



Expert Roundtable
Developing Guidance on
Onward Movement of Asylum-Seekers and Refugees

Auditorium Jacques-Freymond

The Graduate Institute of International and Development Studies, Rue de Lausanne 132 (Parc Barton),
 1202 Geneva, Switzerland

Thursday 1st–Friday 2nd October 2015

Agenda

Day 1

09:00-09:15 **Welcome and aims of the meeting**
Vincent Chetail, Director, Global Migration Centre and Professor of Public International Law at the Graduate Institute of International and Development Studies and Carol Batchelor, Director of International Protection, UNHCR

09:15-09:45 **Objectives of and background to forthcoming UNHCR guidance on onward movement**
Carol Batchelor, UNHCR

09:45-10:30 **Presentation of the discussion paper and its key themes**
Chair: Carol Batchelor, UNHCR
Introduction: Madeline Garlick, Senior Law and Policy Advisor (temporary assignment), Protection Policy and Legal Advice Section, Division of International Protection (20 minutes)

In this session, UNHCR will present the discussion paper, its rationale and purpose, scope, audience and the key thematic challenges to which the proposed guidance seeks to respond.

10:30-11:00 *Break*

11:00-13:00 **Setting the scene: regional and/or country perspectives**
Chair: Janice Lyn Marshall, Deputy Director – Policy and Law, Division of International Protection, UNHCR

- **Southern Africa** – *Justice I. Lenaola, High Court of Kenya*
- **North Africa** – *Areti Sianni, Senior Protection Officer, MENA Bureau, UNHCR HQ, Geneva*

- **Middle East** – O. Nuseir, Senior Humanitarian Coordinator, Ministry of Planning and International Cooperation, Jordan
- **Europe** – M. Wahlstedt, Deputy Director General, Head of the Department for Asylum and Migration Policy, Ministry of Justice, Sweden
- **Asia** – S. Petcharamesree, Institute for Human Rights and Peace Studies, Mahidol University, Thailand
- **Americas** – Ronald L. Newman, Director for Human Rights & Refugee Protection, U.S. National Security Council, United States of America

This session will invite selected participants to give a brief overview of one or more of the key practical challenges and opportunities they are facing in relation to onward movements and where they consider guidance is most needed. (5-10 mins each speaker)

13:00-14:00 Lunch

14:00-15:00 In a nutshell: The international legal framework

Chair: Janice Lyn Marshall, UNHCR

Introduction: Alice Edwards, Chief of the Protection Policy and Legal Advice Section, DIP/UNHCR (15 mins)

This session will present the main principles derived from the international refugee and human rights law framework relevant to onward movement of asylum-seekers and refugees. It will provide an opportunity for participants to consider these principles in the context of onward movement, and to comment or raise questions about their formulation and selection, as well as highlight any additional concepts or principles that might merit inclusion in the guidance. This is an introductory session, and further reflection on the legal framework will also arise under the thematic headings throughout the expert roundtable.

15:00-16:00 Developing guidance: Protection-sensitive entry systems

Chair: Janice Lyn Marshall, UNHCR

Introduction: Thomas Gammeltoft-Hansen, Danish Institute for Human Rights (5-10 mins) (TBC)

This session will deal with the specific challenges in accessing territory in the context of perceived or real onward movement. It will consider whether preliminary profiling/screening and other procedures to identify them can assist States in managing asylum-seeker caseloads more effectively, and ensure that people in need of protection, or other forms of support or assistance, are referred to appropriate processes and facilities. Questions for discussion could include:

1. In the context of real or perceived onward movement, what distinct challenges do asylum-seekers and refugees who have moved onward from other countries face in accessing territory and in turn, asylum procedures?
2. Can identification and profiling/screening mechanisms at the border, or at the initial stage of an asylum procedure prior to the substantive examination of a claim, assist receiving States in dealing efficiently with asylum-seekers and refugees who have moved onwards from other States? What should be the main guiding principles and modalities of such processes?
3. What specific safeguards are needed at the identification or other initial stages of an asylum procedure to ensure that the protection needs of such people will be examined in substance in at least one State which is able and willing to protect them, if needed?

16:00-16:30 *Break*

16:30-18:00 **Developing guidance: Detention and alternatives to detention; Reception conditions**

Chair: Vincent Chetail, Graduate Institute

Presentation (8-10 minutes): Alice Edwards, UNHCR, to present on the key aspects that make alternatives to detention workable in practice.

Presentation (8-10 minutes): Junita Calder, International Detention Coalition, to present their latest research on alternatives to detention in transit contexts.

This session will examine the use of and limits on detention and alternatives in the context of onward movement. While States may consider a person who has moved onward more likely to abscond than some other categories of asylum-seekers, this may not necessarily be the case and may depend on a range of factors. General legal principles and limits on the use of detention and alternatives continue to apply. There is no empirical evidence that detention deters irregular or onward movement. The first part of the discussion will draw on good State practices, research and UNHCR's *Second Global Roundtable on Reception and Alternatives to Detention*, held in April 2015, in Toronto, Canada.

It will also deal with broader issues around the reception of asylum-seekers considering in particular the importance of dignified and humane as well as regionally harmonized standards of treatment, in part to disincentive onward movements. It may deal with the justifiability and problematic consequences of reducing benefits for asylum-seekers who have moved onward or in penalizing asylum-seekers by other means and the legality of such practices.

Questions for discussion will include:

1. What alternatives to detention have been found to be particularly effective? What are the basic elements of such alternatives? Do these vary in the context of onward movement and/or transit?
2. Are there particular alternatives to detention that are relevant or appropriate to the situation of onward movement? If so, are there particular considerations that can be used to identify the most effective alternative for particular cases?
3. Accepting that basic standards of treatment are required for all asylum-seekers and refugees, are there specific considerations that are relevant to policies and practices on reception of asylum-seekers and refugees who may have moved onward from another State? What are the major challenges for States and how can these be addressed?

19:30 Expert Roundtable dinner:

Venue : Brasserie-Restaurant de l'Hôtel de Ville

39 Grand-rue

1204 Genève

<http://www.hdvglouzu.ch/>

Day 2

09:00-9:30 **Recap of key points emerging from Day 1 and Introduction to Day 2**

Alice Edwards and Madeline Garlick, UNHCR

9:30-11:30 **Developing guidance: Processing strategies and options**

Chair: Janice Lyn Marshall, UNHCR

Introduction: Blanche Tax, Chief of RSD Section, DIP/UNHCR [5-10 mins]

The aim of this session is to consider various processing strategies open to States in respect of asylum-seekers and refugees who have moved onwards, looking also at situations of large-scale onward movements. It will discuss in particular options available to current States and the responsibilities of previous States. It will consider the potential scope and elements of bilateral or multilateral agreements allocating responsibility between States for asylum-seekers in this context, as well as temporary protection or stay options. It will also discuss the parameters which should guide States' practices where such agreements are not in place, to ensure that a person seeking international protection has the opportunity to have his or her claim examined in a fair and effective procedure and to receive international protection. Questions for discussion could include:

1. Taking into account the particular context, are there processing strategies that are useful and effective in dealing with the challenges of onward movements? Is it important that States distinguish between individual cases and larger movements?
2. What is the scope in practice for States in different regions and contexts to conclude bilateral or multilateral arrangements for allocation of responsibility for asylum-seekers who have moved onwards? Are these advisable? How would they work in practice?
3. The EU's Dublin Regulation is generally acknowledged as the most well-established and sophisticated example of a multilateral arrangement for allocating responsibility for asylum claims. What has the recent experience of the EU demonstrated about how such agreements should be framed to ensure their sustainability and effectiveness?
4. Is it appropriate to apply specific procedures to asylum claims from people who have moved onward from another State? What are the potential advantages and drawbacks? What minimum safeguards need to be in place?
5. What are the potential arguments for establishing a role in the procedure for taking account of the intentions of asylum-seekers? How could this most practically be included?

11:30-11:45 **Break**

11:45-13:00 **Developing guidance: Deciding asylum claims**

Chair: Janice Lyn Marshall, UNHCR

Introduction: Madeline Garlick, UNHCR [5-10 mins]

This session will consider the challenges for the adjudication of claims in the context of onward movement. It will examine the utility and permissible scope of 'first country of asylum' and 'safe third country' approaches, in light of State practice, and the procedural safeguards that ought to be in place. Questions for discussion include:

1. What are the criteria for determining another State's responsibility for asylum-seekers who have moved through their territory? Are the concepts such as 'first country of asylum' or 'safe third country' useful to deal with such scenarios, and if so, how are they best applied?
2. What are the standards which must be met before a previous State, in theory, could be considered a 'first country of asylum'/'safe third country'? Do 'rebuttable presumptions' help to ensure a fair procedure?
3. Beyond the standards derived directly from a current State's legal obligations, what elements should be taken into account in considering whether a claim should be dealt with in substance by a current State? How can the existence and strength of 'connections or close links' between an asylum-seeker and a particular State be taken into account in ascertaining responsibility for assessing a claim?

13:00-14:00 Lunch

14:00-15:30 Developing guidance: Return and readmission to previous country

Chair: Vincent Chetail, Graduate Institute

Introduction: Madeline Garlick, UNHCR [5-10 mins]

The aim of this session is to consider the practical challenges as well as limits on rights to return an asylum-seeker or refugee to a previous country – where they received, sought or could have applied for protection. It will reflect on the experience of readmission agreements and their effectiveness in facilitating return of people who have moved onward while ensuring that appropriate safeguards are in place. It will also examine the consequences in case an asylum-seeker cannot be returned to a previous State for legal or practical reasons, and where responsibility for his or her protection needs falls in such cases. Questions for discussion could include:

1. What is the realistic scope for return and readmission of people who have moved onward, in most cases, to the knowledge and based on the experience of participants? Are obstacles which limit this primarily legal or practical?
2. Can readmission agreements provide a useful framework for States' cooperation on return of people who have moved onward? What are the risks and disadvantages associated with their use, and what benefits can they bring?
3. What obligations do States hold to readmit refugees to whom they have granted protection, under the 1951 Convention and otherwise? Are these effectively respected in practice? What obligations do States have to readmit asylum-seekers?
4. Where a person cannot be returned to a previous State, either for protection or claim processing, what are the obligations of current States, and/or others with which they may have relevant connections?

15:30-15:45 Break

15:45-17:00 International solidarity, cooperation and solutions

Chair: Janice Marshall, UNHCR

Introduction: Laetitia Weibel-Roberts, Office for International Cooperation, Switzerland [5-10 mins]

At the heart of the international protection regime is the need for international solidarity and cooperation and in particular the attainment of solutions for refugees and others in need of international protection. Building on the outcomes of UNHCR's 2011 *Expert Meeting on International Cooperation to Share Burdens and Responsibilities*, held in Amman, Jordan, this session aims to discuss the key areas in

which international cooperation around onward movement of asylum-seekers and refugees should focus.

In addition to arrangements for clarifying or allocating responsibility among States for status determination and protection (discussed earlier in the session on processing strategies), international cooperation entails material, technical or financial assistance, as well as in some circumstances the physical relocation of asylum-seekers for processing, protection and/or solutions. It will also look at ways in which people found to be in need of international protection can be offered effective solutions, as a means of addressing some of the causes and pressures of onward movement among other objectives. Questions for discussion could include:

1. Given the extensive references to the need for more cooperation to address onward movement in multilateral fora and political declarations over the years, what are the main reasons for limited progress so far? Are there any recent good examples that have worked?
2. Among the many potential areas of international cooperative action which could potentially reduce some of the causes of onward movement, what activities should be undertaken or intensified in relation to the following areas?
 - Protection capacity-building in regions of origin and transit of asylum-seekers and refugees, including creating and strengthening individual asylum claim determination systems;
 - Wider development activities in countries and regions of origin and transit;
 - Creating more opportunities for legal stay, with secure status and rights, in countries in regions of origin and transit;
 - Expanding and making accessible channels for legal migration across different regions.
3. Are there other potential areas for international cooperation, beyond those listed above should be prioritized?

17:00-17:20 Summary of key elements emerging from Day 2 and next steps

Madeline Garlick and Alice Edwards, UNHCR

17:20-17:30 Closing: Carol Batchelor and Vincent Chetail