



EDITED BY ELIZABETH W. COLLIER
AND CHARLES R. STRAIN

RELIGIOUS AND ETHICAL PERSPECTIVES ON GLOBAL MIGRATION



International Law and Forced Global Migration

The UN and NGOs Global Initiatives to Fight Human Trafficking, and Protect Refugee and Labor Immigrant Rights¹

Marco Tavanti

Introduction:

Worldwide official statistics on refugees, asylum seekers and internally displaced people (IDP) are on the rise. Violence, political instability, corruption, climate change and other realities force an increasing number of people to flee their homes and seek security elsewhere. The United Nations High Commissioner for Refugees (UNHCR) documented more than 43 million people were forcibly displaced worldwide at the end of 2009, the highest number since the mid-1990s.² This number takes into account the 15.2 million refugees, 983,000 asylum seekers and 27.1 million internally displaced persons.³ Iraq, Afghanistan and Somalia remain the top countries of origin for asylum applicants, followed by China, Serbia (including Kosovo), Burma, the Russian Federation, Nigeria, Mexico, Zimbabwe, Pakistan and Sri Lanka.⁴ The number of “stateless people”, namely those people who are not considered to be nationals by any state through its nationality legislation or constitution, is also on the rise with an estimated 12 million people without citizen and travel

¹ Citation: Tavanti, Marco, “International Law and Global Migration: The UN and NGOs Global Initiatives to Fight Human Trafficking, Protect Refugee Rights and Labor Immigrant Rights.” In *Religious and Ethical Perspectives on Global Migration*. Edited by Elizabeth W. Collier and Charles R. Strain, pp. 109-128. New York: Lexington Books, 2014.

² United Nations Higher Commission for Refugees, “UNHCR. 2009 Global Trends Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons,” (15 June 2010). Online: <http://www.unhcr.org/4c11f0be9.html>

³ Ibid.

⁴ Ibid.

rights.⁵ These alarming numbers are further complicated by cases of people forced to migrate because of man-made and natural disasters or other causes.

Agencies of the United Nations, the International Committee for the Red Cross (ICRC) and its umbrella organization the Red Cross Red Crescent Movement (the world's largest humanitarian network),⁶ are at the forefront of protecting the rights of civilians affected by conflicts. Their work is made possible by the provisions of the so-called international humanitarian laws.⁷ Refugee law, human rights law and the international humanitarian law form a complex network of complementary laws sharing the common goal of protecting the lives, health and dignity of persons. The 1951 United Nations Convention Relating to the Status of Refugees ensures the respect of human rights and the protection of the human dignity of refugees, internally displaced people (IDPs) and other people affected by man-made forced migrations as specifically defined by the convention itself. The documentation and practices accumulated by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), UNHCR, the United Nations Development Programme (UNDP) and various international nongovernmental organizations offer numerous insights on how to best protect and guarantee the rights and dignity of forced migrants. The international practices of these agencies, along with the legal international frameworks under which they operate, provide useful insights for integrating human “rights” and human “development” approaches to assist and protect people forcibly displaced for a variety of reasons. Their focus and insistence on capacity building of people and organizations, along with their determination to respect human and legal rights of people, suggest a right-based approach to human development for forced global migrants. Along with numerous nongovernmental organizations (NGOs), these important UN agencies identify “capacity-building” as the key to self-reliance for displaced people and communities, and for effectively transitioning from humanitarian responses to emergencies to an integrated and rights-based approach to human development.

Understanding Global Forced Migrations

Forced displacement today is a complex global phenomenon. Refugees and internally displaced persons uprooted by conflict and human rights abuses remain a central focus of international humanitarian law and protection. However, forced displacement is closely tied to other factors that motivate population flows. These include poverty, perceived or real opportunities to better their lives away from home, and also environmental degradation and natural disasters.⁸ Global forced migration often includes situations of human trafficking and

⁵ UNHCR does not provide comprehensive and reliable statistics on stateless people worldwide as there is a discrepancy between 6.6 million people (December 2009) provided by country-level data and the estimated 12 million of stateless population worldwide. For details see UNHCR. “Statelessness: UNHCR Action to Address Statelessness - A Strategy Note.” Online: <http://www.unhcr.org/4b960ae99.html>

⁶ Established in 1863, the International Committee of the Red Cross (ICRC) is “an impartial, neutral and independent organization whose exclusive humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance.” Online: <http://www.icrc.org>.

⁷ International humanitarian law, often referred to as the laws of war (*Jus in bello*) is the legal corpus that comprises the Geneva Conventions and the Hague Conventions, as well as subsequent treaties, case law, and customary international law. It includes the instruments establishing international mechanisms for the enforcement of international humanitarian law such as the 1998 Statute of the International Criminal Court. See Dieter Fleck and Michael Bothe, *The Handbook of International Humanitarian Law* (New York: Oxford University Press, 2008).

⁸ For more information see the UN Department of Economic and Social Affairs / International Immigration. Online: <http://www.un.org/esa/population/migration/index.html>

forced migrant labor as well as those people displaced by large development projects. The International Association for the Study of Forced Migration (IASFM) defines forced migration as “a general term that refers to the movements of refugees and internally displaced people (people displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.”⁹

There are various situations and diverse cases of “forced” migration but scholars generally agree on three major categories of people’s displacement.¹⁰

Conflict Induced Displacement

People who are forced to escape their homes because of armed conflicts, generalized violence or persecution because of nationality, race, religion, social group or political opinion. To be eligible for legal, international protection, in addition to these conditions or causes, there has to be a recognized situation where state authorities are unable or unwilling to protect these migrants. The most familiar terms describing groups of people affected by this type of forced migration are international refugees, asylum seekers and internal refugees, or IDPs. With the end of the Cold War and the increase of internal conflicts based on national, ethnic and religious divisions, the practice of internal displacement has become a consciously chosen strategy adopted by all sides in the conflict. Globally, the UNHCR helps only about 6.3 million of an estimated 27 million IDPs worldwide. UNHCR classifies refugees, asylum seekers, IDPs, returnees and people in need of temporary or humanitarian protection as “people of concern.” UNHCR attempts to provide protection, assistance and capacity building to all “people of concern” even though IDPs are not in its primary mandate and it is hampered by limited resources. UNRWA, as the other UN refugee organization with the specific mandate to aid Palestinian refugees in the Middle East, exemplifies the comprehensive, rights-based and development oriented approach of the United Nations in dealing with conflict-induced displaced people.

Development Induced Displacement

This type of displacement is a subset of forced migration and characterizes communities or individuals forced out of their homes, in some cases also their homelands, for the purposes of economic development. While most well known cases include mega development projects such as the construction of dams for hydroelectric power and irrigation purposes, other activities include mining, industrial plants, military installations, weapon testing grounds, construction of airports, railways, road developments or even urbanization and conservation projects. Development-induced displacements are often characterized by lack of participatory decision-making and inadequate support for relocation.¹¹

⁹ International Association for the Study of Forced Migration (IASFM). Online: <http://iasfm.org/>.

¹⁰ Francois Crépeau, *Forced Migration and Global Processes: A View from Forced Migration Studies Program in Migration and Refugee Studies* (Lanham, MD: Lexington Books, 2006).

¹¹ A. K., Sachan and B. Jaiswal, *Development Induced Displacement and Rehabilitation* (New Delhi, India: Alfa Publications, 2008).

Environmentally Induced Displacement

In 1985 the United Nations Environment Program (UNEP) published a controversial report entitled “Environmental Refugees.”¹² Controversy and debate surrounded the use of the term “refugee” which has a specific definition and the term “environmental” that appears to be separated from political and economic causes of displacement. UNEP’s report defined environmental refugees as “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/ or seriously affected the quality of their life.”¹³ Since then, other terms have been used to identify situations of human displacement induced by environmental degradation and climate change. These include terms like “environmentally induced migrants”, “climate exile” or “climigrant.” Like “environmental refugee” the term “climate refugee” is also controversial due to the legally binding specific definition of refugee that doesn’t mention environmental causes at all.

The Protection of People Affected by Global Forced Migration

Sixty years after the establishment of the UNHCR and the adoption of the UN Convention relating to the Status of Refugees, the challenges of adequately protecting and regulating human displacement appear greater than ever. The Convention’s basic principles on which international refugee protection is built have been questioned and attacked on the basis of security, actual needs of refugees and contemporary ‘mixed migration’ (when fear of persecution is mixed with economic and poverty factors as well).¹⁴ These concerns are aggravated by the global war on terror and the increasing economic costs of offering asylum. In addition some hosting countries who originally offered generous packages of refugee services now face growing challenges to integration arising from cultural diversity, different political ideologies and unmanageable numbers of recipients.¹⁵ Furthermore, since the September 11, 2001 attacks, most countries have become preoccupied with national and homeland security issues, which often overshadow the legal responsibility to foreigners in need of protection and resettlement.

A refugee is legally defined in Article 1 of the 1951 UN Convention as someone who “has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group, or political opinion and is outside his/her country of origin; and is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.”¹⁶ In general, people who are legally recognized as refugees are better off than other forced migrants as they can benefit from the legal protections of the nations that are signatories to the Convention and the services offered by UNHCR and UNRWA.

¹² Essam E Hinnawi, *Environmental Refugees* (Nairobi, Kenya: United Nations Environment Programme, 1985).

¹³ Ibid.

¹⁴ UNHCR, 2006. “The State of the World’s Refugees 2006 - Human Displacement in the New Millennium.” Online: <http://www.unhcr.org/4a4dc1a89.html>.

¹⁵ David A. Martin, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement* (Washington, DC: Migration Policy Institute, 2005).

¹⁶ “Convention and Protocol Relating to the Status of Refugees.” Online: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

The Convention clearly spells out the refugee's legal assistance rights, humanitarian assistance and social rights. It also explains which persons governments do not have to accept, such as war criminals, who do not qualify for refugee status. The 1967 Protocol expanded the original purpose of the 1951 Convention, which was limited mainly to protecting European refugees in the aftermath of World War II. As the problem of displacement around the world continued, agencies like UNHCR had to expand their scope worldwide.

The definition of a refugee has been criticized as "too restrictive" in that its focus on individualized persecution does not correspond to the realities of today's world. Nevertheless, almost 60 years later, the 1951 Convention remains a cornerstone of protection, with regional conventions created in its image. Some specific elements of the Convention, such as the definition of the term 'refugee' and the principle of *non-refoulement*, have become accepted international law.¹⁷ *Non-refoulement* is a well-known principle of international law that protects people (refugees) from being returned to places where their lives or freedoms would be threatened. Unlike political asylum, which requires evidence of a well-grounded fear of persecution, the *non-refoulement* principle prohibits the repatriation of refugees into war zones and other disaster areas.¹⁸ The 1951 Convention is also the main international instrument of what is now a body of refugee law adopted in numerous national laws and regional instruments. Subsequent conventions have attempted to expand and adapt the "refugee" definition. An example comes from the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa: "The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."¹⁹

The 1984 Cartagena Declaration on Refugees, which related to Latin America, added to the definition by including "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."²⁰ This more all-encompassing definition attempts to include the protection of persons from other complex in-country violent conditions. However, the expanded definitions of these declarations and conventions still do not fully cover IDPs as people who have fled their homes for many of the same reasons as refugees but have not crossed the physical borders of their countries of origin and, therefore, are not entitled to the same protections as refugees according to the 1951 Convention. Recent debates have attempted to reconcile the concept of the responsibility to protect with the effort to design an international system to protect IDPs.²¹

¹⁷ Erika, Feller et al., *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge, UK: Cambridge University Press, 2003).

¹⁸ Ibid.

¹⁹ Online: www.asylumlaw.org/docs/international/Africa.PDF

²⁰ Online: www.asylumlaw.org/docs/international/CentralAmerica.PDF

²¹ See for example the report Reconciling R2P with IDP Protection. Online: http://www.reliefweb.int/rw/rwb.nsf/retrieveattachments?openagent&shortid=SNAA-84R8VL&file=Full_Report.pdf. Read more about the debate in "The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern." Online: http://www.brookings.edu/articles/2005/fall_humanrights_mooney.aspx.

The Convention and definition does not necessarily extend its protection to emerging categories of forced displacement or even to “stateless people.” In spite of the 1954 UN Convention Relating to the Status of Stateless Persons still Kurdish, Palestinian, Sahrawi and Tibetan refugees claim asylum due to statelessness.²² According to the UNHCR’s Statelessness Unit, the status of “statelessness” is due to state dissolution, decolonization, conflicts of laws or arbitrary decisions. The estimated 12 million stateless people are left in a legal limbo, with limited basic rights. Statelessness signifies not having a national protection or “limited access to birth registration, identity documentation, education, health care, legal employment, property ownership, political participation and freedom of movement.”²³ Even in cases where state rights are intrinsically limited, the denial of these civil rights for those individuals should be a reason for concern by society as a whole, especially as these situations may lead to arbitrary forced displacement, social conflict and impediments to economic and social development.

In its assistance of more than 22 million persons of concern, UNHCR works in tandem with many other UN agencies, such as the Office for the Coordination of Humanitarian Affairs, the UN Development Program (UNDP), UNICEF, and the World Food Program, as well as numerous NGOs. In spite of this coordination, UNHCR is not able to assist all of the estimated 27 million IDPs worldwide. There is a widespread international debate currently underway about how this group of uprooted people can be better protected and by whom. The debate is even more acute regarding sexual and gender-based violence against refugees, returnees and IDPs.²⁴ The Refugee Convention doesn’t mention gender in its list of grounds on which refugee status is based. However, there is growing recognition that gender-related violence under certain circumstances falls within the Refugee Convention definition, especially when women are a “particular social group” persecuted on the basis of their gender or receive less legal protection than men.

The current refugee convention with its expansions and its regional adaptations represent significant achievements in humanitarian law, but they are not sufficient. We have a long road to travel before we can achieve a level of protection that is genuinely comprehensive, fair and effective. The confluence and comprehensive approach in international humanitarian laws and other international laws, including international criminal law, international human rights law, international labor law, regional international law and international refugee law represent a successful strategy to the fight such complex phenomena as human trafficking.

The Global Fight against Human Trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol) defines human trafficking as the “recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability [...] for the purpose of exploitation.”²⁵

²² For more information about statelessness see the UNHCR section. Online: <http://www.unhcr.org/statelessness>

²³ Ibid.

²⁴ UNHCR (SGVB Guidelines). “Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response.” Online: www.unhcr.org/3f696bcc4.html

²⁵ United Nations, Treaty Series, vol. 2237, No. 39574.

According to the Trafficking Protocol, trafficking in persons includes three constituent elements:

1. An act (*What* is done): Recruitment, transportation, transfer, harboring or receipt of persons; If the victim is a child, it is considered trafficking even if there is no threat or use of force. Trafficking need not be across borders; it can occur within the borders of a single country.
2. The means (*How* it is done): Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.
3. The Purpose (*Why* it is done): The person is used for exploitative purposes including sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁶

The International Labor Organization (ILO) estimates between 1995 and 2005, 2.5 million people worldwide were forced into labor or sexual exploitation as a result of human trafficking, affecting more than 161 countries.²⁷ These alarming statistics are only the tip of the iceberg. The United Nations agencies, bolstered by international humanitarian laws and a growing movement of concerned global citizens, have been at the forefront of battling human trafficking. The ongoing global campaign against human trafficking and modern slavery, and the duty that the international community has to protect refugees, asylum seekers and IDPs are linked to the belief that basic human rights include the right of all people to cross borders to safeguard their lives and improve their existence.

An example of work being done is that of the United Nations Office on Drugs and Crime, which has been instrumental in starting the Global Initiative to Fight Human Trafficking and Modern Slavery. This organization has created effective working relationships with governments, inter-governmental organizations, non-governmental organizations, the media, and the private sector in working to end human trafficking. Using the legal definitions of human trafficking and migrant smuggling of the Trafficking Protocol (Palermo Convention),²⁸ the Global Initiative focuses on analysis, education and mobilization around three themes connected to human trafficking: 1) Vulnerability, that is, the conditions that foster the tragedy. 2) Impact on the human costs of trafficking; 3) Action or the struggle to end human trafficking and modern slavery.²⁹ The Global Initiative merged into what is today known as The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). As a result of UN leadership and the advocacy and service activities of numerous NGOs engaged in anti-human trafficking advocacy, over 117 countries have signed the Trafficking Protocol. Many of these countries have been promoting strong

²⁶ United Nations Office for Drugs and Crimes (UNODC), "Human Trafficking." Online: <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

²⁷ This estimate uses the UN Protocol definition of human trafficking, and includes both transnational and internal data.

²⁸ The Palermo Convention includes two protocols as part of The Convention against Transnational Organized Crime adopted by the United Nations in Palermo, Italy in 2000: "The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children" (Trafficking Protocol) and the "Protocol against the Smuggling of Migrants by Land, Sea and Air" (Smuggling Protocol). Online: <http://www.unodc.org/unodc/treaties/CTOC/>

²⁹ UNODC, "Global Initiative to Fight Human Trafficking and Modern Slavery: Concept Paper and Roadmap." (16 March 2007). Online: <http://www.unodc.org/unodc/en/human-trafficking/publications.html>

national campaigns to educate the population about modern slavery while cracking down on human trafficking. Under the slogan “*el ser humano no está a la venta*” (human beings are not for sale). Mexico, for example, has become a leader in this effort with the "Blue Heart" (*Corazón Azul*) campaign against human trafficking.³⁰ The Mexican "Blue Heart" campaign has been successful in influencing Mexican society to understand the negative impact that human trafficking has on society. Through a pact and a list of promises, the campaign aims at raising the consciousness of Mexican people in refusing all forms of exploitation that come from human trafficking. The Pact includes grassroots monitoring of labor exploitation or other forms of human trafficking.

The UN.GIFT global campaign seeks to collaborate with governments and NGOs from different countries to analyze strategic international solutions to prevent and denounce human trafficking.³¹ A complex and lucrative illegal business such as human trafficking requires a multifaceted and collaborative campaign aimed at tackling the issue with a variety of means:

1. Reduce Poverty: Alleviate the factors that make people vulnerable to trafficking such as poverty, underdevelopment and lack of opportunity;
2. Reduce Demand: Attack the problem by controlling trade and lowering demand for the products and services of exploited people;
3. Raise Awareness: Mobilize people to denounce and to prevent trafficking, by strengthening and warning vulnerable groups;
3. Rescue and Protect: Provide adequate housing, work and medical services along with legal protection and psychological counseling for those who have been trafficked.
4. Coordinate law enforcement: Improve international communication and collaboration among law enforcement agencies to locate international trafficking routes, convict traffickers, and identify victims.
5. Implement Commitments: Although signing international conventions is important, they are not, effective unless they are translated into national laws and other mechanisms for monitoring and implementing these international commitments.³²

Although often associated, human trafficking and migrant smuggling are not the same. The 2000 UN Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrants Protocol) defines smuggling of migrants as the "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State

³⁰ Online: <http://www.unodc.org/blueheart/es/about-us.html> Mexico has elaborated its own version of the international Blue Heart Campaign. “Qué es la Campaña Corazón Azul,” Online: <http://www.unodc.org/blueheart/>

³¹ See the 2009 “A Global Report on Trafficking in Persons” published by the United Nations Office on Drugs and Crime (UNODC) and characterizing human trafficking as a modern form of slavery. Online: <http://www.unodc.org/unodc/en/frontpage/unodc-report-on-human-trafficking-exposes-modern-form-of-slavery-.html>

³² Elaborated from the action plans of UNODC, “Global Initiative,” 6.

Party of which the person is not a national or a permanent resident."³³ Nearly every nation is affected by migrant smuggling - whether as an origin, transit or destination country. Numerous NGOs have denounced the vulnerable situations of smuggled migrants who are often exposed to life-threatening risks too often resulting in tragedies like suffocation inside containers, deaths from impossibly long journeys in deserts, drowning or dying of dehydration at sea. While generating huge profits for smugglers and the organized criminal syndicates behind smuggling, the most vulnerable victims remain smuggled women and children who are often abused while being smuggled. An effective, long-term solution to migrant smuggling and human trafficking must include political and legislative solutions, but also a comprehensive and critical analysis of global poverty, marginalization and unequal development.

Seeking Sustainable and Integrated Solutions

Refugee status is not and should not be a long-term solution. Millions of refugees around the world are forced to live outside of their homes because their countries face ongoing conflict or, more often, because they remain fearful of persecution if they return home. In cases where voluntary repatriation is not a viable option, integrating into a local community of the country of asylum could offer a sustainable solution and the opportunity of starting a new life. Resettlement in a third country is another potential solution. However, resettlement benefits only a very small number of refugees. Recent statistics indicate only one per cent of the world's refugees have directly benefited from resettlement.

According to the UNHCR 2009 report, a total of 112,400 refugees were admitted by 19 resettlement countries during 2009, including the United States of America (79,900), Canada (12,500), Australia (11,100), Germany (2,100), Sweden, (1,900), and Norway (1,400). The statistical and comparative analysis of UNHCR assisted refugees show that the total number of resettled refugees in 2009 was more than 150 percent of the total for 2008 (88,800) and the highest level since 1995 (134,100).³⁴ In 2009 alone, the various worldwide offices of UNHCR assisted more than 84,000 individuals in being resettled. This is 18,000 more than the previous year and the highest number since the early 1990s. The main beneficiaries of the UNHCR-facilitated resettlement programs in 2009 were refugees from Myanmar (24,800), Iraq (23,000), Bhutan (17,500), Somalia (5,500), Eritrea (2,500), and the Democratic Republic of the Congo (2,500).³⁵

Dr. Edwin Silverman is a recognized pioneer in U.S. refugee resettlement. He devoted over thirty-five years to helping refugees resettle in the State of Illinois. During a lecture at a DePaul University class on Refugee Service Management he commented, "the refugee resettlement program is really the only real immigration program of the United States of America." In spite the limitations of U.S. immigration law and policy, the U.S. refugee resettlement policies and services have been and continue to be an inspiring international example. According to the U.S. Office of Refugee Resettlement (ORR), annual admissions figures have ranged from a high of 207,116 in 1980 (the year of the Refugee Act) to a low of 27,100 in 2002. ORR works in partnership with selected volunteer agencies to provide

³³ "Protocol against the Smuggling of Migrants by Land, Sea and Air" (Migrants Smuggling Protocol), Article 3. Online: <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

³⁴ Online: <http://www.unhcr.org/gr09/index.html>

³⁵ Ibid.

financial and technical assistance to local refugee resettlement organizations that accompany refugees as they achieve self-sufficiency.

Even after the events of 9/11, the U.S. continues to be a leader in welcoming refugees referred by the UNHCR for resettlement. With the exception of the year 2002, the number of refugees admitted into the U.S. has been around 70,000-80,000 per year. Although this recent average is lower than in earlier years of the program, it is still a large number when compared with most other countries. The leading countries of origin for refugees currently being resettled in the U.S. are Iraq, Burma, Bhutan, Iran and Somalia. While still open to people fleeing from countries of Cold War adversaries, the current focus of the U.S. refugee program has shifted to more diverse populations from Africa, South East Asia and the Middle East, particularly from Muslim countries.

The U.S. maintains a program for asylum seekers that is distinct from that of the resettled refugees program. Asylum seekers are individuals who are already physically present in the country in which they are seeking asylum. They ask for protection and immunity from forced return before a relevant government agency. In recent years, the number of asylum seekers accepted into the U.S. has been about 40,000 per year. This accounts for fifteen to twenty percent of all asylum-seeker acceptances in the member states of the Organization for Economic Co-operation and Development (OECD).

Overcoming Barriers for Human Mobility and Development

The rights and duties that come with the above-described situations of “persons of concern” cannot be fully understood unless placed in the larger context of migration and development. The 2009 Human Development Report, compiled by the UNDP, is entirely dedicated to the analysis of human mobility and the importance that migration has for international development.³⁶ In addition to highlighting the estimated 740 million internal migrants (including IDPs), the report presents the positive impact of international migration on human development and the empowerment of traditionally disadvantaged groups, in particular women. It also points out the vulnerability of less visible movements of typically disadvantaged groups such as short term and seasonal migrants.³⁷

In spite of restrictive nationalistic and sometimes xenophobic government policies among the developed nations, the issue of “forced” migration remains central to the understanding and recognition of civil, political, economic, social and cultural human rights.³⁸ Push factors, that is, social, political, economic and environmental forces that compel a person to migrate, have been the main reasons for an increase in migration. Yet, current international humanitarian law does not recognize “forced” economic migrants as economic refugees.³⁹

³⁶ United Nations Development Programme, “Human Development Report (HDR) 2009: Overcoming Barriers: Human Mobility and Development,” (New York: United Nations, 2009). Online: <http://hdr.undp.org/en/>

³⁷ *Ibid.*, 1.

³⁸ Jane McAdam, *Forced Migration, Human Rights and Security*, Studies in International Law 17 (Oxford, UK: Hart, 2008).

³⁹ Michelle Foster, *International Refugee Law and Socio-economic Rights: Refuge from Deprivation*, Cambridge Studies in International and Comparative Law (Cambridge, UK: Cambridge University Press, 2007). See also, Jane Walker, “Economic Refugees: Distributive Justice Beyond the State” (LL.B. Thesis, Hons. University of Waikato, 2003).

The United Nations Convention Relating to the Status of Refugees, along with the Universal Declaration of Human Rights, have provided the legal platform for national and international commitment to the fair and just treatment of migrants without discrimination based on race, age, gender, religion, sexual orientation and disability. These rights are universally valid and legitimate whether the people in question are citizens or not, or whether their status is regular or irregular. They are, along with the rights to equality under the law, important legal constraints on state action. Yet, much work needs to be done, especially in extending the legal and material rights that recognized refugees have to the protection of forced economic migrants.⁴⁰ While unresolved from a legal standpoint, the growing situations of war, poverty and climate change in the 21st century will force more people to pull up their roots and move somewhere else.

Whatever their classification, people move both within and between nations, driven predominantly by the search for better opportunities. The well-established convention on refugees is a good foundation but does not sufficiently address the need for guaranteeing human rights for internal and international migrants. In spite of the hard work of numerous UN agencies and NGOs, the international community lacks a binding multilateral regime protecting international mobility in its contemporary complex facets. The International Labour Organization (ILO) has been a pioneer in the elaboration of important conventions on the rights of migrant workers, but few of the highly developed nations have signed these conventions.⁴¹ The 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is one of those important conventions reiterating the core human rights principles for migrant workers while defining discrimination more broadly, including arbitrary expulsion and denial of the right to vote and be elected in their home country. In 2003, the convention entered into force, after the threshold of 20 ratifying States was reached. The Convention has been ratified by forty-three states and signed by fifteen others. Among them are Mexico, Morocco and the Philippines and other countries of origin of migrants that recognize the importance of protecting their citizens living abroad. However, no Western migrant-receiving country has ratified the Convention nor have Australia, India or the Arab states.⁴²

The International Organization for Migration (IOM) is the primary intergovernmental agency engaged in international migration.⁴³ They have been instrumental in promoting the orderly and humane management of migration, while assisting migrants in need, no matter what their status. IOM has been essential also for the promotion of international cooperation and capacity building for solutions to migration problems.⁴⁴ For example, the IOM sponsored project, "Improving Knowledge of Remittance Corridors and Enhancing Development through Inter-Regional Dialogue and Pilot Projects in South-East Asia and Europe (with special focus on the Philippines and Indonesia," seeks to enhance the link between migration and development within Southeast Asia by improving knowledge of financial corridors and the promotion of regional dialogue about remittances policies and the link between

⁴⁰ Foster, Michelle. *International refugee law and socio-economic rights: refuge from deprivation*. (Cambridge, U.K.: Cambridge University Press, 2007).

⁴¹ Human Development Report (HDR) 2009, Chapter 5.

⁴² For more about the campaign, see: Online: <http://www.migrantsrights.org/>

⁴³ The International Organization for Migration (IOM) is an intergovernmental organization not affiliated with the United Nations but initially established in 1951 as the Intergovernmental Committee for European Migration (ICEM) to help resettle people displaced by World War II. Read more at <http://www.iom.int>

⁴⁴ International Organization for Migration, *Migration for Development: Within and Beyond Frontiers* (Geneva, Switzerland: International Organization for Migration, 2006).

remittances and development.⁴⁵ Like UNHCR, the IOM has expanded beyond its historic role in the post-war repatriation of refugees towards a more general mission to improve migration management. However, it is an organization outside the UN system and therefore remains largely oriented towards service provision to member states on a project basis.⁴⁶ As the leading inter-governmental agency in its field of migration, IOM has been working in partnership with the United Nations for the formulation of important reports and resolutions on migration-related issues. Between the 1999 54th session and the 2008 63rd session, the UN General Assembly discussed and approved important resolutions pertaining to migrants' rights, humanitarian assistance and development. Resolutions such as Trafficking in women and girls (A/RES/63/156), Protection of migrants (A/RES/63/184), Improving the coordination of efforts against trafficking in persons (A/RES/63/194) and International migration and development (A/RES/63/225), highlight recent significant contributions toward the legal and effective protection of migrant rights, refugee rights and the human rights and welfare of people on the move.⁴⁷

Capacity Building and Rights-Based Development

Capacity building is one of the core activities of UNHCR, UNDP and other UN agencies. Their main focus is collaborating and assisting national authorities to strengthen laws and policies to ensure the proper protection of refugee and asylum seekers while promoting self-reliance and durable solutions. Such complex tasks can be accomplished only through strong partnerships among development agencies, humanitarian groups, host governments and civil society, including NGOs together with refugees themselves.

In relation to the work of UN agencies primarily responsible for refugee and development, capacity building refers to the reinforcement of human, institutional or community performance, skills, knowledge and attitudes on a sustainable basis. For UNHCR in particular, capacity building is both an approach and a set of activities, intimately linked to nationally driven reform processes.⁴⁸

Capacity building at the individual, community, organizational and institutional levels is imperative to find durable solutions to refugee services. UNHCR and especially UNRWA have been working with various stakeholders (NGOs, government departments and international development agencies) to support refugees in their search for self-reliance by facilitating vocational skills training, microcredit schemes and income-generating activities. Community capacity building requires a comprehensive plan that looks at both refugee and poor non-refugee members of the community. UNRWA was established in 1949 to provide relief and assistance, to prevent starvation and distress and to further the conditions for peace and stability.⁴⁹ In addition to its mandate to deliver basic services such as health, education, welfare, UNRWA is the UN agency that linked capacity building to refugee rights and community development. In the early years of its operations, UNRWA fulfilled its mandate by offering small-scale training and employment-creating projects known as "work relief"

⁴⁵ See further: Online: <http://www.iom.int/jahia/Jahia/activities/by-theme/migration-development/maximizing-remittances-for-development-southeast-asia/>

⁴⁶ Human Development Report (HDR), 2009, p. 39.

⁴⁷ "United Nations Resolutions and Reports Related to Migration." Online: <http://www.iom.int/jahia/Jahia/policy-research/63rd-session-2008/>.

⁴⁸ See UNHCR, "A Practical Guide to Capacity Building as a Feature of UNHCR's Humanitarian Programmes," Online: <http://www.unhcr.org/3bbd64845.html>

⁴⁹ The United Nations General Assembly Resolution 302 (IV) of 1949.

and, medium government-controlled projects such as road-building and tree-planting known as "works projects". Since 1951, UNRWA, in coordination with the government of Jordan and development projects from USAID and other OECD countries, has been raising living standards of poor communities in Jordan rather than solely assisting Palestinian refugees. This trend reflects what became a more flexible interpretation of the UNRWA's mandate, now clearly committed to providing assistance to poor non-refugees in the area of its operations. UNRWA's relief assistance and social development works represent the Agency's integrated approach to poverty alleviation and its contribution to achieving the Millennium Development Goals. UNRWA's services include post-conflict and post-disaster microfinance assistance, providing income-generating opportunities primarily to Palestinian women but also to other poor or marginal groups who live and work around the refugee camps.⁵⁰

Capacity building at the institutional level is more than technical capacity – it includes stakeholder engagement for policy change. In the United States NGOs such as the National Network for Immigrant and Refugee Rights are helpful coalitions of “immigrant, refugee, community, religious, civil rights and labor organizations and activists.” Such stakeholder forums provide the necessary dialogue to “develop and coordinate plans of action on important immigrant and refugee issues.” NWIRR's priority focus on capacity building articulates its mission to promote a just immigration and refugee policy in the United States and to defend and expand the rights of all immigrants and refugees, regardless of immigration status. It does so through programs like the Building a Race and Immigration Dialogue in the Global Era or BRIDGE that provide multi-cultural, multi-regional and multi-language education about labor, rights and economics to immigrant and refugee populations around the globe. Going beyond assisting the individual refugee, capacity building focuses more on economic and political issues that will help the state in the long run. Capacity building is what links refugee work with migrant rights and development.

Protracted political conflicts make it clear that humanitarian emergency service for refugee and IDPs works best when linked to capacity building and community development.⁵¹ UNRWA, with its sixty-two plus years of experience providing education, health care, social services and emergency aid to over 400,000 Palestine refugees has learned the essential strategy of focusing on community development for achieving self-reliance.⁵² UNHCR has learned similar lessons on the importance of integrating an individual-rights approach with a more collective-capacity building approach for refugee empowerment. This community-based approach represents a shift from considering refugees and IDPs as people to be “saved and assisted,” to “equal partners who have an active role in protecting themselves and organizing for their own basic needs, even in emergencies.”⁵³

⁵⁰ For The United Nations Relief and Works Agency for Palestine Refugees (UNRWA)'s microfinance department, see: Online: <http://www.unrwa.org/etemplate.php?id=19>

⁵¹ The team working on the World Bank's upcoming World Development Report 2011 “Conflict, Security, and Development” is currently engaging in practical debate addressing the fragile balance between development and conflict management. See Online: <http://blogs.worldbank.org/conflict/>

⁵² Dana Masad and Jens G. Pohl. “Moving towards Self-reliance: Living Conditions of Refugee Camps in Lebanon and Opportunities for Development.” (San Luis Obispo, CA: California Polytechnic State University, 2009). Online: <http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1154&context=theses>

⁵³ Office of the United Nations High Commissioner for Refugees. “A Community-based Approach in UNHCR Operations,” (Geneva: Office of the United Nations High Commissioner for Refugees, 2007). Online: <http://www.unhcr.org/publ/PUBL/47ed0e212.html>.

In recent years, UNHCR has gradually shifted its focus from individual assistance in the area of community services to building on the knowledge, skills and capacities of people of concern and their communities. This approach is based on the understanding that by placing people of concern at the center of operational decision-making, and building protection strategies in partnership with them, they will be better protected, their capacities to identify, develop and sustain solutions will be strengthened, and the resources available will be used more effectively.⁵⁴

A community-based approach is even more important when there are evident disparities between refugee communities and the host communities. The outcome of complex operations of humanitarian assistance and human development often varies across groups and countries. In developing countries there may be a visible difference between the higher level of education and health indicators in refugee camps compared with those of the surrounding local populations.⁵⁵ These patterns of inequality between the conditions of refugee camps and the generally poor human development conditions in the host country are even more complex when most refugees and IDPs do not end up living in camps. It is estimated, for example, that less than one third of Palestinian refugees live in UNRWA administered camps. The human development analysis of the UNDP found that “On average, those who relocate to urban centres seem to be younger and better educated, and may enjoy better human development outcomes than those living in camps. Others, usually the better off, may be able to flee to more distant and wealthier countries, sometimes under special government programmes.”⁵⁶

While community development must be integrated in humanitarian emergency operations, top-down large development programs are often the cause of human displacement. Mega development projects are the primary cause not only for human mobility of laborers seeking occupation but also of populations forcibly displaced from their communities. Large dam projects and public-private mega-projects for agricultural expansion are the classic cases of development-induced displacement. The impact is particularly serious on marginalized sectors of society like poor peasants, indigenous communities and minority ethnic groups. Known examples include 21 million development-induced displaced people in India, most of them belonging to Indian discriminated castes and tribal groups as documented by the India Social Institute.⁵⁷ The construction of the Tucuruí Dam in Brazil displaced an estimated 25,000 to 30,000 indigenous people living on the site of the project. Their displacement significantly altered their lifestyle and livelihood, ultimately endangering their survival.⁵⁸ Even in the best scenario when government agencies provide forcibly displaced people with assistance packages, often the resettlement is poorly planned, especially regarding long-term livelihood assistance and the creation of sustainable community development. Bad relocation plans often force communities to relocate several times or in areas lacking the necessary infrastructure or fail to provide the means to achieve self-reliance or sustainable development.⁵⁹

⁵⁴ Ibid., 5.

⁵⁵ United Nations Development Programme, “Human Development Report 2009,” Figure 3.12.

⁵⁶ Ibid., 64.

⁵⁷ Development induced displaced people are a different category than IDPs. See Indian Social Institute (ISI) website. Online: <http://www.isidelhi.org.in>

⁵⁸ Philip M. Fearnside, "Social Impacts of Brazil's Tucuruí Dam". *Environmental Management*. 24 no.4 (199), 483-495.

⁵⁹ For more on the connection between displacement and development, see: the World Bank Group report “Forced Displacement: The Development Challenge.” Online: http://www.humansecuritygateway.com/documents/WB_ForcedDisplacement_DevelopmentChallenge.pdf.

Human mobility is an integral part of human history. It is also essential for human development. The international community has a responsibility to prevent and minimize the conflicts, human rights violations, natural or human-made disasters and mega-development projects that displace people. Finding sustainable long-term solutions to refugees, IDPs and forced migrants is a challenge that needs the cooperation of multiple stakeholders. It requires appropriate efforts and investments in the creation of adequate international legal frameworks for the protection of the tens of millions of people who are displaced. Gradual resettlement of forced migrants into local communities, when desired and possible, requires effective material, legal, and social (especially cultural and psychological) support both in developing and developed countries.

People on the move, especially those forced to relocate because of conflict, trafficking, natural disasters, experience a weakening in their sense of security (and consequently of their well-being) during or following the process of movement. When human mobility is associated with constraints that prevent people from choosing their place in life freely, it should be a concern of the international community at large, and of the origin and sending communities in particular.

Human movement is always a tradeoff for the migrant. People lose in some dimensions and gain in other dimensions of their well-being and freedom. However, well thought out policies can alleviate or even prevent the losses. The UNDP study on human mobility highlighted in the 2009 Human Development Report offers practical suggestions for implementing international and national policies diminishing or even offsetting the negative effects of displacement. In the final chapter, the HDR proposes reforms that will enhance human rights and create more favorable conditions for individual migrants, their families, their country of origin and their host country. The list of policy reform recommendations includes:

- Liberalizing and simplifying regular channels that allow people to seek work abroad;
- Ensuring basic rights for migrants;
- Reducing transaction costs associated with migration;
- Improving outcomes for migrants and destination communities;
- Enabling benefits from internal mobility; and
- Making mobility an integral part of national development strategies.⁶⁰

While the design, timing and acceptability of such reforms depend on the recognition of public opinion and political, economic and social constraints, the ensuring of basic human rights remains a responsibility of everyone. Indeed, human mobility is not a problem but an opportunity for our global and international society to enhance human development through the respect of human rights and the promotion of peace, security and decent lives for all. To achieve more human and sustainable conditions for human mobility it is necessary to significantly improve our institutions and policies at the national, regional and international

⁶⁰ United Nations Development Programme, "Human Development Report 2009," 5; see also Chapter 5.

levels. The United Nations, with its various agencies along with the Global Forum on Migration and Development are promising international forums for sharing best practices and fostering serious processes for international policy reforms. Consultation at these international levels needs to be matched by other processes at regional and national levels. Such reforms could lead to significant gains in human development, quality of mobility and international human rights.

International laws regulating and protecting refugees and other persons of concern could be the basis for developing appropriate legal frameworks in individual states for migrant rights. Although they still need better support for their implementation, refugee services represent a possible blueprint for a comprehensive and humanitarian immigration reform. Regardless of national and regional differences, a proper human mobility policy must have human rights and human development at its core. International laws and national legislations for regulating global migration must recognize the common vision and purpose that human rights and human development share—to secure, for every human being, freedom, well-being and dignity.⁶¹

⁶¹ United Nations Development Programme, “Human Development Report 2000, Human Rights and Human Development.” Online: <http://hdr.undp.org/en/reports/global/hdr2000/>.