

## Refugees and Asylum-Seekers in Distress at Sea – how best to respond?

Expert Meeting in Djibouti, 8 to 10 November 2011

### Summary Conclusions

#### Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) convened an Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea in Djibouti from 8 to 10 November 2011. This expert meeting was one in a series of events organized to mark the 60th anniversary of the 1951 Convention relating to the Status of Refugees.<sup>1</sup> Participants included 40 experts drawn from governments, regional bodies, international organizations, non-governmental organizations and academia.<sup>2</sup> A background paper was prepared by UNHCR to facilitate discussion.<sup>3</sup> One day of the expert meeting involved field trips to the Loyada border crossing point and Ali-Addeh refugee camp, and the sea departure point at Obock.<sup>4</sup>
2. Building on the conclusions of the Expert Meeting on International Cooperation to Share Burdens and Responsibilities in Amman, Jordan, in June 2011,<sup>5</sup> the purpose of this expert meeting was to explore how responses to rescue at sea situations involving refugees and asylum-seekers could be improved and made more predictable through practical cooperation to share burdens and responsibilities.
3. These Summary Conclusions do not necessarily represent the individual views of participants or UNHCR, but reflect broadly the themes and understandings emerging from the discussion.

#### A. The reality of irregular mixed movements by sea

4. Complex mixed migratory movements have always been and will continue to be a reality of human existence. The situation in the Gulf of Aden region provides ample evidence of many of these complexities, echoed in all regions faced with irregular sea movements, including the Asia-Pacific, the Mediterranean, the Caribbean and Southern Africa. Individuals may be motivated by a mix of push and pull factors such

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<sup>1</sup> For more information and documentation relating to the 2011 Commemorations see: UNHCR, *Commemorating the Refugee and Statelessness Conventions*, [www.unhcr.org/commemorations](http://www.unhcr.org/commemorations). All documents from the expert meeting are available at UNHCR, *Expert Meetings*, <http://www.unhcr.org/pages/4d22f95f6.html>.

<sup>2</sup> See List of Participants, attached in Annex III.

<sup>3</sup> UNHCR, *Refugees and Asylum-Seekers in Distress at Sea – how best to respond?*, October 2011, <http://www.unhcr.org/4ec1436c9.html>.

<sup>4</sup> See Agenda, attached in Annex II.

<sup>5</sup> See UNHCR, *Expert Meeting on International Cooperation to Share Burdens and Responsibilities: Summary Conclusions*, June 2011, <http://www.unhcr.org/refworld/docid/4e9fed232.html>.

as conflict, persecution, lack of livelihood opportunities, as well as the desire to seek a better life. They may accordingly have differing protection and other needs. Many people moving irregularly may also resort to dangerous modes of travel when orderly channels are not available.

5. Governments affected by these mixed movements, in the Gulf of Aden as in other regions, face the difficult task of balancing their sovereign right to control their borders and protect national security with the need to uphold the rights of people involved. This is especially the case when such travel is facilitated by human smugglers and traffickers.
6. The Gulf of Aden region also demonstrates the particular challenges of irregular movements by sea. In light of the frequently overcrowded and unseaworthy vessels used for the sea crossing, distress situations are regular occurrences. Search and rescue capacities of coastal States are limited or non-existent, and shipmasters have sometimes faced difficulties in obtaining permission to disembark rescued groups. Concerns about piracy can further limit a commercial vessel's ability or willingness to rescue persons in distress.

## **B. The legal framework**

7. The international legal framework for the protection of human life at sea is made up of different but interrelated bodies of law: international law of the sea; international human rights and refugee law; and, where sea movements are triggered by situations of armed conflict, international humanitarian law.
  - The duty to rescue people in distress is a longstanding maritime tradition and is part of customary international law. It is expressed in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and in several other international law of the sea instruments.<sup>6</sup> The duty to render assistance applies in all maritime zones and to every person in distress without discrimination, including asylum-seekers and refugees. The specific legal framework governing rescue at sea does not apply to interception operations that have no search and rescue component.<sup>7</sup>

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<sup>6</sup> Article 98 of UNCLOS, entered into force 16 November 1994; Chapter V, Regulation 33 1-1 of the 1974 International Convention for the Safety of Life at Sea (SOLAS), entered into force 25 May 1980, as amended; Chapter 2.1.10 of the 1979 International Convention on Maritime Search and Rescue (SAR), entered into force 25 March 1980, as amended.

<sup>7</sup> There is no internationally accepted definition of interception, and its meaning is largely informed by State practice. UNHCR Executive Committee Conclusion No. 97 (LIV) (2003) on "Protection Safeguards in Interception Measures" contains a working definition of interception as "one of the measures employed by States to: (i) prevent embarkation of persons on an international journey; (ii) prevent further onward international travel by persons who have commenced their journey; or (iii) assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law; where, in relation to the above, the person or persons do not have the required documentation or valid permission to enter".

- International human rights law guarantees human dignity, including for those moving irregularly by sea. The principle of *non-refoulement* enshrined in international refugee and human rights law ensures that people rescued at sea are not disembarked in places where they may face torture, persecution or other serious harm.<sup>8</sup> These provisions apply wherever a State exercises effective jurisdiction, including extraterritorially.<sup>9</sup>
- International humanitarian law obliges parties to an armed conflict to take all possible measures to search for, collect and evacuate the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment and to ensure their adequate care. There are also obligations on parties to take feasible measures to account for persons reported missing, with respect to the right of families to know the fate of their missing relatives, and with respect to the management of the dead and related issues.<sup>10</sup>

### C. Gaps in the implementation of the legal framework governing rescue at sea

8. Recent amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and the 1979 International Convention on Maritime Search and Rescue (SAR Convention), as well as associated International Maritime Organization (IMO) Guidelines, have strengthened the framework governing rescue at sea, notably by establishing an obligation for all States to co-ordinate and co-operate in rescue at sea operations.<sup>11</sup>
9. Nevertheless, practical and operational challenges remain. These are due, in part, to the fact that search and rescue operations can trigger the responsibilities of different States and that these responsibilities may conflict with migration management and security objectives relating to irregular sea arrivals. Lack of capacity to implement search and rescue (SAR) obligations or to receive persons rescued at sea upon disembarkation can be additional complicating factors. The inability to properly

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<sup>8</sup> Article 33 of the 1951 Convention relating to the Status of Refugees, entered into force 22 April 1954 (1951 Convention); Articles 6 and 7 of the 1966 International Covenant on Civil and Political Rights, entered into force 23 March 1976 (ICCPR); Article 3 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force 26 June 1987 (CAT).

<sup>9</sup> For references, including to relevant case law of the International Court of Justice (ICJ) and Human Rights Committee general comments, see UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, <http://www.unhcr.org/refworld/docid/45f17a1a4.html>.

<sup>10</sup> Articles 18, 19, 20, 21 of the 1949 Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, entered into force 21 October 1950; Article 26 of the 1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War, entered into force 21 October 1950; Articles 10, 17, 32, 33, 34 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), entered into force 7 December 1978; Articles 4, 8 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), entered into force 7 December 1978.

<sup>11</sup> For further details see UNHCR, *Refugees and Asylum-Seekers in Distress at Sea – how best to respond?*, October 2011, <http://www.unhcr.org/4ec1436c9.html>.

address these challenges can lead not only to loss of life at sea, but also to significant costs for the shipping industry and the international community. Such failure may also deny the protection due to asylum-seekers and refugees under the principle of *non-refoulement*.

10. Fundamentally, a core challenge in any particular rescue at sea operation involving asylum-seekers and refugees is often the timely identification of a place of safety for disembarkation, as well as necessary follow-up, including reception arrangements, access to appropriate processes and procedures, and outcomes. If a shipmaster is likely to face delay in disembarking rescued people, he/she may be less ready to come to the assistance of those in distress at sea. Addressing these challenges and developing predictable responses requires strengthened cooperation and coordination among all States and other stakeholders implicated in rescue at sea operations.

#### **D. Towards solutions: operational tools to enhance international cooperation**

11. This section sets out three proposed operational tools to enhance cooperative responses to rescue at sea situations involving refugees and asylum-seekers, in light of the challenges identified above: (I) a *Model Framework for Cooperation*; (II) Standard Operating Procedures for Shipmasters; and (III) Mobile Protection Response Teams.

##### **I. Model Framework for Cooperation**

12. A *Regional agreement on concerted procedures relating to the disembarkation of persons rescued at sea* is under development by the IMO for the Mediterranean region.<sup>12</sup> This is a useful pilot scheme that seeks to allocate maritime responsibilities more predictably among various States in the region, especially relating to the disembarkation of people rescued at sea.
13. As a complement to the IMO initiative, cooperative arrangements could be developed to support countries of disembarkation and/or processing. This could include assistance for reception arrangements and burden-sharing schemes to provide a range of outcomes to individuals, depending on their profile and needs. The *Model Framework for Cooperation in Rescue at Sea Operations involving Asylum-Seekers and Refugees* (Model Framework) (**Annex I**) proposed by UNHCR offers a starting point for such discussions. The Model Framework is based on and further develops UNHCR's *10 Point Plan of Action on Refugee Protection and International Migration*.<sup>13</sup> The Model Framework is without prejudice to and flows from existing international law, including international refugee and human rights law. It is a complement to, and not a substitute for, mechanisms adopted to implement the SAR and SOLAS Conventions.

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<sup>12</sup> IMO Facilitation Committee, 37<sup>th</sup> session, FAL 37/6/1 of 1 July 2011.

<sup>13</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, <http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf>.

14. The negotiation of cooperative arrangements based on the Model Framework would be most successful where one or more governments are committed to lead the process and facilitate the necessary political consensus among concerned States. UNHCR and other agencies could advocate for, and act as conveners of, such arrangements. Dedicated expert meetings at the regional level to support the development of the Model Framework would help to adapt it to regional realities. While it is envisaged that the Model Framework would be used on a regional basis, the engagement and support of the international community would be essential, in particular resettlement countries. States outside the region concerned but who are involved in shipping or naval activities in that region could also participate in cooperative arrangements.
15. It is important that support for reception arrangements provided as part of the Model Framework include mechanisms to rapidly identify and distinguish among different groups of rescued persons. Persons found to be in need of international protection and assistance are to be separated from those identified as criminal perpetrators, such as traffickers and smugglers. Reception arrangements should also include mechanisms to manage the remains of persons who have perished at sea and ensure family tracing. The important guidance developed by the International Committee of the Red Cross (ICRC) in this respect could be more widely distributed, and may benefit from specific targeting to the context of irregular mixed movements by sea.<sup>14</sup>
16. Given that many migrants in an irregular situation rescued at sea do not qualify for refugee status or complementary protection, it is necessary to establish within the Model Framework cooperative responses to facilitate the return of people not in need of international protection who are unable to stay in the country of disembarkation and/or processing. Solutions for refugees could, where appropriate, build on existing good practices supporting host States to facilitate self-reliance and local integration. Resettlement can also be part of an overall regional strategic effort to address rescue at sea incidents involving refugees, including as a burden-sharing tool. These traditional solutions may be complemented by temporary or permanent options offered by migration frameworks. Care is required to ensure that rapid processing and/or an increase in resettlement places for asylum-seekers or refugees rescued at sea does not create pull factors or lead persons traveling irregularly by sea to create “distress” situations in order to promote rescue.

## ***II. Standard Operating Procedures for Shipmasters***

17. The Model Framework could be complemented by *Standard Operating Procedures for Shipmasters* (SOPs) when faced with distress at sea situations involving undocumented migrants, refugees and asylum-seekers. The SOPs could be incorporated into “industry best practice” guidance to be developed in conjunction

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<sup>14</sup> See, e.g., ICRC, *Management of Dead Bodies after Disasters*, 2006, [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0880.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0880.pdf) ; ICRC, *The Need to Know: Restoring Links between Dispersed Family Members*, 2011, <http://www.icrc.org/eng/resources/documents/publication/p4037.htm>.

with the International Chamber of Shipping (ICS), to ensure that humanitarian and protection concerns are taken into account.

18. Shipmasters of commercial vessels are not responsible for identifying or differentiating between groups of rescued persons or making substantive decisions on the merits of any international protection claims. However, SOPs could provide guidance as regards the appropriate procedures to be followed when asylum-seekers and refugees may be among groups of rescued persons.
19. The SOPs could, for example, include:
  - contact points for relevant authorities (i.e. Maritime Rescue Coordination Centres) in specific countries;
  - a list of potential places of safety for disembarkation, as may be designated by Governments for their respective Search and Rescue Region (SRR), along with relevant criteria that may assist to make a determination in any particular case;
  - advice on information that shipmasters may be able to collect about rescued persons;
  - recommendations on proper management of the human remains and handling of data on deceased persons.

### ***III. Mobile Protection Response Teams***

20. *Mobile Protection Response Teams* could form part of cooperative arrangements to address rescue at sea situations involving undocumented migrants, refugees and asylum-seekers, including those based on the Model Framework. Mobile protection response teams would be composed of experts with complementary backgrounds and expertise from a range of stakeholders, including States, international organizations and NGOs. They could provide support to and capacity-building for States of disembarkation and/or processing in addressing the needs of irregular mixed groups. It is envisaged that the teams would have a particular role in reception arrangements, profiling and referral and, where appropriate, asylum or other status determination procedures.<sup>15</sup>
21. UNHCR, in cooperation with IOM and other agencies, will further develop the concept of *Mobile Protection Response Teams*, including through elaboration of a pilot scheme.

### ***IV. Regional processes to address irregular mixed movements***

22. Arrangements to strengthen international cooperation in rescue at sea emergencies involving refugees and asylum-seekers may benefit from inclusion in broader regional processes to address irregular mixed movements. While State-led processes are critical, multi-stakeholder bodies working on these issues, such as the Regional Mixed Migration Secretariat in the Horn of Africa and Yemen sub-region, can also

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<sup>15</sup> See further UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, <http://www.unhcr.org/refworld/docid/4d9430ea2.html>, Chapters 4, 5 and 6.

play a supporting role - providing policymakers with analyses on migration dynamics and facilitating data exchange among States and other stakeholders.

23. Examples of comprehensive regional approaches to address irregular mixed movements include the Regional Cooperation Framework established through the Bali Process in the Asia-Pacific region.<sup>16</sup> Where possible, such approaches can aim to address all phases of the displacement and migration cycle, from root causes to solutions, situating responses to the rescue at sea component within a broader context. They can provide alternatives to irregular migration to deter people without protection needs from undertaking dangerous sea journeys (e.g., legal migration opportunities), and strengthen protection capacities in transit States to avoid onward movements (e.g., livelihood projects). Regional processes may also foresee mechanisms to combat human smuggling and trafficking, as well as for voluntary return for those without international protection needs.

Division of International Protection  
UNHCR  
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<sup>16</sup> UNHCR, *Regional Cooperative Approach to Address Refugees, Asylum-Seekers and Irregular Movement*, November 2010, <http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf>.



## ANNEX I

### **Model Framework for Cooperation following Rescue at Sea Operations involving Refugees and Asylum-Seekers (Model Framework)**

*The aim of this Model Framework is to strengthen the protection of refugees and asylum-seekers in distress at sea through enhanced international cooperation among concerned States and other stakeholders.*

*The Model Framework focuses on actions that may be undertaken after a rescue at sea operation involving refugees and asylum-seekers, among others, has been carried out. It offers a starting point for discussion and would require adaptation to the specific regional circumstances to be addressed. The Model Framework could form the basis for an ad hoc arrangement in a particular rescue at sea emergency, or be used to develop a standing cooperative arrangement to increase predictability of responses among certain States. It could also be adopted as one element in a broader comprehensive regional approach to address irregular mixed movements.<sup>1</sup>*

*The Model Framework is based on and further develops UNHCR's "10-Point Plan of Action on Refugee Protection and Mixed Migration" (the 10-Point Plan)<sup>2</sup> and uses its terminology. UNHCR's publication "Refugee Protection and Mixed Migration: The 10-Point Plan in action" provides a number of practical examples on the implementation of the 10-Point Plan, including in the context of sea arrivals, and contains a detailed glossary setting out relevant terms and definitions.<sup>3</sup>*

*The Model Framework could be merged with or exist independently of the "Regional agreement on concerted procedures relating to the disembarkation of persons rescued at sea", which has been proposed by the International Maritime Organization (IMO) as a pilot in the Mediterranean region.<sup>4</sup>*

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<sup>1</sup> For information on comprehensive regional approaches see UNHCR, *International Cooperation to Share Burden and Responsibilities*, June 2011, <http://www.unhcr.org/refworld/docid/4e533bc02.html> and UNHCR, *Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement*, November 2010, <http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf>.

<sup>2</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, <http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf>.

<sup>3</sup> UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, <http://www.unhcr.org/refworld/docid/4d9430ea2.html> (the 10-Point Plan Compilation). The *Glossary*, in whole or in part, could be annexed to the Model Framework in the event that further clarification of terminology is desired.

<sup>4</sup> IMO Facilitation Committee, 37<sup>th</sup> session, FAL 37/6/1 of 1 July 2011.



## ***I. Purpose and Underlying Principles***

- 1) The purpose of this Model Framework is to improve responses following rescue at sea operations involving refugees and asylum-seekers travelling as part of irregular mixed movements.
- 2) Specifically, the Model Framework aims to:
  - (i) maximize efforts to reduce loss of life at sea;
  - (ii) ensure more predictability in identifying places for disembarkation;
  - (iii) ensure that rescued people are not disembarked in or transferred to places where they may face persecution, torture or other serious harm; and
  - (iv) establish measures for burden and responsibility sharing to support States providing for disembarkation, processing and/or solutions.
- 3) The Model Framework is without prejudice to, and flows from, existing international law, including international refugee and human rights law. It is a complement to, and not a substitute for, mechanisms adopted to implement the SAR and SOLAS Conventions.<sup>5</sup> The Model Framework is based on the principles of international cooperation, including burden and responsibility sharing.

## ***II. Scope and Application***

This Model Framework applies to rescue at sea operations involving refugees and asylum-seekers, irrespective of the nature of the rescuing vessel;<sup>6</sup> and where disembarkation at a place of safety and/or processing of rescued persons is being considered in a State other than the flag State of the rescuing vessel.<sup>7</sup>

## ***III. Operational Arrangements***

- 1) Principal actors
  - (i) States implicated by a particular rescue at sea operation may include:
    - the flag State(s) of the rescuing vessel(s);
    - the flag State of the vessel in distress;
    - the State(s) in whose Search and Rescue Region (SRR) the rescue operation takes place;
    - the State where rescued persons are disembarked;
    - the State where rescued persons are processed;

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<sup>5</sup> 1979 International Convention on Maritime Search and Rescue (SAR), entered into force 25 March 1980, as amended; 1974 International Convention for the Safety of Life at Sea (SOLAS), entered into force 25 May 1980, as amended.

<sup>6</sup> i.e., regardless of whether the vessel is commercial or a public (coastguard or military).

<sup>7</sup> These situations warrant cooperative arrangements as they may trigger the responsibility of different States.

- States of transit and origin of rescued persons;
- third States, including resettlement States, as appropriate.<sup>8</sup>

(ii) Any or all of these States may consider joining this Model Framework. International organizations, including UNHCR, and non-governmental organizations may provide additional support as necessary and appropriate.<sup>9</sup>

## 2) Undertakings by [Concerned States]

(i) In joining this Model Framework, [each *Concerned State*<sup>10</sup>] commits to undertake specific responsibilities. The nature and scope of this contribution may differ among States.

- (ii) Possible roles and responsibilities may include:
- coordinating search and rescue (SAR) activities;
  - carrying out SAR activities;
  - providing a place for disembarkation and initial reception;
  - processing rescued persons;
  - providing solutions for rescued persons;
  - providing financial support to affected States.

## 3) Establishment of Task Force

(i) [*Concerned States*] may establish a Task Force to ensure smooth coordination and cooperation among principal actors and other stakeholders.

- (ii) Functions of the Task Force could include:
- designation of specific focal points to share information;
  - establishing clear lines of communication;
  - clarification of responsibilities.

(iii) The Task Force will be mindful of the need to arrange for disembarkation of rescued persons at a place of safety as soon as reasonably practical and to release shipmasters from their obligations with minimum further deviation from the ship's intended voyage.

## 4) Identification of a country for disembarkation

(i) [*Concerned States*] will agree on the most appropriate country for disembarkation, possibly on the basis of a predetermined list of places for disembarkation identified by [*Concerned States*].

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<sup>8</sup> In some situations, States may have assumed more than one of these roles.

<sup>9</sup> See Part IV for the role of UNHCR specifically.

<sup>10</sup> The names of the States party to the Model Framework could be inserted in place of [*Concerned States*].

- (ii) Relevant factors in identifying the place of disembarkation include:
- practical considerations (e.g., maritime safety; geographical proximity; the extent to which the rescuing vessel will be required to deviate from its intended voyage; the needs of rescued persons; facilities at the proposed site of disembarkation, including access to fair and efficient asylum procedures);
  - applicable SAR and SOLAS provisions;<sup>11</sup>
  - the principle of *non-refoulement*.<sup>12</sup>

5) Reception arrangements

(i) [*Concerned States*] will cooperate to ensure adequate reception arrangements are in place at the site of disembarkation.

- (ii) The purpose of reception arrangements includes:
- addressing the immediate needs of new arrivals, e.g., medical treatment, shelter and food, family tracing;
  - providing for stay consistent with an adequate standard of living;<sup>13</sup>
  - providing protection from direct or indirect *refoulement*;
  - proper management of human remains and handling of data on deceased persons.

6) Mechanisms for profiling and referral

(i) [*Concerned States*] may establish mechanisms for profiling and referral<sup>14</sup> to rapidly identify and differentiate among rescued persons according to their background and needs.

- (ii) Functions of such mechanisms could include:
- the provision of information to rescued persons;
  - gathering of information through questionnaires and/or informal interviews;
  - the establishment of preliminary profiles for each person;
  - counselling and referral to differentiated processes and procedures, including asylum procedures for those who may be in need of international protection.

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<sup>11</sup> 1979 International Convention on Maritime Search and Rescue (SAR), entered into force 25 March 1980, as amended; 1974 International Convention for the Safety of Life at Sea (SOLAS), entered into force 25 May 1980, as amended.

<sup>12</sup> Article 33 of the 1951 Convention relating to the Status of Refugees, entered into force 22 April 1954 (1951 Convention); Articles 6 and 7 of the 1966 International Covenant on Civil and Political Rights, entered into force 23 March 1976 (ICCPR); Article 3 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force 26 June 1987 (CAT).

<sup>13</sup> Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR), entered into force 3 January 1976.

<sup>14</sup> For further information see Chapter 5 (“Mechanisms for profiling and referral”) of the 10-Point Plan Compilation, above n 3.

(iii) Best practice is for profiling and referral to be conducted by expert teams, consisting of officials and representatives from diverse backgrounds, including government, international agencies and/or non-governmental organizations.

7) Determining international protection needs

(i) [*Concerned States*] will agree on an appropriate place, and the authorities responsible, for processing any asylum claims made by rescued persons in accordance with applicable international standards.<sup>15</sup>

(ii) Processing may occur:

- in the country of disembarkation;
- in the flag State of the rescuing vessel;<sup>16</sup> or
- in a third State, which has agreed to assume responsibility in line with applicable international standards.<sup>17</sup>

(iii) In any of the cases identified above processing may be undertaken by the authorities of the State where processing occurs, and/or by authorities of another relevant State, subject to applicable international standards.<sup>18</sup>

(iv) The existing capacity of each State to undertake fair and efficient asylum procedures will be a relevant factor in determining the location of processing.

8) Outcomes for rescued persons

(i) [*Concerned States*] may provide for a range of outcomes for rescued persons depending on their profile and needs.

a) *Persons in need of international protection*

- Persons who have been recognized as refugees or as being otherwise in need of international protection should be permitted to stay in the country of processing or [another *Concerned State*] and provided with the possibility to obtain self-reliance.
- [*Concerned States*] may agree to provide additional support to host States to enhance protection and available solutions.

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<sup>15</sup> UNHCR, *Fair and Efficient Asylum Procedures: a Non-Exhaustive Overview of Applicable International Standards*, 2 September 2005, <http://www.unhcr.org/refworld/docid/432ae9204.html>.

<sup>16</sup> This may be appropriate, for example, where the flag State of the rescuing vessel is also a coastal State within the area where those persons are rescued.

<sup>17</sup> UNHCR, *Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing*, November 2010, <http://www.unhcr.org/refworld/docid/4cd12d3a2.html>.

<sup>18</sup> See above n 17.

- Resettlement may be considered to countries within and beyond the region concerned should local integration in the country of processing not be possible, or pursuant to a regional cooperative arrangement to share burdens and responsibilities.<sup>19</sup>

*b) Persons not in need of international protection*

- Persons found not to be in need of international protection may nonetheless be permitted to remain (temporarily and/or permanently) in the country of processing or [another *Concerned State*] if permission to do so is granted by the relevant authorities.
- Those without international protection needs may also be able to take advantage of migration options to other countries, as appropriate, including on the basis of specific cooperative arrangements.
- Absent alternative solutions, such persons will need to return to their countries of origin, preferably on a voluntary basis and subject to applicable human rights law and humanitarian considerations. Assistance may be provided to support voluntary return, as necessary.<sup>20</sup>

*c) Other categories of persons with specific needs*

- Other processes and procedures may be adopted for other groups with specific needs, e.g. unaccompanied or separated children, disabled persons, victims of trafficking.<sup>21</sup>

9) Additional support and capacity building measures for country(ies) of disembarkation/processing

[*Concerned States*] may agree on additional support and capacity building measures for the country(ies) of disembarkation and/or processing, such as increased resettlement places, financial or technical support for the asylum system, and/or other activities.

#### **IV. Role of UNHCR**

- 1) UNHCR may become a party to this Model Framework, or other cooperative arrangements, as appropriate.

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<sup>19</sup> See, e.g., UNHCR, *Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement*, November 2010, <http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf>. See also UNHCR, *International Cooperation to Share Burden and Responsibilities*, June 2011, <http://www.unhcr.org/refworld/docid/4e533bc02.html>.

<sup>20</sup> UNHCR, *Protection Policy Paper: The return of persons found not to be in need of international protection to their countries of origin: UNHCR's role*, November 2010, <http://www.unhcr.org/refworld/docid/4cea23c62.html>.

<sup>21</sup> See Chapter 5 (“Mechanisms for profiling and referral”) and Chapter 6 (“Differentiated processes and procedures”) of the 10-Point Plan Compilation, above n 3.

- 2) UNHCR's engagement will not prejudice pre-existing arrangements that UNHCR may have with [any *Concerned State*] for the purposes of carrying out its regular mandate responsibilities.
- 3) Activities that may be undertaken by UNHCR under this Model Framework, as appropriate and resources permitting, include:
  - supporting reception arrangements;
  - initiating/participating in expert teams for profiling and referral, along with other actors;
  - supporting refugee status determination (RSD);
  - supporting the return of persons without international protection needs by identifying and bringing together relevant partner organizations, in particular the International Organization for Migration (IOM);
  - coordinating resettlement activities.

ANNEX II

**Refugees and Asylum-Seekers in Distress at Sea – how best to respond?  
Expert Meeting in Djibouti, 8 - 10 November 2011**

**AGENDA**

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**DAY 1 – Tuesday, 8 November 2011**

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**09.00 – 13.00 Introduction and Overview (Plenary)**

09:00 – 09:30 *Welcome and Introduction*

Welcome: Mr. Hassan Darar Houffaneh, Minister of Interior, Government of Djibouti

Introduction: Dr. Volker Türk, Director, Division of International Protection

09:30 – 11:00 *Rescue at sea – a longstanding maritime tradition and legal obligation*

Presenters: Professor Tullio Scovazzi, University of Milan: *Rescue at sea and international maritime law*

Ms. Alice Hicuburundi, DOALOS, UN New York: *UNCLOS and rescue at sea*

Professor François Crépeau, Special Rapporteur on the Human Rights of Migrants: *Rescue at sea and international human rights law*

Dr. Neil Falzon, University of Malta: *Rescue at sea and international refugee law*

Chair: Captain Hartmut Hesse, International Maritime Organization (IMO)

11.00 – 11.30 Coffee Break

11:30 – 13:00 *Distress at sea situations involving asylum-seekers and refugees - identifying the challenges and discussing the way forward*

Presenters: Mr. Abdullah Al Qahdi, Yemen Coast Guards: *Challenges from the perspective of Yemen*

Dr. Reuben Brigety, United States: *Recent US Government Experiences in the Gulf of Aden*

Commodore Roderick Bowe, Royal Bahamas Defense Force: *Challenges in the Caribbean*

Ms. Maria Stavropoulou Greece: *Migrant and refugee movements across the Greek seas*

Chair: Professor François Crépeau, Special Rapporteur on the Human Rights of Migrants

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**13.00 – 14.00 Lunch**

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14.00 – 15.00 *Distress at sea situations involving asylum-seekers and refugees - identifying the challenges and discussing the way forward (continued)*

Presenters: Mr. John Murray, International Chamber of Shipping: *The shipping industry's perspective*

Mr. Samuel Kame Domguia, African Union: *The 2050 Africa Integrated Maritime Strategy (2050 AIM-Strategy)*

Captain Hartmut Hesse, IMO: *A draft regional agreement on concerted procedures relating to the disembarkation of persons rescued at sea*

Chair: Dr. Volker Türk, Director, Division of International Protection

15.00 – 15.30 *A draft Model Framework for Cooperation in rescue at sea emergencies involving asylum-seekers and refugees*

Speaker: Ms. Anja Klug, UNHCR

15.30 – 16.00 Coffee Break

### **16.00 – 17.30 Working Groups**

*Participants will be divided into four working groups to critically review the draft Model Framework for Cooperation proposed by UNHCR, on the basis of their own experience. The results of the working groups will be presented to the Plenary.*

*The following questions may be discussed in the working groups:*

- *Do you think the Model Framework would have been helpful for a resolution of situations that you have experienced?*
- *Could the Model Framework be implemented in your region? What regional specificities would need to be taken into account?*
- *Do you have suggestions for improvements to the Model Framework?*

### **17:30 – 18.30 Reports from Working Groups and Conclusion of Day One (Plenary)**

Chair: Dr. Volker Türk, Director, Division of International Protection

### **19.30 Cocktail Reception**

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**DAY 2 – Wednesday, 9 November 2011**

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**7.00 Departure for field missions**

*Participants will be divided into two groups:*

- *Group A will visit the border crossing point and reception centre in Loyada, and the refugee Camp Ali Addeh*
- *Group B will visit the facilities at the sea departure point in Obock*

15.00 Return Group A

18.00 Return Group B

**19.00 – 20.00 Debriefing and drinks - observations during field trips and discussion (Plenary)**

Chair: Ms. Anja Klug, UNHCR

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**DAY 3 – Thursday, 10 November 2011**

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**09.00 – 12.00 Cooperation on Rescue at Sea Emergencies – An Element of a Broader Regional Approach (Plenary)**

09.00 – 09.10 *Introduction*

Dr. Volker Türk, Director, Division of International Protection

09.10 – 09.45 *Comprehensive regional strategies on irregular mixed movements*

Presenters: Mr. Surat Suwannikha, Thailand: *The regional cooperation framework and the Bali process*

Mr. Christopher Horwood, Regional Mixed Migration Secretariat: *Regional cooperation in the Gulf of Aden– follow up to the 2008 Sana'a Conference on refugee protection and international migration*

Chair: Dr. Volker Türk, Director, Division of International Protection

09.45 – 10.45 *Reception arrangements after disembarkation – what support can be provided?*

Presenters: Mr. Michelangelo La Tella, Italy: *Reception arrangements in Italy – challenges and good practices*

Mr. Olivier Dubois, ICRC: *Retrieving and identifying the remains of those who perish at sea*

Ms. Ann Mayman, UNHCR Yemen: *Reception arrangements in Yemen*

Chair: Ambassador Fisseha Yimer, Ethiopia

10.45 - 11.00 Coffee Break

11.00 – 12.00 *Identifying solutions – what support can be provided?*

Presenters: Colonel Samba Fall, CNRRPD, Senegal: *Capacity building for self-reliance and local integration*

Ms. Vijaya Souri, IOM: *IOM and Rescue at Sea*

Mr. Jon Hoisaeter, UNHCR: *Support for Malta under the Eurema project*

Chair: Ms. Irena Vojackova-Sollorano, Director, IOM

**12.00 – 13.00 Conclusions and Recommendations**

Panel: IOM, IMO, Government of Djibouti, Government of the United States

Chair: Dr. Volker Türk, Director, Division of International Protection

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**13.00 – 14.00 Lunch**

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**14.00 End of Expert Meeting**

**Field Trip Itinerary**  
**Wednesday 10 November 2011**

**GROUP A: Loyada/Ali-Addeh trip**

7.00 a.m. – Departure from Djibouti-ville by UNHCR bus.

7.30 a.m – 8.00 a.m. – Loyada border crossing point.

9.30 a.m. – 10.00 a.m. – Meeting with Ali-Sabieh Prefet (courtesy).

10.45 a.m. – 11.00 a.m. – Visit clinic with AMDA (medical IP).

11.00 a.m. – 11.15 a.m. – Visit primary school with LWF (Education IP).

11.15 a.m. – 11.30 a.m. – Visit with APEF (Community Services IP).

11.30 a.m. – 12.00 p.m. – Visit transit area. Meet new arrivals from Somalia.

13.00 p.m. – Lunch in Ali-Sabieh (La Palmerie).

14.00 p.m. – Return to Djibouti-ville.

**GROUP B: Obock trip**

7.00 a.m. - Departure from Djibouti-ville to Obock.

11.00 a.m. – 11.30 a.m. – Meeting with Obock Prefet (courtesy).

11.30 a.m. -12.00 p.m. – Obock Main Hospital.

12.00 p.m. – 13.00 p.m. - Migration Response Centre (MRC).

14.00 p.m. – Lunch in Tadjoura.

18.00 p.m. – Arrival Djibouti-ville.

### ANNEX III

#### **Refugees and Asylum-Seekers in Distress at Sea – how best to respond? Expert Meeting in Djibouti, 8 - 10 November 2011**

##### **List of Participants\***

1. Ms. Mylene Ahounou, UNHCR Djibouti
2. Mr. Michel Babkine, Secrétariat général de la mer, France
3. Mr. Richard Ares Baumgartner, External Relations, FRONTEX
4. Commodore Roderick Bowe, Royal Bahamas Defence Force, Bahamas
5. Dr. Reuben Brigety, Bureau of Population, Refugees and Migration, United States
6. Dr. Amina Said Chireh, University of Djibouti
7. Rear Admiral J S K Colombage, Sri Lanka Navy, Sri Lanka
8. Professor François Crépeau, UN Special Rapporteur on the Human Rights of Migrants
9. Mr. Omar Dhadho, Ministry of State for Immigration and Registration of Persons (MIRP), Kenya
10. Mr. Samuel Kame Domguia, African Union
11. Mr. Olivier Dubois, International Committee of the Red Cross (ICRC)
12. Colonel Samba Fall, Comité National Chargé de la Gestion de la situation des Réfugiés, Rapatriés et Personnes Déplacées (CNRRPD), Sénégal
13. Dr. Neil Falzon, University of Malta
14. Captain Hartmut Hesse, International Maritime Organisation (IMO)
15. Ms. Alice Hicuburundi, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations
16. Mr. Jon Høisaeter, UNHCR Malta
17. Mr. Christopher Horwood, Regional Mixed Migration Secretariat (RMMS)
18. Ms. Claire Inder, UNHCR Geneva
19. Mr. Mboje Kanga, Ministry of Home Affairs, Tanzania
20. Ms. Anja Klug, UNHCR Geneva

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\* Institutional affiliation given for identification purposes only.

21. Mr. John Matthews, Permanent Mission of Australia to the United Nations Office at Geneva, Australia
22. Ms. Ann Mayman, UNHCR Yemen
23. Lt Mohamed Adaweh Mohamed, Ministère de la Défense, Djibouti
24. Mr. John Murray, International Chamber of Shipping
25. Mr. Ashraf El Nour, International Organisation for Migration (IOM Kenya)
26. Ms. Marie-Antoinette Okimba, UNHCR Djibouti
27. Mr. Andrew Painter, UNHCR Geneva
28. Mr. Abdullah Al Qahdi, Yemen Coast Guard Authority, Yemen
29. Mr. Ibrahim Soubaneh Rayaleh, Ministère de l'Intérieur, Djibouti
30. Commandant Jawhar Sahmim, Ministry of Interior, Tunisia
31. Professor Tullio Scovazzi, Università degli Studi di Milano-Bicocca
32. Ms. Irena Vojackova-Sollorano, International Organisation for Migration (IOM Geneva)
33. Ms. Vijaya Souri, International Organisation for Migration (IOM Geneva)
34. Ms. Maria Stavropoulou, Ministry of Citizen Protection, Greece
35. Mr. Surat Suwannikkha, Ministry of Foreign Affairs, Thailand
36. Mr. Michelangelo La Tella, Border Police Department, Italy
37. Dr. Volker Turk, UNHCR Geneva
38. Ambassador Fisseha Yimer, Special Advisor to the Minister, Ministry of Foreign Affairs, Ethiopia
39. Mr. Elmi Isman Yonis, Ministère de l'Intérieur, Djibouti
40. Ms. Jessica Warden Yutacom, Bureau of Population, Refugees and Migration, United States