



Refugee protection and  
durable solutions in the  
context of international  
migration

Report on the  
High Commissioner's  
Dialogue on Protection  
Challenges,  
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## **High Commissioner's Dialogue on Protection Challenges**

The inaugural meeting of the High Commissioner's Dialogue on Protection Challenges was held on 11 and 12 December 2007 in the Palais des Nations in Geneva. It focused on the theme 'Refugee protection, durable solutions and international migration', examining the challenges and dilemmas stemming from today's mixed movements of migrants and refugees.

The Dialogue brought together some 300 participants, comprising representatives of 80 states, 10 intergovernmental organizations including the International Organization for Migration, 10 members of the International Red Cross and Red Crescent movement, 23 NGOs and 10 experts.

This report provides a compilation of documents associated with the High Commissioner's Dialogue:

1. Discussion paper: 'Refugee protection and durable solutions in the context of international migration'.
2. Opening statement by the High Commissioner.
3. Chairman's summary.
4. 'Refugee protection and mixed migration: a 10-Point Plan of Action'.
5. Background note: 'The treatment of persons rescued at sea'.

**DISCUSSION PAPER**

**Refugee protection and durable solutions  
in the context of international migration**

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## Introduction

1. In recent years, the movement of people from one country and continent to another has grown significantly in scale and scope. The world's population is increasingly mobile, with women, men and children leaving their own country and taking up residence elsewhere for a variety of different reasons.

2. While the majority of people move to establish new livelihoods, improve their standard of living, join members of their family or take up educational opportunities, those of concern to UNHCR are forced to flee by human rights violations and armed conflict. Given the uneven outcomes of the globalization process, coupled with the growing impact of climate change on the sustainability of life in many parts of the planet, it seems likely that the issue of human mobility will become increasingly complex and assume a leading role on the global policy agenda.

3. One effect of the developments described above has been to raise new challenges with regard to the relationship between refugee movements and international migration. Hitherto, discussions of this relationship have focused primarily on the 'asylum-migration nexus', a concept that is generally used to denote those issues that arise in mixed movement situations, where refugees and migrants are travelling alongside each other, often by irregular means.

4. While these 'nexus' issues continue to be of central concern to States, UNHCR and other stakeholders, this discussion paper suggests that an alternative approach may now be appropriate, addressing the broader range of topics that connect the questions of refugee protection and durable solutions to that of international migration.<sup>1</sup>

5. The paper, which should be read in combination with the 'Agenda for Protection', as well as the UNHCR document 'Refugee Protection and Mixed Migration: a 10 Point Plan of Action', is divided into three sections<sup>2</sup>. The first section sets out the basic understandings that guide UNHCR's involvement in this policy domain. The second identifies those migration-related issues that are of direct relevance to UNHCR's mandate for refugee protection and solutions, and explains the primary concerns and objectives of the Office in each of these areas. The final section of the paper presents the strategy that UNHCR is employing to attain these objectives.

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<sup>1</sup> The paper draws from two policy statements that were published in the context of the General Assembly's September 2006 High-Level Dialogue on International Migration and Development: 'UNHCR, refugee protection and international migration', and 'The High-Level Dialogue on International Migration and Development: UNHCR's observations and recommendations'. Both can be accessed at the 'Protecting refugees' page of the UNHCR website, [www.unhcr.org](http://www.unhcr.org).

<sup>2</sup> The Agenda for Protection is a non-binding document adopted by UNHCR and States, providing an ambitious yet practical programme of action to improve the protection of refugees and asylum seekers around the world. Goal 2 of the Agenda for Protection ('Protecting refugees within broader migration movements') is of particular relevance to this paper, as are a number of Executive Committee Conclusions. These include, most recently, the Conclusion on Women and Girls at Risk (2006) and the Conclusion on Children at Risk (2007).

## Basic understandings

6. UNHCR's approach to the issue of refugee protection and durable solutions in the context of international migration is founded on a number of understandings.

### *I. The distinctive status of refugees*

7. UNHCR considers refugees to be a distinct category of people and to have a unique legal status. Their circumstances, rights and responsibilities are specifically governed by international law, most notably the 1951 UN Convention relating to the Status of Refugees.

8. This instrument describes refugees as people who are outside their country of origin and who are unable or unwilling to return there because of a well-founded fear of persecution. Since the 1951 Convention was established, the refugee notion has been broadened to encompass a wider group of people who have fled the indiscriminate effects of generalized violence or serious public disorder.<sup>3</sup>

9. UNHCR's approach to the issues addressed in this paper is premised on the international community's recognition of the specific rights and needs of refugees, as well as the concomitant obligations of States, including the obligation not to return refugees to countries where they would be at risk.

### *II. UNHCR's protection mandate*

10. UNHCR's mandate is to provide protection and solutions for refugees and other people who are of concern to the Office. All of UNHCR's activities relating to the broader issue of international migration derive from this mandate.

11. UNHCR is not a migration organization and does not consider its activities to fall within the function that is commonly described as 'migration management', a task which is undertaken by States and other international actors, most notably the International Organization for Migration (IOM).<sup>4</sup> Moreover, the Office has no interest in seeing migration situations turned into or treated as if they were refugee situations.<sup>5</sup> Indeed, UNHCR considers that such an approach would be detrimental to the integrity of the international refugee protection regime.

12. While UNHCR considers refugee protection and migration management to be distinct and different functions, the Office adheres to the principle that they should be

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<sup>3</sup> The broadening of the notion has taken place by means of regional legal instruments, through the jurisprudence of a large number of States and in the practice of even more, as well as in the practice of UNHCR.

<sup>4</sup> Many of the issues addressed in this paper have been the subject of consultations between UNHCR and IOM. For a joint contribution to the discourse, see 'Refugee protection and migration control: perspectives from UNHCR and IOM', paper prepared for the Global Consultations on International Protection, 31 May 2001, UNHCR document EC/GC/01/11.

<sup>5</sup> Many migratory movements, it should be recalled, take place on a voluntary basis and in an orderly and organized manner, and thus have no relationship with UNHCR's mandate for refugee protection and solutions.

undertaken in a complementary and mutually reinforcing manner. Unregulated migration can place serious strains on national asylum systems and provoke public hostility towards all foreign nationals, irrespective of their legal status. It can also prompt the imposition of restrictive border controls which fail to make the necessary distinction between prospective entrants on grounds of their need for protection, which lead to incidents of refoulement, thereby undermining the objective of effective refugee protection.

### *III. Individual rights and national interests*

13. UNHCR's fundamental concern is the protection of refugees. This entails assisting refugees to access those rights to which they are specifically entitled under international law. By promoting durable solutions, the Office also seeks to ensure that refugees are able to exercise rights of which they were deprived in the process of flight.

14. UNHCR underlines the need for States to ensure that people living outside their country of origin, whatever their legal status or their location in the world, are able to enjoy the human rights to which they are entitled under international law. In this respect, it should be recalled that States also have a responsibility to protect their own citizens, whether living at home or abroad.

15. The Office also draws attention to the fundamental right of all persons to reside in their own country, if they choose to do so. In this respect, UNHCR fully concurs with the Global Commission on International Migration, which states that "women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfill their aspirations in their country of origin, and hence migrate out of choice, rather than necessity."<sup>6</sup> The refugee movements that UNHCR has been mandated to address constitute a particularly egregious violation of this principle.

16. UNHCR fully recognizes the right of States to control their borders and to regulate the movement of people into and out of their territory. The Office also acknowledges that the presence of foreign nationals in other States can raise sensitive issues relating to cultural identity, social cohesion, public safety and the rule of law, especially when those people have arrived in large numbers and in an irregular manner. In this context, and in accordance with the 1951 Convention and other instruments, UNHCR considers it essential for refugees and asylum-seekers to respect their legal obligations.

### *IV. People in distress*

17. While refugees have specific protection needs and entitlements, UNHCR recognizes that the phenomenon of mixed movements raises broader human rights and humanitarian concerns. As recent experience has demonstrated, the people involved in such flows, irrespective of their legal status, often find themselves in distress and are subject to the same hazards and human rights violations. These include detention and

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<sup>6</sup> *Migration in an Interconnected World: New Directions for Action*, Global Commission on International Migration, Geneva, 2005, p. 4.



imprisonment; destitution and exploitation; trafficking and smuggling; physical abuse and harassment; racial or ethnic discrimination; interception, abandonment and drowning at sea; as well as return or transfer to remote and dangerous locations. People on the move who lose or who have destroyed their travel and identity documents may also find it very difficult to establish their nationality and become effectively stateless.

18. As indicated already in this discussion paper, UNHCR's mandate does not formally or normally extend to an engagement with people who lack a valid claim to refugee status or who have expressed no interest in availing themselves of that status. However, as a rights-based organization, UNHCR considers it appropriate to join with other actors in drawing attention to the plight of people who, in the course of their journey, find themselves in distress.

#### *V. Comprehensive approaches*

19. The issues of refugee protection and international migration affect countries in all regions of the world and at every level of economic development. Indeed, some of the largest cross-border movements of people take place within the global South, involving countries of origin, transit and destination that are striving to meet the Millennium Development Goals.

20. Despite the considerable publicity that has been given to the arrival of irregular migrants, asylum-seekers and refugees in the industrialized States, UNHCR wishes to point out that developing countries continue to host the majority of people who are of concern to the Office. UNHCR consequently underlines the importance of ensuring that the task of providing refugees with protection and solutions, including the solution of resettlement, is firmly underpinned by the principles of international solidarity and responsibility-sharing.

21. As indicated already in this discussion paper, UNHCR considers that there is a need for refugee and migration policies to be formulated in a coherent and consistent manner, so as to ensure their complementarity. At the same time, the Office has concluded that the challenges arising from the cross-border movement of people cannot be effectively addressed by means of refugee and migration policies alone. UNHCR consequently encourages the adoption of comprehensive approaches, taking full account of the way that policies in diverse areas such as human rights, conflict resolution, post-conflict reconstruction, environmental degradation and the development process, impinge upon the issues addressed in this paper.

## Policy issues and objectives

22. The following section of this discussion paper identifies and elaborates upon those areas in which UNHCR's mandate for refugee protection and durable solutions intersects with the issue of international migration. On that basis, the section presents the specific organizational objectives that the Office is pursuing in this policy domain.

### *I. Mixed movements*

23. Cross-border movements of people can be categorized in a number of ways. Some are clearly economic in motivation, while others involve people who are evidently fleeing serious threats to their life and liberty. While mixed movements are by no means a new phenomenon, there would appear to be a growth in the number of movements that involve some individuals who are in need of international protection for refugee-related reasons, and others (usually a larger proportion) who are not. As indicated earlier in this discussion paper, the people involved in such flows often engage in irregular forms of movement, making use of similar routes, employing the services of the same human smugglers and in some cases obtaining fraudulent travel documents from the same suppliers.

24. Such movements have clearly contributed towards a blurring of the distinction between refugees and migrants in public and political opinion. This is particularly the case in situations where considerable numbers of asylum-seekers who are deemed to have no need for international protection are able or obliged to remain in the asylum system for extended periods of time and fail to leave the country in which they have arrived once their claim has been definitively rejected. Some States have further contributed to the blurring of these distinctions by treating refugees as irregular migrants, despite their special status in international law.

25. In response to mixed movements of people, many States have also introduced measures that are intended to prevent and deter foreign nationals from arriving on their territory and submitting claims to refugee status. These measures are often indiscriminate in their application and act as a serious constraint on the efforts of the Office to ensure that people who are in need of or who wish to seek international protection are able to have their claims examined in a fair and thorough manner and are not returned to countries where their life or liberty would be at risk.

26. A principal concern of the Office in mixed migration situations is thus to encourage and assist States to establish protection-sensitive border controls and migration management systems that respect the internationally recognized right of everyone "to seek and to enjoy in other countries asylum from persecution."<sup>7</sup> The Office is particularly eager to examine ways of averting those situations in which persons of concern are intercepted and apprehended in the course of their journey, are unable to

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<sup>7</sup> Article 14 of the Universal Declaration of Human Rights.

have access to the territory and asylum procedures of States, cannot establish contact with UNHCR and are at risk of being returned to or left in dangerous circumstances.

27. When people are moving in an irregular and unsafe manner by sea, the immediate issue is not whether those individuals meet the criteria for refugee status. In accordance with longstanding maritime tradition, the first priority must be to protect the right to life by ensuring that those people are rescued and disembarked in a safe and timely manner. Given the growing scale of the problem, UNHCR considers that further discussion is required so as to reach an international consensus on the attainment of these objectives.

28. UNHCR considers that the task of refugee protection can be facilitated by initiatives which reduce the number of people to submit manifestly unfounded asylum applications. Indeed, it is to the advantage of refugees, as well as States, to reduce the pressure placed on national asylum systems by people who are not in need of international protection but who submit applications for refugee status as a means of attaining a migration outcome.

29. The Office consequently stands ready to discuss and participate in measures that provide people with the information and opportunities they need to make informed choices about their options. Not least, those people should be informed by States and competent international organizations of any opportunities that exist for them to move in a safe, legal and organized manner, including by means of family reunion and labour migration programmes.

30. A related concern, although not one that is linked solely to the issue of mixed movements, is the return of people who have submitted asylum applications and who are found not to be in need of international protection. While such migrants are by definition not of direct concern to the Office, UNHCR recognizes that their continued presence in destination countries can undermine the integrity of asylum systems, contribute to public hostility towards foreign nationals and thereby threaten the objective of refugee protection.

31. To avert such difficulties, UNHCR considers that it would be appropriate to discuss how the Office, in partnership with other actors, might contribute to initiatives that are designed to facilitate the return, readmission and reintegration of rejected asylum-seekers and to ensure that their human rights and dignity are respected. These could include, for example, profiling exercises to establish the number and characteristics of rejected asylum-seekers, the dissemination of information to such people in relation to return and onward movement, as well as the promotion of effective and rights-based return and reintegration practices.

## *II. Mixed motivations*

32. UNHCR recognizes that some of the people involved in mixed movements may also have mixed motivations. When a person decides to leave her or his own country and seek admission to another state, she or he may be prompted by a combination of fears, uncertainties, hopes and aspirations which can be difficult to unravel.

33. This is particularly so when, as is often the case, people are leaving countries that are simultaneously affected by human rights violations, armed conflict, ethnic discrimination, unemployment and deteriorating public services. Increasingly, moreover, such factors are being exacerbated by the problems of climate change and environmental degradation. In these respects, UNHCR acknowledges that the issue of refugee protection and durable solutions cannot be divorced from questions related to underdevelopment and poverty.

34. UNHCR considers that high-quality refugee status determination procedures, supported by accurate and timely country of origin information, make it possible to differentiate between those people who are in need of international protection and those who are not. The Office is consequently eager to discuss how it might best assist States in their efforts to establish such procedures and to access such information. UNHCR also underlines the importance of applying the 'benefit of the doubt' principle in such procedures, so as to ensure that people whose motivations are mixed or unclear are protected from refoulement.

### *III. Onward or secondary movements*

35. A vexing issue for both States and UNHCR concerns the situation of people who have gained refugee status or otherwise accessed protection in one state, whether by means of a refugee status determination procedure or on a *prima facie* basis, and who subsequently move on to another country. An even more problematic question concerns the situation of people who have transited through one or more countries in which they could have found protection before reaching a state in which they eventually submit an application for refugee status.

36. The rights and responsibilities inherent in such complex circumstances are still in need of clarification, and this paper will not seek to examine or elaborate on them in any detail.<sup>8</sup> There are, however, two overriding principles that guide UNHCR policy in relation to this issue and which might benefit from further consideration.

37. First, in situations where refugees are confronted with serious protection problems in their country of putative asylum, UNHCR considers that movements which would otherwise be deemed 'irregular' and 'secondary' in nature are more appropriately understood as part of the process of flight from the country of origin.

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<sup>8</sup> The Convention Plus initiative sought, *inter alia*, to promote understandings on how to address secondary movements. Given sharp differences among participating delegations, negotiations on a framework of understandings in this regard were suspended and Switzerland and South Africa, the co-chairs of this aspect of Convention Plus, issued *Convention Plus Core Group on Addressing Irregular Secondary Movements of Refugees and Asylum-Seekers: Joint Statement by the Co-Chairs*, FORUM/2005/7, 8 November 2005. The Joint Statement reflects, in summary form, the viewpoints expressed within the Core Group on the very complex issues surrounding such movements. See also Executive Committee Conclusion No. 58 (XL) of 1989, 'Irregular movement of refugees and asylum-seekers from a country in which they had already found protection'.

38. Second, a refugee who moves on for reasons that are unrelated to their protection needs does not cease to be a refugee, remains a person of concern to UNHCR and must be protected against *refoulement*. Such refugees are, however, subject to the immigration controls of the country in which they have arrived, which could in principle lead to return to their country of first asylum, as long as that country is prepared to readmit them and is able to offer them adequate protection.

39. UNHCR considers that these principles are central to any response to the issue of onward movement, but that they do not, in themselves, suffice as a framework for a responsible approach to the question of onward and secondary movements. If these principles are to have meaningful and practical application, they must, for example, be complemented by adequate levels of international support to host countries in their efforts to provide refugees with acceptable conditions of life. The application of these principles also relies on international cooperation in providing refugees with durable solutions, thereby averting the need for them to engage in irregular onward movements.

40. At the same time, it must be recognized that refugees and asylum-seekers will seek to move from poorer and less stable parts of the world to more prosperous and peaceful regions unless concerted efforts are made to address and diminish such disparities. In the absence of such efforts, secondary movement seems likely to remain a feature of both refugee flows and mixed movements more generally. Finally, UNHCR acknowledges that onward or secondary movements may also be prompted by disparities in the services provided by the Office in different countries, and will consequently seek to attain a greater degree of harmonization in this respect.

#### *IV. From refugee movement to mixed movement*

41. A refugee exodus may over the course of time become a mixed movement, involving a progressively smaller proportion of people who have a need for international protection and a progressively larger proportion of people who are moving for reasons unrelated to refugee status. This does not provide a rationale for the introduction of responses which ignore the refugee component of a mixed movement, however small that may be. Such situations will, however, require appropriate adjustments in the activities of States and UNHCR.

42. Such situations may, for example, require UNHCR to engage more directly with the circumstances of people found not to be refugees or otherwise in need of international protection. This is particularly likely to be case in situations where the Office already has an extensive presence, enjoys a detailed understanding of the changing character of the movement and has already established effective working relationships with States and other stakeholders that are seeking to address the causes and consequences of that movement.

43. To be more specific, there may be circumstances in which UNHCR can play a useful role in supporting and monitoring the return of non-refugees in their country of origin, especially when other actors cannot. The Office may also be able to engage other stakeholders in the provision of regular migration opportunities to people who might

otherwise be inclined to engage in irregular movements.<sup>9</sup> As well as making effective use of UNHCR's competencies and capacities, such interventions can preserve the 'asylum space' and thereby contribute to the quest for refugee protection and solutions.

#### *V. Human trafficking and smuggling*

44. While the victims of human trafficking do not leave their own country in search of international protection, such people, particularly women and children, may become of concern to UNHCR by virtue of human rights violations experienced during the trafficking process, coupled with the risk that they would be re-trafficked or subjected to ill-treatment should they go back or be returned to their country of origin. Irregular migrants who rely on the services of smugglers may also become victims of trafficking and become of concern to UNHCR, even if it was not their original intention to seek refugee status.

45. An important objective for UNHCR in relation to this issue is to ensure that victims and potential victims of trafficking who have a well-founded fear of returning to their country of origin are identified and given access to asylum procedures. The Office also has a responsibility to try to ensure that persons of concern to UNHCR, including refugees and stateless people, are prevented from becoming victims of trafficking by identifying and responding to relevant risk factors in a timely manner. This entails addressing issues related to their documentation, legal status and residency rights.

46. With respect to human smuggling, UNHCR's perspective is twofold. The Office is concerned about the many negative dimensions of this phenomenon, including the threat that it poses to the well-being of people who are smuggled, its illicit nature and its links with other forms of cross-border crime, as well as its role in promoting xenophobia in countries of transit and destination. UNHCR therefore encourages States to accede to the UN Convention against Transnational Organized Crime and its Protocols, and to publicize the penalties imposed on people who are engaged in smuggling and trafficking.

47. At the same time, the Office also notes that many refugees do not have an opportunity to leave their own country and to seek asylum elsewhere by lawful means, and may consequently be obliged to travel in an irregular manner, including being smuggled. In this respect, the Office welcomes further discussion of the way that the imperatives of refugee protection and border control can be reconciled.

#### *VI. Changing status: migration and durable solutions*

48. While UNHCR insists on the fundamental distinction that exists between refugees and migrants, the Office recognizes that there are situations in which people in both categories are required to or would benefit from a change in their status.

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<sup>9</sup> In this respect, some particularly interesting precedents were set by UNHCR's role with Indo-Chinese refugees and asylum seekers in South-East Asia during the late 1970s and 1980s.

49. Migrants who leave their own country for non-refugee-related reasons may nevertheless acquire a need for international protection during their period of residence in another country. An overseas student or contract worker, for example, may become a 'refugee *sur place*' if there is a violent change of regime in that person's country of origin, if a civil war erupts, or if the social group to which they belong becomes the target of persecution. In such contexts, UNHCR's objective is to ensure that the people concerned are able to benefit from refugee status or have access to some other and adequate form of protection, thereby ensuring that they will not be returned to a situation where their life or liberty would be at risk.

50. While migrants sometimes find it necessary to seek refugee status, there are also situations in which people who have fled their own country in response to armed conflict and human rights violations may prefer to remain in their country of asylum, even if the causes of flight have disappeared in their homeland.

51. By acquiring the status of legal migrants in their country of asylum, people of concern or of previous concern to UNHCR may gain an opportunity to develop their skills, save some money and support families and communities at home by means of remittance transfers. At the same time, by living and working abroad, such people effectively reduce the competition for jobs and other scarce resources in their country of origin, and thereby contribute to the peacebuilding process. As far as countries of asylum are concerned, the continued presence of refugees who have found jobs and established other livelihoods may make a valuable contribution to the growth and productivity of both local and national economies.

52. On the basis of these considerations, UNHCR would welcome further discussion of the concept of durable solutions, which has hitherto been associated with the notion that continued mobility on the part of refugees and former refugees represents a failure of the integration or reintegration process. In a period of globalization, and at a time when many countries of origin cannot yet offer adequate jobs and other livelihoods to their citizens, it may be appropriate to consider whether legal migration opportunities should be incorporated more fully in UNHCR's approach to the promotion of durable solutions.

### *VII. Migration and development*

53. In recent years there has been intense international interest in the issue of migration and development. Two dimensions of this discourse - remittance transfers and the migration of skilled personnel - are of particular interest to UNHCR in the context of refugee protection and durable solutions.

54. With regard to remittances, there is growing evidence to suggest that refugees, especially those in the industrialized States, remit significant amounts of money to members of their household and community, both in countries of origin and in other asylum countries. Such remittances have played an important role in cushioning some refugees from the impact of reductions and blockages in the provision of international assistance to the camps and settlements where they live.

55. Remittances transferred by refugees may also play a role in enabling family members to remain in their country of origin, rather than feeling compelled to move to another country in order to sustain themselves. UNHCR consequently supports the efforts that the World Bank and other actors are making to reduce the transaction costs of remittances and to maximize their impact on poverty reduction and development.

56. With regard to the issue of skilled personnel, it is evident that refugee populations include people whose talents could and should be put to good use, both in countries of asylum and, if and when they choose to return, in countries of origin. In this context, UNHCR's primary interest is to ensure that refugees are not excluded from or discriminated against in national labour markets, and to ensure that the qualifications and credentials they possess are recognized in their country of asylum. The 1951 Convention, it should be noted, promotes both of these objectives.

57. Returning to the more general discourse on migration and development, there is growing international recognition of the fact that migrants contribute to the prosperity of both their destination countries and their countries of origin. Hitherto, however, this recognition has far less frequently been extended to refugees. Indeed, people of concern to UNHCR are often perceived as a drain on public resources and a threat to national security. As a result, serious constraints have been placed on refugees in many parts of the world, including restrictions on freedom of movement, access to agricultural land and the ability to engage in other income-generating activities.

58. UNHCR's objective is to counter these negative perceptions and policies, underlining the fact that refugees have the potential to be agents of development in their country of asylum by boosting economic production, filling gaps in the labour market and by creating new business opportunities. The Office is also eager to gain a wider recognition of the fact that refugees who are able to undertake such activities during their time in exile will be better placed to go back to their country of origin and contribute to its reconstruction, once conditions allow them to return.

59. Finally, UNHCR underlines the need for States and other actors to address the root causes of many refugee and migratory movements by promoting and realizing the right to economic, social, cultural and political development, "in which all human rights and fundamental freedoms can be fully realized."<sup>10</sup>

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<sup>10</sup> Article 1 of the UN Declaration on the Right to Development.



## **Implementation strategy**

60. The preceding section of this discussion paper identified the key linkages that connect the issues of refugee protection, durable solutions and international migration, and used that analysis as a framework for the presentation of UNHCR's principal policy concerns and objectives. The following and final section of the document provides a summary of the implementation strategy that the Office is using in its efforts to address these concerns and objectives. The section focuses on special UNHCR initiatives and arrangements relating to the interface between refugee protection, durable solutions and international migration, and does not seek to summarize the wide range of associated UNHCR activities that constitute the regular and ongoing work of the Office.

### *I. Operationalizing the 10-Point Plan of Action*

61. The heart of UNHCR's implementation strategy is to be found in 'Refugee Protection and Mixed Migration: a 10 Point Plan of Action'. Drawing its inspiration from Goal 2 of the Agenda for Protection, the Plan provides a framework of activities that UNHCR, States and other actors can use to develop comprehensive strategies in mixed migration situations, especially when refugees might be at risk of refoulement. The 10 components of the plan are:

- Cooperation among key partners
- Data collection and analysis
- Protection-sensitive entry systems
- Reception arrangements
- Mechanisms for profiling and referral
- Differentiated processes and procedures
- Solutions for refugees
- Addressing secondary movements
- Return arrangements for non-refugees and alternative migration options
- Information strategy

62. The 10 Point Plan is not a blueprint that requires identical action to be taken in all circumstances. Rather, it identifies main issues and objectives around which a comprehensive strategy can be formulated, in full recognition of the fact that the activities of UNHCR and other actors subsumed within this strategy must be tailored to specific situations.

63. While some elements of the Plan are drawn from well-established UNHCR policies and practices, others are more innovative in nature. These include, for example, the notion of a 'profiling and referral mechanism', which would provide an early understanding of the circumstances and motives of the journey undertaken by a new arrival and facilitate the channeling of individual cases into the most appropriate response mechanism. The Plan also proposes the establishment of differentiated asylum processes and procedures that can be used to assess cases with varying levels of complexity. Finally, the Plan highlights the need to promote the return of non-refugees

and to identify alternative and legal migration options for people who have arrived in an irregular manner and who are not in need of international protection.

64. In order to ensure its effective operationalization, a wide-ranging checklist has been established, identifying the specific activities that UNHCR offices can undertake in relation to all components of the Plan. UNHCR's Regional Bureaux have been asked to examine the Plan and to ascertain its relevance to the mixed movement scenarios with which they are confronted.

65. Additional efforts are now being made to ensure that the Plan is known, understood and used as a consensus-building tool by UNHCR, States, international organizations, NGO partners and civil society institutions. Indeed, the Plan has already attracted considerable interest in this regard. A set of guidelines relating to the Plan are currently being produced, providing a detailed explanation of its 10 components, together with good practice examples.

66. A particular challenge for UNHCR will be to operationalize the 10 Point Plan in regions of the world where States have granted asylum to refugees but are not parties to the 1951 Convention and have not established legal or policy frameworks relating to refugees. In such circumstances, UNHCR's efforts to fulfill its mandate for protection and solutions may benefit from migration, labour and human rights regimes that are applicable to refugees but not specifically refugee-related. In the longer term, however, the UNHCR encourages and will assist all States to establish laws, procedures and policies relating to the distinctive situation of persons who are of concern to the Office.

## *II. Strengthening partnerships*

67. As envisaged in the 10 Point Plan, UNHCR's engagement in the interface between refugee protection, durable solutions and international migration depends on the establishment of partnerships with governmental, international and non-governmental actors that bring complementary competencies and capacities to this policy domain. In accordance with this principle, UNHCR is an active member of the Global Migration Group (GMG), which, since its establishment in 2006, has brought together 10 major international organizations with an interest and involvement in migration-related issues.

68. UNHCR's implementation strategy is also based on the establishment of stronger bilateral partnerships. In this respect, UNHCR places particular importance on its relationship with IOM, which is reinforced by means of an annual high-level meeting between the High Commissioner and IOM's Director General. Similar meetings are held each year between the High Commissioner and the President of the International Committee of the Red Cross, and with the UN High Commissioner for Human Rights. Issues relating to refugee protection and international migration have featured on the agenda of these respective meetings. UNHCR attaches particular value to its partnership with the International Labour Organization, especially in situations where labour migration standards and legal frameworks can be used to promote refugee protection and durable solutions.

69. UNHCR's efforts to address the issue of refugee protection, durable solutions and international migration require the Office to capitalize upon its close working relationship with the NGO community. UNHCR will also look beyond its usual range of partners in order to ensure that appropriate competencies and capacities are brought to bear on the issues addressed in this paper. A good example is to be found in the relationship that UNHCR has established with the International Maritime Organization in the context of issues such as interception, rescue at sea and stowaways.

### *III. Participating in regional migration processes*

70. The last decade has witnessed the establishment of a number of regional migration processes, bringing States and other stakeholders together on a regular basis to address migration-related issues in specific parts of the world. UNHCR is fully supportive of these processes, recognizing the opportunity they provide for dialogue, confidence-building, as well as enhanced cooperation between States and other stakeholders, including on issues of direct concern to the Office.

71. UNHCR is already engaged in a number of these processes, including, for example, the Bali Process in the Asia-Pacific region, the Budapest Process in Europe, the Migration Dialogue for Southern Africa (MIDSA) and the Puebla Process in the Americas. The Office strives to ensure that the agenda and work programmes of such regional migration processes take full account of refugee protection and durable solutions concerns.

72. UNHCR supports the involvement of a wide range of stakeholders in such processes, including NGOs, civil society institutions and government ministries dealing with those dimensions of international migration relating to human rights and development. The Office also sees value in an approach which enables the different regional migration processes to interact with each other, so as to facilitate the transfer of good practice and lessons learned in areas of concern to UNHCR from one part of the world to another.

### *IV. Contributing to global migration initiatives*

73. UNHCR welcomes the fact that the international discourse on migration has broadened beyond issues of control and state security to incorporate a focus on the impact of human mobility on poverty reduction and development. Recognizing the need to ensure that refugee issues are brought fully into this discourse, UNHCR seconded a staff member to the Global Commission on International Migration and participated in the UN General Assembly's High-Level Dialogue on Migration and Development, held in New York in September 2006.

74. UNHCR has also supported the Global Forum on Migration and Development (GFMD), the first meeting of which took place in Belgium in July 2007. At the request of the Belgian government, UNHCR supported the Secretariat that was established for this event. The Office is currently making arrangements to assist the Government of the

Philippines, which will be convening the second meeting of the Global Forum in October 2008.

75. By means of its involvement in such global initiatives, UNHCR hopes to further a number of the objectives outlined in the preceding section of this paper: raising awareness of and mobilizing support for developing countries that are hosting large numbers of refugees; highlighting the contribution that refugees and returnees can make to the development of asylum countries and the peacebuilding process in countries of origin; and underlining the need for development to be pursued in a way that takes full account of refugee protection and human rights issues.

#### *V. Using presence as a tool of protection*

76. UNHCR considers one of its key strengths to be the extent to which it is 'on the ground', with staff and offices located in close proximity to the locations where refugees and other persons of concern are to be found or through which they are moving. Without such a field presence, it would not be possible for the Office to discharge its mandate for protection and durable solutions.

77. In the context of mixed movements, determining whether and where UNHCR should be present is a particular challenge, given the volatility of such flows and their tendency to shift and divert in response to the border control measures introduced by States. The Office will consequently strive to pursue a flexible and cost-effective approach to this issue, building capacity and expertise on migration-related protection issues in a number of key hubs, while at the same time ensuring that shorter-term deployments can be made in response to specific incidents or crises.<sup>11</sup>

#### *VI. Building and engaging with national capacities*

78. UNHCR's involvement in the interface between refugee protection, durable solutions and international migration is based on the principle that States have primary responsibility for non-citizens on their territory, whether those people are refugees, asylum-seekers or migrants. States may, however, lack the resources and capacity to address such issues in an effective manner. UNHCR's primary concern in this respect is to support the development of dedicated systems and procedures that enable States to identify and formally recognize refugees, to ensure that they enjoy the protection to which they are entitled, and to enable them to find a durable solution.

79. As indicated earlier, UNHCR will in some situations be required to engage with national institutional and legal frameworks which treat refugees and irregular migrants in an undifferentiated manner. The Office will respond to such situations in a creative way, stressing the need for the establishment of refugee-specific protection regimes,

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<sup>11</sup> The deployment of a UNHCR staff member to the Italian island of Lampedusa, where large numbers of foreign nationals have arrived by irregular means, provides one example of this approach.

while at the same time exploring opportunities for refugee protection and solutions to be promoted by other means.

80. UNHCR recognizes the need for national capacity-building activities to be undertaken in the context of regional and sub-regional approaches, so as to avoid the creation of imbalances and pull-factors which act as an inducement to irregular movement.

#### *VII. Influencing public opinion*

81. Recent responses to mixed movements and other dimensions of international migration of concern to UNHCR have been strongly influenced by public opinion and media coverage. That opinion and coverage has in many instances reflected a considerable degree of confusion in relation to the respective situation and status of refugees, asylum-seekers, irregular and legal migrants. Politicians seeking to mobilize public support have in some instances contributed to this confusion, engendering an environment which is detrimental to the protection of refugees and the well-being of other foreign nationals.

82. While UNHCR's ability to influence these variables is limited, the Office will reinforce and reorient its public information and advocacy efforts, so as to highlight the needs and entitlements of refugees in the context of international migration. To support such efforts, a portal has been established on the UNHCR website providing access to a wide range of relevant UNHCR documents, including the 10 Point Plan of Action. A complementary photo and video portal is currently under construction.

#### *VIII. Ensuring internal coordination*

83. In terms of UNHCR's internal structure, the issue of refugee protection and international migration is a cross-cutting one, in which many different parts of the Office are involved. The implementation strategy presented in this document consequently depends on effective leadership and internal coordination. To attain this objective, the High Commissioner has determined that activities relating to the interface between refugee protection, durable solutions and international migration will be led by the Assistant High Commissioner (Protection) working under his overall authority.

84. Recognizing the growing importance of the linkages between these issues, a multifunctional Migration Working Group (MWG) has been established at UNHCR Headquarters. The Assistant High Commissioner (Protection) will ensure that this body meets on a regular basis and at a suitably senior level, that it establishes a coherent work programme and that it liaises effectively with other UNHCR units at Headquarters and in the field.

#### *IX. Providing staff training*

85. While UNHCR staff are familiar with issues relating to refugee protection and durable solutions, their understanding of the way these issues interface with that of

international migration is less strong. Responding to this need, UNHCR has for the past four years offered staff members a thematic learning programme on 'Protection in the context of broader migration movements', as well as mainstreaming the issue in other learning programmes such as the 'Protection Learning Programme'.

86. The first of these programmes offers UNHCR staff an opportunity to learn about the most recent trends and developments in the rapidly-moving field of international migration, and to consider the implications of these trends and developments for the programmes for persons of concern to UNHCR in which they are engaged.

87. The programme also provides the Office's personnel with an opportunity to interact with and learn from colleagues in other relevant organizations, including IOM, the Office of the UN High Commissioner for Human Rights and the International Labour Organization. UNHCR will update the learning programme on an annual basis, ensuring that it is used as a means of disseminating and supporting the implementation of the 10 Point Plan of Action. The Office will ensure that all of these initiatives are based upon the principle of Age, Gender and Diversity Mainstreaming.

#### *X. Reviewing UNHCR policies and programmes*

88. As observed earlier in this paper, the issue of refugee protection and international migration, and more particularly that of mixed movements, has gained a prominent place on the global policy agenda. Given the predictions that are now being concerning the future movement of people as a result of climate change, natural disasters and global economic disparities, one can expect this issue to remain a high priority for the international community.

89. As part of its implementation strategy, UNHCR will keep abreast of and contribute to the discourse of refugee protection and international migration, as well as developing and articulating its own policies in this policy domain. The Office will also review the effectiveness of its interventions in this area in order to learn lessons from its experience and to ensure that they are incorporated in its policymaking and programming processes.

*UNHCR*

**High Commissioner's Dialogue on Protection Challenges**  
Theme: Refugee Protection, Durable Solutions and International Migration

Opening Statement by Mr. António Guterres  
United Nations High Commissioner for Refugees  
(Geneva, 11 December 2007)

Your Excellencies, Ladies and Gentlemen,

Let me begin by offering a warm welcome to all of you. It gives me great satisfaction to see so many states, international organizations, NGOs and experts gathered here today for our first Dialogue on Protection Challenges.

To open the Dialogue, I would briefly like to address three questions. What is the purpose of the Dialogue? Why have we chosen to focus our discussion on the issue of refugee protection and international migration? And what perspectives does UNHCR bring to this theme?

\* \* \*

The first of those questions can be answered very briefly. We have initiated this Dialogue because of the need to forge an international consensus on the principles and practice of protection for refugees in the current context of human displacement.

As you know, global refugee numbers have not increased dramatically in recent years. But the challenge of providing these and other displaced people with protection and solutions has not become any easier. This is particularly the case in situations where refugees are moving alongside people who are not in need of international protection.

In convening this Dialogue, it is my hope that we will be able to discuss and build consensus on ways of improving our response to the contemporary challenges of refugee protection. I also hope that our discussion will be as informal, interactive and open as possible.

\* \* \*

Question two. Why have we chosen to focus this first Dialogue on the issue of refugee protection, durable solutions and international migration?

The answer to that question is to be found in the fact that human mobility is growing in scale, scope and complexity. New patterns of movement are emerging, including forms of displacement and forced migration that are not addressed by international refugee law. States throughout the globe are expressing concern about the impact of these developments on their economy, their security and their social cohesion.

Unfortunately, the debate about mobility and migration is not always a rational one. Electoral opportunism, political populism and the sensationalist media have combined to poison the debate on this issue, promoting a sense of fear, intolerance and rejection.

At the same time, the discourse on international migration has recently taken a new and more positive turn. As demonstrated by the establishment of the Global Forum on Migration and

Development, there is growing recognition of the need to maximize the contribution that migration can make to poverty reduction and economic growth, both in the North and the South of the globe.

The agenda that has been established for the second meeting of the Global Forum in the Philippines also indicates that we are witnessing a new awareness of the need to safeguard the human rights of those people who are on the move. I make no secret of my ambition to ensure that the current debate on migration, development and human rights includes a focus on the protection needs of refugees and the contribution they can make to their countries of asylum.

I am firmly convinced that the efforts of my Office to promote refugee protection and solutions are fully compatible with (and can actually reinforce) the efforts of states to ensure their own security and to define their migration policies. I hope that this Dialogue will enable us to determine how these complementary objectives can be more effectively attained.

\* \* \*

Let me continue my opening remarks with a few words about UNHCR's perspective on the issues that we will be addressing in the Dialogue, and which are examined at greater length in the Discussion Paper which has been made available to you.

As you will see from that paper, our starting point in this Dialogue is to be found in the 1951 Refugee Convention, in the distinctive status and rights that have been given to refugees in international law, and in UNHCR's unique mandate to provide that group of people with protection and durable solutions.

At the same time, we recognize that the refugee concept has changed over the 50 years, and has been broadened as a result of additional legal instruments, new jurisprudence, changing state practice and the evolution of UNHCR's mandate. All of these developments testify to a phenomenon that I referred to a moment ago, namely the growing complexity of human mobility.

The world's 10 million refugees constitute only a small proportion of the 200 million or more people who are now living outside their own country. But increasingly those refugees are to be found in mixed movements, travelling in the same directions, using the same routes and means of transport as migrants.

In many cases they are also exposed to similar risks and dangers, especially when travelling in flimsy and overcrowded boats of the type we have recently witnessed in places as far apart as the Gulf of Aden, the Caribbean, the southern Mediterranean and the west coast of Africa.

UNHCR has a number of fundamental objectives in relation to mixed movements, all of which are addressed in our 10 Point Action Plan on Refugee Protection and Mixed Migration.

We want to ensure that people who are in need of protection have access to the territory of other states, and are able to have their case assessed in fair and effective asylum procedures.

We want to make sure that border controls are implemented in a manner that is sensitive to protection concerns and to the rights of refugees.

We want to promote measures that will save the lives of people who are in distress on the high seas and ensure their safe and timely disembarkation.

We want action to be taken to crack down on human traffickers and smugglers, and to ensure that the victims of these crimes are properly protected.



We want to ensure that durable solutions are found for refugees, and at the same time to ensure that people who are not in need of international protection can either return to their homeland in a dignified manner or regularize their status in accordance with the migration policies of the states concerned. In seeking solutions for refugees, moreover, we would like to ask whether persons of concern to UNHCR could benefit more systematically from regular migration opportunities.

Above all, we want to ensure that our efforts to meet these objectives are firmly based on the principles of international solidarity, cooperation and responsibility sharing. Indeed, one of my principal ambitions for this Dialogue is to gain broader recognition of the need to build protection capacity in every part of the world, so that refugees can find safety where and when they need it and are not obliged to engage in onward movements.

In this context, let us remember that the issue of refugee protection and international migration is not simply one of movements from the South to the North of the globe. The majority of the world's refugees are to be found in developing countries, and some of the largest migratory movements take place within the South.

We must ensure that efforts to improve the situation of refugees in developing regions are not used as a pretext by the world's most prosperous countries to dump protection problems onto states with far fewer resources and much weaker capacity. Refugee protection in the South can never be an alternative to asylum in the North.

\* \* \*

Ladies and gentlemen,

Before opening the floor to other participants in this Dialogue, allow me to conclude by raising some issues which may fall outside the mandate of my Office, but which have enormous consequences for my ability to exercise that mandate.

First, we must recognize that in the current and very dynamic phase of the globalization process, migration is inevitable. It is probably an illusion to believe that goods, capital, services and information can move increasingly freely across state borders without a simultaneous expansion in the scale and scope of human mobility.

Second, international migration cannot be effectively managed by border controls or by migration policies alone. A more coherent, comprehensive and integrated approach is required, incorporating appropriate initiatives in a wide range of other policy areas.

Particular attention must be given to the establishment of better coordinated and more targeted development cooperation programmes, focused on poverty reduction, job creation and the strengthening of public and community services. Greater efforts are needed to address the challenges of conflict prevention, conflict resolution and peacebuilding. International trade must become a true instrument of development. And new initiatives are needed to mitigate the effects of climate change and to enable communities to adapt to changes in their environment.

Third, I encourage states to acknowledge the need to balance effective border controls with the provision of additional legal migration opportunities. In an environment where irregular migration prevails, human traffickers and smugglers are bound to prosper. Irregular migration can only be curtailed if people who want to move can aspire to do so in a safe and legal manner.

We should recognize that while international migration is driven by some powerful economic and social forces, it is ultimately a human phenomenon. People who move from one country and continent to another usually do so to make the best of their lives. We must ensure that such movements are undertaken as a matter of choice, and not because it is the only way for people to survive.

Fourth, I believe that if we are to address the issue of human mobility in a more effective and equitable manner, then we must strive for better cooperation, particularly between states, but also involving other stakeholders. Such cooperation must take place at the regional and global levels and promote an active dialogue between countries of origin, transit and destination.

In exactly a week from now, we will be celebrating International Migrants Day. Let us use that day, and let us use this Dialogue, to reaffirm the need to respect the rights of all those people who have left their own country, irrespective of their legal status or their motivation for moving.

In making that remark, I am not seeking an expansion of my Office's mandate. I do not want UNHCR to assume responsibility for activities that are more properly done by other organizations, particularly the International Organization for Migration. I am not in favour of diluting the fundamental distinction between refugees and migrants, and certainly do not wish to suggest that everyone who is on the move should be considered a refugee.

I do believe, however, in the universality and indivisibility of human rights. By creating a global environment in which migrant rights are respected, we will also be creating an environment in which UNHCR can more effectively exercise its mandate for refugee protection and solutions.

Thank you very much.



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **High Commissioner's Dialogue on Protection Challenges** (11-12 December 2007)

Theme: Refugee Protection, Durable Solutions and International Migration

### **Chairman's Summary** 12 December 2007

Excellencies, Distinguished Participants, and Friends,

We have come to the end of this first Dialogue on Protection Challenges, which has focused on the theme of refugee protection, durable solutions and international migration.

I now have the difficult task of summing up the discussions we have had over the past one and one-half days. Let me begin by thanking all of you for having contributed individually to what I have found to be an enriching and thought-provoking discussion on a very complex topic. Many of you felt that the theme chosen for this first Dialogue was very timely. I come away from the Dialogue on Protection Challenges with the following observations and recommendations for follow-up.

There were three main themes that emerged: "protection gaps" in mixed population flows; UNHCR's mandate in this area of "mixed movements"; and partnership.

#### Protection gaps

Echoing the keynote statement made by the IFRC's Special Envoy on Migration, it has been repeatedly stressed that there are protection gaps or grey areas affecting those involved in mixed movements. This especially relates to migrants who are deemed to be "irregular" by the authorities, fall outside the international refugee protection framework, but who nevertheless need humanitarian assistance and/or different kinds of protection.

There were strong calls to uphold the rights and protect the welfare of people who are moving for reasons unrelated to refugee status, but who become vulnerable to abuse and exploitation, both in the course of their journey and following arrival. No single agency has the capacity or mandate to address the complex issue of mixed migration alone. However, the solution lies not in redesigning mandates, but in forging more effective partnership mechanisms. There was a strong call for UNHCR to work in close partnership with States

and other organizations, notably with IOM, to create synergies and fill the gaps in this area.

You have repeatedly emphasized the need to set in place specific rights-based methodologies and approaches to address the grey areas and fill these gaps, as well as the need for the human rights and dignity of all migrants to be at the core of all activities. Some speakers reminded us that while it is important to address human rights and humanitarian concerns, political developments, security aspects and regional specificities should not be neglected. In this regard, you have emphasized both the primacy of State sovereignty and State responsibility in this area and the importance of taking into account specific national interests. By the same token, you have stressed that the goal of better “managing” migration and refugee protection can be achieved by developing national legislation and building capacity through robust international solidarity and burden-sharing. This solidarity must be translated into practical arrangements to address specific situations.

Although we have discussed the gaps a great deal, we have not analyzed them in-depth. Many observed that there are contexts in which UNHCR can appropriately play a “convenor role”, specifically where the preservation of protection space is at issue. My idea, building on the suggestion just made by the Netherlands, would be to establish an informal working group, involving IOM, ICRC, the IFRC, OHCHR, the ILO, the NGO community and perhaps UNDP. The informal working group should take a more in-depth look into this question of existing gaps, the different agencies that operate and how better cooperation and partnership can address these gaps.

This more concrete analysis should take place in an open framework. I would be willing to act as a convenor of such a group, which in my view should not be composed just of agencies. I think States, from different parts of the world, need to be involved. It would also need to be both a relatively open and representative group. If not, it would not be effective.

Some of you questioned how the issue of migrant rights could be given more prominence in the State-led Global Forum on Migration and Development. It is not for UNHCR, or UNHCR’s Excom, to shape the Global Forum’s agenda. However, some of you felt that this Dialogue on Protection Challenges has provided useful insights into an array of human rights and refugee protection issues, as well as development challenges, and that it might be useful to explore these further in regional consultative migration processes and in the Global Forum.

You also discussed the phenomenon of irregular maritime migration, especially during the side event on rescue-at-sea, which was convened as an integral part of the Dialogue. While such movements account for only a small component of international migration, they raise very specific and complex challenges which need to be addressed.

You confirmed the need to preserve and protect the safety of life at sea and to facilitate rescue-at-sea and the search and rescue regime. Most speakers

placed a primacy on the right to life and on the need to address humanitarian concerns that arise in the context of rescue-at-sea – regardless of definitions and of meeting specific criteria for refugee status. You emphasized that the safe and timely disembarkation of persons rescued at sea requires a collaborative response that involves a wide range of actors, including intergovernmental organizations. You also recognized the need to develop more predictable responses, drawing upon long-standing maritime and humanitarian traditions. In this regard, you took note of the Third Interagency Meeting on the Treatment of Persons Rescued at Sea, convened by UNHCR on 11 December 2007, and expressed appreciation for the supportive role being played by UNHCR and other agencies in helping States to find solutions for migrants and refugees rescued at sea.

Rescue-at-sea is one area where I believe we *can* move forward with the instruments we have and with decisions that have already been taken. I will convene a meeting next semester of the heads of the different agencies that have been involved in this, namely IOM, ILO, IMO, the Office of the High Commissioner for Human Rights and UN-DOLOAS – the portion of the UN Secretariat that deals with these issues. We will look at what kind of action we undertake in our specific fields of activities and what forms of cooperation we can establish. I hope that the first meeting will allow us to work on an interagency plan of action relating to rescue-at-sea.

Together with IMO, UNHCR will issue a new edition of guidance on rescue-at-sea for shipmasters. At the same time, we are proposing that our Executive Committee consider drafting a Conclusion on rescue-at-sea, specifically in areas relevant to UNHCR activities. According to our discussions, I believe that this is an area in which this Dialogue should be contributing and moving forward.

### UNHCR's mandate

Regarding refugees and persons of concern to UNHCR, you acknowledged that UNHCR has a role to play in mixed migration, not least by ensuring access to protection systems. This is not a new role for UNHCR, but fits squarely within its mandate to create protection space for refugees.

You urged the international community to maintain a distinction between refugees and migrants. Many States raised concerns that failure to distinguish between those who have international protection needs under the 1951 Convention relating to the Status of Refugees or complementary forms of protection, and “other” migrants, would undermine the integrity of asylum systems and reduce public support for the reception of those in need of international protection.

Yet, you also recognized that refugee and migration issues intersect at a number of key points, and must therefore be addressed in a complementary and mutually reinforcing manner. International migration cannot be effectively “managed” by border controls or by migration policies alone. In this regard, you recognized the imperative to reconcile the task of refugee protection with

that of border control and migration management. A more coherent, comprehensive and integrated approach is required, incorporating appropriate initiatives in a wide range of other policy areas.

There were some serious concerns raised about UNHCR's mandate with regard to migration management, the provision of information and assistance to migrants not in need of protection, the return of failed asylum-seekers and the need to ensure value added when taking on a convenor function. These concerns were raised loudly and clearly, and I heard them.

### Partnership: The 10-Point Plan on Refugee Protection and Mixed Migration

I would also draw from our discussions that a key objective is to strengthen partnerships, even in the protection of refugees, which is primarily a State responsibility. States will, of course, have a key role to play in these partnerships.

You acknowledged the direct relevance of the areas covered in the 10-Point Plan of Action on Refugee Protection and Mixed Migration for better management of asylum and migration nexus issues. In view of our discussions, I believe that we need to look at the 10-Point Plan from a dual perspective – as both a work in progress and a framework for closer cooperation.

The 10-Point Plan is work in progress because it is not a document that enshrines a “doctrine” forever. It would not make sense to consider it in this way. It has aspects that need to be improved, adapted and made more precise. But this needs to be done by examining specific circumstances around the world where we have to act together. These will change over time in the light of new challenges. So, as I said, it is a work in progress.

But the 10-Point Plan also needs to be an instrument for action. This means that we cannot spend 10 years discussing the “perfect” document, only to discover that it is completely useless, because realities have changed. We need to be able to enhance it in partnership, because many of the areas referred to in the document do not relate specifically to the activities of UNHCR. And, of course, the 10 points do not cover all global migration and asylum problems, and much less all aspects of international migration per se.

Therefore, the 10-Point Plan is an instrument that can be enhanced, and which needs some additional fleshing out. I was particularly attentive to several interventions in the debates on areas that require further work, for example, responsibility sharing and the need to ensure that the rights given to and considered for refugees do not in any way undermine the human rights of migrant workers. This is something that needs to be stressed. This cannot be an instrument that excludes people from a rights-minded approach, but must include everybody in such an approach.

You highlighted a number of areas of particular concern. For example, you discussed the importance of terminology and of achieving a common

understanding of the terms and concepts used when we speak about “mixed migration” or “persons in need of protection.” You also stressed the need to revisit and update terminology based on developments in law and practice. We have heard concerns about the term “profiling”, especially since the 10-Point Plan is not an instrument to exclude anybody from access to refugee procedures.

We also heard very relevant concerns about the role UNHCR might play in the return of those people found not to be in need of international protection. Some cautioned against UNHCR becoming involved, whereas others pointed to examples where the Office’s involvement in the return of non-refugees in mixed flow situations could actually produce “protection benefits” for refugees. I think that we need to be very cautious about the way we handle this specific problem. We need to recognize that the assistance of UNHCR might be required more when it comes to capacity building in some parts of the world, rather than in regions where States have the capacity to handle those situations with their own means and with bilateral agreements.

You also recognized that the status of refugees and asylum-seekers who engage in onward movements remains an issue requiring further discussions, notably on the practical measures required to address such onward movements. Referring to the work in this area during the Global Consultations on International Protection and the Convention Plus Initiative, my Office was asked to explore with the Executive Committee how the Committee might address this issue in future.

So there are concerns and precautions that need to be taken into consideration, and there are precisions that need to be made. I believe that we can continue to work in cooperation around the 10-Point Plan of Action, with States at the very centre of all that is done, because refugee and migration movements are primarily the responsibility of States.

Many of you referred to capacity-building in a broad sense. We have an instrument, the Strengthening Protection Capacity Project that probably needs to be improved and developed. There are other capacity-building instruments in relation to this area. IOM has several capacity-building programmes. The European Commission, for instance, has its regional protection programmes. Since there are many instruments for capacity building, once again it does not make sense for my Office to work alone. This is obviously an area in which the capacity of the international community to support the efforts of States to build their institutions is absolutely crucial.

At the same time, you encouraged my Office to continue to explore innovative ways to use migration, labour and human rights frameworks, as a means of strengthening protection in countries and regions that have not established legal and policy frameworks relating specifically to refugees and asylum-seekers. Such legislation can provide a useful framework to ensure that those people in need of protection find it. In this regard, you encouraged UNHCR to engage with States on how labour migration can benefit refugees, without restricting opportunities for durable solutions.

## High Commissioner's Dialogue on Protection Challenges

Finally, I believe this model of “dialogue” on protection challenges makes sense, although I think we can improve the methodology. Several speakers appreciated the format of the breakout sessions and highlighted the value of hearing a cross-section of views. My suggestion is that we should have one such Dialogue each year. Each Dialogue should be about one key protection challenge. The selection of the topic will be, of course, discussed with ExCom Member States and with the organizations with which we are in permanent contact during the year. I would suggest that we convene the next Dialogue in the 3<sup>rd</sup> quarter of 2008, focusing on another protection challenge relating to refugees.

If this can be agreeable to you, as a way to move forward, let us proceed.

**21 January 2008**

UNHCR Headquarters





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United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **Refugee Protection and Mixed Migration: A 10-Point Plan of Action**

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#### **Introduction**

While refugees and asylum seekers account for a relatively small portion of the global movement of people, they increasingly move from one country or continent to another alongside other people whose reasons for moving are different and not protection-related.

More often than not such movements are irregular, in the sense that they take place without the requisite documentation and frequently involve human smugglers and traffickers. The people who move in this manner often place their lives at risk, are obliged to travel in inhumane conditions and may be exposed to exploitation and abuse. States regard such movements as a threat to their sovereignty and security.

It has become imperative for the international community to address this phenomenon in a more coherent and comprehensive manner. States have assumed protection responsibilities for refugees under international instruments which it is in their collective interest to honour.

More specifically, steps must be taken to establish entry systems that are able to identify new arrivals with international protection needs and which provide appropriate and differentiated solutions for them, side by side with such other solutions as need to be pursued for other groups involved in mixed movements. UNHCR is especially mindful of the need to ensure that the provision of protection and asylum to refugees and other people of concern to the Office does not compound the difficulties that states experience in controlling more generally the arrival and residence of foreign nationals and in combating international crime.

This paper sets out ten key areas in which UNHCR has an interest and a potential role to play, and where the Office believe initiatives are called for and could make a positive impact. The Plan of Action provided in the paper is especially relevant to situations where refugees are at risk of *refoulement*, human rights violations and hazardous onward movements.

The paper does not purport to be comprehensive in relation to matters that are beyond the competence and responsibility of UNHCR. Nor does it contain a detailed blueprint for the implementation of each component of the Plan of Action.

The matrix in Annex I sets out the goals that the Plan of Action is intended to achieve and contains suggestions for activities that might be undertaken under each of the ten component parts. The Plan of Action is global in nature and its implementation would evidently have to be adapted to specific regional and national contexts.

## **1. Cooperation among key partners**

Effective approaches to the dilemmas of mixed movements will inevitably depend upon full cooperation amongst the key actors concerned: affected states, governmental bodies, regional and international organizations with relevant mandates (e.g. UNHCR, OHCHR, UNICEF and IOM) as well as local and international NGOs.

Hence, a first step is to identify and convene such actors in an appropriate forum so that they can exchange information and establish terms and conditions for cooperation and coordination. The convenor of such a forum would preferably be one or more of the affected states but an international organisation can also play a ‘good offices’ role in this respect.

## **2. Data collection and analysis**

A key to any coherent and comprehensive strategy is the collection, analysis and exchange of data about the characteristics of the movement and those groups which make it up. Such data should typically include information relating to conditions in countries of origin, motivations for movement, modes of transport, transit routes and entry points. An international or regional organization may be well placed to offer support for this function.

### **3. Protection-sensitive entry systems**

The establishment of a functioning entry system is an important element in any strategy relating to mixed movements. Border control is essential for the purposes of combating international crime, including smuggling and trafficking, and averting security threats.

Practical protection safeguards are required to ensure that such measures are not applied in an indiscriminate or disproportionate manner and that they do not lead to *refoulement*. In this respect, border guards and immigration officials would benefit from training and clear instructions on how to respond to asylum applications and how to handle the needs of separated children, victims of trafficking and other groups with specific needs.

With regard to irregular maritime migration, a particular range of considerations arise, including safeguarding lives at sea, respecting the obligations of maritime law, maintaining the integrity of the search and rescue regime and ensuring the smooth flow of maritime traffic.

### **4. Reception arrangements**

Appropriate reception arrangements are needed to ensure that the basic human needs of people involved in mixed movements can be met. Such reception arrangements should also enable new arrivals to be registered and provided with temporary documentation. Especially in situations where a high percentage of the new arrivals are refugees or asylum-seekers, UNHCR could facilitate the putting in place of appropriate arrangements, or be otherwise involved on a temporary basis, together with the principally responsible party.

### **5. Mechanisms for profiling and referral**

Once new arrivals have been registered and provided with temporary documentation, an initial determination will have to be made with regard to who they are, why they have left their own country and where their intended destination is. Counselling provides an opportunity to establish whether they wish to seek asylum and to identify other options available to them, including return, regularization or regular onward migration. This channelling arrangement would not constitute a refugee status determination. Rather its role is to give a good indication of a person's motives for departure and to ensure the person's situation is met with the most appropriate response. Annex II to this note provides a schematic representation of how such a profiling and referral mechanism might work.

### **6. Differentiated processes and procedures**

With respect to asylum claims, those which appear to be relatively simple (because they are well founded or manifestly unfounded) could be assessed in an expedited procedure. Other and more complex claims normally will require a more detailed assessment. Different processes outside the asylum arrangements should address the situation of

people with specific needs which are not refugee related, including victims of trafficking not in need of international protection, as well as persons who are seeking to migrate (see Chapter 9 below).

While UNHCR is likely to be a principal partner for states in relation to refugee status determination procedures, NGOs, lawyers and civil society institutions should also have a role to play in this component of the Plan of Action. In relation to other processes, UNHCR will only be minimally involved, if at all. The likely partners will depend on the situation in the specific country and on which organisations are present and willing to act as partner.

## **7. Solutions for refugees**

People who are recognized as refugees or as otherwise being in need of international protection require a protection-based response that includes a durable solution, the nature of which will depend on the opportunities and constraints inherent in each situation.

A comprehensive approach involving a mix of solutions will often offer the best chances for success. Beyond the classic durable solutions, legal migration opportunities may open up a complementary avenue for some refugees.

Refugee-receiving countries may benefit from international assistance to strengthen national protection capacities.

## **8. Addressing secondary movements**

Addressing the situation of refugees and asylum seekers who have moved on from countries where they had already found adequate protection requires a more defined strategy. This strategy should take into account both the legitimate concerns of states about irregular onward movement and the rights and well-being of the people concerned. To date efforts to articulate such a strategy have failed to muster international consensus. UNHCR is committed to continuing the effort in this regard.

## **9. Return of non-refugees and alternative migration options**

For people who are found not to be refugees, and for those who do not wish to seek asylum, expeditious return in safety and dignity is usually the preferred response of states. UNHCR may, on a good offices basis, assist states in the return of people who are not in need of international protection where this is the most appropriate and agreed solution. The manner in which UNHCR could be of assistance deserves closer examination by all interested parties.

There will be circumstances where people who do not meet the criteria for refugee status may nevertheless be in a position to access alternative temporary migration options. These could variously allow them to stay legally in the country of arrival, or to move to a third country for humanitarian reasons, or for the purposes of work, education or family

reunion. Efforts to address mixed population movements should also explore a place for regular migration options, temporary or even longer term.

## **10. Information strategy**

All of the measures described above should be complemented by information campaigns in countries of origin, transit and destination. People need to be alerted to the dangers of irregular movement and the difficulties they might face upon arrival, as well as to any alternatives to irregular migration which might also meet their circumstances.

Such information campaigns will likely not curb irregular movements entirely but, if combined with the other action points and supported by longer term measures to tackle the root causes of such movements, they may have a positive impact.

While information campaigns are primarily a task for agencies with a migration or information related mandate such as IOM, UNHCR may also play a role in such initiatives. UNHCR also has capacity and interest to initiate public awareness activities about the plight of refugees, in order to promote tolerance and to combat racism and xenophobia.

UNHCR  
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## Annex I

### Ten Point Plan of Action Check List for UNHCR

**Goals:**

- Government responses to mixed movements are comprehensive, cooperative and protection sensitive.
- Solutions are available which address differently and in appropriate ways the situation of the respective groups.
- Refugees are identified and protected, while the irregular movement is reduced.

Objectives	Activities
<p><b>1. Collaboration among key partners</b></p>	<ol style="list-style-type: none"> <li>1. Identify key partners/stakeholders at national level to participate in a collaborative response.</li> <li>2. Promote the creation of a national coordination structure at the appropriate level(s).</li> <li>3. Establish a regular consultation mechanism with partners (Government, IOM, ILO, UNODC, ICMPD, UNICEF, UNDP, UNFPA, NGOs, regional organizations etc.)</li> <li>4. Ensure consultation with civil society structures and academia in order to exchange information on developments and to mobilize community support.</li> <li>5. Include asylum/migration issues on the agenda of the UN Country Teams (UNCT) and reinforce information flow and links among UNCTs in the region.</li> <li>6. Inject asylum/migration issues in UNDAF at national level.</li> <li>7. Establish consultation and coordination mechanism at regional level.</li> <li>8. Encourage/mobilize donor support.</li> <li>9. Lobby and advocate internationally for appropriate responses, around the ten points, within national and international fora.</li> </ol>
<p><b>2. Data collection and analysis</b></p>	<p><u>On refugee flows within mixed movements</u></p> <ol style="list-style-type: none"> <li>1. Cooperate with the establishment and/or usage of databases covering the specific region to better understand movements and identify appropriate responses.</li> <li>2. Use such databases to systematize collection of data on asylum-seekers and refugees, to set in train the exchange of data with UNHCR country offices in the region, as well as in other impacted States, to anticipate routes, movements and trends, identify secondary movement situations, and improve case tracking, using, as appropriate, ProGres.</li> </ol>

Objectives	Activities
	<p>3. Build into this, as appropriate and in full respect for confidentiality guidelines, relevant information derived from RSD and interviews to ascertain trends, transit routes, etc.</p> <p>4. Devise Country Information Notes on trends and patterns of movement.</p> <p>5. Review and analyse reports to anticipate routes, movements and trends and to formulate country-specific strategies.</p> <p><u>Overall</u> Cooperate with data-collection and research initiatives, as appropriate, to contribute to the generation of a coherent and comprehensive overview of overall trends.</p>
<p><b>3. Protection-sensitive entry systems (in-country, at borders and at sea)</b></p>	<p>1. Undertake or strengthen capacity-building of border and law enforcement officials in order to sensitize them to refugee issues and to facilitate admission of persons in need of international protection.</p> <p>2. Put in place training programmes/workshops for NGOs, lawyers, judiciary and national human rights institutions, to facilitate admission of persons in need of international protection and build constituencies for protection.</p> <p>3. Actively monitor and follow up on conditions of detention and treatment of asylum-seekers/refugees</p> <p>4. Explore how UNHCR might positively interact with arrangements put in place for interception and managing maritime movements, including giving consideration to measures to monitor interception.</p>
<p><b>4. Reception arrangements</b></p>	<p>Make recommendations on what role UNHCR can and should play in any reception arrangements for new arrivals, including in reception sites, with appropriate safeguards (e.g. UNHCR access).</p>
<p><b>5. Mechanism for profiling and referral</b></p>	<p>Pursue establishment of joint mechanisms, with identified partners and in appropriate locations, to profile arriving groups. This arrangement should preferably include mechanisms to identify the profile of new arrivals and their eventual protection needs, and should allow for appropriate counselling and referral of the persons concerned to the appropriate response mechanism (e.g. RSD, assisted voluntary return, particularised process for victims of trafficking).</p>
<p><b>6. Differentiated processes and procedures</b></p>	<p>1. Pursue the development of legal frameworks for determining refugee status and meeting protection needs. The aim should be:</p> <ul style="list-style-type: none"> <li>o functioning national asylum procedures;</li> <li>o adequate administrative and institutional capacities at appropriate level(s);</li> </ul>

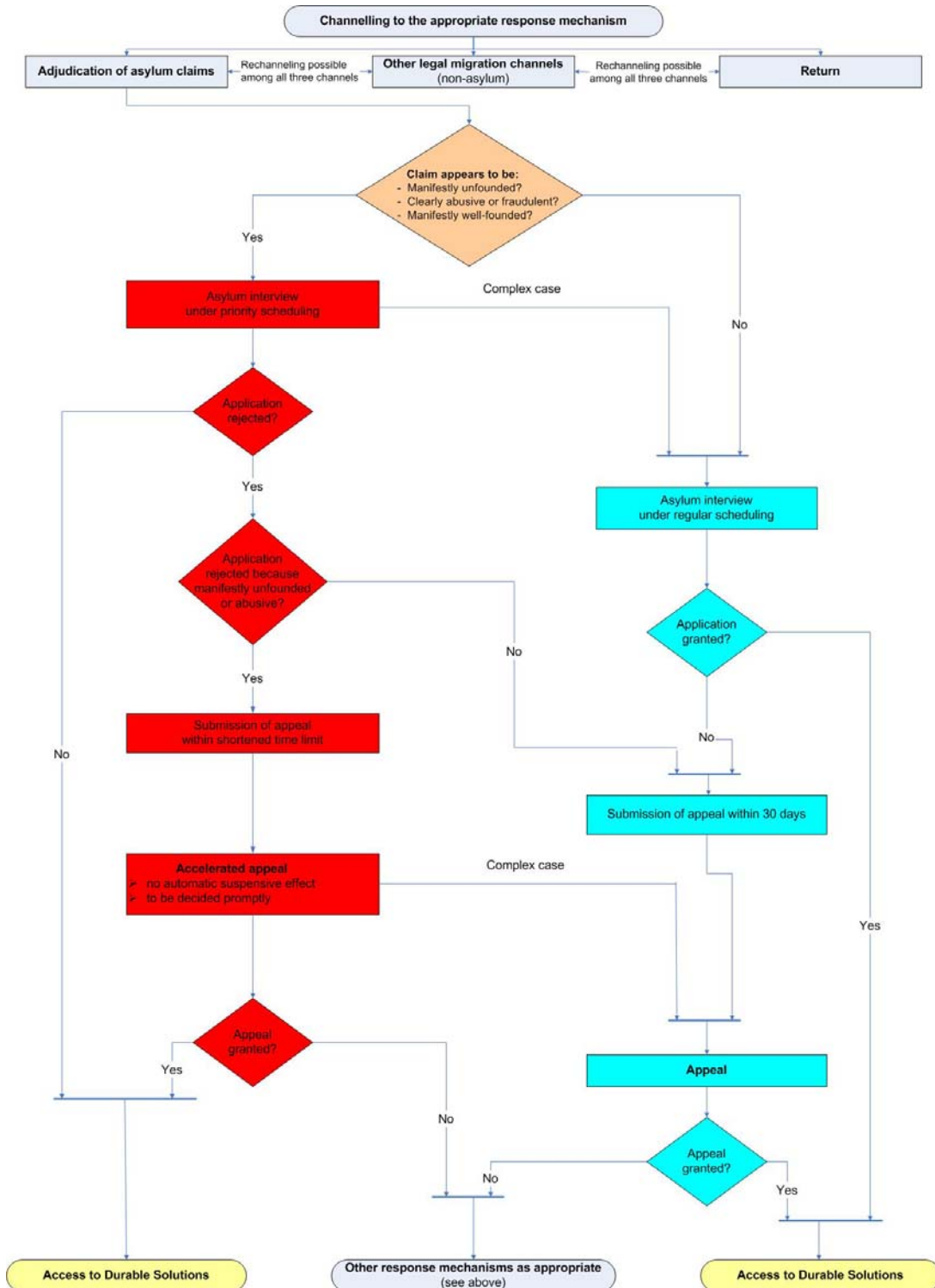
Objectives	Activities
	<ul style="list-style-type: none"> <li>○ NGO and civil society engagement in protection and assistance arrangements.</li> <li>2. If there is no properly functioning national asylum procedure, UNHCR to assume responsibility for RSD. In this connection, offices to ensure that a proper case management is established, which is able to prioritise certain cases and can appropriately address particular needs (single women, unaccompanied and separated children, etc.).</li> </ul>
<p><b>7. Solutions for refugees</b></p>	<p>All solutions to be considered in a comprehensive approach.</p> <p><u>Voluntary repatriation</u> Undertake activities to facilitate voluntary return, underpinned, resources permitting, by promotion of sustainable reintegration in countries of origin, in cooperation with relevant partners, as well as by returnee monitoring.</p> <p><u>Local integration</u> Where repatriation is not feasible in the short or intermediate term, explore options for whatever might prove an appropriate local stay arrangement (including advocating for leave to remain of persons found to be in need of international protection but unable or unlikely to access more formal status).</p> <p><u>Resettlement</u> In cooperation with the Resettlement Service, become familiar with the concept of strategic use of resettlement and coordinate on resettlement needs and dilemmas, with a view to agreeing on a region-wide approach to resettlement, as part of overall burden-sharing arrangements to ease pressure on host countries. Explore resettlement pools or resettlement quotas for specific groups in this context.</p>
<p><b>8. Addressing secondary movement</b></p>	<ol style="list-style-type: none"> <li>1. Make effective use of the Strengthening Protection Capacity Project (SPCP) to improve availability of quality protection closer to where protection is first sought or needed.</li> <li>2. Actively examine how and under which circumstances UNHCR can ease the process of readmission and, as appropriate, set in train the necessary activities with countries of first asylum.</li> </ol>
<p><b>9. Return arrangements and alternative migration options for non-refugees</b></p>	<ol style="list-style-type: none"> <li>1. Contribute appropriately (i.a. through cooperation with IOM) to making return of persons found not to be in need of international protection a realizable solution.</li> <li>2. Advocate for proper standards for return and be prepared to facilitate return, including by activities in the areas of documentation and return counselling.</li> </ol>



Objectives	Activities
	<ol style="list-style-type: none"> <li>3. Explore the need for and the value of a post-return passive monitoring role for UNHCR in countries of origin.</li> <li>4. Explore utilising legal migration channels (e.g. temporary labour migration schemes in third countries and in-country of presence).</li> </ol>
<p><b>10. Information strategy in countries of origin, transit and arrival</b></p>	<ol style="list-style-type: none"> <li>1. Coordinate/cooperate in efforts of IOM and other partners to undertake mass information campaigns in countries of origin, transit and destination, to discourage irregular migration, warn of the dangers of smuggling and trafficking, and focus on legal options.</li> <li>2. Explore whether and, if so, how to establish joint information centres in countries of origin.</li> <li>3. Undertake public awareness activities with the media to sensitize about the plight of refugees, including through human interest stories, in order to promote tolerance, and combat racism and xenophobia.</li> </ol>

## Annex II

### Schematic Representation of a Profiling and Referral Mechanism in the Context of Addressing Mixed Migratory Movements





**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **Background note**

### **The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert roundtables convened by UNHCR**

#### Introduction

UNHCR has convened three recent meetings on rescue at sea and refugee protection: the Expert Roundtable on Rescue-at-Sea in Lisbon, Portugal in March 2002; the Expert Meeting on Interception and Rescue in the Mediterranean in Athens, Greece in September 2005; and the meeting of State Representatives on the same issue in Madrid, Spain in May 2006.

The meetings brought together participants from governments, the shipping industry, international organizations, non-governmental organizations and academia. They resulted in a number of important observations and recommendations, aimed at preserving the integrity of the global search and rescue (SAR) regime for which irregular migration poses a particular challenge, and at meeting the humanitarian and protection needs of those in distress. However, participants also recognized that efforts to improve search and rescue operations for migrants and refugees in distress at sea are only one aspect of addressing the broader challenges of irregular maritime migration. This requires tackling all the different aspects of this phenomenon in a comprehensive manner, from the root causes to differentiated solutions after disembarkation.

The points below synthesize the key conclusions coming out of these meetings. They include suggestions for the strengthening of the maritime SAR regime, as well as recommendations for a broader approach to address irregular maritime migration beyond the imminent rescue phase.

#### Conclusions and recommendations

##### *Irregular maritime migration*

- Irregular maritime migration is only a small component of the overall phenomenon of international migration, but it raises specific challenges which need to be addressed.
- While it is not in essence a refugee problem, there are refugee protection issues to contend with which must be addressed as part of the broader response to irregular maritime migration, and asylum must be effectively made available in such situations for those requiring it.

- Irregular maritime migration requires a collaborative response, involving a wide range of actors, including intergovernmental organizations.
- Human rights and refugee law principles are an important point of reference in handling rescue-at-sea situations.

*Preserving the integrity of the search and rescue regime*

- The rescue of persons in distress at sea is not only an obligation under maritime law but also a humanitarian necessity, regardless of who people are and what their reasons are for moving.
- The integrity of the global SAR regime as governed by the SOLAS and SAR Conventions must be scrupulously protected. This is a responsibility of the international community as a whole.
- All States should implement strict safety standards before authorizing any boat to depart their ports or shores.
- States should be encouraged to support the recently adopted amendments to the SAR and SOLAS Conventions, which provide clarity on the responsibility of Contracting States to provide a place of safety; or to ensure that a place of safety is provided under the coordination of the State responsible for the SAR region in which the survivors were recovered.
- States should facilitate rescue operations by ensuring that the necessary enabling arrangements are in place in their SAR area.
- It may be necessary to support and assist other States in establishing functioning, sustainable SAR facilities. Such support could also lead to gradual harmonization of approaches to SAR.
- States should take the necessary measures to disseminate to shipmasters and government officials involved in rescue-at-sea operations relevant provisions of maritime law and accompanying guidelines, including the new amendments.
- States should avoid the categorization of interception operations as SAR operations, as this can lead to confusion with respect to disembarkation responsibilities.

*Duties of shipmasters, shipping and insurance agencies*

- The responsibility to rescue is an obligation of shipmasters, established under maritime law. The duty is triggered at the outset of the actual rescue and ends when passengers have been disembarked at a place of safety.
- Decisions as to when and where to land rescued persons will be influenced by factors such as the safety and well-being of the ship and its crew, and the appropriateness of the place of landing (safety, closeness, and the ship's pre-rescue schedule).
- Shipping and/or insurance companies should promptly inform the International Maritime Organization (IMO), UNHCR and other relevant actors

when disembarkation proves problematic or when rescued persons claim international protection. This facilitates cooperation in finding an appropriate disembarkation solution.

- Cases of refusal of disembarkation should be documented by shipping companies and reported to the IMO. This information can then be used by relevant intergovernmental organizations to better quantify the problem and devise solutions with the concerned States.
- Shipping and insurance companies should provide regular statistics to the IMO on incidents of stowaways and people rescued at sea.
- Shipping companies should ensure that shipmasters are made aware of the practical consequences resulting from the IMO guidelines on the treatment of persons rescued at sea through the provision of multilingual information material.

#### *Minimizing the inconvenience for private actors in fulfilling their maritime obligations*

- Shipmasters who undertake rescue operations should not be seen as part of the problem; rather, their actions in saving lives should be recognized and supported by States.
- Their professional judgment as regards the determination of when and where to land the persons rescued should be respected.
- Shipping companies should not be penalized in any manner whatsoever for disembarking or attempting to disembark people rescued at sea.
- The shipmaster has the right to expect the assistance of coastal States with facilitation and completion of the rescue.
- States should not impose a requirement that shipping companies or their insurers cover the repatriation costs of stowaways or people rescued at sea as a precondition for disembarkation.
- A non-state vessel is not an appropriate place to screen and categorize those rescued, or devise solutions for them. Nor should it be used as a “floating detention centre”.

#### *Disembarkation*

- The responsibility for finding solutions to enable timely disembarkation in a humane manner rests exclusively with States and not with private actors. States have a duty to cooperate in finding a place of safety under maritime law.
- Disembarkation procedures should be governed by the maritime regime, not by immigration control objectives.
- Disembarkation procedures should be harmonized, speedy and predictable in order to avoid recurrent case-by-case time consuming negotiation problems, which can endanger the lives of those rescued. Procedures should balance the

interests of the shipping industry and the basic needs of individuals rescued at sea.

- Disembarkation, particularly when it involves large numbers, does not necessarily entail the provision of durable solutions in the country of disembarkation.

#### *Reception standards, profiling and referral to differentiated procedures after disembarkation*

- Comprehensive reception arrangements should be established for persons rescued at sea which meet the needs of the rescued persons, according to their different situations.
- Rapid response teams could assist States facing large-scale arrivals.
- There may be value in establishing multidisciplinary teams (including government experts as well as international and local governmental and non-governmental organizations) for maritime arrival situations; such teams would address any immediate needs, provide information and refer arrivals to appropriate response mechanisms (profiling). These teams may include or benefit from the expertise of non-governmental organizations.
- Persons claiming international protection should be allowed to enter the national asylum procedure without delay; in countries where no asylum procedure exists, they should be referred to UNHCR. The State providing for disembarkation will generally be the State whose refugee protection responsibilities are first engaged.
- Fair and efficient asylum procedures help to separate individuals with international protection needs from those who do not have such needs.
- Trafficked persons and other vulnerable groups such as separated children will require specific assistance. They may also have international protection needs.

#### *Comprehensive solutions*

- Persons with international protection needs should receive protection and, in due course, access to a durable solution, either through local integration or resettlement.
- Persons not seeking asylum, and those who are found not to be in need of international protection or have no other compelling humanitarian reasons to remain, should be encouraged and assisted to return to their country of origin in humane and safe conditions, unless an alternative legal migration option might be available to them. The International Organization for Migration (IOM) and other organizations may offer support to States in implementing assisted voluntary return programmes.
- Return should be complemented by efforts to reintegrate migrants in their community of origin, to ensure the sustainability of return and avoid a “recycling” phenomenon.

- The development of an appropriate response to secondary movements of refugees is a critical challenge.

#### *Combating smuggling and trafficking*

- More vigorous and effective action is needed to identify, arrest and prosecute smugglers and traffickers.
- States should renew their cooperation in protecting witnesses and victims who assist in identification and prosecution of smugglers and traffickers.
- Measures to combat people smuggling must not undermine international refugee protection responsibilities.

#### *Prevention: information strategy and addressing root causes*

- Multilateral cooperation should include a proper review of mechanisms for the creation of orderly migration and protection channels, to provide alternative opportunities for migrants.
- States, relevant intergovernmental organizations and non-governmental actors should explore the feasibility of establishing mass information campaigns to inform prospective clandestine passengers of the risks associated with irregular maritime migration. Such campaigns would also need to touch on the various risks associated with overland travel en route to the prospective embarkation point. They should be targeted at communities in countries of origin, transit countries and migrant communities in countries of destination.
- States should adopt broader, longer-term multilateral commitments to address the root causes of irregular migration. Additional efforts are called for, such as re-targeting aid to achieve sustainable development and the development of alternative legal migration channels.

#### *Improved information management*

- Empirical data on the scale and scope of irregular maritime migration, interception, rescue at sea, disembarkation and treatment of persons disembarked should be harmonized and more systematically compiled by governments and international agencies. Statistical information should include the number and profile of persons intercepted and disembarked as stowaways or following a rescue.
- An exchange of data would enable all stakeholders to better address emerging trends and reinforce their cooperation to combat trafficking and abuse or exploitation of migrants.
- Improved communication procedures among all actors and a better understanding and analysis of the challenges in relation to disembarkation may facilitate sharing of best practices and the identification and realization of timely and fair solutions.

*Cooperation and responsibility sharing*

- International cooperative efforts to address complex rescue-at-sea situations should be built around burden-sharing arrangements. These arrangements could encompass the processing of asylum applications and/or the realization of durable solutions, such as resettlement. Further, they should address, as appropriate, the issue of readmission to first countries of asylum and/or safe third countries. Burden-sharing arrangements should be in place with regard to persons not in need of international protection.
- UNHCR should mobilize States to establish adequate burden-sharing arrangements and/or standby resettlement programmes, as appropriate.

*UNHCR*

*28 November 2007*