



Refugee Protection and Displacement in the OSCE Region – Commitments for Protection and Solutions

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Forced displacement has grown in size and complexity in recent years. During 2008/9, the outbreak, renewal and prolongation of armed conflicts had an adverse impact on peace, stability and security in many regions of the world. This has resulted in the renewed displacement of people within and outside their home countries. Patterns of conflict became more complex, as did contemporary forms of displacement. Climate change, extreme poverty and conflict are becoming more and more interrelated and increasing forced displacement.

Varying root causes of displacement create differing needs and responsibilities. Whatever other responses may be necessary, the concept of asylum will have to be safeguarded. The international protection regime must be strengthened in areas where it is weak and made flexible enough to respond effectively to new displacement challenges.

At the end of 2008, some 42 million people were forcibly displaced. This included 15.2 million refugees, of whom 10.5 million fall directly under UNHCR's mandate and some 4.7 million Palestinian refugees were the responsibility of UNRWA as well as more than 827,000 people whose asylum applications had not yet been adjudicated. The total number of people displaced within their countries as a result of armed conflicts is estimated at 26 million.¹ Afghan and Iraqi refugees have accounted for almost 50% of all refugees under UNHCR's responsibility worldwide. Some 4.75 million persons of UNHCR's concern are in the *OSCE region*. They include some 2.5 million refugees and asylum seekers, 1.3 million internally displaced persons and more than 900,000 returnees, stateless and other persons of concern.

Statelessness has remained a major challenge with an estimated 12 million stateless people worldwide, of whom 6.6 million are recorded by UNHCR. The 'invisibility' of stateless persons and a generally poor understanding of their protection needs, remain complicated factors. In the *OSCE region*, UNHCR statistics indicate that in 2008 some 706,000 persons were affected by statelessness.

The absence of a solution for millions of refugees in a protracted displacement situation continues to pose a major dilemma for UNHCR and its partners, to host countries, to the refugees themselves and to the international community at large. UNHCR estimates that there are currently more than 5.7 million refugees trapped in protracted situations². Close to 30 of

¹ Source: Internal Displacement Monitoring Centre (IDMC).

² UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for five years or more in a given country.

these situations are to be found throughout the world, the vast majority of them in Africa and Asia. A protracted refugee situation in the *OSCE region* can be found in Serbia. At the end of 2008 Serbia hosted 97,000 refugees for whom a durable solution has thus proved elusive.

International human rights law, including international refugee law, provides the framework for the protection of refugees and other persons of concern, which aims to secure non-discriminatory enjoyment of their rights, including, notably, the right to seek and enjoy asylum, the principle of *non-refoulement*, and the right to a nationality and to return to one's country. *OSCE's Human Dimension commitments on "Refugees, Displaced Persons, Returnees, and Stateless Persons"* reinforce these obligations contained in international law, and strive towards their implementation.

Given the link between conflict and displacement, the necessity to adequately address the humanitarian and human rights concerns for refugees and IDPs, and the importance of protection-sensitive crisis-management, monitoring and reporting, UNHCR and the OSCE have established close co-operation and links, especially at the field level. This strategic partnership is of particular importance to tackle existing implementation gaps between international frameworks and human dimension commitments, on the one hand, and national and regional practice, on the other.

Protection Gaps and Challenges

Non-refoulement is a fundamental and well-recognized principle of international law which requires States to refrain from returning persons at risk of persecution to their home countries either directly or indirectly. Forced returns of asylum-seekers and migrants, without assessment of international protection needs, in particular those arriving irregularly, have nevertheless occurred repeatedly in breach of this principle, also in *the OSCE region*, during 2008/9.

Asylum has often been viewed through a security prism, resulting in States reinforcing control measures beyond their own territory and at **borders**. All too often interception takes place without proper scrutiny. Protection safeguards at borders are less evident when it comes to sea borders. UNHCR continues to work with States and relevant institutions such as FRONTEX, to find practical solutions to these issues and translate protection concepts and objectives into concrete action in relation to protection-sensitive border and migration management.

In Southern Europe, some countries have reacted to mixed migration movements and increased numbers of maritime arrivals with strict deterrence measures, including '**push-backs**' and refusals to disembark people rescued at sea and readmission agreements that lacked necessary protection safeguards. Systematic **detention**, rather than the development of long-term solutions taking into account the rights and needs of asylum seekers, have repeatedly given rise to concern.

Another concern is **restrictive interpretations of the refugee definition**. Among sometimes widely divergent recognition rates for the same or comparable population groups individuals from Iraq, Somalia, Sri Lanka and the Russian Federation have very different prospects of finding protection, depending upon the country in which their claim was lodged. Differences have resulted both from differing interpretative approaches and the quality of assessing and adjudicating claims and evidence. The number of positive asylum decisions issued in 2008 increased across all major regions worldwide, with the exception of Europe.

Although **status determination** mechanisms and procedures exist in all Central Asian countries, except Uzbekistan, access by asylum seekers from neighbouring countries to the procedures in place is often denied.

To align **national legislation** with international refugee law standards and good practice, in 2008/9 UNHCR has continued to support States amending existing legislation in *the OSCE region*, including in Denmark, Ireland, the Netherlands, Spain, Switzerland, Ukraine and the United Kingdom.

Mindful of potential security considerations, UNHCR has worked with states to find ways to ensure respect for the principle of *non-refoulement* while addressing legitimate concerns about international crime and **terrorism**. Counter-terrorism measures must not undermine refugee protection nor the right to seek asylum, and persons in need of international protection must have access to territory and refugee status determination procedures.

In 2008, several countries have made efforts to identify and register **stateless persons**. In Kyrgyzstan, for instance, UNHCR supported a survey undertaken by NGO partners to identify stateless persons in the north of the country. As a result, in addition to the previously known population of almost 10,000 stateless persons, a further 10,000 stateless were identified and registered. It is expected that identification and registration will help facilitate acquisition of nationality. Similar projects exist in a number of *OSCE participating States* to support Governments facing situations of protracted statelessness resulting from state succession. Such large scale projects exist in Ukraine, the Russian Federation, Bosnia-Herzegovina, Montenegro, Serbia and The former Yugoslav Republic of Macedonia, providing *inter alia* information on birth and civil registration and documentation to large numbers of people. The latter is particularly important for the Roma community and IDPs who are likely to face problems related to their undocumented nationality.

A UNHCR commissioned study on identification and referral systems for **victims of human trafficking** found serious shortcomings in many countries, including the absence of a well-structured legal framework for identifying victims of trafficking and assessing their international protection needs, lack of adequate inter-agency expertise, coordination and collaboration in information exchange, and gaps in acknowledging international protection needs of victims of trafficking.

Xenophobic attitudes and negative stereotyping of non-citizens have persisted in many countries on the parts of politicians, law enforcement and immigration officials and in the media. This has led to xenophobic violence and the targeting of migrants, refugees and asylum seekers. Also, refugee reception and integration have been undermined by xenophobia and racial discrimination. States are urged to combat such attitudes and activities, *inter alia* at border entry points, in the media and in responses and policies towards refugees, IDPs and stateless persons.

Durable Solutions

Too many refugees have remained without viable durable solutions for too long. Resolute and sustained international co-operation are key, particularly for initiatives to resolve protracted refugee situations which require their own tailor-made solution of which political will is generally the most essential and elusive ingredient. An honest and balanced assessment must facilitate a common understanding of what international solidarity and burden sharing entails, and then be vigorously pursued. Durable solutions need to be looked at in a comprehensive manner and pursued in a complementary way. UNHCR works closely with *OSCE participating States* in South Eastern Europe to address long term displacement and protracted refugee situations.

UNHCR's 2008 statistics indicate that voluntary refugee repatriation –the solution which has historically benefited the largest number of refugees - went down by 17 % worldwide, while IDP returns decreased by 34%. 2008 also saw the second lowest repatriation total in 15 years, partially reflected by deteriorating security situations in Afghanistan and Somalia.

In Georgia, out of some 138,000 people who were displaced in the August 2008 conflict some 30,000 were still internally displaced and some 30,000 IDPs returning to area adjacent to South Ossetia live under volatile security circumstances. More than 222,000 IDPs had been displaced for 15 years, many in very poor conditions. UNHCR will continue to support confidence building, promote dignified and safe return for those who wish to do so, and support the integration of IDPs in adequate conditions at their existing location when no other solution is available.

Resettlement is a key protection tool and responsibility sharing mechanism. Resettlement however, only benefits a small number of refugees (1%). It has been acknowledged that resettlement has an increasingly important role to play in resolution of protracted refugee situations. Positively, the number of places offered and submissions made by UNHCR have been increasing worldwide. 2008 saw the largest number of resettlement places allocated to needy refugees since the early 1990s. Out of the total number of all resettled refugees in the period 1999-2008, 86% have resettled to the *OSCE region*.

For refugees who can not or, for a variety of reasons, do not wish to return to their home countries, local integration is the preferred durable solution. UNHCR continues to pay particular attention to this solution. The acquisition of a nationality by former refugees, however, remains underreported and only limited statistical data are available. In Europe, UNHCR has worked to reduce obstacles to integration, as identified by a recent EC supported study on local integration in Ukraine, Belarus and the Republic of Moldova. The Government of The former Yugoslav Republic of Macedonia adopted a strategy for 2009-2015 for the integration of refugees and aliens.

OSCE-UNHCR Co-operation

The protection of refugees within broader migration movements, supporting solutions for refugees and IDPs, the building of national protection capacities, humanitarian interventions in conflict prevention and crisis management, reduction of statelessness, fighting discrimination and xenophobia and the special care for women and children in conflict and post-conflict situations, are important areas of practical co-operation between UNHCR and OSCE missions.

Examples of successful co-operation can be found in South Eastern Europe (protracted displacement situations, protection monitoring, prevention of statelessness, minority returns and re-integration at municipal level), in the Southern Caucasus (protection monitoring and reporting, Co-Chair of Geneva talks), in Central Asia (identification and registration of stateless persons, protection sensitive border management and training of senior border officers, capacity building) and in Eastern Europe (monitoring of hate crimes and discrimination, protection capacity building).

Existing international human rights and refugee law as well as the *OSCE's Human Dimension commitments on "Refugees, Displaced Persons, Returnees, and Stateless Persons"* provide a binding framework for international protection. However, only too often a gap between State obligations and commitments, and practice, hampers the *implementation* of effective protection and durable solutions for displaced populations and other persons of concern. Many of today's conflicts show no sign of abating and some are actually worsening. Displacement is increasingly complex to address. Only strategic partnerships can tackle the growing challenges, making refugee protection a manageable task.

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