NEW ISSUES IN REFUGEE RESEARCH

Working Paper No. 64

Refugee protection and migration management: the challenge for UNHCR

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August 2002

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The current context

Until the 1990s, UNHCR rarely made any reference to the issue of international migration in its public statements or policy documents. Indeed, the organisation made a conscious effort to maintain a sharp distinction between refugees and other types of international migrants, so as to underline the special status and protection needs of its beneficiaries.[1]

During the past decade, however, UNHCR's traditional reluctance to acknowledge or discuss the issue of international migration has been challenged by a number of related developments in the organisation's operational environment.

In the contemporary world, more and more people are moving, not only from one country to another, but also from one continent to another. These increasingly long-distance movements are being prompted and facilitated by a wide variety of factors, most of them related to the broader process of globalisation. These include growing disparities in the level of prosperity and human security experienced by different societies; improved transportation, communications and information technology systems; the expansion of transnational social networks; and the emergence of a commercial (and often criminal) industry, devoted to the trafficking and smuggling of people and illicit goods across international borders.

It should be emphasised that much of the international migration currently taking place is uncontroversial, involves no protection or human rights issues, and is therefore of no concern to UNHCR. Leisure, business and student travel, as well as the movement of skilled and contracted workers, all fall within this category.

Recognising the economic and social value of such migratory movements, states in several parts of the world - the European Union, West Africa and Central America, for example - have taken significant steps to abolish controls on the movement of people and to facilitate the process of intra-regional migration. Indeed, the current debate on international migration frequently ignores the fact that the vast majority of migrants remain within their regions of origin.

States generally acknowledge the positive value of international migration - including organised refugee resettlement - when it takes place in a regulated and predictable manner. They are alarmed, however, by irregular migratory movements, especially when they involve the arrival of people who come from unfamiliar cultures and who bring little financial or social capital with them.

Such fears have contributed to the widespread belief that substantial numbers of people seek asylum in other countries not because they have a valid claim to refugee status, but because they want to improve their standard of living and wish to circumvent established forms of migration control. UNHCR has acknowledged this to be the case to some extent, while insisting on the need to preserve the right of people to seek and to enjoy asylum in other states.

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[1] The authors served as rapporteurs for a UNHCR Working Group on Migration and Asylum and this paper is adapted from the report of that group. The paper does not represent the official views of UNHCR.

Confronted with the growing scale of irregular migration, states have introduced a barrage of measures intended to obstruct or dissuade people from gaining access to and claiming refugee status on their territory. But such measures have had only a limited success in meeting their intended objectives. In fact, there is growing evidence to suggest that the imposition of such controls has had the effect of diverting migrants and asylum-seekers to new destinations and prompting them to resort to clandestine forms of movement.

These problems have been exacerbated by the inability of states - including the world's most prosperous nations - to establish expeditious, effective and efficient systems for the determination of refugee status. Such problems have been manifested in the prevalence of asylum backlogs, delays in status determination, the failure to remove rejected cases and the periodic declaration of amnesties for irregular migrants and rejected refugee claimants.

Public confidence in asylum systems and procedures is consequently low, a situation that is compounded by the widespread confusion between regular and irregular migrants, asylum-seekers, refugees and people in need of protection for humanitarian reasons. Such confusion has been intentionally generated by certain politicians and pressure groups, in both developed and developing countries. In some states emerging from long periods of authoritarian government, xenophobia has become a significant means of mobilising popular and electoral support.

The outcome of the factors identified above seems likely to be a growing reluctance on the part of states to tolerate the arrival and presence on their territory of what they call "illegal immigrants pretending to be asylum-seekers." This trend is especially pronounced in the industrialised countries, which in many respects set a standard and a precedent for other parts of the world. Unsurprisingly, the restrictive migration and asylum measures introduced by less developed states have frequently been justified in terms of the example set by the world's more affluent nations.

In its efforts to develop an effective response to this situation, UNHCR and its partners must work on the basis of several realistic assumptions and constraints.

First, the forces which determine the scale, pattern and direction of international migration (whether of the 'forced' or 'voluntary' variety) are extremely powerful. UNHCR's ability to influence those forces and to modify the behaviour of states, migrants and other relevant actors is very limited.

Second, the restrictive measures which states have introduced to limit the scale of irregular migration and the perceived or real misuse of the asylum system (visa restrictions, carrier sanctions, pre-boarding documentation checks, readmission agreements and the detention of asylum-seekers, etc.) are unlikely to be dismantled.

Third, even if 'replacement migration' is needed to address the demographic imbalance and consequent labour shortage that seems to be emerging in certain parts of the world, we are unlikely to witness a liberalisation of state policy towards the admission of refugees and asylum-seekers unless states feel that their asylum systems are "abuse-free" and cost-effective.

Fourth, there are many important contradictions in the interests and policies of UNHCR's different constituencies: states, NGOs and human rights organisations, as well as sending, receiving and transit countries - all of which are represented on the organisation's Executive Committee. It will be difficult for UNHCR to satisfy these different constituencies simultaneously, while holding firm to its own principles of refugee protection.

Fifth, in developing a response to the asylum and migration issue, UNHCR should recognise that many of the strategies which have been proposed - including some of those recommended in this paper - could have contradictory, unintended and negative consequences. The evidence suggests, for example, that efforts to stimulate the process of economic development in low-income countries may well stimulate rather than reduce emigration in the short and medium-term. Similarly, measures that are taken to combat the illicit activity of human smuggling may well prevent asylum-seekers from submitting a claim to refugee status, thereby putting their lives and liberty at risk.

In the context described above, UNHCR's primary challenge is to preserve the institution of asylum and to ensure that effective international protection is provided to those people who need it. At the same time, and for the same reasons, UNHCR has a legitimate interest in ensuring that people are able to experience an acceptable degree of human security without leaving their homeland. Similarly, if people feel obliged to leave their country of origin, then they should be able to do so without resorting to irregular and clandestine forms of movement.

There is an evident tension between the right of people to seek and enjoy asylum in another country and the right of states to regulate the arrival, admission and settlement of foreign nationals. While that tension is not easily resolved, it could at least be mitigated. The following sections of this paper examine some of the principal strategies that UNHCR might employ in its efforts to meet that objective.

Addressing migration pressure

International efforts to address the root causes of refugee movements and emigration from less stable and prosperous countries have a chequered history. While many key actors in the international community have given rhetorical support to the notion that prevention is better than cure, it is not very easy to identify concrete initiatives that have sought to operationalise this principle. More often than not, the response to unwanted migratory movements (whether or not they involve people of concern to UNHCR) has been to place more stringent obstacles and deterrents in the way of those people who wish or feel compelled to leave their country of origin.

While the recent record of achievement in this area might not be particularly impressive, serious attempts are evidently required to deal with the economic, security, human rights, environmental and demographic problems that prompt people to leave their own country and to seek admission to other states.

The intention should not be to prevent or discourage international migration. Historically, it must be emphasised, the movement of people has been one of the most

powerful and positive forces in human development. But action is clearly required to provide individuals and communities with greater degrees of security in their countries of origin, so that if they decide to migrate, they do so out of choice, and not of necessity.

UNHCR's role in the creation and maintenance of such conditions is clearly a very limited one. It simply does not have the mandate, resources or political leverage to address the root causes of population movement and displacement.

In some situations - Bosnia and pre-1999 Kosovo being two examples - UNHCR's work on behalf of the internally displaced might have had the effect of averting the need for people to leave their own country. However, the organisation's programmes for internally displaced people should not be undertaken with the intention of preventing people from seeking protection and asylum in another country. Nor should they be used as a pretext for the introduction of restrictive asylum measures in neighbouring and nearby states.

In certain parts of the world, most notably Central Asia, UNHCR appears to have had some success in promoting human rights, capacity-building and development activities that have the effect of averting migratory and refugee movements. On a global basis, however, UNHCR's comparative advantage in relation to the prevention of displacement and migration would appear to be in the area of sustainable return and reintegration. For unless returning refugees and internally displaced people are able to establish new livelihoods and enjoy a satisfactory standard of living, then there is a risk that they will join the stream of irregular migrants, looking for and moving to new opportunities in other states and parts of the world.

UNHCR's reintegration programmes in countries of origin should thus be conceived, implemented and marketed not only in terms of the achievement of durable solutions, but also in terms of averting irregular migration prompted by the lack of basic necessities of human security. Violent political, ethnic or religious conflicts and systematic violations of human rights are main causes of not only refugee movements, but also of economic hardship and social degradations forcing people to migrate elsewhere.

While UNHCR's operational role in addressing the root causes of population movement is a very modest one, the organisation does have the public profile, moral authority, media access and international partnerships required to act as an effective advocate in this area.

Identifying the messages that UNHCR should seek to convey in relation to the root causes of international migration is by no means a simple task. Common sense suggests that an improvement in the economic performance of poorer and less stable states should help to remove or at least diminish some of the pressures that induce people to migrate and to submit an asylum application in another state. And few experts would dispute the notion that well directed investment, more equitable trading arrangements, a reduction of the debt burden and intelligently used development assistance can all help to raise living standards and provide the people of low-income countries with less incentive to travel and work abroad.

Even so, such strategies do not represent a panacea to the asylum and migration issue. As indicated earlier in this paper, there is now considerable evidence to suggest that economic growth raises expectations and provides people with the resources that they need to migrate. Such short-term outcomes do not invalidate the 'development in place of migration' strategy, but they do point to the need for this strategy to be pursued over a considerable period of time.

In this respect, UNHCR should stress the need for states, regional organisations and other actors to take a longer-term view of the asylum and migration issue, rather than resorting to the use of short-term and restrictive measures that jeopardise the human rights of refugees, asylum-seekers and other migrants.

In its advocacy efforts, UNHCR could be more explicit in highlighting the negative consequences of macro-economic policies that entail economic liberalisation, the withdrawal of public services and increased unemployment and underemployment - factors that have undoubtedly contributed to the scale of emigration from many countries in the developing world.

UNHCR should also encourage other actors to undertake additional analysis of those countries that have made the transition from being migrant-sending to migrant-receiving states, so as to identify the forms of economic intervention which have the greatest impact on people's propensity to leave their country of origin.

If UNHCR has a legitimate interest in advocacy efforts related to the migratory consequences of economic policy, then it has an even more explicit concern to advocate on behalf of human rights, democratic values, conflict prevention and the peaceful resolution of disputes. For people will always be more prone to run the risks associated with irregular migration if their security is threatened at home.

UNHCR and other members of the international community must be aware, however, that the process of change in states with a history of authoritarian rule and bad governance rarely proceeds in a linear fashion, and that in the short term at least, it may be associated with higher levels of emigration.

In its advocacy efforts, UNHCR should pay particular and stronger attention to the responsibilities of the world's more powerful states - countries which have in recent years expressed growing irritation with respect to the number and character of the asylum-seekers gaining access to their territory. Such states, it might be pointed out, could make far greater efforts to ensure that the action which they take in other policy domains are consistent with their objectives in relation to asylum and international migration.

First, if the richer states really want to make it possible for people in other regions to live safely in their own country, then they should refrain from selling arms to regimes which are intent on persecuting their citizens and discriminating against minority groups.

Second, the world's powerful states should be encouraged to examine more closely the impact of economic sanctions in prompting people to leave their country of origin.

Third, if those states have a genuine interest in bringing a degree of stability to areas that generate large numbers of refugees, asylum-seekers and migrants, then they might legitimately be expected to provide more consistent support to the work of the United Nations, especially to its efforts in the area of peacekeeping and peace-building in war-torn states.

Regularising migratory movements

Many commentators have suggested that the growth of asylum migration in the 1980s and 1990s resulted largely from the closure or curtailment of regular labour migration channels. If that analysis is correct, then it might be assumed that an orderly reopening of such channels might relieve some of the migration pressure which exists in low and middle income countries, thereby helping to disentangle people in need of protection from the broader flow of economic migrants.

Other commentators challenge such assertions. Many asylum advocates, for example, dispute the notion that substantial numbers of economic migrants have been using the asylum door as a means of immigration, pointing to the fact that many refugee claimants come from countries which are not only poor, but which are affected by violence, and violations of human and minority rights.

It can also be argued that the people who have been seeking asylum - whether or not they have well-founded claims to refugee status - are not the kind of migrants who would or could successfully make use of regular migration channels. The experience of countries such as the USA, Canada and Australia, which continue to have relatively large immigration programmes, lends weight to the latter argument, as the volume of asylum applications in those countries has followed broadly the same trend as in Europe.

Finally, the assumption that an increase in the level of regular migration will lead to a reduction in the level of irregular migration seems to ignore the inevitability of an overall substantial increase of mobility within the reality of globalisation in which we live. There will always be considerably more people wanting to migrate than states are willing and able to receive through established immigration quota or other forms of legal admission.

Despite such reservations, UNHCR should not entirely discount the regularisation of migration as a means of addressing the asylum issue. First, the organisation should encourage states - especially those with a real need for foreign labour - to conduct a rational public debate on migration and to adopt transparent and equitable immigration policies. As well as reducing the number of non-refugees who feel obliged to make use of asylum procedures, such an approach would also help to encourage a greater understanding of international migration and its value to receiving countries. This would, in turn, contribute towards a more positive image of the refugee.

A second means of regularising the transnational and transcontinental movement of people is to be found in the form of information campaigns, targeted at potential migrants. For there is evidence to suggest that the impetus to migrate is often based

on ill-founded perceptions of the conditions and opportunities that exist in other countries, as well as a limited awareness of the dangers associated with migration, especially when it assumes an irregular form. Information programmes in countries or origin and transit may help to dispel such misconceptions.

More specifically, such initiatives can fulfil a number of different functions: informing potential migrants about any regular migration opportunities that exist, including in-country processing schemes and refugee resettlement programmes; warning them about the risks they may run if they put their fate into the hands of traffickers or smugglers; and providing them with details of the likely consequences of exploiting the asylum system to achieve their migration objective for non-refugee reasons.

Information campaigns of this kind are a very modest antidote to the rosy images of life abroad which are disseminated by the mass communications industry. They should evidently not be used as a means of preventing the flight of people who have a genuine need for international protection, and must therefore be scrupulously honest, impartial and accurate in their content. And they should always be implemented in conjunction with practical measures to address the root causes of movement.

Because information campaigns may be interpreted as a form of deterrence to flight, UNHCR should not normally be involved in their implementation. For the same reason, such programmes should be strictly limited to those situations where the great majority of people who are leaving a country are demonstrably not in need of international protection.

A final issue of concern to UNHCR in this area is to be found in the issue of human smuggling and trafficking, as well as the increasingly restrictive measures - including interdiction - that states have introduced to counter these growing phenomena. This is an inherently problematic issue for UNHCR. On one hand, it is evident that many people - including those with a valid claim to refugee status - make use of smugglers or traffickers because they have no other way of reaching their intended destination. As a result, measures to combat smuggling inevitably have the consequence of limiting access to asylum procedures.

On the other hand, it is equally evident that human smuggling has a range of negative consequences, not least for the people who are smuggled. The covert nature of smuggling means that it is closely linked to the criminal world. Stealing and forging travel documents, and work and residence permits have become an important industry. To get people across borders, it is often necessary to pay bribes to the police, immigration officers and local government officials.

Those migrants who manage to reach their intended destination, usually after much exploitation and physical hardship, may find that they have to turn to crime to pay off their debts, and this may mean transporting or selling drugs for criminal organisations. Many people who are smuggled never actually reach their expected destination, and must resort to irregular movement again in order to leave the country where they have been stranded.

The world's more prosperous states have exhibited a degree of irritation with UNHCR in relation to the issue of human smuggling. On one hand, they have accused UNHCR of being inactive in this area, and failing to address the irregular movement of asylum-seekers and refugees from countries of first asylum. On the other hand, they have resented UNHCR's efforts to point out the protection dangers associated with indiscriminately targeted anti-smuggling measures.

UNHCR's capacity to influence the behaviour of smugglers, the people who are smuggled and the states affected by this phenomenon is evidently very limited. As indicated elsewhere in this paper, the organisation does have a role to play in the improvement of protection standards in countries of first asylum, thereby reducing the pressure on refugees and asylum-seekers to leave by irregular means.

In addition, the organisation could insist upon and institutionalise the distinction between smuggling and trafficking, so as to encourage a more coherent debate on these issues. It should continue to underline the need for anti-smuggling legislation and measures to grant special treatment to refugees and asylum-seekers. And it should encourage states, both bilaterally and by means of regional fora and processes, to address the smuggling issue in a humane and comprehensive manner. In this respect, active co-operation between sending, transit and receiving countries is of particular importance, as is the need for states to find solutions for people who have been interdicted or apprehended while moving irregularly from one country to another.

Migration control and refugee protection

It is increasingly recognised that refugees are part of a global migratory phenomenon in which people are prompted to leave their own country by a complex combination of fears, hopes and aspirations. Nevertheless, the international community has yet to approach the issue of international migration in a concerted, comprehensive and forward-looking manner. Instead, the emphasis has been on reinforcing national and regional efforts to obstruct the arrival of people who are deemed to be of little economic or political interest or value to the states concerned. Many observers speak of the emergence of a "new apartheid in migration" between the rich and the poor states.

The blanket enforcement of measures designed to deter or prevent the movement of unwanted migrants makes it increasingly difficult for refugees and asylum-seekers to gain access to international protection. Such measures, particularly when they are introduced on a unilateral basis, may also obstruct international co-operation in resolving refugee and migration problems.

Many commentators have also argued that restrictive refugee and migration practices are, to varying degrees, self-defeating. So long as certain basic needs are not met in the country of origin, the imperative of survival may continue to prompt migration to another state, irrespective of the barriers placed in its way.

It has also become clear that the more governments seek to obstruct movement, without addressing its root causes, the more human smuggling flourishes. Indeed, by

erecting an increasingly tight 'migration fence' around their borders, states are creating the conditions for the further expansion of this booming and exploitative industry.

Given the perceived threat of uncontrolled and irregular migration, there is currently little or no political will amongst states to move away from the restrictive practices of the past decade. In this context, the most realistic strategy for UNHCR is to focus the organisation's efforts on the introduction of compensatory mechanisms, with the purpose of mitigating the negative effects of these practices on people who need international protection, and averting the need for asylum-seekers to resort to the services of traffickers.

The following compensatory measures may go some way towards reducing the existing tension between the right of states to control migration and the right of people in need of international protection to seek and enjoy asylum.

UNHCR should seek to convince states that the imposition of visa requirements on citizens of countries where serious human rights violations are occurring be accompanied by a legislative provision for the issuance of 'humanitarian visas' to people with a claim to international protection. Such an approach is required because those people who are at greatest risk in their country of origin often have serious difficulties in meeting the regular visa requirements, such as the possession of a valid national passport. It is proposed that people who benefit from such 'humanitarian visa' arrangements may be initially admitted to the visa-issuing state on a temporary basis.

In certain situations, there may be a possibility of processing asylum applications within the country of origin. There are some useful lessons to be drawn from Canada's so-called 'source country programmes' for El Salvador, Guatemala and currently Colombia. The US in-country processing programme for Cubans under the Cuba Adjustment Act is another example, although it is primarily designed to process immigration, rather than asylum applications. A careful UNHCR assessment of these and other in-country processing programmes is required, so as to identify the benefits and risks associated with them.

As an alternative, or supplement, to the processing of asylum applications in countries of origin, consideration should be given to the establishment of 'regional processing centres'. This notion is based on the assumption that if refugee status determination procedures are brought closer to countries of origin and people have access to these procedures, then the impetus to move extra-regionally and in an irregular manner may to some extent be reduced. Any regional processing system should be based upon five principles.

First, primary responsibility for carrying out refugee status determination in the processing centre should rest with asylum states, acting individually or collectively, with UNHCR having a formal monitoring role. Second, admission to any country hosting a processing centre must be guaranteed, with strict observance of the principle of non-refoulement. Third, there must be in place an effective resettlement programme for those asylum-seekers who are determined to be refugees. Fourth, there must be a return programme, financed by the asylum states, for those asylum-seekers who do not qualify for refugee status. Fifth, there must be a clear understanding and

acknowledgement that the establishment of regional processing centres does not absolve states further afield of their responsibility towards asylum-seekers who arrive spontaneously on their territory.

Finally, sufficient attention must be paid to the situation of asylum-seekers from developing countries who have to embark upon long transcontinental journeys because the standard of protection and assistance available in neighbouring and nearby states is so poor. To address this dimension of the migration/asylum nexus, UNHCR must continually emphasise the principles of solidarity and responsibility-sharing, encouraging the world's richer nations to provide meaningful support to low-income countries that host significant numbers of refugees. At the same time, the organisation must encourage and assist those low-income countries to ensure the security of and recognise the rights of refugees.

Regional harmonisation

The regional harmonisation of asylum policies and practices has a potentially important role to play in addressing the nexus between migration and asylum. UNHCR's position on this issue was succinctly set out in the 1994 Note on International Protection, which stated:

> Harmonised regional approaches, of which the European Union offers the strongest example, are perhaps the most promising option for strengthening protection. As progress is made towards removing intra-regional barriers on the movement of persons and co-ordinating regional policies on the admission - and non-admission - of foreigners, including asylum-seekers, it is inevitable that national policies concerning the admission of persons in need of international protection should also be harmonised. To the extent that the recommendations of regional bodies lead to the adoption of national legislation in conformity with them, the practical effect can be virtually the same as a regional convention.

While the value of harmonised regional approaches to the question of migration and asylum is unquestionable, UNHCR must seek to ensure that such approaches build on and complement the universal body of principles and standards embodied in the 1951 Convention, the 1967 Protocol and other relevant international instruments. For unfortunately, the notion of harmonisation has become associated with the introduction of common containment and deterrence policies, intended to prevent or discourage would-be asylum-seekers from leaving their country of origin and gaining access to the territory of other states.

Governments contend that their exclusionary and restrictive policies are intended to preserve an effective asylum system for the benefit of the 'genuine' refugees, while deterring 'abusive' refugee claimants. But they do not deny that these policies are blunt instruments. In short, they affect all asylum-seekers, regardless of the validity of their claim to refugee status.

UNHCR should be particularly concerned by - and be active in relation to - the harmonisation of asylum legislation and policies currently underway in the European Union. Hitherto, this process has been characterised by a competitive race amongst European states to reach the lowest common denominator of refugee protection standards. A specific area of concern relates to the expansion of visa regimes and carrier sanctions, which in combination prevent people who are in need of protection from seeking asylum in other states.

Other concerns include restrictions on access to refugee status determination procedures through the use of notions such as the 'safe third country' and 'safe country of origin'; narrow interpretations of the refugee definition, including the refusal to recognise that non-state entities can be agents of persecution; the reduction or withdrawal of social welfare benefits provided to asylum-seekers; and the arbitrary use of detention. Such developments are significant because they have a far-reaching and almost immediate impact on other parts of the world. When the institution of asylum is threatened in Europe and other developed regions, then asylum is threatened globally.

UNHCR should consequently continue to promote the notion of regional harmonisation, but only insofar as such approaches support the fundamental principles of refugee protection. Recognising that the European Union is in the forefront of the harmonisation process, and considering that European protection standards and approaches have a considerable 'export value' for the rest of the world, UNHCR should reinforce its lobbying, networking and advocacy efforts in the current and future member states of the European Union.

Efficiency and fairness of asylum procedures

In recent years, many states have had to contend with the real and perceived misuse of their asylum procedures by migrants who are moving for non-refugee related reasons. Unfortunately, the public and political debate on this issue has become polarised in many countries.

On one side of the debate are those who call for greater speed and stringency in asylum procedures, with little regard for their fairness. On the other side of the debate are those who argue for the highest possible procedural and protection standards, but who express relatively little concern for the efficiency or speed of the process employed to determine refugee status. Fairness and efficiency have thus increasingly been regarded as contradictory objectives. UNHCR must evidently seek to counter this notion, which threatens to undermine confidence in and support for the institution of asylum.

Within this context, UNHCR should continue to promote the establishment and strengthening of formal procedures for the determination of refugee status. Such procedures will go far towards ensuring not only the proper identification of those in need of international protection, but also their enjoyment of the rights and benefits provided for in the 1951 Convention and 1967 Protocol, relevant international human rights law and domestic legislation.

The principal objective of refugee status determination is to provide a fair and expeditious decision-making process, which ensures that states respect their obligations under international refugee and human rights law. At the same time, refugee status determination procedures serve to address the legitimate interests of states by screening out those asylum-seekers who do not need or deserve protection.

The challenge is to establish and maintain asylum procedures that strike a proper balance between the protection needs of refugees and the legitimate interest of states in preventing their asylum systems from being misused as a *de facto* immigration channel. Fair and efficient asylum procedures offer the most appropriate mechanism for addressing the issue of misuse of the asylum system. Tightening up the procedures or downgrading the requisite safeguards is not the proper response to misuse. Nor can the level of misuse or abuse of the asylum system be measured by the proportion of people denied refugee status at the end of the procedure.

UNHCR should encourage states to establish well-resourced and professionally staffed asylum procedures that are in conformity with the internationally accepted principle of due process of law, as well as the minimum standards set out in Executive Committee Conclusion No. 8 of 1977. Measures that are taken to speed up such procedures should not entail any weakening of existing standards and safeguards.

A procedure that is fair, which respects the rights of asylum-seekers and which enables states to undertake an efficient, effective and expeditious examination of refugee claims will achieve two positive results: on one hand, people in need of protection do not have to be subjected to lengthy periods of uncertainty and insecurity about their status; on the other hand, there would be fewer opportunities for the misuse of asylum systems by would-be immigrants who are able to take advantage of procedural delays.

Experience has demonstrated that highly sophisticated determination procedures do not necessarily guarantee either fairness or efficiency. UNHCR should play a more active role in assisting states to introduce changes in their legislative framework and administrative practices, so as to improve the quality and speed of refugee status determination procedures.

Existing limitations in the first-instance decision-making process must be adequately addressed, a task that relates to issues such as the quality of interviews, the skills and expertise of the decision-makers, the "culture of disbelief" about the validity of today's refugee claims, the quality of written reasons for negative decisions and the availability and use of comprehensive, objective and up-to-date country of origin information. Fair and accurate first-instance decisions can substantially minimise the resort to appeals, which in turn achieves cost economies and reduces delays in the determination procedure.

Many states currently operate special procedures so that they can deal in a simplified and speedy manner with asylum applications which are considered to be so obviously without foundation that they do not merit a full examination at every level of the procedure. Both fairness and efficiency are also served by procedures which provide for the priority processing of claims deserving an expedited and positive

determination because they clearly meet the criteria for the recognition of refugee status.

Likewise, procedures designed for case-by-case determination of refugee status could also be utilized to identify groups and categories at risk. A 'groups and categories' approach to protection, involving recourse to *prima facie* determination of refugee status, has been the long-established practice in many parts of the world experiencing large-scale arrival of asylum-seekers. Such an approach poses no obstacle to carrying out individual determinations in the case of those in the group believed to be undeserving of international protection.

Experience suggests that complex, multi-layered procedures allowing for protracted appeals proceedings unduly hamper the efficient functioning of asylum systems. As a result, procedures of this type may actually have the effect of undermining support for the principle of asylum. A streamlining of such appeals procedures is vitally important, both to ensure that the protection needs of refugees are met quickly, and to deprive migrants without a valid claim to refugee status of an incentive to exploit the asylum application process. A maximum of two levels of appeal should be sufficient to meet the requirements of fairness, while maintaining the requisite efficiency. UNHCR should insist that the suspensive effect of appeals is recognised in all cases.

Ensuring the protection of all refugees

Efforts to provide effective international protection to all those who need it continues to be one of the most critical challenges facing UNHCR. Even when the 1951 Convention and the 1967 Protocol are properly interpreted and applied, not everyone who is forced to flee his or her country because of serious threats to his or her life or liberty comes within the scope of these instruments.

The international community, through the UN General Assembly and UNHCR's Executive Committee, has for many years called upon the High Commissioner to provide protection and assistance to such 'non-Convention refugees', who include, for example, people fleeing the indiscriminate effects of armed conflict or serious public disorder, albeit with no specific element of persecution. Apart from the regional instruments developed in Africa and Latin America, other states have not shown any willingness to assume an internationally binding obligation towards such refugees.

In those regions where neither the OAU Refugee Convention nor the Cartagena Declaration is applicable, the provision of complementary protection to people fleeing armed conflict and generalised violence but not meeting the narrow definitional criteria of the 1951 Convention and 1967 Protocol depends entirely on the goodwill of states. As a result, the protection they receive and the standard of treatment they are accorded varies considerably. Most significantly, perhaps, their admission to safety is not guaranteed, since many immigration control measures - visa regimes, carrier sanctions, physical interception and readmission agreements, for example - generally do not take into account the protection needs of these categories of refugees.

There has also been a noticeable trend in recent years to move away from the granting of Convention refugee status and to make use instead of complementary forms of

protection - 'humanitarian status', 'B-status', 'de facto status', 'subsidiary protection', 'exceptional leave to remain' and 'toleration permits'. When the legal status of persons entitled to international protection is reduced to a mere toleration of stay or withholding of deportation, not only the state's compliance with its international human rights obligations is evidently put in question, but also efforts to find solutions to the refugee problem are frustrated.

To ensure the provision of international protection to all who need it, all options should be considered in the context of the global consultations launched by UNHCR at the 51st session of the Executive Committee. A global instrument complementing the 1951 Convention and 1967 Protocol and extending protection to refugees in the broader sense is, of course, the most desirable option. Regional complements similar to the OAU Refugee Convention may be the second-best alternative, especially if combined with a universal declaration of guiding principles for international protection to all refugees.

In the meantime, the harmonisation of complementary forms of protection - currently granted in European and some other countries under domestic legislative or *ad hoc* arrangements - should be an area of immediate concern to UNHCR. The organisation should promote a single refugee status determination procedure to examine, in a 'one-stop-shop', protection claims arising from all forms of risk.

To ensure that the recognition of Convention refugee status is not downgraded, the single procedure should operate in a hierarchical manner, with the granting of Convention refugee status always considered first. When this fails, the need for a complementary form of protection should be examined. A negative decision on Convention refugee status should carry with it the right of appeal, even where the person is granted complementary protection.

The standard of treatment accorded to refugees benefiting from complementary forms of protection must approximate the minimum protection of basic rights and legal status required by anyone in need of international protection. These include admission to safety in the country of asylum; protection against *refoulement* and expulsion; and respect for basic human rights and treatment in accordance with internationally recognised humanitarian standards.

The return of unsuccessful asylum-seekers

As noted earlier, certain asylum states, particularly those in the industrialised world, have invested considerably in the establishment and maintenance of complex refugee status determination procedures. However, the inability of states to return unsuccessful asylum-seekers to their country of origin, after a thorough, fair and objective assessment of their claims to refugee status, has undermined the purpose, effectiveness and credibility of those procedures. For the readiness of societies to support the legal admission of non-nationals, whether on humanitarian or economic grounds, depends to a large extent on the way that governments deal with those who have no right to remain on their territory.

Until quite recently, UNHCR was reluctant to play any role in the return of failed asylum-seekers, on the grounds that such an involvement might be incompatible with the organisation's mandate. The organisation continues to take the position that primary responsibility for such returns lies with countries of asylum and countries origin, and not with UNHCR.

But UNHCR has also demonstrated a degree of flexibility, believing that its involvement with unsuccessful refugee claimants can in some instances - Sri Lanka and Vietnam being two cases in point - make a contribution to the effective functioning of asylum systems and procedures.

Thus in October 1997, UNHCR issued a policy paper on the issue of return, stating that there could be no overriding mandate-related obstacle to the organisation's involvement, if such an involvement contributed to the quest for refugee protection and solutions. At the same time, the policy paper emphasised that UNHCR's involvement in the return of unsuccessful asylum-seekers should be exceptional rather than the rule, and that a decision to become involved should be made only after a careful and case-by-case assessment of the situation.

Under the terms of an agreement established in 1994, UNHCR continues to play a limited role in the return of unsuccessful Sri Lankan asylum-seekers from Switzerland. UNHCR is not involved at all on the Swiss side, and on the Sri Lankan side, its role is limited to what is called the 'passive monitoring' of returnees arriving at Colombo airport.

The notion of passive monitoring implies that UNHCR only acts if it receives information indicating that a returnee might be confronted with some kind of ill-treatment. In which case the information, once verified, is brought to the attention of the Swiss embassy in Colombo for intervention as appropriate with the Sri Lankan authorities. Although the passive monitoring approach was not intended to include any direct UNHCR intervention with the Sri Lankan authorities, in practice UNHCR has frequently taken up cases of detained returnees.

UNHCR's involvement in the return programme for unsuccessful asylum-seekers from Sri Lanka, albeit limited in nature and scope, has facilitated the favourable treatment of the returnees and contributed to their psychological well-being. Because it is an organised programme of return, carried out in the framework of a bilateral agreement between Switzerland and Sri Lanka, the latter country has not had to deal with the unforeseen arrival of large numbers of deportees.

The Switzerland/Sri Lanka programme may provide a useful model for the return of other groups of failed asylum-seekers. The principal problem remains the unwillingness of many countries of origin to readmit their nationals, especially when those people do not volunteer to return. Indeed, some countries of origin have denied outright the nationality of the individuals concerned, thereby contributing to the problem of statelessness.

UNHCR should take concrete steps to implement its October 1997 policy position on return of unsuccessful asylum-seekers. There are a number of ways in which UNHCR could usefully be involved in assisting states to resolve this difficult

problem, including the following: undertaking the systematic dissemination of information on developments in the country of origin as they affect the process of return; facilitating dialogue and negotiations between countries of asylum and origin; identifying possibilities for post-return reintegration assistance; and monitoring the situation of returnees once in their country of origin.

In all voluntary repatriation programmes carried out under the organisation's auspices, UNHCR should give due consideration to the possibility of extending these programmes to unsuccessful asylum-seekers. For the availability of repatriation and reintegration assistance and the monitoring role played by UNHCR in the country of origin may encourage unsuccessful asylum-seekers, who have no right to remain in the asylum country, to comply voluntarily with the obligation to return.

When it comes to the issue of return, the distinction sometimes made between irregular economic migrants and unsuccessful asylum-seekers serves no useful purpose. UNHCR should therefore promote comprehensive return policies and programmes for irregular migrants in general, which by definition include unsuccessful refugee claimants. Such policies and programmes should, of course, pay adequate attention to the economic, social and development concerns of the country of origin.

The key criterion for UNHCR's involvement with the return of unsuccessful asylum-seekers must remain the organisation's full satisfaction with the fairness and accuracy of the refugee status determination procedure. This, in turn, presupposes an effective UNHCR monitoring role in relation to those procedures.

Public information and education

The current challenge to the institution of asylum is to a considerable extent rooted in ignorance and fear. Politicians and the public in both developed and developing countries often fail to appreciate the difference between refugees, asylum-seekers, legal and illegal immigrants. In some countries this confusion has been consciously mobilised as a means of gaining electoral support by whipping up hysteria and a wave of anti-immigrant sentiment.

As a result, many people feel that their societies are being flooded by 'bogus asylum-seekers' and other outsiders who make little or no contribution to the life of the country and who represent an alien way of life, and even a threat to their national security. At the same time, such citizens appear to have lost confidence in the ability of their states to address the issue of migration and asylum in an effective manner. All of which creates a very negative context in which to advocate on behalf of asylum and refugee protection.

Credible public information disseminated by UNHCR and its partners has an important part to play in puncturing some of commonly held myths about refugees, thereby de-dramatising and de-politicising the asylum debate. The public in receiving countries should be properly informed about the number of asylum-seekers and other migrants arriving on their territory. The concern that these numbers are unmanageable should be dispelled. To begin with, it would be helpful to point out that the granting

of Convention refugee status to a relatively small proportion of applicants does not mean that the others are all 'bogus', as many commentators and politicians maintain.

More could be done to make the public aware of the positive contribution that refugees (and other migrants) can make to their host country, not just economically, but also socially and culturally. Care has to be exercised on this issue, however, if the distinction between refugees and other migrants is to be maintained: refugees should be admitted to countries because they are in fear of their lives and in need of protection, not because of the economic contribution they may make to the society where they settle. As a further means of building public support for generous asylum policies, steps should be taken to explain the principle of responsibility-sharing, pointing out that the world's poorest states continue to provide refuge to the vast majority of forcibly displaced people.

A more sympathetic environment could also be established by means of measures to promote the social and economic integration of recognised refugees. The idea that refugees are unproductive and a drain on public resources is in many sense a self-fulfilling prophecy. If, in the interests of economy, refugees are deprived of the means to adapt to their new society - language skills, vocational training, employment counselling and secure housing, for example - then it is hardly surprising that they should encounter problems in becoming full and self-supporting members of society. In this respect, there is a particularly important (but too often neglected) role to be played by the refugee associations and community organisations which invariably spring up in cities with exiled and immigrant populations.

In relation to migration more generally, UNHCR could help to educate public and political opinion in two specific ways. First, it could point out that in view of the dismal conditions of life that exist in many parts of the world, the number of people who leave their own country and move elsewhere is surprisingly small. Second, instead of implicitly downgrading the status of economic migrants by emphasising the special needs of refugees and asylum-seekers, UNHCR should attempt to gain support and respect for the human rights of all people who move from one country to another, regardless of their motivation or the means they use.

Conclusions

There are few, if any, new ideas in the conclusions and recommendations of this paper. This should come as no surprise, given the amount of time, effort and money that governments, international organisations and other actors have devoted to the questions of migration and asylum over the past decade. One is tempted to suggest that if there were any easy solutions to the complex problems addressed in this paper, they would have been found by now.

At the same time, the paper has sought to draw attention to a number of potential initiatives where UNHCR could play a positive and creative role. These include, for example, the role of in-country processing programmes and regional asylum processing centres; the regularisation of migratory movements; the return of unsuccessful asylum-seekers; and the reduction of migration pressures in countries of origin. In addition, the paper has pointed out that many of UNHCR's regular

operational activities - providing protection and assistance in countries of first asylum, assisting with the development of refugee status determination procedures, and establishing reintegration programmes for returning refugees - have an important role to play in addressing the issue of the migration/asylum nexus.