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A. Introduction

1 The Office of the United Nations High Commissioner for Refugees ('UNHCR'; 'Office'), more commonly known as UNHCR or the UN Refugee Agency, is one of the world body's chief humanitarian organizations. It was awarded the Nobel Peace Prize in both 1954 and 1981. Based in Geneva, Switzerland, it was given a core mandate to protect and find solutions for → *refugees*. Its mandate has, though, evolved to include other forcibly displaced, and stateless people (see also → *Forced Population Transfer*; → *Population, Expulsion and Transfer*). At the time of writing, some 34 million persons are of concern to UNHCR. Since 2005, UNHCR has been headed by High Commissioner António Guterres, from Portugal. His mandate was renewed for a second five-year term in April 2010 by the UN General Assembly.

B. UNHCR—Origins and Evolution

2 Since the early 20th century, the plight of refugees has been a major concern to the → *international community*. Between 1921 and 1950, a series of multilateral legal and institutional arrangements were developed to provide protection and assistance to refugees (→ *Refugees, League of Nations Offices*). Post World War II, these arrangements included UNHCR's immediate predecessor, the → *International Refugee Organization (IRO)* (see also → *History of International Law, since World War II*).

3 UNHCR was established by the UN General Assembly ('UNGA'; → *United Nations, General Assembly*) in December 1949, initially for three years, primarily to deal with the remaining refugee problem in Europe in the aftermath of World War II. The original mandate of UNHCR was laid down in the Statute of the Office ('UNHCR Statute'), adopted through UNGA Resolution 428 (V) of 14 December 1950. The UNHCR Statute included a generic refugee definition, but also calls on UNHCR to assist specific groups previously protected by the IRO and other earlier arrangements. UNHCR was given the primary task of providing international protection to refugees and working with States to seek permanent solutions to their plight on a non-political and humanitarian basis. UNHCR began its work on 1 January 1951, in Geneva, with a budget of US\$300,000 and 35 staff (see also → *United Nations Budget*).

4 During the 1950s, UNHCR's earliest focus was helping European → *governments* deal with refugees from World War II still living in camps. The Hungarian crisis in 1956, which led to a swift exodus of some 200,000 refugees, mainly into Austria, was UNHCR's first major emergency. The efficient handling of the crisis earned UNHCR credibility, while demonstrating an ongoing need for an international body specifically responsible for refugees. The mandate of the Office accordingly continued to be extended in five-year renewable terms.

5 Commensurate with its growing authority, UNHCR's activities gradually spread beyond Europe. In the late 1950s, UNHCR's mandate was invoked during the Algerian war of independence (→ *Territorial Integrity and Political Independence*), when some 260,000 refugees fled into neighbouring countries, and later for a series of refugee crises in sub-Saharan Africa (see also → *Sahara*), often linked to the process of → *decolonization*. By the end of the 1960s, some two-thirds of UNHCR's programme funds were oriented to Africa. The shift in UNHCR's activities from Europe to → *developing countries* was accompanied by a growth in assistance activities (→ *Humanitarian Assistance in Cases of Emergency*), in tandem with its central protection role.

6 The 1970s were marked by strong engagement in Asia. In 1971, the conflict which led to the creation of Bangladesh caused an estimated 10 million people to flee from what was then East Pakistan into India. At the height of the crisis, the UN Secretary-General appointed UNHCR to act as the focal point for co-ordinating UN and other international humanitarian assistance (→ *United Nations, Secretary-General*). After hostilities ended, UNHCR undertook responsibility for coordinating the mass → *repatriation* to Bangladesh.

7 Developments both during and following the → *Vietnam* war in the mid-1970s resulted in an exodus from Indochina, which continued for more than two decades. During this time over three million people fled their countries, mostly by sea. UNHCR was instrumental in the arrangements agreed for temporary asylum in neighbouring countries in South East Asia and resettlement in third countries (see also → *Asylum, Territorial*). With UNHCR's assistance, some two million people were resettled—approximately 1.3 million of them in the United States of America. Between 1975 and 1980, UNHCR's annual budget increased from US\$69 million to US\$510 million, while the number of staff more than doubled. Much of this growth was in direct response to the Indochina crisis.

8 In the 1980s, decolonization, coupled with superpower involvement in civil wars in different parts of the world (→ *Armed Conflict, Non-International*), led to large-scale and repeated displacements on several continents. Afghanistan produced the largest number of refugees during this period (→ *Afghanistan Conflict*). Following the Soviet invasion of the country in 1979, more than six million Afghans fled to Pakistan and Iran. The 1980s also saw the development of large refugee camps and protracted refugee situations, phenomena that are still prevalent today.

9 With the end of the → *Cold War (1947-91)* in the late 1980s, a number of predominantly inter-ethnic conflicts were revived (see also → *Ethnicity*). UNHCR's role in situations of on-going armed conflict intensified. UNHCR developed additional expertise, working with UN → *peacekeeping forces* and other multinational military forces. UNHCR also became increasingly involved in assisting internally displaced persons ('IDPs') and other war-affected populations.

10 The 1990s were dominated by three major refugee emergencies. The first was the mass exodus of Kurds from northern Iraq in 1991 (see also → *Iraq-Kuwait War [1990-91]*), who became stranded along the Iraqi-Turkish border. The relief operation proved to be a watershed for UNHCR with regard to increased involvement in countries of origin.

11 The second was the violent dissolution of Yugoslavia (→ *Yugoslavia, Dissolution of*) leading to the largest refugee crisis in Europe since World War II. Throughout the Balkan wars, UNHCR coordinated large-scale emergency relief operations involving millions of people. Then High Commissioner Sadako Ogata was a strong advocate for an 'integrated approach' to crisis management, insisting that practical humanitarian aid and assistance must not be a substitute for genuine efforts to resolve the underlying political issues. The Balkan crisis had demonstrated that the political will for such an integrated approach could not be taken for granted.

12 In 1999 the Kosovo crisis caused some 800,000 people to flee to Albania, Macedonia and elsewhere. The expanding role of the military as a humanitarian actor, in this crisis in particular, contributed to a blurring of the boundaries between military action and humanitarian response. With the → *North Atlantic Treaty Organization (NATO)* constructing refugee camps and providing other support to the humanitarian operation, UNHCR found itself working in an altered operational framework, which continues to shape UNHCR's

work today. The military, together with many other actors, have become indispensable partners in many operations.

13 The exodus of over two million Rwandans to neighbouring countries following the 1994 → *genocide* in → *Rwanda* required UNHCR to mount a major assistance programme in refugee camps firmly in the grip of supporters of the former Rwandan government, amongst them persons responsible for organizing or participating in the genocide. The breakdown of → *security* in the camps forced mass returns to Rwanda, despite ongoing security concerns there. This was a distressing example of the dangers of militarized refugee camps and the imperative of respecting the humanitarian and civilian character of asylum.

14 In the 62 years since its creation, UNHCR has helped tens of millions of people to restart their lives. Its work continues today on behalf of over 34 million persons. Some of UNHCR's main current operations are in Afghanistan, Chad, Colombia, Democratic Republic of the Congo, Iran, Iraq and the surrounding countries, Kenya, Pakistan, and Sudan.

15 On 14 December 2010 UNHCR marked 60 years of its existence. Successful management of its responsibilities in quick succession of three major emergencies in 2011—in the Ivory Coast, Libya, and Somalia—underlined how effective the organization's response capacity has become and how relevant and necessary its mandate remains. 2011 also marked the 60th anniversary of the core refugee protection instrument, the 1951 Convention relating to the Status of Refugees ('Refugee Convention'), and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. Both anniversaries were an occasion for UNHCR to review with States and partner organizations the resilience of the basic instruments, but also gaps in the protection architecture and future needs.

C. UNHCR and the UN

1. UNHCR as Subsidiary Organ of the UN General Assembly

16 UNHCR was established by UNGA Resolution 319 (IV) of 3 December 1949 as a subsidiary organ of the General Assembly, consistent with Art. 22 Charter of the United Nations ('UN Charter' ; → *United Nations Charter*). The temporal limitation on its mandate was removed in 2003, when the General Assembly authorized UNHCR to continue its work 'until the refugee problem is solved' (UNGA Res 58/153 [22 December 2003] para. 9).

17 The opening paragraph of the UNHCR Statute recalls that UNHCR is acting under the authority of the General Assembly, which retains the right to guide and influence UNHCR's activities. The UNHCR Statute also specifies that UNHCR receives policy directives from the General Assembly and the UN Economic and Social Council (→ *United Nations, Economic and Social Council [ECOSOC]*). The General Assembly elects the High Commissioner, upon recommendation by the UN Secretary-General, normally for a five-year term, and reviews UNHCR's annual report.

18 While formally part of the UN Secretariat, UNHCR enjoys considerable independence. It has a separate operational budget financed by voluntary contributions, and does not operate under the full supervision of the UN Secretary-General in the exercise of his/her mandate. The main competencies of the UN Secretary-General with regard to UNHCR relate to ensuring its proper administration (UNHCR Statute paras 13, 15 (c), 17, 18, 21, and 22). In this regard, UNHCR is answerable to the UN Secretary-General as Chief Administrative Officer of the UN (Art. 97 UN Charter). By delegation of the General Assembly, decision-making power for UNHCR's participation in non-refugee, humanitarian actions of the UN also rests with the UN Secretary-General (UNGA Res 2956 [XXVII] [12

December 1972]; see also → *International Organizations or Institutions, Decision-Making Bodies*).

19 UNHCR's semi-autonomous character is further strengthened by its authority to conclude → *treaties* directly with States (UNHCR Statute paras 1, 8 (b), and 16; see also → *Autonomy*; → *Treaties, Conclusion and Entry into Force*). A direct relationship with States is created through the 'Refugee Convention' and its Protocol relating to the Status of Refugees of 1967 ('Refugee Protocol').

20 UNHCR accordingly has a separate legal personality for the purposes of the implementation of its mandate. In many ways, UNHCR more closely resembles a specialized agency than an organ of the General Assembly (→ *United Nations, Specialized Agencies*).

2. The Executive Committee of UNHCR's Programme

21 The Executive Committee of the High Commissioner's Programme ('ExCom') was formally established by ECOSOC Resolution 672 (XXV) of 30 April 1958, at the request of the General Assembly (UNGA Res 1166 [XII] [26 November 1957]), to serve as the advisory committee foreseen in UNHCR Statute para. 4. ExCom functions as a subsidiary organ of the General Assembly and has both executive and advisory responsibilities. Originally comprising 25 States, ExCom has progressively enlarged its membership to 87 members as of today (→ *International Organizations or Institutions, Membership*). It consists of States that have demonstrated interest in refugee matters. These include States party to the main refugee treaties and/or important refugee hosting countries (see also → *Host State Agreements*). The election of ExCom members takes place through a process involving both ECOSOC and the General Assembly. ExCom submits the report of its annual session to the General Assembly, as an annex to UNHCR's report.

22 ExCom's terms of reference, as formulated in UNGA Resolution 1166 (XII) para. 5, mainly concern the approval of UNHCR's country programmes budgets as well as oversight of the finances and administration of UNHCR. However, ExCom is also entrusted to 'advise the High Commissioner, at his request, in the exercise of his functions under the Statute' (UNGA Resolution 1166 [XII] para. 5 (b)). This has been interpreted as providing ExCom with an advisory role on international protection of refugees. ExCom meets in Geneva in plenary session for one week in October of each year. A Standing Committee established in 1995 usually meets three times a year to examine thematic issues, review UNHCR's activities and programmes, adopt decisions and finalize conclusions, and discuss other issues of concern to ExCom. Subject to certain conditions, interested non-Member States can also participate in meetings as observers, along with representatives of other UN organizations, international and → *non-governmental organizations* ('NGOs'; → *International Organizations or Institutions, Observer Status*).

23 Notwithstanding the restrictions on its role as defined in its initial terms of reference, ExCom has come to exercise a growing influence over the day-to-day management and policy work of UNHCR. Some commentators have considered this as a threat to the Office's independence (eg Loescher 350 and 376). ExCom does provide an important forum for interaction between States and UNHCR, including on State practices and policies.

24 ExCom is also the only global inter-governmental forum to be involved in the development of international refugee protection standards. Since 1963, the results of ExCom's deliberations have been formally presented as Conclusions on the International Protection of Refugees ('Conclusions on International Protection'). The Conclusions on International Protection address pertinent protection questions of a general or group specific nature. They not only provide policy guidance to UNHCR, but are also directly addressed to States. Each year the Conclusions on International Protection adopted by

ExCom are annexed to the High Commissioner's annual report and endorsed by the General Assembly.

25 The Conclusions on International Protection are adopted by → *consensus*. They are an indication of State practice in key areas, and hence have a standard-setting role. They assist in the interpretation and development of principles and provisions of international refugee law, provide evidence of an already established rule of → *customary international law*, or lead to law creation. Though often referred to as → *soft law*, they nevertheless find their way into judicial pronouncements, with judges referring to them as a source of authority on matters of policy, legal practice or interpretation.

26 Just as the Conclusions on International Protection are not legally binding on States, they are also not binding on UNHCR unless they become the basis of a formal instruction from the General Assembly. They nevertheless influence the way UNHCR exercises its international protection mandate and undertakes its advocacy activities with governments.

27 Traditionally, UNHCR exerts considerable influence over the direction of the Conclusions on International Protection in how it structures the ExCom agenda, its background papers and the initial texts for → *negotiation* which it drafts. In this sense, the Office's role is broader than that of the usual secretariat. This is justified on the basis of the Office's mandate and its role in overseeing the Refugee Convention. In recent years, however, some ExCom members have started to question UNHCR's role in the process of generating protection conclusions. These States propose a more substantive engagement of ExCom in the identification and selection of topics and the preparation of drafts.

28 The enlarged membership of ExCom has contributed to ExCom becoming an increasingly representative forum for discussions, dialogue, and exchange, covering a variety of perspectives and issues. While this allows better representation of UNHCR's diverse constituents, it has also, at times, made consensus building at ExCom more difficult.

29 The High Commissioner's annual 'Dialogues on Protection Challenges' have evolved into a valued forum for global discussions on protection challenges. Follow-up activities flowing from the deliberation are undertaken in a spirit of international co-operation, rather than being driven by formally adopted consensus conclusions.

D. Structure of the Office

30 UNHCR is headed by the High Commissioner. He or she is nominated by the UN Secretary-General and elected in his or her own right by the General Assembly for a term of five years. The High Commissioner's functions are laid down in the UNHCR Statute.

31 UNHCR's staff are appointed by the High Commissioner and report to him. Staff are subject to the UN staff regulations. They enjoy privileges and immunities under the 1946 Convention on the Privileges and Immunities of the United Nations ([adopted 13 February 1946, entered into force 17 September 1946] 1 UNTS 15; → *International Organizations or Institutions, Privileges and Immunities*). As at the start of 2012, the Office employed some 7,735 regular staff, approximately 85 per cent of whom are based in field locations. In addition to its headquarters in Geneva, UNHCR's field presence includes 418 offices in 126 countries worldwide. UNHCR's presence is generally authorized pursuant to a 'host country agreement', or some other form of co-operation agreement with the host State (see also → *International Organizations or Institutions, External Relations and Co-operation*).

32 The High Commissioner's Executive Office at UNHCR headquarters formulates policy, ensures effective management and oversees UNHCR's operations worldwide. It consists of: the High Commissioner; a Deputy High Commissioner (UNHCR Statute para. 14), who oversees all functions related to management and administration of the Office; an Assistant High Commissioner for Operations; and an Assistant High Commissioner for Protection. The Assistant High Commissioner for Operations is responsible for setting parameters for and oversight of global planning and implementation of major operations. The Assistant High Commissioner for Protection has oversight over protection policy development, and ensures coherency and consistency in the integration of protection priorities into the management and delivery of operations.

33 At headquarters, the Office comprises five Regional Bureaux (Africa, the Americas, Asia and the Pacific, Europe, Middle East, and North Africa) and seven divisions—the Division of International Protection ('DIP'), of Emergency, Security and Supply ('DESS'), of Programme Support and Management ('DPSM'), of Financial and Administrative Management ('DFAM'), of External Relations ('DER'), of Human Resources Management ('DHRM'), and of Information Systems and Telecommunications ('DIST'). An Emergency Preparedness and Response Section ('EPRS'), within DESS, is responsible for rapid mobilization of staff (within 72 hours) and supplies in situations of emergency impacting up to 500,000 people (→ *Emergency, State of*).

E. Budget

34 UNHCR is one of the few UN agencies whose work depends almost entirely on voluntary contributions. In 2011, only two per cent of its new income came from the UN regular budget, and this goes to cover only part of the administrative costs (UNHCR Statute para. 20). Contributions are made primarily by governments and the European Commission (88 per cent in 2011). Other important sources of funding include the private sector (five per cent in 2011), UN pooled funding sources (four per cent in 2011) and other inter-governmental organizations (one per cent in 2011). UNHCR's donor base is relatively narrow: ten of its traditional government donors and the EU provide around two third its income. The organization is, therefore, making efforts to identify new funding sources, including from the private sector.

35 Since 2010, UNHCR's annual budget, has been based on a comprehensive needs assessment and a four-pillar budget structure. This revised budget structure was introduced to present financial requirements in a more transparent and effective manner, allowing for better oversight. UNHCR's field offices undertake a participatory assessment of the needs of persons of concern. On this basis, UNHCR develops a budget of what UNHCR could reasonably be expected to implement within a certain period of time subject to availability of funding. The budget is subdivided into four pillars: refugees, stateless people, reintegration activities and IDPs. Activities under Pillars 1 (refugees) and 2 (stateless) are planned and implemented on a programme basis, while those budgeted under Pillars 3 (reintegration) and 4 (IDPs) are designed to be implemented on a project basis. The annual budget also includes an operational reserve to meet additional requirements. UNHCR uses a standardized results-based framework for budgeting, which includes objectives and desired outputs for operations.

36 The budget is submitted to the ExCom at its October session each year for approval. As approval does not constitute a commitment to fund the budget, a pledging conference is subsequently convened annually in December to allow governments to confirm their central levels of support. Pledges made at this conference only partially cover the needs, and

additional contributions are made throughout the year. Early availability of funds is essential for the implementation of programmes throughout the year.

37 As UNHCR cannot be certain of the precise level of funding it will receive in the course of any given year, it has adopted a phased approach to the implementation of plans and budget targets determined under the global needs assessments. In 2011, for example, the final budget was US\$3.8 billion, but the Office received contributions amounting to only US\$2.13 billion. The Office regulates the level of expenditure authorized in line with the funding that is available. This requires ongoing review and re-prioritization of objectives

F. UNHCR's Mandate

38 The mandate of UNHCR consists of a number of elements, foremost its Statute and legal authority, but also requests authoritatively addressed to it, stipulations of ExCom, decisions made on funding and understandings about the organization's responsibilities agreed internationally and perceived needs. A 'mandate' is, therefore, best understood as a description of recognized and approved responsibilities of the organization (Aleinikoff).

1. Legal Basis

39 The principal legal basis for UNHCR's mandate is the UNHCR Statute adopted in 1950. However, numerous UN General Assembly and ECOSOC resolutions and decisions have subsequently interpreted and broadened this mandate—without formally amending the UNHCR Statute. UNHCR's mandate thus has a somewhat fragmented legal basis.

40 Decisions of the General Assembly affecting the scope of UNHCR's mandate, both in terms of its competence *ratione personae* as well as *ratione materiae*, have often been initiated by the Office itself to ensure the necessary flexibility to act in the face of protection challenges and mandate gaps. An example was the innovative use of the → *good offices* concept. UNHCR's 'good offices' were used as a basis for certain UNHCR operations, to enable the Office to provide support and assistance without having to pronounce itself on the status of the individuals concerned as 'refugees' or otherwise. The good offices concept enabled UNHCR to adapt to changing political environments and to de-escalate tense situations. It flowed from and strengthened the understanding that international assistance is non-political in character. It was used for the first time in 1957 for Chinese nationals in → *Hong Kong*. Activities undertaken under the good offices function were later often streamlined into regular programme activities.

41 The Refugee Convention and its Refugee Protocol have also conferred on UNHCR specific responsibilities with regard to the supervision of the implementation of these treaties. This has ensured that the legal basis of UNHCR's mandate goes beyond the immediate framework of law governing the organization of the UN and includes international refugee and → *human rights* law (see paras 66–69 below).

2. Competence *ratione personae*

42 UNHCR's competence *ratione personae*, initially limited to refugees, has over time been expanded to include other categories of forcibly displaced people, eg IDPs. In addition, UNHCR is responsible for stateless people.

(a) Refugees and Asylum Seekers

43 While the UNHCR Statute originally grounded UNHCR's mandate on a refugee definition as applied individually, over the following decades the focus shifted to groups and/or broader displacement situations (→ *Group Rights*). UNHCR's competence *ratione personae* has mirrored this trend.

44 The refugee definition, as contained in the UNHCR Statute, rests on the following key criteria: the person must be outside the country of → *nationality* or former habitual residence, and unable to return there because of a well-founded fear of persecution on the grounds of race, religion, nationality or political opinion (UNHCR Statute para. 6 B; see also → *Opinion and Expression, Freedom of, International Protection*; → *Religion or Belief, Freedom of, International Protection*). Persons considered to be refugees under preceding international instruments (statutory refugees) were included to ensure continuity of international protection (UNHCR Statute para. 6 A).

45 This definition is similar to that contained in Art. 1 A (2) Refugee Convention. Differences relate to the temporal and geographical limitations of the Refugee Convention, absent from the UNHCR Statute definition, and which, for the vast majority of States Parties, have been removed through the Refugee Protocol. Moreover, the Refugee Convention definition criteria include the ground of ‘membership of a particular social group’ (Art. 1 A (2) Refugee Convention), not mentioned in the UNHCR Statute. UNHCR interprets its statutory definition consistent with Art. 1 Refugee Convention, since the latter is a subsequent, more specific and authoritative expression of the same refugee concept.

46 Subsequent UNGA and ECOSOC resolutions, as well as organizational and State practice have taken the refugee concept beyond the 1950 definition (see enumeration in Note on International Protection of 1994 note 8), not by amending the legal definition, but by calling on UNHCR to accept responsibility for particular groups of displaced persons whose circumstances did not meet the classical definition.

47 The General Assembly has here used, in addition to ‘refugees’, terms such as ‘displaced persons’, ‘persons of concern to the Office’ or ‘people who require international protection’(see eg most recently UNGA Res 65/194 [28 February 2011]).

48 In practical terms, this has extended UNHCR’s competence to situations where displacement has originated from a variety of man-made disasters, notably conflict, or generalized violence or public disorder. UNHCR today considers serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order as valid reasons for the granting of international protection under its mandate.

49 People fleeing conflict situations may also be fleeing targeted persecution in the sense of the Refugee Convention definition, and therefore qualify for refugee status on that basis. However, in practice such individualized persecution can be difficult to determine in mass exodus situations of the sort that conflict generates. Refugee status is accordingly often granted on a prima facie group basis. In operational terms, few distinctions are made between individually recognized refugees within UNHCR’s statutory mandate and persons or groups accepted on a prima facie basis within its extended competence. A difference exists, however, in the law and practice of many asylum States. Although States have generally co-operated with and acquiesced to UNHCR’s broadened competence (→ *Acquiescence*), they have not gone so far as to adjust international treaty law accordingly, be it through the creation of new, globally applicable legal provisions, or the interpretation of existing provisions (see also → *Interpretation in International Law*). UNHCR’s attempts to promote common legal standards at the global level for protection based on the broader grounds have so far met with uneven success. States apply protection regimes complementary to the Refugee Convention. These protection regimes differ

markedly from region to region, in terms of the level and standards of protection provided under the national laws of any given country.

50 In several regions there have, though, been notable advances. In particular in Africa, Art. 1 Convention Governing the Specific Aspects of Refugee Problems in Africa ('OAU Refugee Convention') has given formal legal voice to a broader refugee definition, which covers 'events seriously disturbing the public order'. In Latin America, the Cartagena Declaration on Refugees of 1984 ('Cartagena Declaration') provides a similar definition of the term 'refugee' in para. III 3, broadening its application to situations of generalized violence, internal conflicts and massive violations of human rights. To date, 15 countries have incorporated the refugee definition contained in the Cartagena Declaration into their domestic legal systems.

51 Although not specifically mentioned in the UNHCR Statute, UNHCR's mandate for refugees has been interpreted to include a competence for asylum seekers—people who claim to be refugees and ask for asylum, but whose claims are awaiting examination. UNHCR's competence derives from the declaratory rather than constitutive nature of refugee → *recognition*, and the need to provide protection to such persons until their claims have been formally assessed. UNHCR's responsibility embraces activities designed to ensure the claims of asylum seekers are received and examined in a fair and proper way, and that the persons concerned can stay safely and in dignity until a decision on their claim is reached.

(b) Stateless Persons

52 UNHCR's mandate for stateless refugees is specified in para. 6 A (II) UNHCR Statute and in Art. 1 (A) 2 Refugee Convention. In addition, UNHCR has mandate responsibilities for stateless people who are not refugees. These responsibilities include → *technical assistance*, but also extend to individual and group protection activities.

53 UNHCR's mandate for stateless people derives, not least, from UNHCR's designation under Art. 11 Convention on the Reduction of Statelessness of 1961 ('Statelessness Convention'), as the body to which a person claiming the benefits of that convention may apply for the examination of her or his claim, and for assistance in presenting it to the authorities.

54 The Office's mandate also flows from States' recognition of the similarity between refugee and statelessness situations, as well as the fact that preventing and reducing statelessness and protecting stateless persons can help prevent situations that lead to forced displacement.

55 Pursuant to recent resolutions of the General Assembly, starting with UNGA Resolution 61/137 (25 January 2007), UNHCR is authorized to carry out activities in four interrelated areas: identification, prevention and reduction of statelessness, and the protection of stateless persons. The work UNHCR has been undertaking in this respect includes promoting State accession to the two core international instruments (1961 Statelessness Convention and the 1954 Convention on the Status of Stateless Persons), the establishment of proper systems for the identification and protection of stateless persons on the national level as well as the resolution of statelessness situations. The mandate for stateless persons provided by the General Assembly has been further elaborated by UNHCR's Executive Committee (see Conclusions on International Protection No 78 [1995] and especially No 106 [2006]).

56 A ministerial meeting organized in Geneva on 7–8 December 2011, to mark the 60th anniversary of the 1951 Refugee Convention and the 50th anniversary of the 1961 Statelessness Convention saw a ‘quantum leap’ in commitments to resolve statelessness. The two main international treaties on statelessness have long been under-subscribed, but nine States acceded to one or both of the conventions in 2011, and 31 others announced an intention to accede. In addition, States pledged to reform their nationality laws to prevent and reduce statelessness and to establish procedures to identify and provide protection to stateless persons.

(c) Internally Displaced Persons

57 Although the UNHCR Statute makes no direct reference to persons displaced inside their own country, UNHCR has a long history of involvement with IDPs. A series of UNGA resolutions since the early 1970s acknowledged UNHCR’s particular humanitarian expertise with respect to displaced persons generally and have encouraged its involvement in specifically designated situations of internal displacement (for an overview see UNHCR *Thematic Compilation*).

58 Unlike the Office’s mandate for refugees, UNHCR’s involvement in the protection of IDPs is decided *in casu* and has been neither comprehensive nor exclusive. A framework for this involvement was provided through UNGA Resolution 48/116 of 20 December 1993, as revised by UNGA Resolution 53/125 of 9 December 1998, which together remain the formal legal basis for UNHCR’s involvement in IDP situations. UNHCR’s role is thereby stipulated as being conditional upon the following four requirements: *a*) a specific request for engagement from the UN Secretary-General or the competent principal organs of the UN; *b*) the consent of the concerned State; *c*) a consideration of the complementarities of the mandates and expertise of other relevant organizations; and *d*) that the activities on behalf of IDPs must not undermine the institution of asylum. ExCom has also acknowledged UNHCR’s evolving competence in this area, confirming and further elaborating these parameters (see Refugee Conclusion No 75 (XLV) [1994] endorsing the framework provided in UNGA Resolution 48/116). Another condition recognized by the Office as important has been the availability of sufficient additional funding, so that money for refugee operations is not depleted.

59 UNHCR’s activities on behalf of IDPs are regularly carried out in an inter-agency context.

60 Following a review of the UN humanitarian response in 2005, a UN system-wide response mechanism, known as the cluster approach and led by the UN Emergency Relief Coordinator, became the preferred co-ordination model. Responsibilities for different clusters were agreed upon in the Inter-Agency Standing Committee (‘IASC’). UNHCR accepted lead responsibility for conflict-affected populations in three of the clusters: *a*) protection, *b*) camp management, and *c*) emergency shelter (Report of the United Nations High Commissioner for Refugees: Covering the Period from January 2005 to mid-2006 paras 36–37). A co-ordinating agency must also be prepared to assume responsibility, in the absence of any alternative, as the last resort deliverer within its cluster. UNHCR now often has three distinct, but interrelated roles in complex emergencies: its traditional lead role for refugees, its operational responsibilities for IDPs and its cluster co-ordination roles for IDPs and other affected populations.

61 The cluster arrangement does not formally change UNHCR’s mandate. Rather, it rationalizes the way that UN agencies work together and promotes a more coherent, consistent and predictable response. The assumption of cluster responsibilities is expected

to lead to a significant increase in UNHCR engagement in IDP situations. Over the long-term, this may impact on the identity of the Office.

62 The cluster system applies to humanitarian emergencies induced by conflict as well as natural disasters. For the latter, UNHCR does not have the default protection cluster lead. The Office has, however, agreed to take the cluster lead on a number of occasions, including in 2009 in the Philippines following a tropical typhoon and the floods in Pakistan in 2010. UNHCR has also been approached by the IASC to assume a more predictable leadership role of the protection cluster in natural disasters.

63 The 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('Kampala Convention'), which is the first binding international instrument on IDPs, explicitly recognizes the role of international agencies in giving effect to its principles, rights and obligations. It also underlines the importance of an inter-agency collaborative approach in support of IDPs (Art. 6 Kampala Convention). Its preamble makes explicit reference to 'the protection expertise' of UNHCR.

64 In December 2011, the IASC adopted a set of recommendations intended to improve the cluster system. The proposed actions aim at strengthening cluster leadership and strategy planning, enhancing accountability and simplifying co-ordination mechanisms. They are subsumed under the broader initiative, or 'transformative agenda', of the office of the UN Emergency Relief Coordinator.

65 The largest IDP situations with which UNHCR is currently involved include Colombia (3.6 million IDPs), Sudan (4.5 million IDPs), Iraq (2.8 million IDPs), Democratic Republic of the Congo (1.7 million IDPs; → *Congo, Democratic Republic of the*) and Somalia (1.5 million IDPs; → *Somalia, Conflict*).

(d) Returnees

66 Strictly speaking, returnees do not form a separate legal category. They may be former refugees whose refugee status has ceased; or refugees or IDPs who decide to return voluntarily to their country or area of origin and who continue to remain under the international protection regime until national protection has been restored. They nevertheless present specific challenges, as return is an interim stage in a process which requires specifically targeted responses and involvement in the returnees' country of origin (see also paras 71-78 below).

(e) Exclusion from and Cessation of Competence

67 Individuals who cease to be within, or are excluded from, the High Commissioner's competence are specified in UNHCR Statute paras 6 A and 7, respectively. Grounds for cessation of UNHCR's competence include the (re-)acquisition of effective national protection or the cessation of the circumstances in connection with which the person concerned was recognized as a refugee. Grounds for exclusion from UNHCR's competence apply where a person enjoys rights akin to those of nationals in his or her country of residence; where protection or assistance are provided by other organs or agencies of the UN (notably the → *United Nations Relief and Works Agency for Palestine Refugees in the Near East [UNRWA]*); or on account of certain serious crimes or heinous acts. Similar cessation and exclusion clauses are provided for in Arts 1 C, D, E, and F of the Refugee Convention. Refugee status may also be cancelled, that is, invalidated from the time of the initial recognition decision, if it was incorrectly granted in the first place. National law may

impose time limits on the re-opening of final recognition decisions which have not been obtained through fraud.

3. Competence *ratione materiae*

68 In 1950, the General Assembly assigned UNHCR two principal functions: to provide international protection to refugees, and together with States, to seek permanent solutions for the problem of refugees (UNHCR Statute para. 1). UNHCR considers both protection and durable solutions to be part of an indivisible continuum, with the achievement of a solution in fact the ultimate form of protection. Providing international protection has consistently remained at the core of UNHCR's responsibilities.

69 International protection connotes protection offered by the community of States to persons lacking adequate protection from their own country. It draws on different → *sources of international law* and has gradually evolved over time, from the idea of international protection as a surrogate for consular and → *diplomatic protection* to include broader notions of human rights protection. The substantial development of human rights law during the past decades has had a considerable influence on the content and scope of international refugee protection.

70 The first usage in public → *international law* of the term international protection was in the UNHCR Statute which did not, however, provide a legal definition. UNHCR Statute para. 8 only provides a non-exhaustive list of activities that the Office can pursue. Beyond this list, UNHCR's operational practice and that of States have given form and content to the concept, which continues to evolve. The international protection of refugees begins with securing their admission to a safe country of asylum, and encompasses the granting of asylum and ensuring respect for their fundamental human rights, including the right not to be forcibly returned to a country where safety or survival is threatened (the principle of *non-refoulement*). It ends with the attainment of a durable solution.

71 The following subsections set out key and interrelated aspects of UNHCR's international protection function.

(a) *Protection Delivery*

72 UNHCR has never considered international protection as an abstract notion, but as a dynamic and action-oriented function. International protection encompasses a range of concrete activities, both policy and operational, and is carried out in co-operation with States and other partners. The goal is to enhance respect for the rights of refugees and other persons of concern to UNHCR and to resolve their problems. Protection is first and foremost about direct protection delivery in the field. This encompasses all activities which directly protect the rights of persons of concern, which improve their physical security, and which address the needs of those who are particularly at risk, such as women (see also → *Women, Rights of, International Protection*), children (see also → *Children, International Protection*), and the elderly. Some of the challenges UNHCR is facing in its efforts to operationalize protection are summarized in paras 93-101 below.

73 While UNHCR Statute para. 2 stipulates that UNHCR's work should primarily relate to 'groups and categories of refugees', the Office has always been directly engaged in the protection of individuals. This flows both from the individual approach inherent in the refugee definition under UNHCR Statute para. 6 and from the realities of field work. Despite an apparent contradiction between UNHCR Statute paras 2 and 6 (Türk [1992] 276-77), → *State Practice* has always accommodated UNHCR's work on behalf of

individuals. National legislation quite regularly provides a role for UNHCR in asylum procedures.

74 A key method for individual protection is determination by UNHCR of refugee status under its own mandate (Refugee Status Determination; 'RSD'). While States have the primary responsibility to determine the status of individuals arriving on their territory, UNHCR can itself undertake RSD under its own mandate, at the request of States or on its own initiative, as may be required for protection reasons.

75 In 2010, UNHCR conducted RSD in 57 countries either as the sole decision-making body or jointly with the specific government. UNHCR issued 61,000 individual decisions which corresponded to 11 per cent of the total global number of RSD decisions. The Office has accumulated considerable jurisprudential experience in the implementation of the Refugee Convention, reaffirming the authoritative character of its opinions.

76 With its limited financial and staffing resources, UNHCR has struggled at times to uphold procedural standards (see Alexander; Kagan). Carrying out reliable RSD is particularly challenging in countries facing sudden large influxes of asylum seekers, or which are themselves seriously affected by armed conflict, civil war or other factors resulting in destabilization and insecurity.

77 Acknowledging these difficulties, improvement of the quality of UNHCR RSD operations in line with the Office's own procedural standards continues to be a priority. Current demands upon UNHCR RSD operations, however, exceed the organization's capacity to respond in a timely manner and significant backlogs do accumulate in larger RSD operations. Greater engagement by States, including by assuming more fully their responsibility for the determination of the international protection needs of persons on their territory and by participating more directly in operations where UNHCR is required to carry out RSD under the mandate, is therefore critical.

(b) Development of International Refugee Law

78 UNHCR is the only international organization explicitly mandated to 'promote the conclusion and ratification of international conventions for the protection of refugees' (UNHCR Statute para. 8 (a)). ExCom has frequently urged UNHCR to pursue the continued development of refugee law in dialogue with governments, NGOs and academic institutions (see, eg, Conclusions on International Protection No 51 (XXIX) [1988] and No 87 (L) [1999]).

79 UNHCR initiated and successfully supported the conclusion of two international refugee law treaties: the Agreement relating to Refugee Seamen of 1957 and the Refugee Protocol. After an attempt to adopt a Convention on Territorial Asylum failed in the 1970s (→ *Asylum, Territorial*), no further attempts were made to draft a universal treaty on refugees, in part to avoid a lowering of existing standards. UNHCR has, though, contributed to the negotiation of human rights and other broader international law instruments, which may have a bearing on the quality of asylum and the protection of persons of concern to UNHCR. The Office has also contributed to the development of customary international law. The most pertinent example is the key role UNHCR has played in the evolution of the *non-refoulement* principle, from a convention principle to a rule 'whose applicability is embedded in customary international law' (see Declaration of State Parties to the 1951 Convention and/or its 1967 Protocol).

80 At the regional level, UNHCR was instrumental in the elaboration of the OAU Refugee Convention. UNHCR also supported the → *African Union (AU)* in articulating a regime for IDPs in a formal regional instrument. Following the adoption of the Kampala Convention on 22 October 2009, UNHCR is working with the AU to accelerate the ratification process so that it can enter into force. In the European context, UNHCR was involved in the negotiation of the 1997 European Convention on Nationality and the development of a Common European Asylum System ('CEAS'; see also → *European [Economic] Community; → European Union, Historical Evolution*).

81 UNHCR's contribution to standard-setting through ExCom's Conclusions on International Protection is referenced above (see paras 19–25 above). Additionally, UNHCR routinely provides advice on the interpretation and practical application of the provisions of the international refugee instruments to authorities, courts—especially in precedent-setting cases—and other national, regional or international bodies (on UNHCR's role in the monitoring and implementation of human rights standards, see Bierwirth). In an effort to promote a harmonized interpretation of the refugee definition, UNHCR offers guidance both on the eligibility of certain groups of refugees and on the interpretation of the definition itself. Of particular note is the UNHCR Handbook on Determining Refugee Status, prepared by UNHCR in 1979 at the request of governments to provide guidance to their officials involved in refugee status determination. The Handbook on Determining Refugee Status has been supplemented by a series of guidelines on interpretative issues with the refugee definition. The UNHCR Handbook, complemented by the guidelines, has been reissued in one publication in 2011.

82 The guidelines mentioned above take into account State practice and, while not legally binding, serve as an authoritative interpretation of current refugee law. National jurisprudence of many countries and regional courts regularly refer to them. Recent examples include: *MSS v Belgium* ([ECtHR] App 30696/09); *HJ (Iran) (FC) (Appellant) v Secretary of State for the Home Department* (United Kingdom Supreme Court [7 July 2010] [2010] UKSC 31; for further references to State practice, see Kälín 625–27).

(c) Supervisory Responsibility

83 UNHCR Statute para. 8 (a) calls upon the High Commissioner to provide for the international protection of refugees, inter alia, by supervising the application of international instruments. This provision gives effect to the general obligation for UN Member States to co-operate with the UN (Arts 1 (3), 2 (2), 2 (5), 55 and 56 UN Charter). Corresponding treaty obligations have been included in Arts 35 and 36 Refugee Convention and Art. II Refugee Protocol. Contracting States recognize herein the supervisory function entrusted to UNHCR and undertake to facilitate the performance of this function. These provisions also establish a formal link between the international authority responsible for the protection of refugees and the Refugee Convention defining their status and rights (Türk [2001] 142). Many signatory States have implemented their obligation under Art. 35 Refugee Convention by granting UNHCR a role in their national asylum procedures.

84 The obligation to co-operate with the Office is also recognized in regional refugee law instruments (Art. VIII OAU Refugee Convention; Recommendation II (e) Cartagena Declaration; Art. 21 Directive 2005/85/EC of 23 October 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status [2005] OJ L 326/13).

85 Unlike the supervisory mechanisms contained in all major human rights treaties (see also → *Human Rights, Individual Communications/Complaints*; → *Human Rights, Remedies*; → *Human Rights, State Complaints*; → *Human Rights, State Reports*), international refugee law does not provide for any institutionalized reporting or enforcement mechanism. The Office itself, not least through its field presence, monitors, analyses, and reports on State and non-State actions in relation to persons under its mandate. States are obliged to facilitate UNHCR's supervisory function by providing the Office, upon request, with information and statistical data. The annual Note on International Protection presented by UNHCR to ExCom is an important channel for sharing and discussing trends and concerns with all partners. Information on protection situations and challenges is also included in other major reports, such as the annual report of the High Commissioner to the General Assembly, as well as UNHCR's periodic publications, including its State of the World's Refugees. UNHCR also maintains a regular dialogue on protection with → *civil society*, the legal, judicial and the academic communities, and other relevant actors, such as the media (see also → *Public Opinion*).

86 Monitoring and resulting interventions by UNHCR are regularly combined with concrete offers of practical support by UNHCR to governments. A number of proposals have been made over past decades to establish an independent review mechanism of States' implementation of their obligations under the 1951 Convention, but State support has been lacking (see Kälin 628-31). Nevertheless the broad range of communication, intervention and response options available to UNHCR in implementing its supervisory responsibility do help to offset some of the challenges arising from the lack of an independent and transparent review mechanism and the fact that, in delivering protection, UNHCR must work closely on the ground with government partners and is reliant on voluntary State funding. These factors impact on what the Office may say publicly and how it reports its concerns.

(d) Promotion of Durable Solutions

87 The ultimate goal of international protection is the achievement of durable solutions, ie integration (→ *Aliens, Integration*), or reintegration, of refugees into communities where effective national protection is available. Traditionally, UNHCR has pursued one or a combination of three durable solutions: voluntary repatriation to the country of origin; local integration in the country of asylum; and resettlement in third States. UNHCR is increasingly developing comprehensive solutions strategies which combine the three solutions and which also include interim steps towards their attainment. For example, in certain situations → *migration* schemes may provide such interim solutions for refugees.

(i) Voluntary Repatriation

88 During the first decade of UNHCR's existence, efforts to find durable solutions were focused primarily on local integration and resettlement, rather than voluntary repatriation. Most of the world's refugees were from communist States, and UNHCR's principal donors considered it inconceivable that refugees would choose to return to their homes. However, as of the mid-1980s, when the focus of many major refugee programmes had shifted to developing regions, increased emphasis was laid on voluntary repatriation, in view of limited opportunities for local integration.

89 Initially, UNHCR's responsibility was considered to have come to an end when refugees had crossed the border back into their home countries. However, over time it has been recognized that the Office has a legitimate interest in the consequences of return. Since the early 1990s, to help ensure the sustainability of return and avert new refugee outflows, UNHCR has thus often been more systematically involved in securing protection in the country of return and assisting in the reintegration and rehabilitation process. UNHCR's engagement within the broader UN framework for post-conflict transition from relief to

development has increasingly been seen as important, particularly to ensure that long-term reconciliation, reconstruction and rehabilitation efforts take into account the needs of returnees.

90 The General Assembly has repeatedly reaffirmed and broadened UNHCR's functions with regard to voluntary repatriation, including an increasingly active role in the country of origin (see, eg, more recently UNGA Res 65/194 [28 February 2011]; UNGA Res 60/129). ExCom conclusions lay down the principles that should govern the voluntary repatriation process (see Conclusions on International Protection No 18 (XXXI) [1980]; No 40 (XXXVI) [1984]; No 74 (XLV) [1994] and No 101(LV) [2004]). As regards treaty law, the OAU Refugee Convention is the only binding instrument to refer to the voluntary repatriation responsibility. It recognizes the voluntary character of repatriation and defines the responsibilities of both country of asylum and the country of origin.

91 UNHCR's Handbook on Voluntary Repatriation, issued in 1996 and currently under review, brings together the standards and modalities of voluntary repatriation operations. The overriding priorities are to promote the conditions for voluntary repatriation to take place in safety and dignity (see also → *Human Dignity, International Protection*), to ensure the exercise of a free and informed choice, and to mobilize support to underpin return, with full restoration of national protection as the end product.

92 UNHCR's role in supporting voluntary repatriation often proceeds in parallel with spontaneous returns. UNHCR may facilitate or actively promote repatriation, depending on the conditions prevailing in the country of return. Where these are less secure or less favourable to durable return, the Office facilitates rather than promotes return. Facilitation assistance may range from providing information, to logistical support, basic reintegration packages and protection monitoring in the country of origin.

93 UNHCR actively promotes repatriation when a significant change has occurred in the country of origin, leading to a strong expectation of a sustainable return. This can be the case even when full national protection is still being restored, and before the conditions for cessation of refugee status according to Art. 1 C (5) and (6) Refugee Convention have been met. Repatriation under such circumstances is increasingly considered as an important step towards reconciliation and the restoration of peace. UNHCR now promotes comprehensive solutions road maps, with cessation of refugee status marking the end of a longer term process.

94 UNHCR's capacity to ensure the voluntariness of return can be compromised by realities on the ground. Where return is the better of bad or only options, or the only one, UNHCR has interpreted its responsibility for refugee safety as consistent with facilitating return, both in the country of asylum to ensure minimum guarantees, and in the country of return to contribute to the safety and viability of the return.

95 Measures to promote voluntary repatriation include, in addition to information, logistical support, protection monitoring, and assistance packages, the facilitation of dialogue between the host country, the country of origin and the refugees. Larger repatriation operations often take place on the basis of tripartite agreements between host country, country of origin, and UNHCR. These set out respective duties and responsibilities, including those of the refugees and returnees. Given their binding nature, such agreements reinforce the legal underpinnings of voluntary repatriation. They also provide UNHCR with an important monitoring mechanism. UNHCR's responsibilities in post-conflict situations are guided also by the UN Secretary-General's policy decision No 2011/20 of 4 October

2011 on durable solutions, which establish agencies' priorities and responsibilities in supporting the delivery of durable solutions.

(ii) Local Integration

96 Local integration is a legal, economic, and socio-cultural process aimed at providing the refugee with a permanent right to stay in the country of asylum, including as a naturalized citizen. Countries hosting large-scale refugee populations are often reluctant to allow their local integration. Nevertheless, local integration as a durable solution has been successfully pursued as a pragmatic response to some long-standing refugee situations, often referred to as 'protracted refugee situations'. This is especially the case for residual groups of refugees remaining following voluntary repatriation of the majority, as well as for those who have de facto integrated socially and economically, and for those unable or unwilling to repatriate for a range of reasons, including the traumatic experiences which triggered flight. To assist States and UNHCR to better implement this durable solution, ExCom adopted guidance in 2005 as to when local integration should be considered (Refugee Conclusion No 104 (LVI) [2005]; see also Conclusion No 109 (LXI) [2009]).

(iii) Resettlement

97 Resettlement involves the selection and movement of refugees from a first asylum State to a third State that has agreed to admit them for long-term or permanent residence. UNHCR plays a facilitating role through identification of beneficiaries, their processing for selection, and assistance with departure.

98 Resettlement was used extensively as a solution for European refugees following World War II (see also → *Peace Settlements after World War II*). Over subsequent years, resettlement evolved into a protection tool for persons unable to remain in countries of asylum. From a solution's perspective, resettlement has always made an important contribution to the identification of durable solutions, though over the years primacy was increasingly given to voluntary repatriation. There have been exceptions when resettlement has been the chief solution for larger numbers, such as for Indo-Chinese refugees in the 1980s or more recently for the refugees from Bhutan in Nepal. In such situations, resettlement also served as a tool for international burden and responsibility sharing as part of a multilateral effort to solve sizeable refugee situations (see also → *Solidarity Rights [Development, Peace, Environment, Humanitarian Assistance]*).

99 During the past few years, considerable momentum has been achieved in strengthening the functions of resettlement: to serve as an important protection tool, to realize a durable solution, and to manifest international responsibility sharing. Resettlement provided solutions for more than 330,000 refugees between 2007 and 2011, and, as a result of its strategic use, it is serving to expand asylum space in a number of host countries and leverage wider protection and solution dividends benefiting the refugee population as a whole.

100 Although the number of resettlement countries has increased over time (currently 26 countries), resettlement capacity is still vastly inadequate. Some 780,000 people are estimated to be in need of resettlement in the coming years against the availability of only 80,000 resettlement places per year. Lengthy and inflexible resettlement processes and reinforced security clearance procedures, as well as difficulties in the timely identification and availability of reception and integration facilities can pose additional challenges to the resettlement process.

(iv) Migration as a Pathway to Solutions

101 During the past few years, UNHCR has increasingly been promoting migration schemes as an interim, or even as one component of a 'durable solution' for refugees in certain situations. This recognizes that traditional understandings of 'durable solutions' which require the re-establishment of national protection through permanent settlement either in the host country or upon return in the country of origin is no longer sustainable in a globalized world (Long).

102 Migration schemes could provide refugees with a legal basis for the regularization of status (residence and work permit) or offer the possibility of legal onward migration. However, practical examples remain limited and the concept is not yet fully integrated in UNHCR's policy and practice. The Office is working to refine its understanding of the opportunities and limitations of resorting to migration schemes within broader protection and solutions strategies.

(e) Humanitarian Assistance

103 The role foreseen in UNHCR Statute para. 10 to provide financial assistance to countries of reception, or material assistance to refugees, was minimal. However it became rapidly untenable to approach protection as a legal responsibility only. In 1954 the General Assembly authorized the High Commissioner to 'negotiate ... voluntary contributions' (UNGA Res 832 (IX) of 21 October 1954 para. 2) and prepare 'proposals for projects designed to achieve permanent solutions' (ibid para. 5). Soon after, these projects expanded into an annual programme of material assistance. ExCom was created in 1957 primarily to oversee this programme.

104 Over the years, UNHCR has accumulated significant expertise in managing wide ranging material assistance programmes to meet needs across the spectrum of refugee flight (emergency aid, care and maintenance and facilitation of durable solutions). Such programmes have become an essential corollary to UNHCR's protection initiatives—a development that has, on occasions, sparked controversy.

105 In some key operations where material assistance became the main focus, UNHCR was criticized for using assistance as a tool for institutional expansion, at the expense of the protection of human rights. There was also a concern on the part of some that humanitarian assistance could become a substitute for political action. Moreover, a number of governments stipulated that assistance programmes were a pre-condition for assuming their own protection responsibilities.

106 Such criticisms have led UNHCR to reassess the role of assistance and how to make it a tool for better protection delivery. UNHCR policy priorities now assume that international protection and assistance are inextricably interlinked, and that the objective of any assistance activity has to be a protection outcome, specifically contributing to the achievement of human security and well-being. As expressed in Programme 21 of the UN Medium Term Plan for the Period 2002–2005: 'Assistance is one aspect of international protection and is a means of facilitating it. It is rooted in and grows out of the protective nature of UNHCR's work' ([2001] UN Doc A/55/6 Rev.1 para. 21.1).

107 UNHCR's results-based planning framework is systematically using a set of agreed rights-based protection standards and indicators for planning and measuring the impact of all its operations. Sets of standards and indicators have been developed for urban as well as for reintegration operations, in addition to those for the camp-based refugee situations. These standards and indicators rest upon a holistic understanding of international protection, which includes respect for the rights contained in international refugee instruments as well as those embodied in other international conventions. Rather than

focusing on available resources, the indicators support a rights-based approach, validated by participatory assessment and planning. The rights-based approach brings together core elements of human rights, community development, and empowerment of people of concern to UNHCR as holders of rights (UNHCR Practical Guide).

G. UNHCR and Its Partners

108 UNHCR can only effectively fulfil its mandate in co-operation with other partners, as foreseen in UNHCR Statute paras 8 and 10. UNHCR of necessity works with a wide variety of partners, ranging from governments to NGOs. They may be partners in implementation or advocacy activities, or deliver protection and assistance in their own right.

109 Co-operation among States is vital for resolving refugee problems. International action can significantly reduce the burden faced by frontline States. UNHCR has a critical role in mobilizing and facilitating international responsibility- and burden-sharing initiatives, including through crafting strategic partnerships among all stakeholders.

100 Committed to the principle of participatory planning and delivery, UNHCR also works closely with civil society, refugees, and their host communities in order to ensure that refugees and others who benefit from the organization's activities are consulted over decisions which affect their security and livelihood.

111 UNHCR maintains bilateral partnerships with a broad range of UN organizations, often on the basis of memoranda of understandings. The Office also participates in several UN co-ordination bodies, notably the Inter-Agency Standing Committee, in particular in its work to improve the global response to internal displacement. UNHCR is one of the founding member agencies of the Global Migration Group which promotes coherence between the programmes of different agencies with responsibility for migration issues. UNHCR also works closely with the Peace Building Support Office. Beyond the UN family, the Office has strong collaboration with multilateral and regional organizations, such as the African Union, the → *Organization of the Islamic Conference (OIC)*, and the → *Association of Southeast Asian Nations (ASEAN)*.

112 Partnership with NGOs has evolved significantly. Initially, NGOs were mainly considered as implementing UNHCR's programmes. Over time, NGOs have become equal partners in their own right. The UNHCR Field Guide for NGOs of 1999 offers guidance on this more collaborative mode of working. Its updating is being considered with NGO partners. Today, 30 per cent of the organization's budget is channeled through NGOs. Consultations with NGOs take place on an annual basis, and many NGOs also participate as observers in the ExCom.

H. The International Protection System 60 Years on-Strengthening Governance

113 A landmark ministerial meeting was convened by UNHCR in December 2011 to celebrate the 60th anniversary of the Refugee Convention and the 50th anniversary of the 1961 Statelessness Convention. The Ministerial Communique issued by the meeting underlined that the Refugee Convention and its Refugee Protocol are the foundation of the international protection regime and have enduring value and relevance in the 21st Century. The positive outcomes of this ministerial meeting, including the numerous pledges made by States to formalize their accession to relevant conventions and to address specific forced displacement and/or statelessness issues, will ground UNHCR's work in the coming years.

114 The context in which UNHCR will have to undertake this work is a world which remains insecure for millions of people. An estimated 43.7 million people are forcibly displaced worldwide due to persecution, human rights violations and conflict. These drivers of displacement are compounded by combinations of factors such as population growth, climate change, and the proliferation of abusive or weak political regimes. Greatly enhanced movement possibilities and incentives created by badly functioning migration management systems have contributed during the past decades to an increase in irregular migration, sometimes over long distances. The power of social media in refugee and migration situations has enormous potential yet to be realized.

115 Against this background, UNHCR's task is to assist States to better protect refugees and other people of concern pending realization of durable solutions and to that end to ensure that the legislation or the practical arrangements they have put in place to implement their protection obligations can meet people's legitimate claims to protection. UNHCR's objectives here required specific activities in the following four broad categories of situations entailing protection gaps.

1. Classical Situation of Persecution or Statelessness—Achieving Consistency in the Delivery of Protection

116 The 1951 Convention was drafted to confer a right to protection on refugees who are exceptionally vulnerable because they are outside the normal framework of national State protection. Its object and purpose was to create rights for refugees, and assign responsibilities to States for their protection. Protection gaps, which do exist, are primarily due to a lack of ratification and committed implementation.

117 More than 40 per cent of refugees under UNHCR's mandate are hosted by States that are not party to any international refugee instrument and are not bound by the standards they contain. UNHCR continues to work toward universal accession to these instruments, to ensure a global understanding of rights and obligations. In tandem, the Office is developing cooperative models which can assist to ensure that rights of refugees are adhered to in practice, particularly in countries which are not likely to consider ratifying the Refugee Convention any time soon.

118 Even in States signatory to the 1951 Convention, the number of persons with international protection needs who enjoy Convention refugee status and the full set of rights it entails is a fraction of those who receive some other form of protection, which is often more minimal. Some countries refrain from *refoulement*, but otherwise take little responsibility for identifying refugees on their territories or according them relevant rights. Building the protection capacity of national authorities and providing guidance to address divergences in the interpretation of the refugee definition are essential parts of UNHCR's global strategy. UNHCR also regularly interacts with regional human rights courts and bodies, which are playing an ever more important role in interpreting and enforcing legal standards for the protection of refugees.

119 Similarly, international instruments providing protection to stateless people have been in place since the 1950s. However, accession to these instruments has been low until recently, and their provisions have also not always been properly implemented in practice.

120 The ministerial meeting UNHCR convened in 2011 and preparatory activities during the commemorations year created a new momentum in relation to the protection of stateless people. The challenge now will be to operationalize the commitments made by States and to establish sound national protection systems for stateless people around the globe. UNHCR is issuing authoritative guidelines on the interpretation and application of the 1954 and 1961 Statelessness Conventions. These will shape UNHCR's operational and

technical efforts to enhance progress on addressing statelessness, alongside States and other stakeholders.

2. Mass Influx Situations—Improving Protection Tools

121 While doctrinally the Refugee Convention framework may also apply in the context of mass influx, in practice it serves more as an aspirational basis for extending protection than the blueprint for what is delivered. Upholding its protection standards can be challenging in the face of large numbers of arrivals with pressing material and physical needs. It is also not a good camp management tool. One of UNHCR's priorities is the development of tools which are better tailored to the needs of persons in large-scale influx situations.

122 Individualized refugee status determination and the granting of all the Convention rights can be practically impossible in the context of mass influx. The daunting task of establishing a measure of physical security for refugees, as well as for humanitarian staff, can become the overriding protection objective, necessarily overtaking other aspects of protection. UNHCR is working on better integrating holistic protection strategies into emergency responses from the outset, to address core protection concerns like sexual and gender-based violence, trafficking, and family separation. The Office is also developing ways to better identify and separate individuals which present security threats.

123 The absence of concrete mechanisms for burden and responsibility sharing in the Refugee Convention itself is a clear liability in mass influx situations. This is particularly the case as the largest percentage of refugees live in fragile or low income countries or border areas neighbouring their home country, where the economic, social, political and environmental impacts of hosting large refugee populations hit hardest. The principle of international co-operation is an important tenet of the refugee protection regime, in light of the international scope and nature of refugee challenges. However, the absence of clear parameters for co-operation between States on refugee issues is a serious gap. There have been several tentative, but ultimately shelved, attempts to articulate general benchmarks or develop more predictable tools for burden and responsibility sharing. UNHCR took advantage of the 2011 commemorations year to reinitiate a dialogue on international co-operation to share burdens and responsibilities, as one step towards moving the principle of international co-operation from an aspiration to practical arrangements with a set of dependable commitments.

3. Displacement Situations Outside the Refugee Convention Framework—Promoting Protection-Sensitive Arrangements

124 Patterns of forced displacement will be increasingly impacted by factors such as population growth, dwindling resources and inequality of access to them, as well as environmental damage and climate change. Natural disasters are forcibly displacing more people inside and outside their countries. Others are or will be displaced across borders by a combination of factors which leave them vulnerable, or exacerbate vulnerabilities to the point where flight becomes more feasible than stay.

125 People in such situations are likely to have many of the same protection needs as Convention refugees. The Refugee Convention as it currently stands is not applicable to most of these situations, and although there is an impressive body of jurisprudence on the *non-refoulement* or non-expulsion provisions of human rights conventions, coverage is still partial. Persons fleeing devastation and disaster do not have a generally recognized right to cross international borders to seek safety, even if the risk is serious. The challenge is to weave the increasing inter-connected web of international law into a coherent and complementary body of protections for all displacement situations. UNHCR will be working

over the coming period to develop interim protection arrangements to address temporary needs.

126 With regard to the protection of IDPs, inter-agency co-operation in complex humanitarian emergencies has improved. The cluster approach mentioned above (paras 60-62) has enhanced coverage, predictability in leadership, and partnerships. Challenges do, though, remain. Process has to find a better balance with delivery, national and local actors need to be made integral, inter-cluster co-ordination must improve and under-funding of the protection cluster needs attention. While current inter-agency initiatives are expected to redress some of these shortcomings, the cluster approach itself needs tailoring to improve effective protection delivery on the ground. In addition, predictable leadership arrangements for protection in situations of natural disasters still require further development. A more harmonious and integrated approach is needed to identify and implement durable solutions for both IDPs and returning refugees, ensuring that needs do not go unaddressed to the point where the sustainability of solutions is at risk. The development of domestic laws and policies on internal displacement which improve legal coherence, and clarify responsibilities at national and local levels and underpin co-ordination arrangements is an important aspect of UNHCR's work.

4. Mixed Migration Scenarios—Incorporating Forced Displacement into Policies and Strategies

127 Today's asylum context is increasingly being challenged by the phenomena of mixed population flows, entailing people with varying profiles—refugees and others—moving along the same routes and using the same methods of travel, often in an irregular manner. Identifying and ensuring access to protection for refugees within these mixed movements can be difficult, notably where protection obligations have to be reconciled with migration control and border security imperatives.

128 To develop appropriate responses to the particular protection challenges of mixed movements UNHCR has been increasingly engaged in regional and global policy discussions, promoting initiatives at the interface between refugee protection, forced displacement and international migration. UNHCR's key tool for engagement in this area, the 10-Point Plan of Action on Refugee Protection and International Migration, was issued in 2006 to assist States to develop comprehensive migration strategies sensitive to refugee protection imperatives. The 10-Point Plan's framework and methodology have formed the basis for the development of comprehensive, rights-based regional strategies which address irregular mixed movements in all their complexity. In addition, the Office has been contributing to initiatives in the context of fora such as the Global Forum for Migration and Development and the forthcoming UN High Level Dialogue on Migration and Development.

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