

**Statement by Neill Wright**  
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**“Current Issues in Public Policy for Asylum Seekers and Refugees”**

Chairman, ladies and gentlemen,

I wish to start by thanking the Australian Red Cross for inviting UNHCR to participate in their Inaugural National Conference.

As of 2005, the number of persons of concern to UNHCR is 19.2 million. This comprises 9.2 million refugees (the lowest number since I joined UNHCR); 840,000 asylum seekers (yet to be determined); 5.6 million Internally Displaced Persons (of the some 25 million estimated IDPs in today’s world); 1.5 million returnees (who have recently returned and have yet to integrate); and 2.1 million others, including stateless persons.

UNHCR is mandated to ensure their protection under international and national laws. Where this is done in conflict or early post conflict situations, the ICRC has become a key partner. In the past 15 years, UNHCR has also increasingly provided relief from suffering to persons of its concern. The International Federation of Red Cross and Red Crescent Societies is a key partner in these activities. As you will all be aware, implementation of these responsibilities should rest with States, but there are still many occasions when States choose not to, or cannot, do so.

UNHCR is the guardian of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. There are now 146 parties to the Refugee Convention and its protocol, after the recent accession of Afghanistan.

Nevertheless, there has seldom been a more challenging time in terms of providing adequate protection, given the post 9-11 focus on security concerns and terrorism.

Not unsurprisingly, addressing security-related concerns receive a higher level of attention by States, compared to addressing rights-based concerns, or pursuing both in a coherent and collaborative manner. Thus there remain many gaps, and there needs to be more balance. I would like to think that this balance has to some extent been redressed recently as a result of the UN Summit, and its focus on the “responsibility to protect”.

I would like, here, to quote from a statement by UNHCR Director of International Protection, Erika Feller, delivered earlier this week in Sydney. The origins of the concept of a “responsibility to protect” are to be found in the debate in the 1990s about humanitarian intervention. At that time, the Security Council showed itself willing, in

some circumstances at least, to characterize egregious human rights abuses as a threat to international peace and security, thus opening up the possibility of enforcement action under Chapter VII of the UN Charter. The problem was a gap between theory and practice, often with tragic consequences, as the genocidal acts in both Rwanda and Srebrenica showed. In addition, humanitarian intervention was, and remains, a politically charged and divisive concept – a fact which did not contribute to its positive reception or use.

UN Secretary-General Kofi Annan, in his March 2005 report “In larger freedom”, likewise urged all to “embrace the responsibility to protect, and, when necessary, to act on it”. This was further endorsed in the Outcomes of the September UN Summit, convened by the SG to review progress with implementation of the UN Millennium goals. This was actually one of the more positive results of a Summit which otherwise, many feel, did not live up to the expectations they had for it, despite the agreements to create a Peacebuilding Commission; to transform the Human Rights Commission to a standing Human Rights Council; and to double the resources available to the Office of the High Commissioner for Human Rights.

So what we are seeing since the 1990s is an important shift in the focus from a “*right* of humanitarian intervention” to a potentially much broader “*responsibility* to protect”. In theory, this could go quite some way to redressing root causes of displacement, which is only positive from UNHCR’s perspective. It is also a most useful framework within which to promote a more flexible and less discretionary approach to addressing the many protection gaps which still confront delivery of protection to persons of our concern.

Human insecurity and displacement are the product of war, other forms of conflict and human rights violations. There are, though, other causes as well. As the Summit (and all that preceded it) made patently clear, there can be no real human security (incidentally another concept much in vogue) without there being progress in tackling other interlinked issues – poverty, disparities between rich and poor peoples and nations, migration push and pull factors, and environmental issues, among many others.

Of course, all these broader concerns extend way beyond UNHCR’s direct mandate responsibilities. Nevertheless, as the world becomes ever more unequal, as inequalities in political power and resources such as land provoke social disintegration or exclusion in many countries, violence, forcible loss of nationality, and displacement result.

The significance of the concept of a responsibility to protect is that it does not rest on mandates, or indeed on international conventions. Rather, it comes into play in response to needs. As a mission to Sri Lanka immediately after the tsunami struck drove home to me, displacement, regardless of its causes, produces protection problems which are quite similar. We are seeing this again in Pakistan. It is beyond doubt that sexual and gender violence concerns, vulnerability of children to abuse, or legal property concerns, to take some random protection issues, are not restricted to refugees and asylum seekers. The protection situation may be equally acute for an earthquake victim in Pakistan, for an IDP in the Sudan, or for a victim of trafficking in Eastern Europe.

This being said, there are still rules of engagement to respect, which, as the International Commission on Intervention and State Sovereignty indicated in its 2001 report, give rise to complex questions of eligibility, legitimacy, sovereignty, political will and mandates, all of which need to be reviewed as we move to give this new responsibility concrete operational content.

With refugees, the gaps are better known and documented. The protection gap is not really a normative one. Rather it stems from inadequate adherence to proper practices and implementation deficits as regards the principles.

At the heart of these gaps are misperceptions, deliberate or otherwise, which have come into play not least because refugee and asylum issues are now so deeply mired in the broader issues of international security, irregular migration, transnational law and order, and crime.

Today asylum seekers are repeatedly mis-characterised as criminals, ‘possible terrorists’ or illegal migrants whose presence is to be managed as a matter of border and crime control, and whose protection needs are a secondary issue.

If I have focused on the protection gaps for refugees who somehow manage to make their way to chosen destination countries, it is because it has a particular relevance for today’s audience here in Australia. There is also, however, a whole other side to refugee protection where it is undertaken in the developing world, in countries of first asylum. Here, more often than not, we are talking of large scale arrivals, insecure camp hosting environments, under-funded programmes, and protracted stay. The gaps in protection are, as a result, many, and UNHCR will continue to work closely with the IFRC and its national Red Cross movement in such countries.

I have been asked to explain recent changes in responsibilities for IDPs. As I mentioned earlier, there are an estimated 25 million IDPs globally. Their access to protection and assistance has been seriously impeded both by the absence of an agreed and implemented international law framework to guarantee access, and by the fact that no one international organisation has the mandate to intervene on their behalf. This has in fact now been recognised as a serious gap in the international protection system, necessitating a range of activities to fill it. The 1998 Guiding Principles on Internal Displacement, which purport to set out the basic normative framework, were a first step.

At the institutional level, there has also been tentative progress with making the UN response a more “collaborative approach”, and the IFRC has been party to these proposals for a systemic change. UNHCR sees promise in the model for collaboration being developed, which is built around so-called “clusters” of activities, and has indicated its preparedness to coordinate the protection, camp management and emergency shelter clusters, albeit in situations of internal displacement caused by conflict (rather than those caused by natural disasters). We have, though, made clear that our cooperation is subject to some caveats, notably that whatever we do cannot be at the expense of the right to seek asylum and our work for refugees.

I cannot conclude without some mention of the important need for advocacy on behalf of persons of our joint concern. This too is a challenging activity, in which UNHCR and the Red Cross need to balance their good relations with the authorities against the need to speak out when rights are abused. This dilemma often drives the forum for such advocacy out of the public domain into taking place behind closed doors.

To reflect briefly then on how these international developments might relate to the situation in Australia. In recent times we have seen a number of welcome, pragmatic steps in the direction of recognising a 'responsibility to protect', together with important instances of gap filling, even if the Government remains wary about referring to them as complementary forms of protection. Here I am referring to the ongoing public interest powers of the Immigration Minister to grant visas, the temporary Safe Haven Visas for Kosovars in 1999 and equivalent Safe Haven Visas for East Timorese the same year; the more recent Return Pending Visa (2004) and Removal Pending Bridging Visa (2005), and even the temporary humanitarian visas given to people recently arrived from Nauru all of which have a different range of rights and benefits attached.

In Australia, the starting point seems to have been sovereignty and ministerial discretion, exercised in accordance with the demands of national interest. It remains our hope, as we demonstrated at EXCOM, that States will be able to move beyond the sovereignty and/or ministerial discretion approach, and put in place a system which integrates the various available forms of protection, expedites the process of their consideration, and achieves a situation where people with genuine needs do not fall through the cracks. This is not only important from the protection perspective, but it makes makes good, cost effective, common sense. UNHCR accepts that the challenge here is to do this without compromising national interests. I would add that UNHCR is not suggesting that it is the responsibility of States to take all people who present themselves as having protection needs. Rather, the challenge is to recognise that addressing these needs is a collective responsibility – flowing from the 'responsibility to protect' – and for States to find innovative ways to do this, and I hope I have shown that there are a number of possibilities.

Thank you for your attention.

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