

## Intervention at the High Commissioner's Dialogue 2017

### Promoting a comprehensive and inclusive response to solutions

The New York Declaration 2016 reaffirms states' commitments to the 1951 Convention relating to the Status of Refugees. The Global Compact on Refugees provides an opportunity for an improved response to refugee movements that better shares responsibility for protection so that states hosting refugees are not burdened, but supported. The 2016 Declaration draws on international human rights law, international humanitarian law and rule of law.<sup>1</sup>

64. ... The promotion of human rights is also critical. In addition, we will promote good governance, the rule of law, effective, accountable and inclusive institutions, and sustainable development at the international, regional, national and local levels. Recognizing that displacement could be reduced if international humanitarian law were respected by all parties to armed conflict, we renew our commitment to uphold humanitarian principles and international humanitarian law. We confirm also our respect for the rules that safeguard civilians in conflict.

Furthermore, as paragraph 12 of the CRRF makes clear, rule of law is central to solutions:

12. To ensure sustainable return and reintegration, States, United Nations organizations and relevant partners would:

...

(d) Support efforts to foster reconciliation and dialogue, particularly with refugee communities and with the equal participation of women and youth, and to ensure respect for the rule of law at the national and local levels;

### Rule of law in the UN

At the High Level Meeting of the General Assembly in 2012<sup>2</sup>, rule of law was affirmed as central to states and to the United Nations.<sup>3</sup> The UN has consistently championed, in the General Assembly and in the reports of different UN actors, a rich, human rights based understanding of rule of law that enhances the capacity of states so that they can provide rule of law societies that protect and promote all individuals so that no-one is left behind.<sup>4</sup>

---

<sup>1</sup> It is worth noting that Paragraph 3 of the Preamble to the Universal Declaration of Human Rights 1948 talks of rule of law protecting human rights. It is also important to recognise that 'rule of law' at the UN level embraces its conception in the common law world and the *l'Etat de Droit/ Rechtsstaat* understanding from civil law countries, where it is part of the structure of the state/ organisation, not simply a judicial restraint on its activities. Some of the following intervention is taken from Geoff Gilbert and Anna Magdalena Rüsçh, 'Rule of Law and UN Interoperability', forthcoming in *International Journal of Refugee Law* in 2018.

<sup>2</sup> UNGA res 67/1 (24 September 2012) para 2.

<sup>3</sup> There have been a series of GA Resolutions since 2005 – the latest can be found at UNGA res 71/148 (13 December 2016), which calls for '20. ... strengthening [of] the rule of law through access to justice, including with regard to the provision of birth registration for all, appropriate registration and documentation of refugees, migrants, asylum seekers and stateless persons'. Rule of law in the UN is not only about police, justice and corrections, but incorporates access to education, employment, legal and healthcare services.

<sup>4</sup> Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Report of the Special Rapporteur to the General Assembly, UN doc A/67/368 (13 September 2012) para 12. See also his recommendation, para 82:

'The Special Rapporteur wishes to highlight that country experiences of these measures suggest that a purely formalist [/proceduralist/thin] understanding of the rule of law has been insufficient to prevent violations and that the notion of the rule of law to which transitional justice bodies have sought to contribute is a robust one that links it with human rights, governance and development and that asserts its relevance for peace and social cohesion, including gender equality and the absence of discrimination on any grounds'.

Rule of law facilitates the operationalisation of interoperability between the UN and states and within the different UN agencies so as to guarantee access to all rights for all persons on the territory or under the jurisdiction of states.<sup>5</sup> In particular, it promotes access to education, employment, health care and legal services so that no-one is left behind and so that individuals are empowered to determine solutions to their displacement.<sup>6</sup> The operationalisation of rule of law with respect to the protection of refugees underpins an individual focus, the indivisibility of all human rights, and justice outcomes, not institution building.

As such, rule of law addresses building the capacity of hosting states so as to ensure the promotion and protection of human rights for refugees, drawing on the competences of the entire range of UN agencies under UNHCR's leadership as part of its unique mandate.<sup>7</sup> The operationalisation of interoperability is essential to move towards durable and sustainable solutions; it challenges two false hypotheses, the humanitarian/development dichotomy and the protection/solutions dichotomy.<sup>8</sup>

### Conclusion

In sum, if the CRRF is to be operationalised through the programme of action, then rule of law principles alongside international human rights standards ought to be incorporated so as to promote solutions. As the New York Declaration sets out, international human rights law and rule of law provide the best comprehensive response to protracted displacement. Within the UN agencies, the importance of rule of law is that it provides a helpful and flexible framework for building the capacity of states and protecting all individuals so that they might enjoy the full panoply of their rights and their needs might be met, including all those found within the state after displacement. It renders any distinction between humanitarian and development activities otiose, as the focus is on promoting justice solutions over time for individuals. As such, rule of law provides a framework for

---

<sup>5</sup> See New York Declaration, paras 12, 43, 64, and Annex 1, para 12(d).

<sup>6</sup> The General Assembly in 2013 went even further in its 'Outcome Document for the Special Event of 25 September 2013

3: 'We are resolved that the post-2015 development agenda should reinforce the international community's commitment to poverty eradication and sustainable development. ... It should also promote peace and security, democratic governance, the rule of law, gender equality and human rights for all' <[http://www.un.org/millenniumgoals/pdf/Outcome documentMDG.pdf](http://www.un.org/millenniumgoals/pdf/Outcome%20documentMDG.pdf)>.

See also UNGA res 67/1, para 7. See also, Sustainable Development Goals (SDGs), 'Transforming our world: the 2030 Agenda for Sustainable Development' GA res 70/1 (25 September 2015):

'Goal 16 of the Sustainable Development Goals is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all'.

On no-one being left behind, see Preamble to ExCom Conclusion 112, (LXVII) 6 October 2016, <<http://www.refworld.org/docid/57f7b5f74.html>>:

'Stressing the importance of the protection of human life and dignity as a priority issue by reaffirming, inter alia, the principle of *non-refoulement*, as well as the importance of providing assistance and seeking comprehensive approaches towards the implementation of durable solutions, as appropriate, from the outset of a displacement situation, while ensuring that no-one is left behind ...'.

<sup>7</sup> See the 1950 Statute of UNHCR, Paragraph 1.

<sup>8</sup> See UNHCR, Conclusion of the Executive Committee on international cooperation from a protection and solutions perspective No. 112 (LXVII) 6 October 2016, Preamble <<http://www.refworld.org/docid/57f7b5f74.html>>: 'Stressing the importance of the protection of human life and dignity as a priority issue by reaffirming, inter alia, the principle of *non-refoulement*, as well as the importance of providing assistance and seeking comprehensive approaches towards the implementation of durable solutions, as appropriate, from the outset of a displacement situation, while ensuring that no-one is left behind ...'.

interoperability within the UN that is essential if all those rights and needs are to be fulfilled and satisfied by the state and by the UN as a whole under UNHCR's leadership.

*Professor Geoff Gilbert, University of Essex*