Speech by Ms. Erika Feller

**SID lecture series "Migration and Development: Challenges for a
World on the Move"
27 January 2004**

Vrije Universiteit, Amsterdam, Netherlands

ARE REFUGEES MIGRANTS? A DANGEROUS CONFUSION

I want to thank the Netherlands Chapter of the Society of International Development for having extended the invitation to me to make a presentation on the refugee dimension of the new lecture series "Migration and Development – Challenges for a World on the Move". In bringing together my thoughts on this, I have certainly benefited from re-reading the Declaration of the Hague on the Future of Refugee and Migration Policy. The Declaration reflects creatively on the way ahead and promotes a major change of focus as regards the long term interests of States and societies, as well as the aspirations and needs of people on the move. It focuses on the great potential and benefits migration can bring, but locates this in the context of renewed efforts to advance internationally agreed human rights norms. We wholeheartedly agree and it is against this background that I make the following observations.

The answer to the question "are refugees migrants" is no - at least not in the classical sense of the term. Can refugee situations nevertheless be part of, or at some point change their character, qualitatively, to become a broader migratory flow? This is a different question in today's globalized world which deserves a more nuanced response. I want to examine both these questions and, at the same time, offer some insights into how UNHCR is adjusting both its thinking and its programs so as to better manage both migration and refugee protection challenges, at the nexus where they intersect.

If persons are defined as migrants by virtue of the fact that they move from their own country to another, regardless of the reasons and their needs, then refugees are migrants. If, however, the causes of flight are the defining feature, together with the framework of rights and responsibilities within which the flight has to be managed, then there is a clear distinction between the two categories of persons.
I believe strongly that the latter is, and has to remain, the case.

Refugees are not migrants in the lay sense of the word. They move through compulsion, not on the basis of meaningful choice. Their immediate objective is to seek protection from persecution, or from generalized violence. They are not primarily seeking – to use a popular term – a migration outcome. Refugees are, because of their precarious security situation and because of the absence of national protection in their own countries, the recognized beneficiaries of certain, clearly articulated and internationally endorsed rights. States have gone further in

supplementing this legal regime of principles and rights with a host of "soft law" guidelines to ensure the proper treatment of refugees, consistent with their dignity and their personal security. Refugees are also entitled to benefit from the services of a United Nations agency, UNHCR, specifically created to address their protection problems and work with States to facilitate lasting solutions to their problems. In this sense refugees are an acknowledged and specifically catered for group, with an independent legal personality internationally recognized by, at least the 145 States which are party to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol.

Migrants are different and, in this sense at least, not so lucky. There are in fact a wide range of agreements and conventions of various sorts which impact on the management of migration. The focus of states has though, been very largely on precisely this, the <u>better management and control</u> of the movement of migrants and their goods and services, rather than on articulation and protection of their rights. Migrants are not, yet, a recognized group as such with a cohesion and status which equates with that of refugees. In important areas there are no rules or guidelines to regulate inter-state cooperation in migration. There is also no global body or structure through which to manage the rights and movement of migrants in a cooperative way.

This is the objective reality. It is important that it be recognized, including through our terminology and the way we approach refugee protection and migration management respectively. In UNHCR's experience, it is dangerous to reason otherwise. Controlling migratory flows is a top priority for many governments. The term "globalization" is becoming synonymous, on the one hand, with a positive liberalization of financial and market opportunities and reduced protectionism. As regards people movements, the term has a different connotation. From the perspective of many states, which has been indelibly marked by September 11th and international terrorism, globalization impacts the movement of people in threatening ways. It carries with it the spectre of the export of terror, a proliferation of transnational crime, the abuse of national borders by traffickers and people smugglers and, overall, serious fears for the survival of ways of life or standards of living of host communities. These concerns manifest themselves in increasingly restrictive and control oriented policies towards migration, and breed hostility and xenophobia to all foreigners among the domestic populace. To a large extent, the positive dimensions of migration – the fact, for example, that migrant workers remitted more than $80b to their home countries by official transfer alone last year [an amount that stands to dwarf development aid from North to South for the same period]- are being lost in the debate over security and border control.

Modern migratory patterns can make it sometimes difficult to distinguish between the various groups on the move. Population flows are rarely homogenous, but very often of a mixed character. Refugees are increasingly part of movements including both forced and voluntary departures. While the immediate causes of forced displacement may be readily identifiable as serious human rights violations, or armed conflict, these causes may well overlap with, or even be themselves aggravated by, factors such as economic marginalization and poverty, environmental degradation, population pressures and poor governance. Refugees may resort to migrant smugglers as one way to leave their countries. At the same time, persons who do not qualify for international protection may resort to asylum channels, in the absence of legal migration options, in

the hope of gaining either temporary or permanent stay abroad. So the line between migrant and refugee progressively blurs in the public mind, just as does the distinction between migration control and refugee protection in the policies of many states.

This all has its impact on refugee protection. For as long as refugees are seen as little more than a sub-species of migrant, the control of their movement, particularly where it is unauthorized, takes clear precedence over the protection of their rights. Consequent upon the somewhat negative characterization given to migration today, the diversity of human migration has been regularly simplified, for management purposes, into one of two categories – legal and illegal migration. This fails appropriately to take into account the fundamental distinctions between those who are forced to migrate, often without authorization of any sort, to seek protection of their basic rights and those who migrate for economic or social betterment. It also overlooks – perhaps conveniently – the equally important distinctions between the responsibilities states have and should exercise for these two different categories.

What is the proper conclusion to be drawn from this state of affairs? Not that refugees are migrants! A refugee does not change his or her character, or lose entitlements, because of being part of a mixed flow. What changes is NOT the characterization of the person as a refugee, but rather the CONTEXT in which protection and solutions have to be realized, as well perhaps as the CONTENT of interventions in this regard. The more appropriate conclusion, for us, is that all partners have to be fully cognizant of and sensitive to the inter-linkages between migration and asylum flows and that we have to work constructively together to manage this so called "asylum-migration nexus", respecting the differences between the various groups and the variety of interests at stake.

States do have genuine concerns about abuse of asylum procedures, costs of various sorts associated with asylum, about criminality [smuggling and trafficking], about the protracted nature of refugee situations, the disproportionate burdens and a lack of burden sharing. These are real and politically charged issues in many European countries, but in others as well, from South Africa to Australia, or from India to Jordan and way beyond. But there are also the willful distortions to contend with – by politicians, the press and pressure groups – as well as the troubling responses, including the erection of legal and physical barriers to arrival, closure of borders and *refoulement* of refugees.

The challenge for us is, firstly, to find ways of ensuring that the needs of refugees, and indeed of genuine asylum seekers, which include most particularly to access protection, are properly met within the broader context of managed migration. Further down the line, a task of growing importance is to properly recognize at what point a refugee problem may change its character and, not least in the context of realizing appropriate solutions, become a qualitatively different kind of issue, for management through development strategies and from a migration optic. I will return to this shortly.

One important obstacle here is the context, which can be different but also rather similar in significant respects, region by region. Africa suffers under conflict and forced human displacement on a scale of numbers and misery rarely experienced in other parts of the world. Protection takes place in the context of large scale

humanitarian operations, sometimes lacking a clear legal context, any formalized inter-state cooperation or, most often, the resources and support necessary to meet the needs. Asia is also broadly characterized by large scale movements and concerns about disproportionate burdens and security. There is, too, a low level of adherence to refugee and human rights instruments and an absence of interstate regional arrangements or agreements on which to build a framework of collaboration. In the Middle East, where accession to the basic instruments is also negligible and where interstate cooperation on displacement is not the norm, to compound it, new refugee movements come face to face with long standing displacement situations. These, notably the Palestinian problem, determine in important ways the political, security and the humanitarian parameters for any response. On all continents, mass influxes of displaced persons have placed onerous burdens on the physical environment [pollution, deforestation, competition for natural food and water supplies], on social systems [health, welfare, housing and employment and education] and can negatively impact the demographic balance of a host population, antagonizing the host communities. Similarly widespread is the growing problem of irregular movement. It is not only a problem as between regions, but also for popular destination countries within regions themselves.

How can refugees be extricated from a web of undifferentiated border controls, often put in place as part of a complicated set of measures which include visa requirements, carrier liabilities, interception beyond borders and laws setting artificial, geographic boundaries to the application of laws which protect rights? If refugees are ever to be appropriately extricated from the migration control web, there has to be movement on important fronts: addressing the contextual issues, notably the uneven burden-sharing; combatting criminality and trafficking; ensuring effective protection closer to the source of the need; making domestic asylum systems work more expeditiously and fairly; better managing secondary or irregular movement of refugees and asylum seekers [forum shopping]; dealing with abuse of the asylum system, (even given that, in UNHCR's view, the debate about the extent of this is ill-informed and politically emotive); freeing up more resources; and finding earlier, more viable and more sustainable solutions for more people; and finally, realizing more effectively the linkages between humanitarian work, longer-term development strategies and maximizing the potential of migration.

Cognisant of these challenges and in an effort to engage partners, notably states but also non government groups and other international organizations, in revitalizing refugee protection strategies, reinforcing but also building on the existing instruments, UNHCR ran a process of Global Consultations on International Protection from end 2000 to the endorsement of its outcomes by the General Assembly of the United Nations in 2002. The main outcome was the Agenda for Protection, an ambitious certainly, but also practical, program of action designed to improve the climate for and the delivery of protection around the world. Its six goals, accompanying objectives, and the activities suggested to realize the objectives, frame UNHCR's protection activities on all of the earlier mentioned fronts.

The Agenda's goals are all interrelated and migration is one of several cross cutting themes. If implementation of the 1951 Convention regime is strengthened, burdens and responsibilities are more equitably shared, security concerns are more effectively addressed and durable solutions are more available – each one of these a goal of the

Agenda – then Goal two: "Protecting refugees within broader migration movements", should indeed lead to better management of the interface between asylum and migration; it should lead, as the Agenda requires, to people in need of protection finding it, to people who wish to migrate having options other than improper resort to the asylum channel, and to smugglers not being able to benefit through illegal and dangerous manipulation of asylum entry possibilities.

Seven specific objectives accompany this goal:
- better identification of and proper response to the needs of asylum seekers and refugees, including access to protection within the broader context of migration management;
- strengthened international efforts to combat smuggling and trafficking;
- better data collection and research on the nexus between asylum and migration;
- reduction of irregular or secondary movement;
- closer dialogue between UNHCR and IOM;
- information campaigns to ensure potential migrants are aware of the prospects for legal migration and the dangers of human smuggling and trafficking;
- return of persons found not to be in need of international protection.

UNHCR's protection activities are designed in part to realize these objectives. For example: At the national level, through our field operations, we focus on building sound, legislative and administrative frameworks which enact refugee rights and related responsibilities and which include the necessary structures, informed and resourced, to support an asylum process. These include civil society institutions such as an independent national Human Rights Commission. This is on the one hand *capacity building*, but it is also, from another perspective, a sound investment in better management of asylum/migration dilemmas. The primary building block for the protection of refugees – and for distinguishing them from the broader category of migrants – is an effective national legislative framework translating rights and commitments into domestic law, in areas as diverse as border entry, detention, social welfare, health or education.

In tandem, UNHCR works to create a more positive climate of public support for refugees, fostering the growth of "protection networks" in civil society. Refugee issues are too easily politicized or manipulated for short term political gain, with the blurring between refugee and illegal migrant actively exploited. UNHCR's advocacy efforts regularly incorporate education and public awareness campaigns to improve understanding of the plight of persons forcibly displaced by persecution or conflict, and to distinguish them, not least in this regard, from other irregular arrivals.

As to solutions, the strategies and programs of international humanitarian organizations, including UNHCR, have been shifting markedly over recent times. The former rather centralized and perhaps even paternalistic approaches have been replaced by programmes that encourage refugees to develop their own self reliance capacities and exercise greater control over solutions to their own problems. This shift is having consequences for the scope of programs and the range of actors involved in refugee issues nationally. Increasingly – and we are strongly promoting this – there is a call to situate refugees in broader development-based strategies in both countries of asylum and of origin, after return. Processes such as national poverty reduction

strategies, that focus on the active participation and community empowerment of groups who are vulnerable to poverty can be of real value. Refugees clearly fall into this category. UNHCR is working with partners to bridge the gap between short term humanitarian programs and longer term development initiatives. Important in this regard are joint planning and programming with development organizations, as well as searching for transitional and complementary sources of funding. In the shorter term, we are working to clarify the notion of "effective protection," as an important underpinning of regional protection strategies and State policies on safe country and returns to such countries.

The Agenda for Protection calls on UNHCR, but also states, to develop comprehensive strategies, built around a range of solutions, to broaden access to all solutions. In part in response to this call, and in part born of his conviction that the status quo will only improve if States make more reliable commitments consistently to support UNHCR's efforts, the High Commissioner launched his "Convention Plus" initiative. What he hopes will eventuate are new multilateral arrangements – both generic and situation specific, to resolve long standing refugee situations. The generic issues covered include, in the migration/asylum context, the secondary movement issue and the challenge of improving protection in regions of origin, closer to the source of the need. Other matters for generic treatment include expansion of resettlement options, creative burden sharing approaches and improved targetting of development assistance to refugees and returnees. On all these issues, the High Commissioner would like to see states commit themselves, in a manner he can rely upon, to framework understandings, or special agreements, to use the language of our Statute, setting out in general terms who is responsible for doing what, when – UNHCR would then be able to draw on these commitments in its response strategies for e.g. Afghans, Somalis, Bhutanese or whichever refugee population they may benefit. The Convention Plus initiative is still in its early stages, but is nevertheless promising. A draft of resettlement undertakings is quite well advanced, and should be ready for inter-governmental discussion in March.

So, UNHCR is solidly engaged in a variety of activities designed to particularize and respond to refugee needs, within a broader migration context. Of course, UNHCR is not alone in having to situate its mandate responsibilities within a qualitatively changed migration environment. The United Nations as an institution is currently looking at whether it has a role to play here, in the context of its Charter commitments to the promotion of human rights and peace and security. The Doyle report, as it is called, counsels against any new institutions at this point, but favours closer collaboration and policy coordination among the concerned agencies. UN agencies have started to work more cooperatively on migration issues, each from the perspective of its own mandate. The High Commissioner has been instrumental in the creation of a new consultative group in Geneva, the Geneva Migration Group, which brings together the Heads of five UN agencies [UNHCR, ILO, OHCHR, UNCTAD, UNODC {United Nations Office on Drugs and Crime in Vienna}] and IOM, to exchange information and promote greater policy coherence in their migration related activities. UNHCR is also an active contributor to the work of the newly established Global Commission on International Migration, which has as one of its mandate objectives, analyzing gaps in current approaches to migration and examining inter-linkages with other issue areas. One of our recommendations to this Commission has been that it proceeds from, and within, a normative, rights based framework. By

placing its work squarely within a value system, of which refugee rights are clearly a part, the Commission should be able to dispel fears that it is engaged in an essentially technical exercise and thereby lend to the good governance of migration a proper frame.

As I now move towards a conclusion, let me offer several, more operational examples of initiatives UNHCR is pursuing to improve management of the asylum/migration nexus, in the interests of better refugee protection. Firstly, I turn to Albania and the problem of irregular migration with which this country has been grappling. The enthusiasm which greeted the new freedom of movement, after the lifting of the so-called "Iron Curtain", was short lived. When the stream of people from and through East to West threatened to become a flood, the industrialized countries reacted predictably with a host of new control measures, from tighter security and stronger border surveillance forces at points of entry, to closer communication and cooperative control mechanisms, tougher asylum procedures and more restrictive refugee definitions. Albania, for its part, since the fall of the old regime, has been making all efforts to be accepted as a responsible member of the international community and a reliable friend of its neighbours. It has ratified numerous international instruments, including a number impacting on the treatment of migrants and refugees. Its infrastructure is, however, rudimentary in important respects and the Government has not been able to shoulder, alone, the economic, social, legal and security challenges posed by the new phenomenon of irregular migration from and through its territory. Albania is concerned not to let this problem become too serious an irritant in its quest for international acceptance. At this juncture, there is an important coincidence of interests. Its neighbours, both near and further afield, have an interest in stemming the tide of illegal migration through Albania. UNHCR is concerned that refugees not be caught up in an indiscriminate net of controls, and also not feed further the precarious and criminal trade in people. Furthermore, the office does not want to see the migration problem overwhelm the country's fledgling asylum system to the point where it is dysfunctional before it has had time to consolidate itself. IOM is keen to extend its migration services to Albania, as a contribution to better management of a regional migration problem. And all agree that the prevalence of trafficking in women and children is a serious human rights violation which must be ended. The result is a clear convergence of mandates, interests and concerns. This, in turn, led UNHCR, IOM, OSCE, and Albania together to set up in Tirana a partnership screening and response arrangement which allows the identification and separate handling of three groups of persons, each part of the overall people movement: persons in need of international protection, economic migrants and persons being trafficked for sex or labour. The arrangement has been formalized in a cooperation agreement among the parties and it ensures screening, channelling of claims and proper follow up to address needs. International standards are the basis for the processes that are followed and institutional backup, in the form not least of reception centres and assistance to the police, has strong donor support.

What the arrangement has proved to us is that cooperation across mandates to address a mixed migration and asylum situation is both possible and productive. We found in Albania that maintaining a credible asylum system required parallel systems to deal with the inter-related problems. There was, and remains, growing evidence in South-Eastern Europe that persons, drugs and weapons are often trafficked along the same routes by the same criminal networks. This fact contributed to the inclusion of the

asylum issue, as part of the package of migration related concerns, within the Stability Pact Working Table III, which relates to security. Migration was occurring clandestinely and in obscurity, breeding prostitution, forced labour and real insecurity for refugees. The arrangement in Albania is making a contribution to bringing it out into the open and, thereby, to better border management, better refugee protection and fighting organized crime.

UNHCR's experience with this arrangement has helped the office develop its thinking on the management of irregular or secondary movement in other situations. You may be familiar with the so called "Bali process", which to date has consisted of two regional conferences, at Ministerial level, convened in the first quarters of 2002 and 2003, as a joint initiative of Australia and Indonesia. The intention of the governments is to set in train greater cooperation among transit and receiving countries to address "People Smuggling, Trafficking in Persons and Related Transnational Crime". Australia has been particularly concerned to include within the ambit of this cooperation, measures to address the problem of secondary movement of asylum seekers and refugees through Southeast Asia and has hence sought to involve UNHCR as an active observer in the process. With some early hesitation, but learning the lessons of the Albania initiative and seeing the opportunities of the process for introducing the refugee protection perspective into the discussions, we are now "actively observing". "Actively" means, not least, that we are running refugee protection training seminars within the Bali process frame. We are also contributing to the process website, on which there are now currently many documents relating to asylum, migration and protection of persons of concern to us. We have also put on the table a proposal on secondary movement which rests in part on making clear distinctions between persons with protection needs and those without, and which [in a region where states traditionally do not make these distinctions] suggests a process we believe would allow the protection needs both to be identified and addressed.

A different sort of asylum/migration mix of problems may well present itself in the European Union in the period to come. The High Commissioner has recently expressed his concern that, with the forthcoming enlargement of the European Union, the fact of irregular migration from the East and the interaction of EU instruments, like Dublin II and EURODAC may overwhelm asylum systems in some new member states. He has presented a detailed set of ideas to enhance the EU's ability to act collectively to prevent this.

Amongst the proposals he has put forward are the following:
- The establishment of EU reception centres where the claims of certain categories of asylum-seekers can be processed by experienced teams of asylum assessors and interpreters drawn from across the EU.
- The establishment of a burden-sharing system to distribute those people found to be refugees from the selected categories across the EU, rather than leaving them in large numbers in only a handful of states. Due attention would be paid to special links, such as family members already living in a particular country.
- The establishment of a collective EU system to promptly return those asylum-seekers judged not to be refugees or in need of any other form of international protection. This system would be based on readmission agreements negotiated by the EU as a whole with the countries of origin.

- The establishment of an EU Asylum Agency – and later an EU Asylum Review Board – to manage the new registration and processing systems and relieve the burden on individual states, as well as to ensure that the responsibility for recognized refugees is shared equitably by all EU states.

A role is also envisaged for UNHCR. UNHCR's supervisory and monitoring role under its Statute, in conjunction with Article 35 of the 1951 Convention, could be realised, for instance, through:
- overall monitoring to ensure integrity and transparency of the process, including through the appropriate sharing of data;
- the provision of UNHCR expert advice, training and other capacity building support, especially in acceding Member States; and
- at a later stage, the provision of an advisory and support function to the EU Asylum Agency and the EU Asylum Review Board once these are established.

The EU proposal does not stand alone, it is part of a wider, three-pronged approach that also aims to improve the global management of refugee flows through strengthening the operation of national asylum systems and, in parallel, through a more sustained effort to improve protection and find (and fund) solutions in regions of origin.

My concluding example of initiatives UNHCR is pursuing relates to Afghanistan. Let me first, though, remind you of the second question I put earlier on, that is, at what point might refugee situations change their character, and be recognized as having evolved into a situation better tailored to migration related, rather than refugee protection, responses? Looking back, there are a number of examples we might point to. We saw it happen, for example, in the early 1990's, when opportunities opened up to repatriate the many thousands of Mozambican refugees who had fled to neighbouring South Africa. The point came when South Africa was confronted by the choice of also retaining quite a number who, over the years, had become a significant source of labour for the goldmines. The South African government exercised this choice in favour of offering an alternative migrant worker status. We promoted this in view of the fact that the conditions for sustainable return were not so good. So Mozambican refugees became Mozambican migrant workers. The story was similar in Zimbabwe, where the refugees had supplemented the plantations labour force in significant ways.

We also saw it happen at an earlier point in the 1980's, with the Indo Chinese boat people problem. The response of the international community was to put in place a comprehensive plan of action with elements to deal with both the migratory and the refugee elements. The CPA was, though, in some senses a reactive process, to manage the problem after it had materialized and had become a serious irritant. The Albania, Bali and EU prong initiatives are efforts to put in place arrangements of various sorts either to manage problems before they get out of hand, or indeed somehow to foresee them and maybe even to avoid them.

UNHCR's Afghanistan vision falls into this latter group of efforts. It is widely recognized that the causes of ongoing displacement from Afghanistan are a complex mix of issues. Many of the reasons why Afghans originally left their homes no longer apply. As such, explaining the continued presence of such a large population outside

Afghanistan in refugee terms alone is insufficient. Economic factors have been playing an increasingly influential role in cross border movements over recent years, as well as in sustaining the Afghan presence abroad. In UNHCR's assessment, a new approach is required to address a situation demanding additional solutions, outside the frame of refugee protection and indeed of UNHCR's mandate.

Our analysis here has been shaped by three primary considerations - that (a) the future management of population movements that are now increasingly migratory and economic should be located within normalized regional and bilateral relations, (b) continued international engagement and support will nevertheless be required to develop and underpin such a transition in view of its refugee history, not least and (c) there will be some refugee and protection dimension in the post 2005 situation.

Given fact that general livelihood issues are emerging as a priority concern (labour migration, economic development, etc.) for the Afghan population as well as for the affected States in the region, UNHCR is proposing that the post 2005 situation should be approached primarily as a migration and a development challenge. This will require, *inter alia,* further development of effective partnerships between governments and agencies with the required competences, expertise, and resources. The multidimensional migration framework that is needed in the region must, though, incorporate an adequate refugee protection possibility.

Let me, in conclusion, sum up this presentation in 4 simple propositions. Firstly, refugees are not migrants. Secondly it is dangerous, and detrimental to refugee protection, to confuse the two groups, terminologically or otherwise. Thirdly, it is also not to the benefit of the broader migration debate as the fact of some abuse of the asylum system by illegal migrants colours the public view of migration giving it a taint of criminality, robbing it its positive aspects and tilting the focus towards control. Fourthly a refugee situation may well be part of a broader migratory movement, or may even metamorphose into one. To define when and where refugee protection approaches and when and where, alternatively, migration based approaches should prevail is our collective challenge.