

**FHSMUN XXIX**  
**UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES**  
**ENHANCING STATE CAPACITY TO PROTECT REFUGEES**

**Introduction**

Refugees are invariably found amongst the world's most vulnerable peoples for several reasons: they have been forced from their homes and must now conform to the laws of new host countries; they frequently have few available financial and political resources; they are often confronted by unfamiliar languages, legal systems, and local customs; and they are often not wanted by their new host countries. When refugees flood across international borders, especially when the influx of refugees is sudden and/or unexpected, the receiving states may be ill-prepared to accommodate these new arrivals. Attending to the needs of large numbers of refugees is an arduous task for even the wealthiest and most highly developed states; poorer developing and least developed countries (LDC's) may find their capacities and treasuries overtaxed. The United Nations High Commissioner for Refugees (UNHCR) is responsible for engaging all relevant stakeholders in a truly multilateral dialogue on how to enhance state capacity for protecting refugees.

**Chaos at the border**

When refugees cross into new host countries, they often encounter scenes of chaos and confusion. In many cases, international borders are not always clearly delineated and refugees may not be aware of exactly what country they may be in. Even when refugees cross at clearly recognized borders, refugees may arrive in areas where the local government officials do not speak the refugees' native languages and where border guards and immigration officials are not fully aware of relevant domestic and international law. Border guards may also extort money and other resources from refugees; female refugees are frequently the victims of sexual assault and exploitation. Ishmael Beah, a former child soldier in Sierra Leone, described how both Sierra Leonean and Guinean border guards extorted payments from Sierra Leoneans fleeing the country's civil war in the 1990's. "It sickened me to see that Sierra Leoneans asked money from those who had come from the war. Why does one have to pay to leave his own country?"<sup>1</sup>

Governments often defend their seemingly hostile receptions of refugees by citing security and public health concerns. In some cases, these concerns, especially security concerns, may be justified. In the mass exodus from Rwanda in the aftermath of the 1994 genocide, tens of thousands of people who had organized and participated in the massacres streamed across the borders, especially into eastern Democratic Republic of Congo (DRC), then known as Zaire. Had the Congolese (Zairean) authorities sought to detain and interview many of these refugees, they may well have been able to present a legitimate argument to the international community about the need to protect local

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<sup>1</sup> Ishmael Beah, *A long way gone: Memoirs of a boy soldier* Farrar, Giroux & Strauss New York 2007 p. 212.

Zaireans as well as to apprehend wanted criminals. In reality, very few of these *genocidaires* were detained by the Congolese/Zairean authorities; in most cases, all the refugees had to do was to throw down their blood-stained machetes on the Rwandan side of the border.

## **Agenda for Protection**

The scale and complexities of the global plight of refugees has certainly not improved in substantial ways in recent years, and in some instances, refugees may find themselves in increasingly dangerous situations. Given the needs of the vast and growing refugee populations, the UNHCR has sought to enhance the capacities of all relevant actors in assisting and protecting refugees. As the UNHCR and the United Nations System in general find themselves at the center of most major refugee situations, they have designed a more formal set of networks for addressing refugee issues. In response to these multifaceted refugee issues, the UNHCR developed the Agenda for Protection and then followed up with the creation of the Global Consultations on International Protection. The Global Consultations are divided into 3 tracks: the first is designed to underline and reaffirm the support of state parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol to the Convention; the second revolves around a series of discussions and meetings of refugee and international law experts; and the third is focused on the policy-making decisions of the Executive Committee.<sup>2</sup> National governments and officials from the UNHCR are not the only entities directly involved in these processes, or tracks, however. Non-governmental organizations (NGOs) play an increasingly vital role in addressing the needs of refugee populations, especially in situations where UN personnel are not present. In a statement delivered at a September 2002 conference on protection of asylum seekers, NGOs, acting under the umbrella organization International Council of Voluntary Agencies (ICVA), asserted that “governments must allow NGOs to develop and play a role in protection which is effective and independent.”<sup>3</sup> As NGOs and civil society representatives take on increasingly important tasks related to refugee protection, their influence in decision-making will need to be augmented.

## **Enhancing refugee protection**

As national governments, international organizations, NGOs and civil society representatives develop solutions for refugee protection problems, these various actors must examine a myriad number of both immediate and longer term issues. These actors would also be well-served by remembering that “capacity-building is a process which requires sustained commitment and which is needed in all countries and in all regions.”<sup>4</sup> While individual governments may have immediate incentives in seeing neighboring

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<sup>2</sup> <http://www.unhcr.org/protect/3b7ceal1b4.html>

<sup>3</sup> “NGO Statement on Capacity-building and Protection” Geneva, Switzerland September 27-28, 2002 Found at: <http://www.icva.ch/doc00000449.html>

<sup>4</sup> “NGO Statement on Capacity-building and Protection”

states increase their own capacities to address refugee issues, these initiatives may, if allowed, begin to substitute for longer-term comprehensive systemic improvements in the treatment of refugees. If states see the enhancement of refugee protection in neighboring states as a quick way around their own obligations to strengthen their own commitments to refugee protection, then refugees will continue to be shunted towards states that can meet little more than the bare essentials of refugee protection. Western European countries have been urging Eastern European countries to enhance their own capabilities to accommodate new refugee populations; a number of NGOs have argued that these Western European countries are urging their Eastern European counterparts to enhance their refugee protection capabilities to cut down the number of asylum seekers in Western Europe. “Similarly readmission agreements and the use of concepts of safe third countries by EU members means that countries with limited capacities face receiving larger numbers of asylum-seekers returned from other asylum countries.”<sup>5</sup>

### **Immediate Protection Issues**

When refugees first cross the border, receiving states assume important responsibilities: they must provide immediate shelter and relief supplies for the refugees; they need to document the flow of refugees including their vital statistics; they need to assess and treat the health needs of the refugees; in cases of genocide or ethnic cleansing, they need to screen refugees for involvement in criminal acts; and they need to document instances of and reasons for refoulement, sending refugees back to situations where they would be in imminent danger. In order for states to meet these minimum requirements, it is essential that they have ratified all relevant international treaties and incorporated these treaties into their own national legislation. In a number of countries, “where not even rudimentary asylum structures exist, the first challenge may well be to generate the political will and interest to accede to the 1951 Convention and the 1967 Protocol.”<sup>6</sup> Encouraging universal application and implementation of these international treaties, especially the 1951 Convention relating to the Status of Refugees and the 1967 Protocol to the Convention, is a vital first step for the UNHCR. If governments have failed to ratify these instruments or have ratified them but only after expressing reservations regarding these instruments, these governments have important obligations to explain their failure to ratify or the reasons for their reservations.

States are now finding themselves in tighter binds as they are assuming greater responsibility for the overall receptivity of their local populations towards refugees. When large numbers of refugees begin flooding into new host countries, local populations often experience significant upheavals. When Rwandan refugees poured into eastern Congo/Zaire, the prices of many local staple foods and other necessities rose significantly because of vastly increased demand. Local residents gradually became more impatient and resentful of the Rwandan refugees, especially after they saw some Rwandans living better than most Congolese. Governments, in partnership with international organizations, NGOs, and civil society representatives, are responsible for

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<sup>5</sup> “NGO Statement on Capacity-building and Protection”

<sup>6</sup> EC/GC/01/19 “Strengthening Protection Capacities in Host Countries” Global Consultations on International Protection April 19, 2002 p. 3.

establishing climates of greater receptivity for refugees by educating local populations on the valuable and positive contributions that refugees often make in their new host countries as well as enacting laws that protect refugees from vilification and reprisals.

An even greater responsibility for states, however, is the need to provide protection and ensure stability within the refugee camps and settlements. Even though states frequently admit refugees only grudgingly, they invariably desire stability within the refugee populations whenever possible. Refugee populations that are infiltrated and/or led by militant elements can also serve to radicalize local populations, especially if they are ethnically or religiously similar. A clear example of this phenomenon can be found in the current Iraq refugee crisis. The ruling regime in Syria comes from the minority Alawite Shia community and most of the Iraqi refugees entering the country are Sunni; according to Kenneth Pollack and Daniel Byman, “Iraqi Sunni Muslims waging a long conflict from Syrian soil could again radicalize Syria’s own Sunni community.”<sup>7</sup> Governments will find that effectively protecting and policing refugee camps, without intimidating them or depriving them of vital resources, can prevent this radicalization of their own populations.

### **Intermediate Protection Issues**

As states contemplate intermediate protection issues, they must analyze the circumstances and decide whether they believe that the refugees will be staying for several months or years. If the refugees will be staying for at least a year, states must seek to enroll refugee children in local schools and also assist the parents in finding jobs as well as using available social services. Not only do governments need to ensure that refugee children are enrolled in school, they need to ensure that the schools have well-trained teachers, adequate resources including textbooks, and they would benefit from including refugees in decision-making regarding schools and the provision of social services.<sup>8</sup> Afghan refugees in both Pakistan and Iran established their own businesses whenever possible and contributed significantly to economic development efforts in the border regions of all 3 countries. Unfortunately, however, when refugees remain within countries for long periods of time, the patience of the local populations may well be tested, especially if the refugees are ethnically, linguistically, and/or religiously different from the local population. “In Iran, Afghans had long provided a major labor force for construction work. Refugees and migrants were often singled out by the public as those who stole jobs from nationals. The Iranian authorities were reinforcing this perception by insisting on the need for an early and massive return to Afghanistan and were regrouping Afghans in camps.”<sup>9</sup> Combating these stereotypes is incumbent on all stakeholders in this multilateral dialogue on enhancing protection of refugees.

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<sup>7</sup> Kenneth M. Pollack & Daniel L. Byman, “Iraqi Refugees: Carriers of Conflict” *The Atlantic Monthly* November 2006.

<sup>8</sup> UNHCR and European Commission, “Protection Gaps Framework for Analysis: Enhancing Protection of Refugees” Strengthening Protection Capacity Project (SPCP) 2006 pp. 21-22.

<sup>9</sup> Sadako Ogata, *The Turbulent Decade: Confronting the Refugee Crises of the 1990’s* W.W. Norton & Company New York 2005 p. 292.

States must also clarify refugees' right of movement have within their territory and if there are limitations on that movement, what are the restrictions and why are they in place? As governments begin facing these intermediate, and in some cases longer-term, refugee protection issues, they will find that their previous efforts at documenting the refugee populations will pay huge dividends. As governments, NGOs, and civil society partners, focus on intermediate and longer-term refugee protection issues, they must also continue to cooperate with international organizations, particularly UNHCR, in order to continue to work towards the primary goal of all interested actors: repatriation.

### **Long Term Protection Issues**

The resolution of some refugee situations can take decades, such as the return of Afghan refugees who fled the various wars from 1979-2002, Cambodian refugees on the Thai border, and Palestinian refugees in Jordan. When countries find themselves assuming long term protection responsibilities for refugees, they also find themselves maintaining sustained interest in the resolution and settlement of the economic, political, and security problems that created the refugee situations in the first place. Host countries and international organizations invariably prefer repatriation rather than resettlement of refugees; indeed, UNHCR is obligated to pursue repatriation options whenever possible. In the most intractable cases, however, repatriation may not be an option and governments must then examine the possibilities that they provide to refugees for citizenship and/or long term legal residence.

UNHCR's longer term roles must be complemented by its partnerships with the other stakeholders involved in refugee issues. When dealing with the complexities of the Palestinian refugee situation, UNHCR depends very heavily on the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). "Because of the prolonged nature of the Palestine refugee problem, the agency's efforts to provide education and health care have been pivotal in developing the refugees' full human potential."<sup>10</sup> The Palestinian case is not only one of the most high profile of all refugee situations; it is also one of the most fundamentally complex. There is no state of Palestine today and efforts to resolve the profound and vexing problems between Israel and the Palestinians do not appear to be near a comprehensive resolution. While most other refugee situations are not as complicated as the Palestinian situation, it is abundantly clear that long term solutions to refugee situations require effective coordination between all interested actors.

### **Protecting Female Refugees**

Female refugees, both adult and children, face even greater threats because of their gender. As women and girls cross international boundaries, they are frequently subjected to sexual and gender-based violence (SGBV) from a host of actors, including border guards and local officials, fellow refugees, and even UN peacekeeping troops. As systematic rape and sexual violence have been used as weapons of war in Darfur and other conflicts around the world, human rights organizations, including Amnesty

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<sup>10</sup> UNHCR, *State of the World's Refugees 2006: Human Displacement in the New Millennium* Box 5.1 "Palestinian Refugees" 2006.

International, have reported that “even in refugee camps, women are not safe from sexual violence.”<sup>11</sup> Host countries must ensure that they have systems of protection in place to prevent the use of sexual and gender-based violence (SGBV) as well as medical and counseling services available for the victims of SGBV. Furthermore, states have serious obligations to ensure that their national legislation recognizes SGBV, including domestic violence and female genital mutilation (FGM), as criminal acts. Finally, as refugees frequently have limited resources and may not know the local laws or languages well, governments and their civil society partners need to ensure that all victims of sexual and gender-based violence (SGBV) know their rights under the host countries’ laws and have access to the appropriate legal counsel or can pursue effective legal remedies.

## **Conclusion**

As states bear the primary responsibility for protecting refugees, it is essential that efforts to protect refugees begin with a focus on states. The international community must remember, however, that states vary immensely in their capacities to protect refugees and to provide the essential services needed to ensure that refugees are able to not only survive but also plan for either repatriation or resettlement. Bearing these considerations in mind, it becomes plainly evident that states must work in concert with the UNHCR and other UN agencies, NGOs, and civil society partners who can augment state efforts and initiatives to protect refugees. The various stakeholders in this multilateral dialogue must also be able to effectively plan for the immediate, intermediate, and longer-term needs of refugee populations and to then implement those plans equitably when the situations arise.

## **Guiding Questions:**

What refugee issues is your country currently experiencing? If your country is not currently hosting or creating refugees, what regional refugee issues are occurring nearby?

Has your country signed and/or ratified the 1951 Convention relating to the Status of refugees and the 1967 Protocol to the Convention? If not, why not? How can UNHCR effectively obtain universal approval of and adherence to the 1951 Convention and the 1967 Protocol?

How might UNHCR, national governments, NGOs, and civil society partners more effectively coordinate refugee protection and relief efforts? What lessons need to be learned from both previous successes and failures?

How might the pre-positioning of relief supplies improve the protection and treatment of refugees?

Does your government classify sexual and gender-based violence (SGBV) against refugees as criminal acts and how are perpetrators of SGBV prosecuted? What legal remedies are available for refugees, including impoverished refugees?

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<sup>11</sup> *BBC News*, “Rape ‘a weapon’ in Sudan war” July 19, 2004.

