

REFUGEE PROTECTION AND MIGRATION CONTROL:
PERSPECTIVES FROM UNHCR AND IOM

I. PURPOSE OF PAPER

1. This paper explores some of the issues at the migration/asylum interface. It does so from the stand points of two organizations with different but complementary mandates in the area. Both have a responsibility to assist States in the implementation of measures which accommodate both protection for refugees and concerns about uncontrolled irregular migration. Both have, too, an important contribution to make to a public debate about migration issues in which humanitarian concerns need to regain their place.

2. Refugees are not migrants in the lay sense of the word. They move through compulsion, not on the basis of meaningful choice, and their immediate objective is to seek protection, not a migration outcome. This being said, refugees may also move – in fact increasingly do so – within a broader mixed flow which includes both forced and voluntary movements. They may even resort to migrant smugglers as one way to leave their country. At the same time, in the absence of viable, legal migration options to pursue, persons who are not refugees are nevertheless seeking to enter countries of their choice through the asylum channel, it being often the only entrance possibility effectively open to them. So the line between migrant and asylum-seeker progressively blurs in the public mind, just as does the distinction between migration control and refugee protection in the policies of some States.

3. This paper focuses on several critical areas of the asylum-migration nexus: trafficking and smuggling; interception; alternatives to interception; information activities and the return of persons not in need of international protection. In the body of the paper, IOM and UNHCR present their respective interests, roles and responsibilities on these issues. In the concluding paragraphs, they jointly identify areas of collaboration between themselves as well as with States and other stakeholders. The purpose is to stimulate discussion to achieve a better understanding of the nexus between migration and asylum, to develop more effective policy responses and to offer concrete measures to address the challenges.

II. INTRODUCTION – SETTING THE SCENE

4. The phenomenon of globalization, involving the rapid movement of capital, goods and services across the world, together with growth in communication and transportation technologies, has contributed to an acceleration of modern migration movements. The total number of international migrants (both in regular as well as irregular and refugee situations, and excluding tourists and other specific short-term visitors) was estimated at about 75 million persons in 1965. Thirty-five years later the estimated number had doubled to 150 million persons residing in foreign countries for more than a year.¹ Asylum-seekers and refugees constitute only a small part of those global migratory movements.²

¹ World Migration Report 2000, IOM, 2000.

² UNHCR estimates that, at the end of 2000, there were approximately 14.7 million asylum-seekers and refugees and other persons of concern to UNHCR, outside their country of origin (i.e. no more than ten percent

5. Modern migratory patterns increasingly make it difficult to distinguish between the various groups on the move. Population flows are not homogenous but of a mixed, composite character. While the immediate causes of forced displacement may be readily identifiable as serious human rights violations or armed conflict, these causes often overlap with, or may themselves be provoked or aggravated by factors such as economic marginalization and poverty, environmental degradation, population pressure and poor governance. Asylum-seekers and refugees may use the same mode of travel as undocumented migrants and resort to, or be exploited by, criminal smugglers and traffickers. In some cases, refugees may use these channels to leave one country of asylum and move to another destination for reasons of security, serious social or economic hardship or personal convenience. At the same time, persons who do not qualify for international protection may resort to asylum channels in the hope of gaining either temporary or permanent stay abroad. The failure to return such persons upon rejection of their claim affects the credibility and efficiency of asylum systems.³

6. There is no international regime for addressing and managing broader migratory movements comparable to that for refugees. States have adopted measures to manage migration, such as the imposition of visa requirements, carrier liabilities, and interception beyond the border, which, while addressing irregular migration, can limit the ability of refugees to seek asylum. States have also sought to develop procedures to prevent their asylum systems from being misused for immigration purposes.⁴ From a refugee protection perspective, the challenge is for the international community to find ways of ensuring that the needs of refugees and asylum-seekers, including access to protection, are properly met within the broader context of migration management.

7. UNHCR and IOM have forged a long-standing partnership in order to ensure a more coordinated approach to situations of displacement impacting on the respective mandates of both organizations. An official framework for closer cooperation in this area was established in a 1997 Memorandum of Understanding. The changing parameters surrounding the asylum and migration debate challenge that partnership to jointly explore new strategies and innovative approaches.

III. MIGRATION CONTROL AND REFUGEE PROTECTION

A. IOM's perspective

(i) Trafficking and smuggling

8. Irregular migration, particularly trafficking and smuggling of persons, represents one of the greatest challenges to the ability of States to effectively manage migration. It also represents the greatest challenge to IOM's core principle that humane and orderly migration benefits migrants and society, as well as to IOM's primary objective to reduce the incidence of irregular migration, in line with relevant recommendations of the 1994 Cairo International Conference on Population and Development.

of the total number of international migrants as estimated by the International Organization for Migration). This figure excludes internally displaced persons and returnees.

³ Within the framework of the Global Consultations, a regional meeting took place in Macau on 28-29 May, for the Asia-Pacific region. It focused on categories of persons in mixed-flow situations and the appropriate policy and procedural response to meeting protection needs among them. Main conclusions of relevance to the third track Global Consultation are contained in document EC/GC/01/13.

⁴ See Global Consultations paper on asylum processes (fair and efficient asylum procedures) (EC/GC/01/12).

9. Trafficking is a specific form of highly abusive irregular migration involving the exploitation of migrants, generally for profit.⁵ Smuggling, as distinct from trafficking, is the illegal facilitation of border crossing or illegally remaining in a country, but does not as clearly carry implications of abuse and exploitation as does trafficking. However, persons choosing to use the services of smugglers may have genuine protection concerns and may consider being smuggled as the only option to remove themselves from the environment in which they lack protection. Despite the distinctions, there are grey areas between the two, and persons who willingly cooperate with and even solicit smugglers' assistance to cross a border may also be subject to serious human rights violations in the process.

10. IOM has two primary objectives in the field of counter-trafficking and counter-smuggling: (1) to curtail the incidence of migrant trafficking and smuggling, and (2) to protect the rights of migrants caught up in the process.⁶ IOM actively supported the adoption of the protocols on trafficking and smuggling to the UN Convention against Transnational Organized Crime and is working with States to implement programmes within the framework of these protocols. IOM provides a range of services to trafficked and smuggled persons as well as to States in their efforts to curtail these practices. IOM's anti-trafficking activities are focused on (1) prevention, primarily through awareness raising and capacity-building, (2) protection of and assistance to individual victims of trafficking and (3) their return to and reintegration in countries of origin.⁷ As some trafficked or smuggled persons may be refugees in need of international protection, IOM's role includes referring persons seeking to present asylum claims to relevant national or international authorities or bodies for consideration.

11. It is now commonly agreed among governments and international agencies that a multi-agency and multi-faceted approach is the only response with any hope of success in combating trafficking, i.e. with any prospect of matching the sophistication and multi-nationality of the trafficking networks. Taking stock of its experience accumulated over many years of working in many aspects of counter-trafficking, IOM works with its partners towards a coherent, strategic approach which requires regional and subregional strategies and comprehensive, integrated actions. IOM's interventions are designed to disrupt the smuggling and trafficking process at multiple, critical junctures, by promoting measures which include:⁸

- strict legislation to prosecute and detain the perpetrators;
- legislation to protect and assist the victims, for example through temporary residence, and where possible inclusion in witness protection programmes;
- effective border management to enable action to be taken before borders are crossed;
- humane options for return of victims to their home countries;
- reintegration assistance as an integral part of return programmes;
- information and awareness-raising of communities in countries of origin, as a warning against the dangers of trafficking and as a preventive measure;

⁵ Both IOM and UNHCR utilize, for the purposes of analysis and their activities, the definitions of trafficking and smuggling contained in the relevant protocols to the United Nations Convention against Transnational Organized Crime.

⁶ "Trafficking in Migrants: IOM Policy and Responses," IOM Council document MC/EX/INF/58, submitted to IOM's Executive Committee at its June 1999 session.

⁷ IOM's activities in the field of countering smuggling are primarily focused on prevention and return, but on occasion involve protection of and assistance to smuggled persons as well. Therefore, IOM's anti-smuggling activities are covered, where appropriate, in the discussion of IOM's anti-trafficking strategy and activities.

⁸ "Trafficking in Migrants: Update and Perspectives," IOM Council document MC/INF/245, submitted to IOM's Executive Committee at its November 2000 session.

- capacity-building of government and non-governmental agencies dealing with this phenomenon (including police, judges, diplomats, teachers, NGOs, etc) in countries of origin, transit and destination;
- research on trafficking to provide a concrete basis for regional and subregional approaches;
- HIV/AIDS and STD prevention and assistance to address a growing phenomenon among displaced groups and to avoid additional socio-economic costs for host communities; and
- closer cooperation with international and national law enforcement institutions.

12. To address this challenge globally, IOM cooperates with other international organizations involved with migrants or other human rights, such as ILO, UNICEF, UNHCHR, UNHCR, UNIFEM, UNAIDS, EU, OAU, OSCE and with NGOs and respective government authorities. There is no single agency, project or programme that curtails human trafficking. Only through international and inter-agency cooperation will it be possible to respond effectively to this complex and highly sophisticated problem.

13. In IOM's view, efforts to curtail trafficking and smuggling will be most effective when pursued as part of an integrated, and in appropriate instances, comprehensive approach to migration management. Regional cooperation initiatives represent key tools in the fight against trafficking, and the increasing attention paid to the issue marks a big step forward in fostering and operationalizing international and regional cooperation on migration management. Ultimately, these and other measures will only be effective if they are complemented by the efforts of States, international organizations and other relevant partners to create an internationally coordinated framework which ensures that:

- those persons who are in need of international refugee protection receive it ;
- the benefits of orderly international migration are maximized;
- the number of undocumented or other migrants in an irregular situation is substantially reduced and the exploitation of such persons is prevented and their basic human rights are protected;
- that labour, family reunion or other legal migration channels are maintained or expanded; and that
- those who do not or no longer need international refugee protection are dealt with within a framework of cooperation that creates appropriate conditions for return in safety and dignity, with assistance as necessary.

(ii) Interception and refugee protection safeguards

14. IOM recognizes the sovereign right of States to determine which non-nationals may be admitted to and remain in their territories, within the limitations of national and international law. In this context, interception is one of many ways by which States seek to prevent irregular migration. Many States which have the ability to do so find that intercepting migrants before they reach their territories is one of the most effective measures to enforce their domestic migration laws and policies.

15. While mindful of the protection issues raised in interception programmes of States, including difficult practical considerations in ensuring access to effective protection in some instances, IOM's role with respect to persons intercepted by States is focused on facilitating voluntary return, including related counselling. IOM does not conduct interceptions, determine whether the intercepted persons are in need of refugee protection or determine how such protection can be provided. IOM's role is (1) to support States in their implementation of orderly migration practices, including return migration and (2) to complement that of other organizations such as UNHCR in ensuring that the protection needs of refugees are met. Consequently, when IOM encounters

migrants presenting claims for asylum or other forms of protection in its activities, IOM refers them to the relevant authorities – national or UNHCR – for appropriate consideration.

16. The Terms of Implementation for the Return of Extra-regional Migrants, developed as part of the “Puebla” Regional Conference on Migration, and the Australian Regional Cooperation Model for interceptions by Indonesia of Australia-bound irregular migrants are important examples for addressing the challenge of protecting refugees in the context of interception programmes. These instances of State cooperation to combat irregular migration and smuggling of persons, with due regard for the respective roles of UNHCR and IOM, warrant further consideration as part of comprehensive migration management mechanisms.

(iii) The return of persons not in need of international protection

17. It is recognized that the return of persons found not to be in need of international protection or not otherwise authorized to enter and remain is essential to maintaining the integrity of a migration management system as well as to maintaining the integrity of the institution of asylum.⁹ A key contribution of IOM to efforts of States to combat irregular migration and to maintain support for asylum is its ability to facilitate voluntary return. IOM considers its return activities in an international cooperation context where the needs and concerns of both sending and receiving States are important. IOM’s core considerations when analyzing such returns and the context in which they must be seen are:

- enhancement of effective migration systems;
- reinforcement of legal migration channels;
- respect for international principles and standards concerning migrants in an irregular situation;
- safeguarding of migrants’ rights and dignity;
- support to efforts to maintain fair asylum procedures;
- comprehensive government return policies which include both voluntary and forced return;
- responsibilities of countries of origin to accept the return of their nationals;
- cooperation between sending and receiving countries; and
- the need to focus on root causes underlying irregular migration.

18. In many cases, return assistance is provided directly to the migrant by IOM. In others, it is given by specialized partners through a network, frequently including other international organizations, notably UNHCR and UNDP, and non-governmental organizations, in which IOM has a coordinating role. These offices often refer rejected asylum seekers and other migrants to IOM for possible assistance. During the first review of the memorandum of understanding between UNHCR and IOM, it was agreed that IOM should increase its leadership in such return programmes.

19. IOM’s role in return operations arises in situations where there is a special interest of States to involve an international organization for the provision of return arrangements. IOM’s assistance in the physical return movement of such persons is limited to returnees who volunteer to accept

⁹ IOM’s mandate to deal with the voluntary return of migrants is based on its Constitution, which, in Article 1.1(a) and (b) states that the purposes and functions of the Organization shall be to concern itself with the organized transfer of “migrants ..., refugees, displaced persons and other individuals in need of international migration services.” Article 1.1(d) further states that migration services – listed in Article 1.1(c) – can also be provided for voluntary return migration. The requirement of voluntariness was introduced into the Constitution in 1989. In the original Constitution, this requirement resulted from the circumstances of IOM’s creation, and was implied in Article 2(b) of the Constitution, which stipulates as a requirement for membership “a demonstrated interest in the principle of free movement of persons.”

return under IOM auspices.¹⁰ Deportation movements cannot be undertaken by IOM. Therefore, IOM's voluntary return programmes offer an alternative to forcible return or deportation programmes of States.

20. IOM is prepared to engage in specific counselling of individuals for the purpose of outlining the options available to that individual. Such counselling should ensure that reliable and unbiased information is available throughout their processing or stay, and that the specific concerns and needs of the individual and family are addressed in the course of that counselling, and then met, when feasible, with return offers which best fit those needs. IOM believes that such counselling is the most effective way both to identify realistic solutions and to ensure the humane and dignified treatment of these persons.

21. IOM expects to be given assurances by the country of origin that migrants returning under its auspices will be readmitted and, according to circumstances, that they will not be exposed to punitive measures for having left their country irregularly. IOM seeks authorization from the country of origin to follow up on the assurances given, through passive or active monitoring as warranted by the circumstances.

22. Return is a key element of comprehensive, orderly migration management. It serves both as a deterrent to future irregular migration and as a support to States in their efforts to establish credible migration management regimes.

(iv) Information activities

23. As millions of people move across borders each year, the need for information has become fundamental to all migration decisions. Distorted perceptions and insufficient information about the realities in the countries they are trying to reach increases the need for migrants to have access to information. Many migrants are unaware of the practical, legal, social and economic consequences involved in moving to another country. This lack of awareness puts migrants at risk and undermines orderly migration processes. Information campaigns help fill this void by providing migrants with the basis to make informed decisions and States with the ability to have objective information disseminated about their policies and practices regarding authorized avenues for migration as well as the consequences of irregular migration.

24. IOM mass information campaigns have included the promotion of repatriation and reconciliation, awareness campaigns on the dangers of trafficking and smuggling, availability of legal immigration channels, as well as campaigns aimed at discouraging departures of those who are not in need of international protection. They are based on the recognition that it is in both IOM and UNHCR's interest to prevent large-scale irregular movements of populations when these are caused primarily by economic, rather than protection-related factors.

25. To maintain the credibility of the message, it is critical that the content of any such mass information campaigns be a balanced one. While drawing attention to the negative aspects of unauthorized departures (that is the risks involved in putting one's life in the hands of criminal smugglers), they must also provide information on legal channels of immigration where available and, most importantly, stress the fact that UNHCR will seek to protect and assist those who feel

¹⁰ IOM considers that voluntariness exists when the migrant's free will is expressed at least through the absence of refusal to return, e.g. by not resisting to board transportation or not otherwise manifesting disagreement. From the moment it is clear that physical force will have to be used to effect movement, IOM would have no further involvement.

compelled to leave for fear of persecution. As discussed above, information and counselling are critical to successful voluntary return programmes.

26. On the side of direct support to States, IOM supplies States with information that allows them to better manage migration. For example, when governments seek information to decide whether conditions are conducive to returns, they must rely on facts and not assumptions. To successfully manage migration and returns, facts and figures on current country situations and reintegration-related options are essential.

27. One programme fulfilling this role is the Kosovo Information Programme, run jointly with the International Centre for Migration Policy Development (ICMPD), which allows participating governments and their partner agencies to receive answers to specific return-related (but non-protection) questions in order to better gauge the timing of returns in accordance with actual conditions on the ground in Kosovo. Other programmes provide targeted country of origin information that is used for such purposes as, inter alia, focusing pre-return vocational training for potential returnees on skills that are actually in demand in the country of origin.

28. Information programmes may be implemented as stand-alone activities or as one component of an overall strategy for effective migration management. The credibility of migration management programmes, as well as the deterrent value of such programmes to irregular migration, depends on effective information dissemination at various decision points. IOM is prepared to explore further initiatives to enhance the effectiveness of information activities to this end.

B. UNHCR's perspective

(i) Smuggling and trafficking of persons

29. UNHCR shares the view that the criminal smuggling in migrants and trafficking in persons pose a growing problem to States, while endangering the lives of those who are exposed to the ruthless practices of the gangs and networks responsible for these practices. UNHCR's direct interest in this issue stems from the fact that many asylum-seekers and refugees also make use of smugglers, either because they have no other means of reaching safety or because they believe that it will open up more viable and durable protection possibilities. As a result, measures to combat smuggling may impact quite directly on the availability of protection for refugees. Hence, UNHCR is committed to working with States to establish processes which enable asylum-seekers to have their protection needs properly assessed and, if appropriate, solutions identified which would meet those needs.

30. An additional humanitarian concern arises where smuggled asylum-seekers, in particular women and children, are targeted by smugglers for criminal purposes. Such cases clearly require additional and appropriate protective measures, distinct from those which may be applicable to refugees under national or international refugee law.

31. In some instances, victims and witnesses of acts of trafficking may feel compelled to apply for asylum to access some form of protection against reprisals from the perpetrators of these acts. In Albania, many of the trafficked women and girls apprehended by the local police felt that they had no other choice but to seek asylum, as there were no adequate alternative systems in place for victims of trafficking operations. This affected adversely the efforts to build effective asylum systems. The problem was overcome by establishing an inter-agency referral system which ensures that such individuals receive proper medical attention, counselling on voluntary return (through IOM) and material assistance in "safe houses". Asylum-seekers, on the other hand, are accommodated in a reception centre established for that purpose, pending a decision on their asylum application.

32. This arrangement reflects the reality that being a victim of trafficking *per se* does not represent a valid ground for claiming refugee status. However, in some cases trafficked persons may qualify for international refugee protection, if the acts inflicted by the perpetrators would amount to persecution for one of the reasons contained in the 1951 Convention definition, in the absence of effective national protection.

33. The adoption of separate and comprehensive provisions for the protection of witnesses and victims of trafficking, while meeting their humanitarian needs, can also help to maintain the integrity of national asylum systems and procedures. In the context of mixed or composite flows, asylum systems are likely to function better if States establish policies and procedures which permit them to distinguish clearly among the different categories of migrants and to identify solutions appropriate to their specific circumstances.

(ii) Interception and refugee protection safeguards

34. The issue of interception was discussed in some depth at the eighteenth meeting of the Standing Committee in July 2000, on the basis of a paper submitted by UNHCR¹¹. The paper advocated a comprehensive approach in dealing with interception, in addition to a number of recommendations aimed at mitigating the effects of interception measures on asylum-seekers and refugees. Subsequent to this discussion, the Executive Committee, at its fifty-first session, recognized the importance of ensuring that, in the context of measures adopted to deal with irregular migration, trafficking and smuggling of persons, the international protection and assistance needs of asylum-seekers and refugees are identified and fully met, consistent with international protection responsibilities, in particular the principle of *non-refoulement*.¹² The following suggestions take account of these discussions, with a view to carrying the debate on interception another step forward.

35. It has been recognized that one of the main challenges resulting from interception is the difficulty of reconciling this practice with relevant international legal responsibilities. In UNHCR's view, the 1951 Convention and the 1967 Protocol, in conjunction with some of the provisions contained in the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime, as well as relevant human rights instruments, offer a useful legal framework for the adoption of practical protection safeguards by States.

36. At the Regional Workshop held in Ottawa on 14-15 May 2001¹³, participants discussed the practice of interception and looked at some possible safeguards. The Workshop drew up a number of conclusions and recommendations for consideration, which highlight, *inter alia*, the following needs which should be built into interception arrangements:

- Safe and humane treatment of intercepted persons in accordance with applicable human rights standards;
- Particular measures to take into account the special needs of refugee women and children;
- Respect for the principle of *non-refoulement* and the right to seek and enjoy asylum in other countries;
- Adequate procedures to identify those in need of international protection among the intercepted persons;
- Training of officials on applicable standards of international law and required procedures;

¹¹ *Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach* (EC/50/SC/CRP.17).

¹² Conclusion No. 89 (LI) of 2000, Preambular paragraph (A/AC.96/944 para. 23)

¹³ See EC/GC/01/13.

- Effective protection against acts of retaliation and intimidation for witnesses and victims of smuggling and trafficking operations;
- Identifying durable solutions for intercepted persons in the context of burden or responsibility-sharing and capacity-building;
- Orderly and humane return of persons who are not in need of international protection, with due regard to their safety and in full respect of their human rights and dignity.

37. From a durable solutions perspective, resettlement can be an appropriate measure for some intercepted persons who are in need of international protection. Its potential as a solution for intercepted cases is most likely to be fully realized if resettlement is approached as a means of responsibility-sharing among involved States, including those who set up the interception mechanisms, those on whose territory the persons are intercepted and those where the intercepted refugees may have direct family links. However, resettlement cannot stand alone and needs to be complemented by efforts to promote other measures for persons for whom resettlement is not, for a number of reasons, the appropriate solution. For instance, in cases where refugees moved in an irregular manner from a country in which they had already found protection, their readmission to the first country of asylum should, in the first instance, be pursued. This being said, there may be considerable doubts as to whether "effective protection" has actually been found. The promotion of local integration may then represent the more feasible alternative solution.

38. Substantial movements of asylum-seekers and refugees occur not only directly from the country of origin, but also from countries of first arrival. In many instances, these latter movements can be described as irregular, in the absence of compelling reasons which endanger the physical safety or freedom of refugees. In other instances, departures of refugees result from a loss of protection in the country of first asylum or from treatment that is at variance with basic human rights standards. In order to curtail such movements, States should undertake joint efforts to strengthen the capacity of countries of first arrival to provide international protection. Some suggestions in this regard are found in the Conclusions and Recommendations of this paper. In addition, the matter is scheduled for more thorough discussion at the third meeting within the Global Consultations framework¹⁴.

(iii) Alternatives to interception

39. In some instances, persons with a well-founded fear of persecution find themselves unable to leave their country and seek asylum and international protection abroad. A small number of States have set up special programmes and procedures which grant such persons the opportunity to submit their claims while they are still in the country of origin. This offers an additional, if usually limited, opportunity for people in need of protection to reach safety, in particular in situations where free and direct access is available to diplomatic representations.

40. The availability of direct departure mechanisms are a complement to, not a replacement for, seeking asylum abroad. They can provide an alternative channel, without undermining refugee protection, for individuals who are unable to leave their country and who might otherwise be compelled to jeopardize their life by cooperating with criminal organized smugglers. In-country processing of claims for organized departure can promote both orderly departures and arrivals, as well as help to reduce criminal smuggling of asylum-seekers. States offering this possibility continue, in parallel, to receive claims on their territory from spontaneous arrivals. If this were to cease to be a possibility, the right to seek asylum and opportunities to access protection would be seriously jeopardized.

¹⁴ 27-28 September 2001.

41. UNHCR's role in in-country processing is limited by its mandate, although there are precedents for its operational involvement, most notably in the Orderly Departure Programme from Vietnam that began in May 1979 and lasted for several years. As one function, UNHCR can advise States on the criteria and modalities of such an arrangement. In addition, the Memorandum of Understanding between IOM and UNHCR provides for the possibility for the two organizations to undertake consultations on in-country processing and share information with the aim, *inter alia*, of ensuring that the plight of persons in vulnerable circumstances is brought to the attention of the organization best placed to assist.

(iv) The return of persons not in need of international protection

42. The early return to the country of origin of persons who, following a fair and efficient procedure, have been determined not to be in need of international protection is important. It can contribute to discouraging irregular migratory movements of similar groups from both the country of origin and from transit countries. Returns are not only part of a viable migration policy but may also maintain the integrity of the institution of asylum. Clearly, return is a significant problem for some States, and is proving detrimental to their asylum processes. Some assistance from international organizations could improve the asylum situation overall. It may also result in a more positive management of refugee status determination procedures for rejected asylum-seekers as well as diminish specific problems in some countries arising from the overstay of rejected asylum-seekers who have no alternative status.

43. The UN Human Rights Commission recognized in its recent resolution on the human rights of migrants that there are a number of obstacles to the full and effective protection of migrants, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation.¹⁵ UNHCR believes that the provisions in the UN Protocol against the Smuggling of Migrants by Land, Sea and Air may effectively help in reducing some of these obstacles. The obligation of each State Party under that Protocol to facilitate and accept, without undue or unreasonable delay, the return of a person who has been smuggled and who is its national or who has the right of permanent residence in its territory, is helpful in reaffirming the right of such persons, including rejected asylum-seekers, to return.¹⁶

44. UNHCR is ready to support States in their efforts to return rejected asylum seekers, provided that the involvement of the Office is fully consistent with its humanitarian mandate to protect refugees. There are also a number of ways in which UNHCR can complement the efforts of States in this area. These include:

- taking a clear, public position on the acceptability of return of the rejected group,
- disseminating information on developments in the country of origin conducive to return;
- facilitating dialogue between countries of asylum and origin;
- promoting awareness among national authorities in the host country willing to assist rejectees and facilitate return;
- providing information on locally available possibilities for post-return reintegration assistance; and
- promoting with States those principles which bear on their responsibility to accept back their citizens or long-term residents, as well as principles on the reduction of statelessness.

¹⁵ Commission on Human Rights resolution 2001/52 (75th meeting) of 24 April 2001

¹⁶ Article 18 (1).

UNHCR's role is a supportive one, ideally as part of an inter-agency arrangement.¹⁷ In situations where there is another agency - such as IOM - already active or, in terms of its mandate, better suited and able to undertake the necessary activities, UNHCR would not become involved.¹⁸ UNHCR welcomes IOM's preparedness to exercise leadership on this issue.

IV. CONCLUSIONS AND RECOMMENDATIONS

45. The nexus between asylum and migration presents important challenges to the refugee protection regime, which can be addressed most effectively in a comprehensive and collaborative framework, involving States, international organizations, NGOs and others. For their part, UNHCR and IOM will continue to cooperate in seeking situation-specific responses, both at the policy and at the operational level. More generally, UNHCR and IOM propose to:

- establish an Action Group on Asylum and Migration to review, at regular intervals, policy and operational issues of particular interest to both organizations in the implementation of priority activities outlined in this paper, in particular at the field level;
- discuss within this Group operational safeguards to ensure that asylum-seekers are provided access to an appropriate authority for consideration of any refugee claims, to coordinate voluntary return programmes and ensure monitoring and follow-up of returnees, where appropriate, in line with the respective mandates of the two organizations;
- increase their cooperation in the area of information activities in regard to persons of concern to the respective organizations, with a view to enabling them to make better informed decisions about departure or repatriation and return options.

46. Consistent with its Constitutional mandate, IOM will examine the usefulness of establishing or strengthening appropriate regional or international mechanisms for addressing and managing migratory movements, including, in the framework of its programmes, consideration of a possible international migration regime.¹⁹

47. UNHCR will elaborate its own guidelines on the protection of intercepted asylum-seekers and refugees, which it is hoped will also prove of assistance to States as they seek to incorporate protection safeguards into their own interception programmes. As appropriate and consistent with its mandate UNHCR will also participate in programmes with States which are designed to ensure that protection is available to intercepted refugees.

48. Notwithstanding these initiatives, both organizations remain very much aware of their limited ability to influence the complex forces which determine the dynamics of global migration movements, and of the importance of encouraging States and other stakeholders to discuss and design policy responses to address the nexus between asylum and migration. To that end, States may wish to set in train a process to:

¹⁷ EC/47/SC/CRP.28, para. 15, on Return of persons not in need of international protection, presented to the 8th meeting of the Standing Committee..

¹⁸ Ibid, para 18.

¹⁹ IOM's Constitution states that one of the purposes and functions of the Organization is "to provide a forum to States as well as international and other organizations for the exchange of views and experiences, and the promotion and co-operation and coordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions."

- examine the possible cause-and-effect relationship between migration movements and refugee protection, including (a) the impact of refugee protection systems on migration patterns; (b) the impact of migration regimes on access to refugee protection; (c) the interrelationships between legal immigration, irregular movement, and asylum systems and (d) the causes of irregular movements, including poverty, social development and measures such as economic sanctions, with a view to develop adequate responses. Such an examination could be conducted in the context of exploring avenues for the development of comprehensive approaches;
- strengthen the capacity of countries of first arrival to provide international protection, including measures such as (a) promoting accession to the 1951 Convention with capacity-building assistance to ensure States can implement it, (b) assisting in the development of effective asylum systems which ensure fair decision-making and a proper balance in responsibilities for processing asylum claims, and (c) alleviating the burden on first countries of asylum through the establishment of responsibility-sharing mechanisms;
- develop safeguards for the protection of intercepted persons in need of international protection based on the elements contained in paragraph 36 above, recommendations and conclusions of the Regional Workshop in Ottawa²⁰, and proposals contained in EC/50/SC/CRP.17 presented to the eighteenth meeting of the Standing Committee. They also could serve as a useful complement to existing inter-state cooperation arrangements for managing interception in the context of irregular migration;
- adopt appropriate protective measures for victims and witnesses of smuggling and trafficking operations, in addition to or distinct from those which may be applicable to refugees under national or international refugee law;
- consider ways in which comprehensive information initiatives could increase the efficiency of States in managing migration.

²⁰ See EC/GC/01/13.