

REFUGEES

NUMBER 148 • ISSUE 4 • 2007



Refugee or Migrant?

WHY IT MATTERS



REFUGEE or Migrant?

IN THE CASE OF THE MAN ON THE COVER OF THIS magazine, at the moment when the picture was taken, the question was irrelevant. Whoever he is, he deserved to be saved – and that is precisely what the coastguards were trying to do after a boat of would-be migrants overturned off the coast of southern Spain, drowning several of its occupants including at least two pregnant women.

However, once he was safely on shore, the question of whether he was a refugee or a migrant may well have come immediately to the fore.

As a refugee, fleeing persecution or armed conflict, he would have been entitled to “international protection” in an asylum country – in this case most probably Spain. On the other hand, if he was someone moving for financial reasons – to earn a better living than he could at home – then he would be classified as an economic migrant, and would quite likely be sent back to his home country.

This is a judgement that many countries around the world make in varying numbers of individual cases every day.

Sometimes the decision is relatively straightforward, and sometimes it is an extremely difficult call to make. There are countries that produce lots of economic migrants, and very few refugees. But they do produce some, and it is the job of asylum adjudicators to spot them.

There are asylum seekers without documents who are refugees, and there are asylum seekers with valid travel documents who are most definitely not. There are people who articulate a false story well, and people who articulate a true story badly – or not at all (because it is too painful and too personal).

And there is a grey zone: people who are leaving a country where persecution and discrimination are unquestionably occurring, and the economy is also dire. Are people leaving such countries for refugee reasons, or economic ones – or do both sets of reasons fuse into one that is, in many cases, almost impossible to unravel?

And what about the people who leave their country for refugee reasons, and then keep on moving for economic ones (so-called ‘secondary movers’)? Whether or not their onward

movement is justified may depend on what lies between their country of origin and the country where they eventually make their asylum claim.

There is, of course, nothing new about people moving. Migrations of people for both refugee and non-refugee reasons have been taking place since before the beginning of recorded time. And if we were to trace our ancestors back far enough, all of us would find that we originated somewhere else.

Nor should voluntary migration – economic or otherwise – necessarily be viewed as negative (even though it is usually seen that way). Migrants often fill the gaps in the workforce, rather than take other workers’ jobs – but they still make the perfect scapegoat for a society’s ills, and their contribution is often hidden or ignored.

The linked issues of migration and asylum are probably more widely debated (and confused) today than ever before: perhaps because the number of people on the move has increased; perhaps because the planet – or certain countries on it – feel overcrowded; perhaps for a host of other reasons, both real and imagined.

And, as the 21st century progresses, it is likely to become even more complicated, with more people forced – one way or another (war, economics, climate change) – to pull up their roots and move somewhere else.

Over 200 million people are believed to be living outside their original homeland already. Relatively few of them are refugees. But, yes – taking the trouble to find out which ones are does still matter.

To undermine the system that identifies a refugee, and prevents him or her from being sent home, would in some cases be like the coastguards in the cover photo cutting the rope instead of hauling it in. It should be unthinkable – and it is unthinkable, when one looks at asylum seekers and refugees as individual human beings.

But when they are reduced to statistics, and described in pejorative terms such as ‘floods,’ ‘waves,’ ‘unstoppable tides’ (and other watery metaphors that bear a certain tragic irony given the number of would-be refugees and migrants who drown), they are all too easy to cast aside and ignore.



Too soon to tell: a migrant or refugee picked up in the Mediterranean.

© REUTERS / A. MERES / ESP/2015

Editor

Rupert Colville

French Editor

Cécile Pouilly

Contributors

Angel Suárez, Anja Klug, Francesca Fontanini, Giulia Laganà, Ligimat Perez, Nazli Zaki and UNHCR staff worldwide.

Editorial Assistant

Manuela Raffoni

Photo Department

Suzy Hopper, Anne Kellner

Design

Vincent Winter Associés, Paris

Production

Françoise Jaccoud

Distribution

John O'Connor, Frédéric Tissot

Photo Engraving

Aloha Scan, Geneva

Maps

UNHCR Mapping Unit

Historical documents

UNHCR archives

REFUGEES is published by the Media Relations and Public Information Service of the United Nations High Commissioner for Refugees. The opinions expressed by contributors are not necessarily those of UNHCR. The designations and maps used do not imply the expression of any opinion or recognition on the part of UNHCR concerning the legal status of a territory or of its authorities.

REFUGEES reserves the right to edit all articles before publication. Articles and photos not covered by copyright © may be reprinted without prior permission. Please credit UNHCR and the photographer. Requests for copyrighted photos should be directed to the agency credited.

English and French editions printed in Italy by AMILCARE PIZZI S.p.A., Milan. Circulation: 121,000 in Arabic, English, French, Italian and Spanish.

ISSN 0252-791 X

Front cover: Coastguards rescue a migrant or refugee off the coast of southern Spain.

©REUTERS / A. MERES / ESP•2002

Back cover: Some migrants and refugees are killed, or badly injured, attempting to cross borders.

©SERGIO CARO / MAR•2005

UNHCR

P.O. Box 2500
1211 Geneva 2, Switzerland
www.unhcr.org

REFUGEES

N ° 1 4 8 • 2 0 0 7



UNHCR/A. WEBSTER/SOM•2006

4 Migrants and refugees take the same routes, face the same hazards.



© U.S. COASTGUARD/USA•1991/1992

22 Protecting refugees in the Caribbean is a challenge.



UNHCR/B. SZANDELSKY/HUN•2000

25 Migration controls make it hard for refugees to find safety.

4 COVER STORY

States are having increasing difficulty distinguishing between refugees and migrants.

12 WORSE THAN THE SHARKS

The smugglers operating between Somalia and Yemen are among the most vicious in the world.

15 MALAWI'S DILEMMA

Many refugees and migrants only stay for a short while before moving on to South Africa.

16 THE DEEP BLUE SEA

Anti-immigration policies, reckless smugglers and cold commercial calculations may be endangering lives at sea.

22 CARIBBEAN CONUNDRUMS

Every year, thousands from within the region – and beyond – try to reach the US via the Caribbean.

23 MIGRATION TO THE NORTH

The route via Mexico to the US is fraught with risk for refugees and migrants alike.

25 CONTROL VS. PROTECTION

Within the EU, there has been a marked shift of focus from protecting refugees to halting irregular migration.

29 DIVERTED TO NAURU

How different treatment, based on the way people arrive, became a central feature of Australia's asylum policy.

31 IS TOLERATION ENOUGH?

Relatively few Asian countries have established formal asylum systems.



Vital DIST

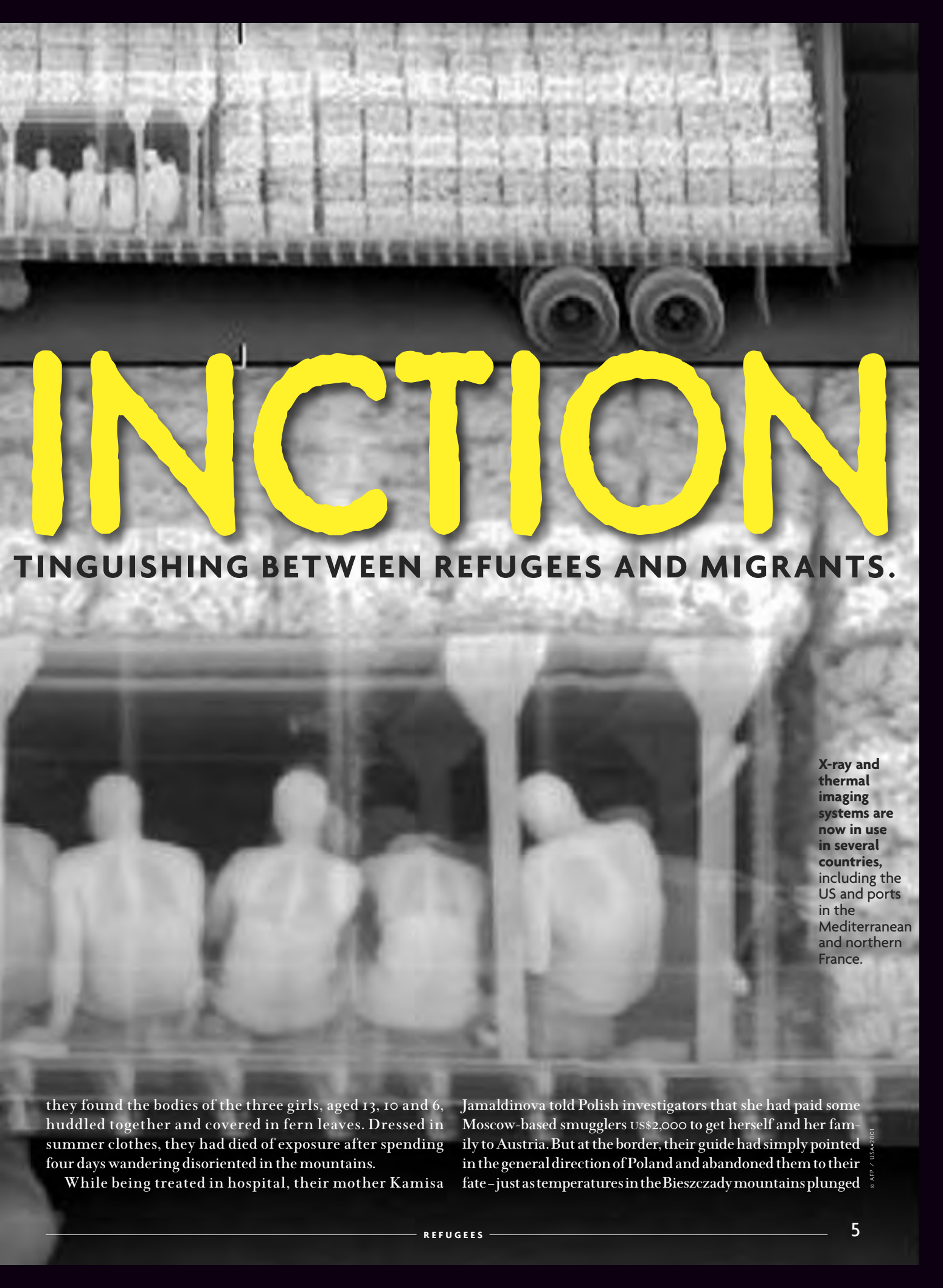
STATES ARE HAVING INCREASING DIFFICULTY DIS

BY JEFF CRISP



On 13 September, Polish border guards patrolling the mountainous border area near the border with Ukraine came upon

a distraught and emaciated Chechen woman carrying a two-year-old baby boy. She begged the border guards to come with her to find her three daughters, whom she had left behind as she went to look for help. A few hours later, around midnight,



INCTION

TINGUISHING BETWEEN REFUGEES AND MIGRANTS.

X-ray and thermal imaging systems are now in use in several countries, including the US and ports in the Mediterranean and northern France.

they found the bodies of the three girls, aged 13, 10 and 6, huddled together and covered in fern leaves. Dressed in summer clothes, they had died of exposure after spending four days wandering disoriented in the mountains.

While being treated in hospital, their mother Kamisa

Jamaldinova told Polish investigators that she had paid some Moscow-based smugglers US\$2,000 to get herself and her family to Austria. But at the border, their guide had simply pointed in the general direction of Poland and abandoned them to their fate—just as temperatures in the Bieszczady mountains plunged

© AFP / USA-001

How the TIDE has



© A. SUÁREZ / ESP-1950

Irregular migrants from the Canary Islands, during their epic 1950 voyage to Venezuela on board the *Telémaco*.

They had a dream – a dream of escaping misery, or political oppression, and finding a new El Dorado on the other side of the world. There were no Africans, Arabs, Asians or Latin Americans among them – just desperate Europeans, impoverished by the economic slump that followed the end of the 1936-39 Spanish civil war.

“If you had breakfast, you had no supper,” remembered José Abreu, “and the only exit [we] could think of was to emigrate.” Abreu, who died in 2006, and his brother Sebastian were interviewed by the makers of a Spanish documentary* half a century after they and 169 other people set sail from the Canary Islands on the *Telémaco*, an old boat designed to carry around 20 passengers.

Their journey across the Atlantic began on 9 August 1950, and lasted a seemingly interminable 36 days.

Between 1946 and 1958, a total of some 180,000 Spaniards emigrated, mainly from Galicia and the Canary Islands, to Venezuela, a country the islanders sometimes refer to as the “The Eighth Island” (*La Octava Isla*), because of the large community of their compatriots who still live there. Venezuela was not the only South American destination: in 1950 alone, some 60,000 Spaniards set sail for Argentina, while thousands more went to other countries in the region.

Fernando Medina Valladolid, speaking to UNHCR at his home in Venezuela, described the departure of the boats, dubbed *buques fantasmas* (ghost ships) by the islanders because they were leaving on a one-way trip, never to return: “People hugged and cried... some jumped into the sea to swim after the boat and then swam back.” Researchers have catalogued at least 130 of these clandestine

to around zero degrees Celsius.

Throughout the world, people are embarking upon long, hazardous and clandestine journeys of the type undertaken by the Jamaldinova family. In Asia, for example, members of the Rohingya community are trying to make their way from Myanmar to Thailand and then to Malaysia and Indonesia. People from Central American countries are moving north, initially to Mexico and subsequently – if they can – to the United States and Canada.

Somalis and Ethiopians are crossing the Gulf of Aden to Yemen and the Gulf states, while people from Central and Eastern Africa are making their way to South Africa.

In recent years there has also been a growing movement of people from, or via, West African countries to Spain’s southern outpost, the Canary Islands; and via North Africa and the Mediterranean to the European Union. Others enter the EU by land from the south-east, making their way through countries such as Turkey and the Balkan states.

MIXED MOTIVES

AS THESE EXAMPLES SUGGEST, THE PHENOMENON of ‘irregular migration,’ in which people move from one country and continent to another without passports and visas, is growing in scale and scope. What forces are driving this trend? Who are the people moving? And how are they affected by their journey?

People move for a variety of reasons. In some cases, they are fleeing persecution, human rights violations and armed conflict in their home country, and can therefore be considered as refugees under international law.

More often, they are migrants trying to escape the hardships and uncertainties of life in developing countries with weak economies, high levels of unemployment, mounting competition for scarce resources, and poor standards of governance.

Refugees and migrants frequently move alongside each other, using the same routes and means of transport, and employing the services of the same human smugglers as they try to reach the same countries of

TURNED

HALF A CENTURY AGO EUROPEANS WERE LEAVING ON BOATS FOR LATIN AMERICA

boats that sailed from the Canaries between 1948 and 1955.

Valladolid was eight years old, when he left with his mother and his nine brothers and sisters: "When I realized the boat was leaving the shore and my grandfather – who had been like a dad to me – was not coming with us, something hit me."

Just like today's clandestine travellers coming to the Canaries from West Africa, the islanders often had to save up for months in order to pay for themselves or a relative to travel. "People in the Canary Islands used to build big wooden boats; they worked day and night in a shed for three or four months to finish a boat," said Valladolid.

The Atlantic crossing was notoriously difficult. Carlos Medina was another passenger on the *Telémaco*: "At first, we had a good time, we were playing guitar... going for

a swim. But, after 10 days, the fuel ran out and bad things started to happen."

The *Telémaco* had hardly any navigation instruments and was steered by a crew who had never crossed the Atlantic. It was something of a miracle that nobody died during the crossing, after a big storm with 15-metre waves left the boat drifting, badly damaged, with its food supplies spoiled.

Many gave up hope, especially after a Spanish-flagged ship refused to take them on board. Eventually they were rescued by men with "a darker complexion" than they had ever seen before. They arrived in Martinique, where they were well looked after – something that has left a lasting impression on 90-year-old Sebastian Abreu: "They offered us everything they had. They treated us very nicely... those coloured people – much better than the whites."

Abreu was the cook on the *Telémaco*, and when the ship finally arrived in Venezuela, he and the rest of the crew were jailed for immigration offences, while the other passengers were taken to an island normally used to quarantine cattle. Later, they were moved to a reception centre on the mainland where they stayed until they received proper documentation. Many of them subsequently worked on farms cutting sugar cane for very low wages.

When Abreu (who later returned to the Canary Islands) witnesses the current odyssey of would-be immigrants from Africa to the Canaries, he finds echoes of his own experience in theirs, and feels empathy towards people who share the simple dream he once had: "They aren't coming to ask for anything," he said, "except a better life."

Cécile Pouilly

* An excerpt of the Spanish documentary on the emigration of Canary Islanders to Latin America "El ruido del mar" can be viewed at <http://elruidodelmar.blogspot.com>



PRINCIPAL 'MIXED MIGRATION' ROUTES



© SERGIO CARO / MARX2005

Would-be migrants await a decision on their future after being rounded up in the Sahara Desert.

destination. These have become known as 'mixed migratory movements.'

COMPLEX SOCIO-ECONOMIC FACTORS

SUCH MOVEMENTS GENERALLY – BUT NOT ALWAYS – involve people travelling from poorer and less stable states to more prosperous and secure countries. However (contrary to popular opinion in the industrialized states), mixed movements are a global phenomenon, affecting destination countries in both the South and the North. For example, while a small number of West Africans head for Europe, a far greater number migrate within their own region, taking advantage of the ECOWAS treaty, which allows the free movement of people between West African states.

There is a broad consensus that mixed migrations are likely to grow. Migration experts have pointed out that the world is characterized by increasing disparities in terms of development and democratic process. Populations are shrinking and getting older in some regions, whereas others have young, growing populations with little or no employment prospects. Improved communications and transport links are encouraging more people to look for a life beyond the confines of their own community, country and continent.

THE POOREST STAY PUT

THE MOST DEPRIVED AND DESTITUTE ARE NOT usually to be found in mixed movements. Travelling long distances in an irregular manner can be an ex-

pensive business, especially when (as is often the case) people have to purchase counterfeit travel documents and employ smugglers in order to find a way round the increasingly stringent border controls established by states.

Sometimes families and communities sell their assets and club together so that one or two individuals can be sent to try their luck abroad. In other situations, people – especially women and children – are moved by professional traffickers from one country to another for the purpose of sexual and other forms of exploitation.

The people involved in mixed movements – whether refugees or migrants, whether trafficked or not – experience many of the same hazards and human rights violations in the course of their journey. These include detention and imprisonment in unacceptable conditions, physical abuse and racial harassment, theft, extortion and destitution.

Those who travel by boat are at risk of interception, abandonment and drowning at sea, while those who move by land may be returned or transferred to remote and dangerous locations. People on the move who lose or destroy their identity documents may be unable to establish their nationality, become effectively stateless and find it very difficult to return home.

While the issue of mixed migratory movements raises a wide range of human rights and humanitarian concerns, the UN refugee agency's interest in the issue is quite specific.

MIXED MOVEMENTS ARE A GLOBAL PHENOMENON, AFFECTING COUNTRIES IN BOTH THE SOUTH AND THE NORTH.

PROTECTING THE REFUGEES

“MANY STATES HAVE INTRODUCED MEASURES that are intended to prevent certain groups of foreign nationals from arriving and remaining on their territory,” said UN Assistant High Commissioner for Refugees Erika Feller. “These measures are often indiscriminate in their application and make it very difficult, if not impossible, for refugees to enter a country where they could find the safety, security and support which they need, and to which they are entitled under international law.”

Feller said UNHCR is particularly concerned to avert situations where refugees are apprehended during their journey, given no opportunity to claim asylum, deprived of legal advice and social welfare services, and, “most seriously, are returned to a country where they may be at risk. For a refugee, being forced to go home may quite literally be a matter of life and death.”

Nobody argues that there are easy answers to these issues. States have a sovereign right to control their borders. They are understandably concerned about

the arrival of people whose journeys are organized by smuggling networks. And they find it difficult to ignore the concerns of their own citizens, some of whom (rightly or wrongly) fear the arrival of migrants and refugees has negative consequences for their society and economy.

Taking full account of such concerns, Feller said UNHCR is working with governments and other organizations in an attempt to ensure the drive to impose stricter forms of migration management does not compromise the right of asylum (see box below).

BROADENING HORIZONS

ONE PARTICULARLY IMPORTANT ARENA IS TO BE found in so-called ‘transit countries,’ where in the past refugees had little or no prospect of gaining asylum, for the simple reason that the country in question had an inadequate domestic asylum system – or no real asylum system at all.

UNHCR is currently working both with ECOWAS and with individual West African countries in a joint effort to make the region safer for refugees, and

The TEN POINT plan

The UN refugee agency has drawn up a ‘10 Point Plan of Action’ that aims to alleviate some of the protection difficulties arising from the intertwined migration and refugee movements occurring around the world. The plan provides a framework that states, UNHCR and other organizations involved in asylum and migration issues can use to develop comprehensive strategies in mixed migration situations.

“The 10 Point Plan is not a blueprint that requires identical or similar action to be taken in all circumstances,” explains UNHCR’s Assistant High Commissioner for Refugees Erika Feller. “Instead, it identifies main issues and objectives around which a comprehensive refugee protection strategy can be formulated, while recognizing that the activities of UNHCR and other actors will have to be tailored to suit specific

situations. The mixed movements are so complex and fluid, that any system designed to cope with them has to be extremely flexible.”

In addition to addressing traditional concerns, such as reception conditions, the plan contains some novel ideas. These include a ‘profiling and referral mechanism,’ which would provide an early understanding of the background and motivation underlying a new arrival’s journey, and help channel individual cases into the most appropriate response mechanism. “By this, we mean some sort of official refugee protection status for those who need it,” said Feller, “but also repatriation, or possibly some legal migration alternative, for those who don’t.”

The plan also flags the difficult issue of ‘secondary movements’ (when refugees

keep on moving from country to country). And it proposes establishing a flexible asylum procedure that could be used to assess cases with varying levels of complexity. “In some situations,” said Feller, “the procedure could be streamlined and quick. But in others, we would have to proceed with caution so as not to make dangerous mistakes. The bottom line remains the same: people with a well-founded fear of persecution, and those fleeing war or widespread violence, should be able to find asylum in another country. But the ways of ensuring we identify all those people could be woven together into a more coherent system. That would be to everyone’s benefit, not least the refugees themselves.”

For a detailed analysis of the ‘10 Point Plan,’ go to www.unhcr.org



© A. MERES / ESP-2007

thereby reduce the number of people who feel they have to continue moving north in search of safety and a reasonably decent life. Such efforts take time to bear fruit, but most countries in West Africa have now not only signed up to international laws such as the 1951 UN Refugee Convention and the 1969 OAU Convention, but have also enacted domestic refugee legislation, adopted training programmes for officials and in some cases are supporting local

integration for refugees.

There has also been progress in some North African countries which sit astride the mixed migration routes from the Middle East and Sub-Saharan Africa to Europe. In February 2007, for example, UNHCR signed an agreement with a local NGO partner in Libya, called the International Organization for Peace, Care and Relief, which has led to a breakthrough in that country in a number of

THERE HAS BEEN **PROGRESS** IN NORTH AFRICAN COUNTRIES WHICH SIT ASTRIDE THE ROUTES FROM THE MIDDLE EAST AND **SUB-SAHARAN AFRICA** TO EUROPE.



A group of people arriving on a European beach, under close surveillance.

One WOMAN'S Ordeal

The group of 58 migrants had just been brought into the port on the Italian island of Lampedusa on a coastguard patrol boat. After a five-day trip, during which two women died, they were exhausted but relieved to have been rescued. Many of them seemed happy, even eager, to describe their awful journey.

However, a young Eritrean woman called Eden (not her real name) stood silently on the sidelines, a sad, distant look in her eyes.

On the second day, Eden began, bit by bit, to unburden herself to a UNHCR official in the island's reception centre. She had left Eritrea because she "didn't want to be a soldier for the rest of [her] life" – in other words, she had deserted

from the Eritrean army. She headed north, eventually arriving in a North African country, where she was arrested.

"Words cannot explain what our life was like in prison," Eden said of her ten months in detention for entering the country without documents or a visa. "They kept us locked up 24 hours a day. There were 70 women in a 30-square metre room. Food was given to us once a day – plain rice and salty drinking water – and sometimes the guards only threw us a piece of bread straight from the door."

Tears began to stream down her face. "I could cope with this treatment, but the real nightmare began once the sun had set," she said. "We were under constant threat of being singled out

and raped by the guards... I hated myself for having to live such a life and for not being able to find a solution."

The day Eden was released from jail was not the day she became free. "A group of us was handed over to a farm owner," she said. "We were sold for approximately 50 dollars each, like animals." They were forced to work on the farm from dawn to dusk, without any pay. "He could do whatever he wanted to us, especially as far as the women were concerned," she said in her low, flat voice. They were finally freed after their families sent money to the land owner.

"I'm already dead," she said, "and nobody will give my life back to me."

Laura Boldrini

Worse than the

BY ASTRID VAN GENDEREN STORT

Sitting in front of her empty tent in Yemen's Kharaz refugee camp, Aysha is trying to move on with life. But holding two young children in her arm, the thought of her three-year-old son keeps haunting her.

"He was sick and cried a lot," she said, ten days after crossing the Gulf of Aden to Yemen. "The smugglers did not like it. They grabbed him – I begged them not to. Then they threw him overboard."

"I saw him disappear into the deep dark water."

Aysha is one of tens of thousands of Somalis and Ethiopians who every year risk their lives crossing the Gulf of Aden, looking for safety or a better life. "When I felt we were no longer secure in Somalia, when gunmen attacked all night, I decided to leave," she explains.

The family travelled from Mogadishu to Bossaso in Puntland, northern Somalia, where they spent seven days with relatives, followed by three days with the smugglers, before

setting off from a beach just before dawn. There were 115 other people crammed into the same flimsy boat.

"I did not know what kind of people the smugglers were," she said. "But now I know. They are not human. They are animals."

The gangs operating in the anarchic stretch of sea separating Somalia from Yemen are notoriously and consistently brutal. During the first 11 months of 2007, more than 26,000 people – mostly Somalis and Ethiopians – each paid US\$ 50-150 to make the crossing. During that period, at least 1,030 people died or were reported missing – almost double the 2006 total.

Many died atrocious deaths: stabbed and beaten by the smugglers; drowned after being dumped too far from the Yemen coast; or asphyxiated when too many people were crammed in a boat's hold. Some were 'luckier:' they were only raped, robbed, beaten or scalded by the engine. But they made it.

In 2007, two-thirds of those who reached Yemen alive sought assistance, and several thousand elected to live in the UNHCR-run refugee camp near Aden. Others attempted to

make a meagre living on their own in Yemen's cities or as shepherds up in the hills. And some moved on to the Gulf States to work as maids, car cleaners – anything to earn a living and send some money back home. When their residence permits expire, some attempt to move elsewhere in the Middle East or head north to Europe.

The movement of people within the Horn of Africa – a region with more than its fair share of poverty, famine and political instability – is scarcely a new phenomenon. However, in recent decades, Yemen has become an ever more important link between the Horn and the oil-rich Gulf countries.

The vast majority of those passing through are Somalis, who have been fleeing for much of the past 19 years as a result of alternating spells of extreme instability and outright conflict, including the most recent round of fighting between Somali insurgents and the Transitional Federal Government (TFG) backed by Ethiopian troops.

Yemen, which is one of world's poorest nations, is the only country in the Arabian Peninsula that has acceded to the 1951 UN



Exhausted survivors waiting for help on a Yemen beach after completing the dangerous crossing from Somalia.

UNHCR / J. BJÖRGVINSÓN / YEM+2007

SHARKS

A map of the Horn of Africa, and the route to Yemen ('Arabia'), drawn on the wall of an old fort near the Kenya-Somalia border.

Refugee Convention. For years it has kept its doors open and offered prima facie refugee status to all Somalis who make it across the Gulf of Aden (its generosity partly stemming from the fact that on some occasions in the past it was Somalia that provided a haven for Yemenis).

At the end of 2006, there were 95,000 refugees living in Yemen, 95 percent of whom were Somalis (other groups, such as Ethiopians, do not get automatic refugee status), and the numbers are rising – despite efforts on both sides of the Gulf of Aden to warn people of the dangers involved in dealing with smugglers.

Under increasing strain, Yemen has called upon the international community for more support in dealing with the constant mixed flow of migrants and refugees. As a result, over the past year, UNHCR and its partners have stepped up work in Yemen under a US\$7 million operation that includes additional staff, increased field presence, more assistance, provision of additional shelter for refugees and training programmes for coastguards and other officials.



© A. FAZEEN / KEN2007

On the Somalia side, information and assistance projects have been launched in an attempt to discourage people from placing their lives in the hands of the smugglers unless they absolutely have to.

But until Somalia finds some sort of lasting peace and economic stability,

and until root causes of poverty in the region are addressed properly, desperate citizens will most likely continue to climb into the boats, no matter what risk they face.

As Aysha put it: "I had to go. I lost my child in the sea. But what choice did I have?"

THE GANGS OPERATING IN THE **ANARCHIC** STRETCH OF SEA SEPARATING SOMALIA FROM YEMEN ARE **NOTORIOUSLY AND CONSISTENTLY BRUTAL.**

areas, including access, registration and assistance to asylum seekers in detention centres, and legal and practical help with voluntary repatriation. Libya has also been taking a more active role in helping locate boats known to be in trouble in the Mediterranean.

UNHCR's presence is also now on firmer ground in Morocco, after the signing of a formal cooperation agreement with the government in July 2007, which should greatly improve its operational capacity, and its ability to work alongside other agencies involved in asylum and migration issues there. Further west, in Mauritania, national asylum legislation has been in force since 2005, and the necessary structures to make it function are being established.

OFFERING ALTERNATIVES

THE TASK OF PROTECTING REFUGEES COULD BE made easier by initiatives that reduce the number of people who move in an irregular manner and submit unfounded asylum applications because they have no other legal means to enter and reside in another country. Prospective migrants need to receive better information about the consequences of irregular migration as well as about new opportunities for them to move in a safe and legal manner, such as expanded family reunion and labour migration programmes.

A final issue that must be tackled concerns the limited capacity (and in some cases the unwillingness) of some states to address the issues of mixed migration

NEW **INITIATIVES** ARE NEEDED TO MAKE IT POSSIBLE FOR PEOPLE TO MOVE IN A **SAFE AND LEGAL** MANNER.

and refugee protection in an effective manner in regions of origin, transit and final destination.

On the one hand, countries of transit and desti-



A boy holds nougat given to him by Turkish gendarmes guarding a group caught heading for Greece.

nation need encouragement to develop the necessary policies, practices and institutions to admit asylum seekers to their territory, assess their claims and provide solutions for those who qualify for refugee status.

On the other hand, action is needed to provide people like Kamisa Jamaldinova and her four children with the opportunity to live a peaceful and prosperous life in their homeland, thereby averting the need for them to embark on difficult, dangerous and sometimes deadly journeys to countries which seem to offer a brighter future.

As the Global Commission on International Migration has stated, “women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin, and hence migrate out of choice, rather than necessity.” ■

Planes, **TRUCKS** and trains

Since the mid 1980s, governments have been attempting to clamp down on all modes of travel, by introducing punitive fines against airlines or transport companies that bring in “irregular” migrants. They are also sometimes made to pay the costs of detaining such people, and of returning them to their home countries.

As a result, airline check-in staff and cabin crews have become quasi-immigration officials, and truck drivers have to inspect their own vehicles as rigorously as if they were border police. But, as the International Transport Workers’ Federation has pointed out, “transport workers are not trained for immigration work, and should not be expected to take on the responsibility of policing borders.”

However, it is what happens next that is of most concern to refugee advocates.

Many industrialized states have introduced special accelerated border procedures to decide on an asylum request before a person is allowed to formally enter the country. This can be especially dangerous in airports where, if there are no proper safeguards, a refugee may very easily be bundled on to the next plane home, before anyone is even aware of what is going on.

Lack of access to proper legal advice is another common problem, along with insufficient time for the preparation of the asylum application, and restricted appeal rights. Decisions on asylum claims are also sometimes not taken by the proper authorities. Detention-like conditions at the airport (where some people can end up living for months – or even, in the occasional case, for years) are also problematic; and sometimes not

enough attention is paid to the specific needs of unaccompanied children and other vulnerable people.

Some countries, however, have adopted specific safeguards in their airport procedures. In Austria, for example, everyone who wishes to claim asylum at the airport has access to legal counselling. The more complex cases are allowed entry into the country and channelled into the regular asylum procedure. And the files of the small minority of cases who are placed into the accelerated airport procedure are automatically sent for review to UNHCR if the case is found to be “manifestly unfounded.” If UNHCR disagrees with this decision, the case will be looked at again in the regular procedure and the person is allowed to enter the country in the meantime.

Rupert Colville

Malawi's DILEMMA

THE DIFFICULTIES FACING A TRANSIT COUNTRY

BY JACK REDDEN

WHEN THE UN REFUGEE agency team made final preparations on 24 October to move the last residents of Luwani Refugee Camp north to an alternative camp near the capital of Malawi, they counted 127 Somalis and Ethiopians in the reception shelter among the refugees and asylum seekers who would be boarding trucks the next morning.

But by the time the 32-vehicle UNHCR convoy pulled out just after dawn, all of the 127 young men had vanished. It was no surprise. The government of Malawi had ordered the camp closed after repeatedly complaining that asylum seekers from the Horn of Africa were just using Luwani as a rest stop en route to South Africa.

"It's a very difficult situation," said Kelvin Sentala, the UNHCR protection field assistant in charge of the convoy. "We have refugees and economic migrants coming here – but very often both groups prefer to keep on moving."

LOOKING FURTHER SOUTH

MANY COUNTRIES AROUND THE world face a similar dilemma, but it is especially acute in Malawi. There are alternatives routes south, such as rough tracks through the Mozambique bush, but Malawi has the best road toward the ultimate goal of so many travellers: the continent's economic powerhouse, South Africa. As a result, people from many troubled countries, like the Democratic Republic of Congo and Sudan, are travelling this way.

Their stay in Malawi is usually brief, but long enough to receive food rations and items like blankets, before continuing the journey. Because so few of the fresh Ethiopian and Somali arrivals stay, UNHCR

in the past two years has limited the chance to sell rations by providing smaller quantities weekly, rather than a larger monthly ration.

Within a month, most Somalis and Ethiopians have headed south over the border into Mozambique. Some then move quickly west into Zimbabwe and down into South Africa. An alternative route heads further down Mozambique and straight into South Africa from there.

"We do suspect there's a network that



starts in Ethiopia and Somalia and extends all the way to South Africa. They appear to have people in every country along the way," said Sarah Thokozani Nayeja, senior legal advisor in Malawi's Office of the Commission for Refugees. "It's difficult. If nothing changes in Ethiopia and Somalia, nothing will change. The cause continues to be there – that is the real problem."

South Africa is not just a magnet because of its economy. Unlike many other countries that straddle the routes from the north, the South African government does not insist refugees live in camps. In addition, it gives refugees and asylum seekers freedom to work and live where they want.

"In many respects," said UNHCR's Regional Representative Sanda Kimbimbi, "South Africa is a model asylum country."

THE REFUGEE ELEMENT

THE DESIRE TO EARN A DECENT LIVING applies to refugees as much as economic migrants, and the fact that so many Somalis and Ethiopians do not remain in Malawi, or other transit countries, should not be seen in any way as undermining the validity of their claim to refugee status. Many of them start moving for refugee reasons – even if their onward journey is motivated by economic factors. Somalis, in particular, have no shortage of genuine horror stories from the years of conflict in a land with no functioning central government.

"While in Kismayo [Somalia] for a short period looking for work, his family was killed by a rival family clan," says one recent UNHCR report of an interview with a young Somali asylum seeker. "His father was tortured and killed, while his mother was raped and then burned alive. Two of his siblings were also killed and one brother was very badly tortured. He says when he arrived home, the entire village had been ransacked and all their possessions were destroyed."

According to the government of Malawi, during the first nine months of 2007 more than 3,000 asylum seekers crossed its northern border with Tanzania. Almost all were from Ethiopia or Somalia, and by November most had already moved on south.

The continual flow of refugees and migrants to South Africa, where it converges with the hundreds of thousands of Zimbabweans moving back and forth each year, is a challenge to UNHCR as well as to the states in the region. There is a danger that the sheer volume of claims is clogging asylum procedures in South Africa, where in the autumn of 2007 a backlog of more than 134,000 asylum cases from scores of different countries were awaiting decisions. ■

BY WILLIAM SPINDLER

ONLY A RELATIVELY SMALL number of the world's migrants travel by sea. Yet the most familiar migration image is probably that of the men, women and children who, crammed on small, barely seaworthy boats, brave the seas to escape poverty, conflict or persecution.

Desta is one of them. After a harrowing trip across the Sahara desert, this 29-year old Ethiopian woman's experiences crossing the Mediterranean were typical of thousands of others attempting to enter Europe each year: "We were 60 people, including 11 women and five kids. The boat was too small. We couldn't move. There was no food, no water... We had a Thuraya [satellite phone], so we called for help – but we didn't know where we were. On the third day, two women died. People cried and panicked. We thought we were all going to die. Then we saw a boat." She was rescued and taken to the Italian island of Lampedusa, one of 11,800 migrants and refugees to end up there in the first ten months of 2007.

Many others are less fortunate.

DYING FOR A BETTER LIFE

EVERY YEAR, THOUSANDS OF desperate people in search of protection or a new life drown as their flimsy boats capsize in the Mediterranean, Atlantic, Indian Ocean, Caribbean and other seas and waterways around the world. Although attempts are made to track casualties, the true extent of this global tragedy will never be known as many vessels sink without trace.

"The fact that there are children among these people in danger, and that we have unfortunately had to retrieve a number of dead ones, has deeply marked us," says Commander Michele Niosi of the Italian Coastguard. "Children are symbols of renewal, and in these conditions it feels like defeat rather than renewal."

While individual naval and coastguard officers often treat the people they rescue with sympathy, governments tend to approach the phenomenon of boat people from a national security perspective. On

Between the DEVIL and the DEEP BLUE SEA

An overloaded boat in the southern Mediterranean.

UNICEF / L. BOLDRINI / ITA*2005

occasions, they have declared "a state of emergency" to deal with perceived "invasions" by people who are not only unarmed, but very often half-starved, sick and destitute. Some national and local officials have even gone so far as to suggest that the boats should be shot at with live ammunition.

INTERCEPTION AT SEA

WHILE STOPPING SHORT OF measures that drastic, some countries have sent warships to turn back boats suspected of transporting migrants or asylum seekers, a practice known as interception or interdiction at sea.

Given the unseaworthy state of so



EVERY YEAR, **THOUSANDS OF DESPERATE PEOPLE** IN SEARCH OF PROTECTION OR A NEW LIFE DROWN AS THEIR **FLIMSY BOATS** CAPSIZE OR SINK.

many of the vessels carrying would-be migrants, many lives are undoubtedly saved by naval and coastguard ships prowling the high seas in search of them.

Nevertheless, the practice of interception is highly controversial for a variety of reasons, including the risks it may entail. It is for example an apparent fact that in order

to avoid detection boat people are resorting to ever longer and more dangerous routes.

The other main cause of concern is that some of the people embarking on these



A sunbather helps aid a group of 46 exhausted and dehydrated people after their boat ran aground on a tourist beach in the Canary Islands.

perilous voyages are refugees. The percentage differs from boat to boat and route to route. “For this reason,” said UN Assistant High Commissioner for Refugees Erika Feller, “UNHCR has an interest in maritime issues such as interception, search and rescue, disembarkation, people smuggling and stowaways. Our position remains that the interception process, even if it may be necessary to protect lives and borders, must include safeguards that allow any refugees on board to claim asylum.”

Interception at sea, whether in territorial or international waters, is not new. During the 1970s, boat people from

Viet Nam and Cambodia were routinely apprehended and towed out to sea by countries in the region, and thousands of Vietnamese may have perished at sea as a result of such ‘pushbacks.’

On the other side of the world, the US Coastguard has been intercepting ships in the Caribbean carrying migrants and asylum seekers from Cuba and Haiti for years.

“We have expressed fears that this policy may have resulted in restricted access to asylum procedures, particularly in the case of the Haitians,” said Feller. “The bottom line is that this could lead to refugees being forcibly returned to a place where their life or freedom is at risk.”

EUROPEAN INTERVENTIONS

SEVERAL EUROPEAN COUNTRIES have also been intercepting boats suspected of carrying uninvited migrants in the Mediterranean. Since the creation of the European Agency for the Management of Operational Cooperation at External Borders (or ‘Frontex’), a series of high-profile joint interception operations by various EU member states have taken place in both the Mediterranean and the Atlantic.

One such operation, code-named “Hera 2007,” deployed Spanish and Italian naval ships and planes to patrol the waters off Mauritania, Senegal and Cape Verde and intercept irregular migrants attempt-

“**THE INTERCEPTION PROCESS, EVEN IF IT IS NECESSARY TO PROTECT LIVES AND BORDERS, MUST INCLUDE SAFEGUARDS THAT ALLOW REFUGEES TO CLAIM ASYLUM.**”

FOR CENTURIES, **RESCUE AT SEA** HAS BEEN GOVERNED BY AN UNWRITTEN CODE, THAT HAS EVEN BEEN APPLIED TO THE **ENEMY** IN TIMES OF WAR.

ing to sail to Spain's Canary Islands.

According to the Spanish Ministry of Interior, the number of arrivals in the Canaries plummeted from 32,000 in 2006 to 9,500 in the first ten months of 2007, as a result of stepped-up interception operations, better collaboration with countries of departure, and information campaigns informing potential travellers of the risks.

The number of arrivals in the Italian mainland and islands, where the Frontex-coordinated "Operation Nautilus" has been active, also fell slightly from 22,000 in 2006, to 19,000 during the first ten months of 2007.

By contrast, the number of migrants and refugees arriving by boat from Turkey in the Greek islands of Samos, Chios and Lesvos doubled from 3,500 in 2006 to 7,000 in the first ten months of 2007 – perhaps partly because it is one of the principal routes used by Iraqis.

RUTHLESS SMUGGLERS

ONE OF THE MAIN REASONS GIVEN by governments for intercepting boats at sea is to combat the smuggling and trafficking of people. There is little doubt that smugglers, some of whom appear to be linked with international organized crime, are behind most irregular crossings by sea. Some of them are utterly ruthless characters who all too often rob, beat and even murder their clients.

In March 2005, for example, 15 Chinese migrants were forced to jump overboard into the sea by "snakeheads" (people smugglers) about 30 km off Sicily. Only two women and four men survived. A forensic examination of one of the bodies showed fractures and a severe concussion in the skull, apparently inflicted before the victim was tossed into the sea.

UNHCR staff in Yemen also frequently report instances when boat people in the Gulf of Aden – where the smugglers are especially brutal – have been beaten, murdered or thrown overboard and attacked by sharks [see p. 12].

Yet, cracking down on smugglers – as important as this is – may not only reduce irregular migration, but close the only avenue left for refugees to escape persecution or conflict. "I can't go back to Iraq, as I will be tortured and killed," insisted Omar, an Iraqi who paid smugglers US\$ 1,600 to ship him from Libya to Italy in August 2007. "I was working in Libya but my contract ended. I was afraid they would send me back to Iraq... no [other]

country would give me a visa. What can I do? There was no other choice." Omar was subsequently recognized as a refugee by the Italian authorities.

MY BROTHER'S KEEPER

FOR CENTURIES, RESCUE AT SEA HAS been governed by an unwritten code, which has even been applied to the enemy in times of war.

"As history progressed and the annals of

Fatal diversion

On 29 April 2006, some fishermen approached a small, white rusty motor boat

drifting in the Caribbean, off Barbados. It contained a grim cargo: the bodies of 11 men, partly mummified by the sun and salt spray. The men had probably been dead for several weeks. One of them had left a note to his family in Senegal. His name was Diao Souncar Dieme.

The other ten, also thought to be from Senegal, had still not been identified when they were finally buried in Barbados in January 2007, in a joint Muslim and Roman Catholic ceremony.

Investigators believe the boat left the Cape Verde Islands, off West Africa, on Christmas Eve 2006 with around 50 people on board. They were almost certainly taking the long way round to Spain's Canary Islands, but the boat ran into trouble and was swept by the prevailing currents across the Atlantic. Some reports have suggested it may have been

towed for a while, and then the tow-rope was cut. The bodies of the other passengers had apparently either been thrown or washed overboard.

Boats of all shapes and sizes are used to reach the Canaries. However, until late 2005, most migrants were using smaller vessels called *pirogues* from West Africa, or *pateras* (which carry up to 20 people) from Morocco and the Western Sahara territory, from where it takes only 10 or 12 hours to sail to the Canaries.

Over the last two years, larger open boats (known as *cayucos*), which carry up to 150 people, have become more common. In order to avoid detection, the *cayucos* are taking longer, more round-about routes from countries such as Senegal, Gambia, Guinea, Sierra Leone and Ghana. As a result, the journey

to the Canaries can now take up to 25 days and involves much greater risks – as demonstrated by the tragic fate of the passengers on the boat with no name that drifted 4,000 kilometres to Barbados.

I would like to send to my family in Bassada a sum of money. Please excuse me and goodbye. This is the end of my life in this big Moroccan sea..

From a note found on the body of Diao Souncar Dieme.

human conflict continued to grow, there remained only one common enemy with which the entire race could consider itself at war, and that was the brute force and wrath of the sea and its elements,” writes Clayton Evans, author of a book on the history of rescue at sea. “A bond would develop amongst seafarers and water travellers the world over: when it came to survival at sea they were their brother’s keeper.”

The moral imperative to rescue fellow humans in peril at sea was eventually given an international legal framework, especially through the 1974 International Convention for the Safety of Life at Sea (SOLAS), and the 1979 International Convention on Maritime Search and Rescue (SAR).

But many migrants and refugees in distress are still saved, not by professional rescuers, but by passing fishermen, leisure yachts, commercial ships, luxury cruise liners – and even by other boat people.



An Italian coastguard officer checks up on a man brought ashore after being rescued at sea.

José Durán, skipper of the Spanish trawler *Francisco y Catalina*, which rescued 51 people – including ten women and a 2-year-old child – from a dinghy in the Mediterranean, exemplifies the principle of solidarity that binds people at sea. The *Francisco y Catalina* was stuck off Malta for a week, as countries in the region argued

UNHCR / L. BOLDRINI / ITA•2005



Infamous episode: A group of 27 people rescued by the Italian Navy after spending three days clinging to a tuna pen.

Stowaways

Desperate situations call for desperate solutions and stowing away in boats, lorries or planes is, in some cases, the only escape route open to those fleeing war or persecution.

As in other forms of irregular migration, refugees and migrants frequently find themselves, quite literally, in the same boat. Regardless of their reasons for travelling clandestinely, stowaways hiding in cargo holds face considerable hazards, ranging from death by asphyxiation to exposure to extreme temperatures. In addition, ships’ crews often resent their presence, since shipping companies that transport undocumented migrants

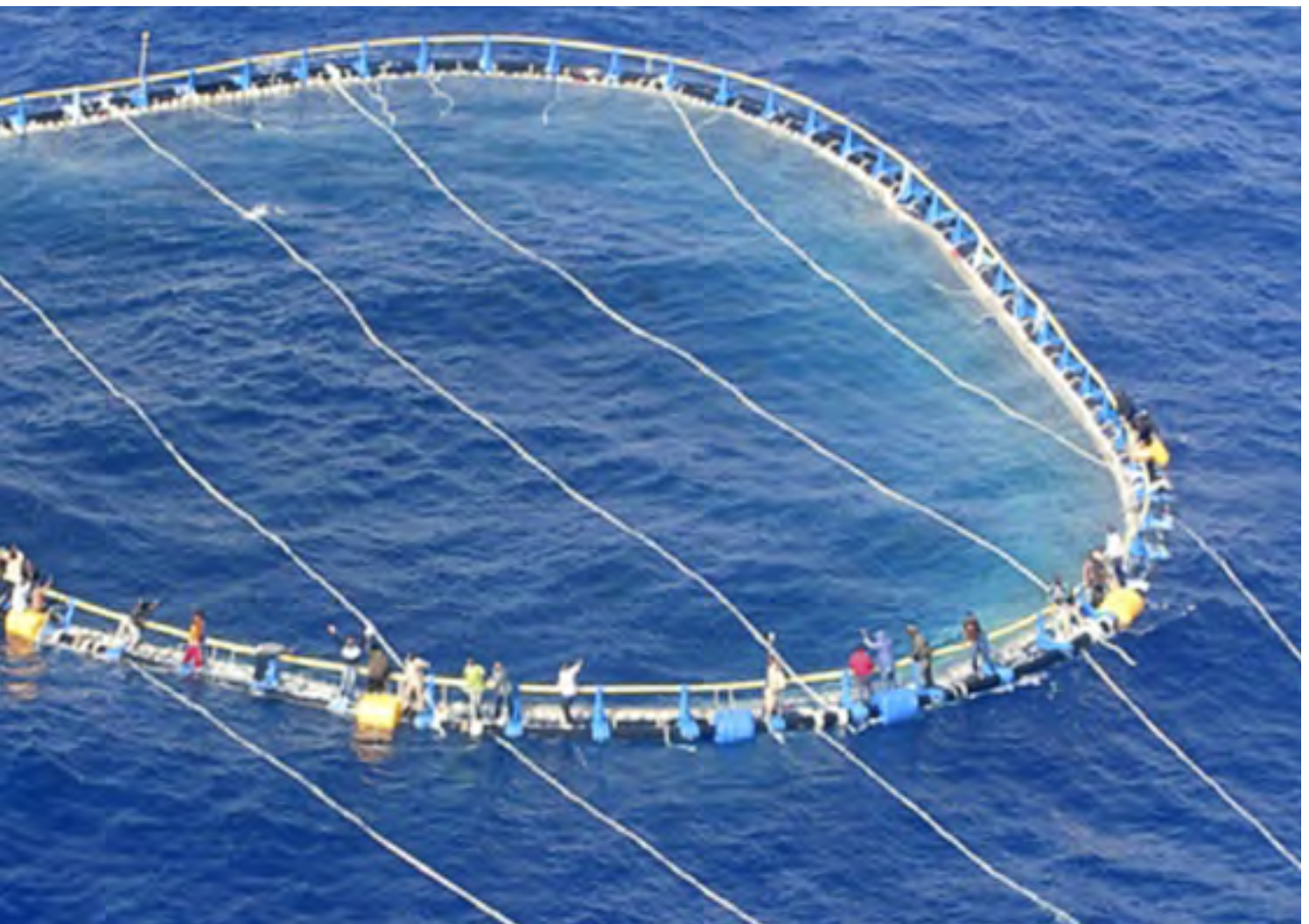
face hefty fines, high repatriation costs and administrative delays.

Although international maritime regulations say that stowaways have to be treated humanely, fear of losing their jobs or bonuses has occasionally turned sailors into murderers: “In some terrible cases, stowaways on board ships have been thrown overboard, because ships’ captains or shipping companies would be fined if they came into port with the stowaway on board,” said David Cockcroft, General Secretary of the International Transport Workers’ Federation, in an interview with a trade magazine.

In January 2006, a South African court heard how the captain of the *African Kalahari* ordered two crew

members to force four Tanzanian and three Kenyan stowaways to jump into the sea off Durban harbour. Two of the men, Omar Kemu and Amir Jesh, could not swim and drowned almost immediately.

Every year, the world’s media carries similar reports about stowaways who have been shot, thrown overboard or beaten to death. In some cases, crew members have reported their superiors to the authorities; in others, stowaways have survived to tell the tale. Prosecutions, however, are all too rare, as evidence of the crime often sinks to the ocean floor, together with the reasons why the stowaways were so desperate to leave their countries of origin.



“SHIP MASTERS WHO **SAVE PEOPLE IN DISTRESS SHOULD NOT BE PENALIZED** WITH FURTHER EXPENSES.”

about where the people it had rescued should disembark.

Asked if he would do it again, given the financial losses and legal wrangles it may entail, this fisherman from the port of Santa Pola, near Alicante, replied: “I would do exactly the same thing. No doubt about it. In our way of thinking, we put ourselves in their place. If I was in their situation, I wouldn’t want another ship to pass me by without helping me. ‘Hell!’ I would say, ‘I’m going to die!’”

TOO EXPENSIVE TO SAVE?

BUT, AS THE EPISODE INVOLVING THE *Francisco y Catalina* illustrates, vessels fulfilling their duty to rescue people at sea are increasingly encountering problems as states refuse to let migrants and refugees disembark. To the alarm of the shipping industry, such incidents may be

seriously jeopardizing the centuries-old humanitarian tradition of sea rescue.

The autumn 2007 trial of seven Tunisian fishermen in Sicily, on charges of aiding and abetting illegal immigration, has also aroused considerable concern among people who believe the fishermen had actually rescued the 44 people (including 11 women and two children) found on their boat from a flimsy rubber dinghy. If convicted, they face between one and 15 years in jail.

“Ship masters who save people in distress should not be penalized with further expenses,” says John Lyras, Chairman of the Shipping Policy Committee of the International Chamber of Shipping. “They should be allowed to disembark the people as soon as possible.”

Amendments were made to the SOLAS and SAR Conventions in July 2006, which

oblige states to cooperate and coordinate with a view to disembarking rescued people to a place of safety as soon as possible. However, several key maritime states have not yet ratified these amendments.

Financial pressures also sometimes override humanitarian principles. In May 2007, for example, a group of 27 Africans were rescued by the Italian Navy after they had spent three days and nights clinging to a tuna pen dragged by a Maltese fishing boat, the *Budafel*. The boat’s captain told the media he refused to divert his ship to disembark the men because he was afraid of losing his valuable catch of tuna.

Such incidents provoke fears that a combination of anti-immigration policies, reckless smugglers and cold commercial calculations may well signal the demise of a noble practice that is almost as old as humanity itself. ■

Caribbean CONUNDRUMS

BY GRAINNE O'HARA

PROVIDING EFFECTIVE protection to refugees caught up in mixed migratory flows criss-crossing the Caribbean is quite a challenge. There are some 25 independent island nations and dependent overseas territories spread along the 2,300 kilometre expanse of ocean separating the Bahamas, just off Florida, from Trinidad and Tobago which lies within sight of Venezuela.

The Caribbean has its share of smugglers peddling their services to migrants sold on the dream of finding a better life on the North American mainland. Numerous secluded islands surrounded by azure waters – the same features that attract the tourists – also catch the eye of ruthless opportunists keen to turn a quick profit regardless of the human cost involved.

What could be easier than dumping an unsuspecting Sri Lankan on the beach of

HIDDEN TRAGEDIES

EVERY YEAR, THOUSANDS TAKE THE northward passage towards the United States along overlapping, winding maritime routes. During periods of regional tension, the figures have sometimes risen into the tens of thousands. US Coastguard statistics on the intercepted and returned only tell part of the story.

Nobody is keeping an accurate account of the number of people who succumb to storms and other hazards en route. Over 60 people died in a single incident in May 2007, when an overcrowded Haitian sloop attempting to reach the Turks and Caicos Islands capsized, pitching its passengers into choppy seas in the dead of night.

In terms of numbers, Dominicans, Cubans and Haitians consistently dominate the mixed flows of migrants and refugees heading north. But the dizzying variety of routes and transit points, and the growing diversity of nationalities involved, reveal a far more complex picture.

MIGRATION KALEIDOSCOPE

THERE IS CONSIDERABLE MOVEMENT to, and between, locations in the Caribbean. Cubans and Haitians transit via the Bahamas (most, but not all, with the clear intention of continuing onwards to the US). Cubans also use the Cayman Islands as a stepping stone on the lengthy journey to Honduras and other

Central American locations, before heading back northwards on the long overland trek to the Mexican-US border. Haitians head for the Turks and Caicos Islands, and destinations further south – including the French overseas departments of Martinique and Guadeloupe – which are seen as a gateway to continental Europe.

In addition, the number of people ar-

riving from other continents appears to be on the increase. Trinidad is a transit point for West Africans, on a long and complicated journey that often includes an earlier stop in Cape Verde, before its weary passengers are eventually disembarked somewhere along the South America coastline. Sri Lankans have appeared in several locations in the Lesser Antilles; Ethiopians have sought asylum in Haiti; and Iraqis have been noted transiting the region, apparently heading to final destinations in both North and South America.

While the number of non-Caribbean people arriving remains low in absolute terms, the presence of some people with very specific protection needs brings an additional dimension to an already complex situation. Even though almost all states in the region are signatories of the 1951 UN Refugee Convention, effective domestic asylum systems are virtually non-existent.

The quantity of arrivals is straining local reception capacity on islands more attuned to tending to the needs of paying guests than responding to the weather-beaten, dehydrated migrants who wash up on their shores, and the reactions of Caribbean states tend to be ad hoc and unpredictable. Refugees are as likely to find themselves intercepted, detained, deemed economic migrants and promptly deported as they are to be admitted to a national asylum system. And even for those few admitted to the asylum process, recognition rates in the Caribbean are uniformly low.

GENEROUS PARTNERS

UNDER SUCH CIRCUMSTANCES, providing even a minimum of protection coverage depends on effective partnerships. For this reason, UNHCR has taken the unusual step of setting up a network of Honorary Liaisons, who undertake essential protection work on a pro bono basis in ten key locations around the Caribbean.

Hailing from all walks of life, these dedi-



St. Lucia and telling him he is only one step away from Canada? Or telling an Iraqi she is already in Florida? Weeks may pass before the bewildered migrants and refugees actually work out exactly where in the world they are, by which time – since the fee is nearly always paid up front – there is little they can do. If they have avoided ending up adrift in a leaky boat with no food and water, that is already a bonus.

cated volunteers (who include a university lecturer in Jamaica, and the head of a legal aid clinic in the Bahamas) have been filling some of the gaps which UNHCR cannot hope to cover with its own small roving team operating out of the US and Caracas. Partnership arrangements with NGOs in the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago are another vital piece in the protection jigsaw that now extends across the Caribbean.



Cubans taking a valuable asset across the Straits of Florida.

© US COASTGUARD / G. EWALD / USA • 2003/2004

A recent seminar on migration flows, organized by UNHCR and the International Organization for Migration in the Cayman Islands, provided a platform for Caribbean states to exchange ideas on strengthening

collaborative responses to migration, refugee protection and trafficking.

The protection challenges in the Caribbean are just that – challenging but not insurmountable.

Establishing a predictable system that would provide

reliable protection for refugees is well within the reach of Caribbean states which are, after all, accustomed to looking after a constant stream of visitors from foreign lands. ■

The Great MIGRATION to the North

THE ROUTE VIA MEXICO TO THE US IS FRAUGHT WITH RISK FOR REFUGEES AND MIGRANTS ALIKE.

BY MARIANA ECHANDI,
MARION HOFFMANN AND
RUPERT COLVILLE

IT IS ESTIMATED THAT HALF a million undocumented migrants cross Mexico's southern border every year, most of them Central Americans attempting to move on to the United States or, to a lesser extent, Canada. According to figures from Mexico's National Migration Institute, in the first nine months of 2007, some 45,000 undocumented migrants were detained at migration holding centres across the country. However, many migrants appear to succeed in crossing Mexico undetected, and the US Border Patrol often ends up apprehending more than 1,000 a day.

Stricter migration controls by both Mexico and the United States, as well as a string of natural disasters affecting southern Mexico and Central American States, have had a strong impact on the migration routes. Since the destruction of 300 kilo-

metres of railway by Hurricane Stan in 2005, most migrants have had to walk hundreds of kilometres across the borders of El Salvador, Honduras and Guatemala to reach the city of Arriaga in Mexico's Chiapas Province, where they climb on cargo trains heading north.

At the southern border itself, there appear to be at least three main land routes into Mexico, via the Guatemalan cities of El Naranjo, la Mesilla or Tecún Uman. Some migrants are also now using boats from Guatemala's Pacific sea ports to avoid migration checkpoints on the land borders.

Although most of the migrants are men, there are also many women and children travelling along these dangerous routes, which cost hundreds – if not thousands – of lives a year.

At the US border alone, at least 400 people died during the year up to 30 September 2007, many of them from thirst, heat or exhaustion in the Arizona desert.

Others died in vehicle and train accidents, or drowned in the great river (known to Americans as the Rio Grande and to Mexicans as the Rio Bravo) which extends for more than half the length of the 3,200 kilometre border.

WOMEN AT RISK

MANY MORE PROBABLY DIE, OR ARE syphoned off by criminal gangs, long before they get anywhere near the United States, with women particularly vulnerable to being sexually abused or forced into long-term prostitution. Indeed, one Mexican Senator, Maria Elena Orantes, has suggested that up to 80 percent of women migrants heading up from the south end up involved in the sex trade in some way or other, with tens of thousands forced into prostitution each year in the Guatemala-Mexico border area alone.

Nobody questions the fact that the great majority of the people heading up to North America in this way are doing

“ I WAS HIDDEN IN THE **MACHINERY ROOM** OF A TOURIST BOAT THINKING THAT I WAS **HEADING TO EUROPE**. AND WHEN I GOT OFF THE SHIP, **THEY TOLD ME I WAS IN GUATEMALA.** ”



© AFP / O. TORRES / MEX-2006

so for economic reasons, and there is no end of debate about whether this is, on balance, a good or bad thing for the economies of their home countries, of Mexico and of the US. But there are always some among them – if not today, then yesterday or tomorrow – who are refugees. And when the percentage is small, they are often less easy to identify.

The number of asylum applications made in Mexico is minuscule compared to the number of people passing through – perhaps one in a thousand, although some of the others will later claim asylum in the US.

In 2003, UNHCR established a small office in Tapachula, a city close to the Guatemalan border in the state of Chiapas. Since then, a total of some 600 people have filed asylum applications to the Mexican authorities there. From January to October 2007, 154 individuals applied for asylum in Tapachula, of whom 12 percent were Somalis, 11 percent Bangladeshis, 10 percent Eritreans, and 8 percent Colombians and Ethiopians.

FROM A FAR CONTINENT

SOME OF THE NON-LATIN AMERICAN asylum seekers end up in Mexico for bizarre reasons. One 31-year-old Sri Lankan, for example, claims he fled after escaping from the Tamil Tigers. After hitching a lift on a fishing boat to the Maldives, he stowed away on a bigger ship. “I was hidden in the machinery

room of a tourist boat thinking that I was heading to Europe,” he told UNHCR officials in Mexico, “and when I got off the ship, they told me I was in Guatemala.”

From there, he joined the thousands of undocumented Central American migrants travelling north, until he reached Tapachula, where he was advised by a NGO working with UNHCR to apply for asylum with the Mexican authorities.

Another asylum seeker, a 26-year-old man from Darfur in Sudan, came by an equally haphazard route. “First I went to Ethiopia, then to Somalia and then to Egypt, where I took a boat that went to Panama,” he said. “Once in Panama, I met some Africans there who told me that if I wanted to apply for asylum, I should go to Mexico.”

Unlike many of his fellow travellers, he says he is happy to stop in Mexico, where he is trying (with difficulty) to get a job as an English teacher. “They kept me in custody at the immigration detention centre where I met other Sudanese, and Eritreans and Ethiopians,” he recalls. “They told me that they were going to the US.”

RAMPANT GANGS

ONE OF THE MOST INTRIGUING phenomena in the region involves people escaping from the so-called ‘*maras*,’ the extremely violent street gangs that are present in force throughout Central America and also in southern Mexico. The *maras*

Hopeful migrants making their way through the desert just south of the US-Mexico border. During the Central American wars, many refugees took similar routes.

(the word is derived from the name of an especially fierce carnivorous ant species) include children as young as ten.

Most of the asylum claims presented by Hondurans, Salvadorans and Guatemalans to the Mexican asylum authorities are by youngsters or families alleging persecution by these gangs. Some fear forcible recruitment by the *maras*. Others are petrified of revenge because they have witnessed crimes.

In 2007, the Mexican National Migration Institute issued internal regulations (drawn up with assistance from UNHCR) to facilitate the granting of humanitarian status to those asylum seekers who are found not to qualify for refugee status under the 1951 Refugee Convention or the key regional refugee instrument known as the Cartagena Declaration, but who may clearly be in need of another form of protection. And UNHCR, UNICEF and other agencies have been attempting to set up a system to help the exceptionally vulnerable unaccompanied children stranded in this febrile border zone.

Meanwhile the great migration north continues, full of largely unseen tragedies and heartbreak as people, for one reason or another, fall by the wayside. ■

Control vs. PROTECTION

REFUGEES, MIGRANTS AND THE EU

BY JUDITH KUMIN

IN 1999, THE EUROPEAN UNION states agreed to build a “Common European Asylum System” based on the “full and inclusive application” of the 1951 Convention relating to the Status of Refugees. The first phase was devoted to the development of minimum common standards to ensure more consistent treatment of asylum seekers and refugees throughout the EU. Since it was completed in mid-2004, work on developing a common asylum system has continued. However, there has been a very marked shift of focus from protecting refugees to halting irregular migration.

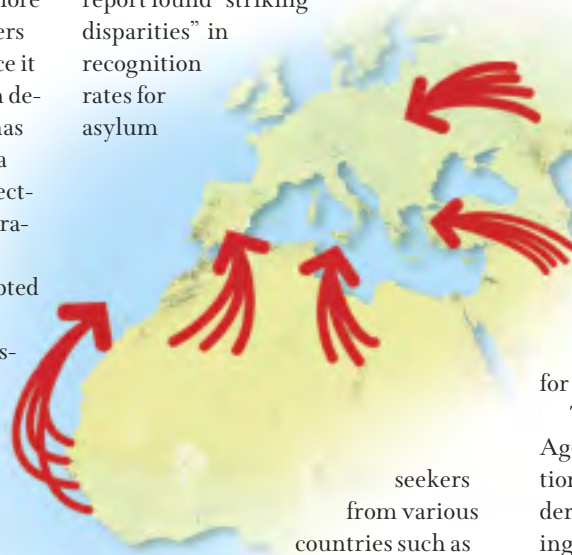
During the first phase, the EU adopted legal directives covering some of the most fundamental elements of the system, including how asylum procedures should be conducted, who qualifies for refugee status, and what the minimum assistance levels for asylum seekers should be. It also agreed on two other pieces of legislation – known as the Dublin II and Eurodac Regulations – that determine which EU state is responsible for handling a particular asylum application.

DIFFERENT STANDARDS

AS THE EU NAVIGATES ITS WAY through the second phase of harmonization (geared mainly to implementing the new laws and filling any remaining gaps), a clear need to reduce the discrepancies between the practices of various EU states has emerged.

In November 2007, UNHCR published a study on the implementation of a key

piece of first-phase legislation, the so-called Qualification Directive, which sets out who is eligible for protection in the EU. The study examined 1,488 asylum decisions taken in five EU states. It confirmed that there were still significant differences on a variety of issues that result in refugees being recognized in one country and not in another. The report found “striking disparities” in recognition rates for asylum



seekers from various countries such as Iraq, Somalia and Sri Lanka – with an individual Iraqi asylum seeker’s chances of receiving protection within the EU varying from 75 percent in Sweden to zero percent in the Slovak Republic and Greece.

Refugee advocates are also increasingly concerned about how migration control efforts are affecting people in search of protection. As internal border checks within the EU are progressively abolished, it has concentrated on reinforcing controls at its external frontiers. In 2006, it adopted a common policy, called the Schengen Borders Code,

which incorporates a general provision stating that the rights of refugees and other people requesting international protection should not be prejudiced, in particular with regard to non-refoulement (the key element of international law that forbids states to deport refugees back to a potentially dangerous situation in their own country).

Yet at the EU’s busy external frontiers, border personnel are sometimes not even aware that refugees must be given the possibility to apply for asylum.

DIVERSIONARY TACTICS

INTENSIFIED EFFORTS BY states to deter or deflect movements before people actually reach the EU’s external frontier have been arousing concern for several years.

Then, in mid-2005, a new European Agency for the Management of Operational Cooperation at the External Borders (known as ‘Frontex’) began functioning, with a wide-ranging mandate, including the coordination of states’ joint efforts to patrol the EU’s external borders.

The most visible of these have involved multinational operations in the Mediterranean and the Atlantic to intercept boatloads of migrants heading for Europe’s southern coasts. The Frontex operations aim to prevent these vessels from reaching EU waters and, if possible, to return them to their points of departure.

So far, what has been happening to the people among them who could be refugees is not entirely clear. UNHCR is working to establish a relationship with Frontex, with the aim of ensuring a clear

“IN SOME INDUSTRIALIZED NATIONS, **DETENTION** HAS BECOME AN ACCEPTED MEANS OF **IMMIGRATION CONTROL**.”



In the autumn of 2005, hundreds of desperate would-be migrants (and some refugees) were rounded up as they tried to reach Europe via Spain's North African enclaves.

understanding of the principles of international refugee law, including the vital provision that no refugee should be unwittingly returned somewhere where he or she might be in danger.

A further priority for the EU in the fight against illegal immigration has been the conclusion of readmission agreements, including with countries along the EU's eastern and southern borders. In 2002, in Seville, the European Council (a biannual meeting of EU government leaders) proposed that compulsory readmission

clauses should be inserted in all future cooperation, association or equivalent agreements between the EU and non-EU countries. It also gave the European Commission a wide-ranging mandate to negotiate readmission agreements with specific states.

Concerns persist about the compatibility of this aggressive readmission policy with international refugee protection norms. Although the agreements contain a general provision repeating states' obligations under the

1951 Refugee Convention, signatories of the readmission agreements have so far omitted to include more detailed protection safeguards.

REAL RISKS

THERE IS A REAL DANGER THAT asylum seekers whose claims have not been examined substantively in the EU will be removed under the terms of these agreements to countries which do not have fair and effective asylum procedures. Indeed, there are regular examples of such



© SERGIO CARRO / MAR 2005

events taking place under bilateral arrangements: Dr. Katrine Camilleri, a lawyer whose work for the Jesuit Refugee Service includes monitoring Malta's detention centres, described one such case to members of UNHCR's governing body in Geneva, the day after she received the prestigious 2007 Nansen Refugee Award for exceptional services to refugees.

She recounted the words of a Somali asylum seeker describing what happened after he was handed back by an EU country to the authorities of a country he had previously transited: "When we landed... we were placed in custody at the airport for a few days and then we were blindfolded, placed in a van and taken to another location... We were kept in this location for seven days. These were the worst days of my life. I was heavily interrogated and tortured, beaten on my shins and electrocuted. They tied my legs and put a piece of wood behind my knees, then placed me upside down. They then beat me on the soles of my feet. There were times where I was beaten so severely that I urinated blood."

He and the others deported with him were sentenced to nine months in prison, where they were kept in appalling conditions, 50 to a cell. At the end of his sentence, he was put in a jeep with some

Died in the Attempt

Three weeks of documented deaths of people trying to reach Europe

DATE FOUND	NUMBER OF DEAD	NAME	ORIGIN	CAUSE OF DEATH
17-9-06	13	No name	unknown	drowned; 1 found, 12 missing after shipwreck 115 miles South West of Malta
16-9-06	1	No name (man)	Sub-Saharan Africa	body found in boat with 56 survivors landed on Los Cristianos, Canary Islands (Spain)
12-9-06	250	No name	unknown	missing; boat, at the mercy of the waves, sent SOS signal near Lampedusa, Italy
10-9-06	2	No name	Kurdish	died in minefield after entered Vyssas area, in Evros (Greek/Turkish border)
9-9-06	17	No name (5 women, 3 minors)	Somalia	died of starvation; thrown overboard from drifting ship on way from Libya to Italy
5-9-06	2	No name	unknown	drowned; bodies found on the beach of Torretta Granitola near Mazara del Vallo, Italy
3-9-06	1	No name (man, 19)	Algeria	Stowaway; fell in field in Vinantes (France) from wheelbay of a plane from North Africa
3-9-06	1	Janvier Makiadi (man, 44)	Congo	Suicide; hanged under bridge, asylum claim refused (UK); known also as Paul Kiese
3-9-06	1	No name	Maghreb	found near Los Ancones, Spain; body thrown overboard by boat landed in Lanzarote
2-9-06	8	No name	Eritrea/Somalia	died of hunger and thirst; bodies thrown overboard during journey to Italy
1-9-06	1	No name (man +/- 30)	Pakistan	drowned; boat hit rocks near Hania (Greece) on way from Egypt to Italy
1-9-06	3	No name (2 adults, 1 minor)	Sub-Saharan Africa	died after been rescued off El Hierro, Canary Islands (Spain), after boat sank
1-9-06	7	No name	unknown	reportedly drowned; missing after boat sank near coast of Crete (Greece)
30-8-06	10	No name	unknown	died in boat with 13 survivors; bodies thrown overboard during journey to Italy
29-8-06	132	No name	Sub-Saharan Africa	drowned; 84 found, 48 missing, shipwreck off coast of Mauritania
28-8-06	1	No name (man)	Mali	died of dehydration after been abandoned in Sahara desert

Source: UNITED - www.unitedagainstracism.org. As of March 2007, this NGO network had assembled reports of 8,855 documented deaths of would-be migrants and refugees in, or heading for, Europe since 1993. The use of an excerpt from this list does not constitute endorsement by UNHCR of all details contained within it.

Greek studies

Due to its geographic location, Greece has always been one of the main gateways to Europe from the Middle East and beyond by land, air and sea. Recent arrivals include a substantial number of people fleeing war-torn countries such as Somalia and Afghanistan. And in the first six months of 2007, some 3,500 Iraqis applied for asylum in Greece, the second highest number in any industrialized country, after Sweden.

Overall, the number of migrants and asylum seekers crossing by boat from Turkey increased sharply in 2007. As a result, detention centres on the islands of Samos, Chios and Lesbos experienced serious problems of overcrowding.

The UN refugee agency has repeatedly raised concerns about the poor conditions under which migrants and asylum seekers are kept in Greece – and in October 2007, UNHCR called for the immediate closure of one particular holding centre, on the island of Samos, because of its overcrowded and extremely unhygienic condition. An earlier European Parliament report (July 2007) had described the same centre as “squalid, deplorable, inhuman and unacceptable,” and had cast a critical eye over a number of

other aspects of the country’s asylum system.

Irregular entrants in Greece face major difficulties accessing asylum procedures. These include lack of information about their rights and asylum procedures, lack of qualified interpreters and insufficient legal aid. However, a new Interior Ministry guide to asylum procedures in Greece, published in six different languages, is expected to help improve this situation somewhat.

For several years, UNHCR has been expressing concern at the extraordinarily low numbers of refugees being recognized in Greece, compared to other EU countries (the overall Greek recognition rate has tended to be just above or below 1 percent). And a study on the implementation of the European Union’s Qualification Directive in five EU states, released by the agency in November 2007, appeared to confirm that there are serious problems with the country’s asylum procedure.

The study examined 305 randomly selected first instance decisions on claims lodged by asylum seekers from Sudan, Iraq, Afghanistan, Somalia and Sri Lanka. All 305 decisions were negative. The study found that none of the decisions contained any reference to the facts, and none

mentioned any legal reasoning. Although each asylum claim should be evaluated on its individual merits, all the decisions examined contained a standard paragraph with exactly the same information.

As a result of these deficiencies, the study said, “the research was not able to discern legal practice in Greece.”

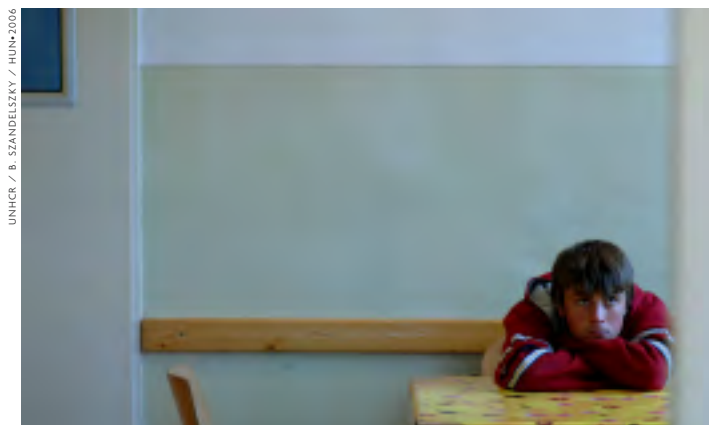
A few weeks earlier, in October 2007, another report was issued – by the Greek Group of Lawyers for the Rights of Refugees and Migrants and the German NGO Pro Asyl – which alleged that the Greek coastguard was pushing back boat people. “It tries to block their boats and force them out of Greek territorial waters,” the report stated. “Regardless of whether they survive or not, passengers are cast ashore on uninhabited islands or left to their fate on the open sea.” The report also alleged there had been serious physical maltreatment of migrants in Greece, as well as cases of forced returns of people, who could be refugees, across the land border with Turkey (an issue UNHCR has raised separately on a number of occasions). The Greek government ordered an investigation into the claims.

William Spindler

other people and driven into the desert. After three days, they were forced out of the vehicle in the middle of the desert and told they were at the border. Of the six people in the group, only two – including the Somali interviewed by Camilleri – survived.

RESTRICTED VISION

NO MONITORING ARRANGEMENTS for readmitted asylum seekers are in place or being contemplated by the EU or its Member States, although unregulated detention upon readmission – as in the case described above – is a real risk. And not just in North Africa. On the EU’s Eastern fringe, for example, a number of countries are heavily engaged in constructing immigration detention



A Romanian boy picked up by the Hungarian border police waits in an airport detention area prior to his deportation.

facilities, in several cases with significant amounts of EU funding.

Long periods of detention are also a feature in some states within the EU, including Malta and Greece: “In some industrialized nations, detention has

become an accepted means of immigration control,” said Camilleri. “At times, it seems as if the fundamental right to personal liberty has been turned on its head, and there is an almost unquestioned assumption that detention is the only option available.”

So even as groundbreaking efforts continue to build a high quality common system for those people who do manage to reach the European Union and lodge their asylum claims, the EU’s migration control policies may be leaving many refugees and other vulnerable people in a potentially dangerous protection limbo in other countries in the European neighbourhood. ■

DIVERTED to Nauru

BY ARIANE RUMMERY

IN AUGUST 2001, AFTER A Norwegian freighter, the *MV Tampa*, rescued 433 mainly Afghan asylum seekers from a sinking Indonesian fishing boat, the Australian authorities refused to let them disembark on Christmas Island. New Zealand accepted 131 of the Afghans directly from the boat, and the rest were transferred to the Pacific island state of Nauru, sparking what became known as the 'Pacific Solution.'

Zerghona Jawadi was one of some 1,600 asylum seekers who were taken to Nauru or Manus Island in the wake of the *Tampa* incident.

Zerghona, her husband Hadi and their ten-year-old son Mustafa originally fled to Iran from Taliban-controlled Afghanistan, after the family had received threats. They subsequently moved on to Australia via the well-trodden route through Malaysia and Indonesia.

After eight days at sea, the small fishing boat she shared with about 160 other asylum seekers started to sink in waters near Ashmore Reef off north-western Australia on November 8, 2001 – just two days before the federal election. The *Sumber Lestari* – known to the Australian authorities as 'Suspected Illegal Entry Vessel (SIEV) 10' – then caught fire. Almost overcome by smoke, Zerghona, Hadi and Mustafa jumped into the water and were eventually rescued by an Australian naval vessel.

Some of the first group of asylum seekers deposited by the Australian navy on the Pacific island of Nauru in September 2001.

Two women drowned in the incident. The survivors were taken first to Ashmore Reef for two days, then to Christmas Island for almost two months, and eventually to Nauru.

THE MINISTER EXPLAINS

ZERGHONA RECALLS A VISIT, SOON after her arrival on Nauru, by the then Australian Immigration Minister Philip Ruddock who spoke briefly to the group of mainly Afghan and Iraqi asylum seekers.

"I remember I was standing close to him," Zerghona said. "He said you are not refugees because you do not come through the door, you just come through the window. You are not welcome in Australia."

But the Minister's metaphor was lost on Zerghona and many of the others. Nor did she understand why, simply because her family had scraped together some cash to pay for their passage, and initially spent some time in Iran, the legitimacy of

their refugee claim was being questioned.

"We sold our house and our shop in Afghanistan because we couldn't stay there. We had problems and had to leave," she explained. They stayed in Iran for six months. But without ID papers or formal status, they faced many obstacles and felt extremely vulnerable. "It was hard. My son couldn't go to school. And my husband was taken from the street. He had to pay money two times."

DETERRING ARRIVALS

THE DIFFERENT TREATMENT OF people based on their mode of arrival has become a central feature of Australia's asylum policy.

Building on the policy of mandatory detention for 'unauthorised arrivals' introduced by a Labour government in 1992, the Howard Coalition Government deepened the differential treatment between those asylum seekers who arrive with visas and those who come without.



© AP / R. RYCKOFF / NRU 2001

Temporary protection visas, offshore processing, and lengthy delays in offshore centres for recognized refugees all became part of the special regime applied to those who come through the ‘window,’ rather than the ‘door.’

This differential treatment has long been of concern to UNHCR, lawyers, NGOs and advocates – not least because it is at odds with protection and human rights principles.

But if the suite of measures is about deterring would-be economic migrants, does the logic still stand up if most of those impacted turn out to be genuine refugees?

As time goes on, the recognition rate of those asylum seekers who arrive without a visa in Australia remains consistently higher than those who arrive with one.

In Australia, the words “onshore” and “offshore” feature constantly in the public debate, although they are little known elsewhere. “Onshore” asylum claims are made by people who make it to the Australian mainland, these days usually by air and mostly with valid visas. Some boat arrivals make it through the customs patrols to the mainland, but most arrive on outlying territories like Ashmore Reef or Christmas Island (or are intercepted at sea) and are diverted into the ‘Offshore’ system – which included being transferred to the controversial reception centres on Nauru and Manus Island.

UNHCR’s Regional Representative in Canberra, Richard Towle, observes that the Australian system, in practice, appears to penalize the genuine asylum seekers in the offshore system.

“In Europe there are some larger flows of people with a wide range of motives moving in clandestine ways which have relatively low refugee components, and recognition rates,” he said. “But statistics show that the so-called ‘irregular movers’ in the Australasian region are actually, for the most part, refugees.”

According to Department of Immi-

gration and Citizenship onshore figures from July 1999 to June 2007, of the 11,266 asylum seekers who arrived in Australia without a valid visa (and were automatically detained), 87 percent were found to be refugees. By contrast, over the same period, only 15 percent of the 49,573 ‘lawful’ arrivals who claimed asylum were found to be refugees.

DIFFERENT STANDARDS

UNHCR IS ESPECIALLY CONCERNED by the reduced procedural safeguards in place for people who are processed offshore: these asylum seekers, unlike those processed in mainland Australia, do not have ready access to legal advice, to a fully independent merits review or to the Australian courts. As a result, they may face a higher risk of being wrongly returned against their will to a dangerous situation in their own country.

Towle acknowledges the legitimate concerns of states over border control, but argues that protection needs should remain at the heart of all policies relating to the treatment of refugees both onshore and offshore.

“We need to look at the nature and character of the people actually moving, rather than making generalized assumptions about illegal migration,” Towle said.

“Currently, in the Asia Pacific region, the question is not so much whether these ‘secondary movers’ are in need of protection, but which country is best placed to provide it,” he added. “Very few of the countries refugees pass through on their way to Australia and New Zealand have signed the Refugee Convention, unlike in Europe where virtually every country has done so.”

After two and a half years on Nauru, Zerghona Jawadi and her family were eventually found to be refugees and taken to the Australian capital Canberra in July 2004. Hadi is working as a house painter and Mustafa (now 16) is doing well at school.

Things are looking up for the Jawadi family. Zerghona was the first of “the Afghan ladies off Nauru” to gain a driving licence and work in a shop in Canberra, and she hopes to study nursing once her youngest child Hedayat – one of around 20 babies born on Nauru – starts school.

AN ETHICAL QUESTION

THE GOVERNMENT HAS INSISTED that the decline in boat arrivals shows offshore processing works as a deterrent to would-be illegal immigrants and the people smuggling industry.

Others, like Australian National University’s Professor William Maley, argue that drawing connections between policies and observed outcomes is ‘fraught with difficulty’.

“There’s a multiplicity of influences at play that can shape the way in which people make decisions about migration or movement from one country or area to another,” Maley said, adding that changes in political circumstances in source countries may have done more to influence boat arrivals than the government’s deterrent policies.

Under international law, people entering Australia without a visa to claim asylum have not committed any offence, Maley said. And for him, there is also an important “moral question about the legitimacy of ... treating one potentially quite innocent group poorly, in order to deter others.” ■

In November 2007, the claims of seven asylum seekers from Myanmar, who had already spent over a year on Nauru, were still undecided. And 74 recognized refugees out of a group of 82 Sri Lankans sent to Nauru in March 2007 remained on the island while the Australian government searched for another country willing to accept them. The newly elected Labor party has pledged to end offshore processing on Nauru and Manus Island.

“ WE NEED TO LOOK AT THE **NATURE AND CHARACTER** OF THE PEOPLE ACTUALLY MOVING, **RATHER THAN MAKING GENERALIZED ASSUMPTIONS** ABOUT ILLEGAL MIGRATION.”

Is TOLERATION Enough?

REFUGEES IN ASIA

BY YANTE ISMAIL

SIXTEEN-YEAR-OLD STEPBROTHERS Amin and Hashim had endured over a fortnight of hard work with no pay – and virtually no rest or food – on a small fishing boat in the Bay of Bengal.

“The fisherman told us we had been sold to him to pay off our debts to the smuggling agent,” recalls Amin. “We were in the middle of the sea – there was no one to help us.”

The two young Muslim Rohingya refugees thought they had paid a smuggler to help them flee from Myanmar to Malaysia. Instead, they were sold into forced labour in Thailand.

Late one night, in an act of sheer desperation, the boys jumped into the sea.

“We swam for hours,” said Amin. “When we finally reached the shore, the sky was pink and getting light.” Hiding during daylight hours, they travelled furtively on foot through the Thai countryside over several nights, until they finally arrived at the Malaysian border.

FORBIDDEN TO LEAVE

AMIN AND HASHIM HAD FLED THEIR village in Myanmar’s northern Rakhine state after discovering the authorities were looking for them because of an earlier trip they had made to find work in Bangladesh (the Rohingyas are stateless and therefore unable to acquire the necessary documentation to work outside Rakhine state legally – let alone leave the country).

Fearing the worst, the boys’ family paid almost US\$1,000 – a huge sum for a Rohingya family – to an agent to smuggle them to the Malaysian capital Kuala Lumpur, where they have relatives.

Amin’s and Hashim’s story is all too familiar. Similar journeys have been taking place for similar reasons for decades.



Three mothers with babies shortly after their release from immigration detention in Malaysia.

Myanmar is Southeast Asia’s biggest producer of refugees – with 203,000 recorded in neighbouring countries at the beginning of 2007 (although the true total may be nearer 400,000). Of these, some 31,000 have entered Malaysia over the past ten years or so to find safety.

Within Asia, refugee and migratory movements frequently intersect. With some countries, such as Myanmar, imposing strict exit control measures, refugees often have no choice but to engage in unauthorized forms of movement in order to reach safety or join their families – and they are often obliged to use the same routes and methods as migrants.

As a result, refugees in Asia – like refugees elsewhere – are stigmatized as people trying to circumvent the law. In addition, the reliance on the netherworld of smugglers increases the vulnerability of both refugees and migrants to abuse – as happened in the case of Amin and Hashim, when a smuggling transaction metamorphosed into trafficking for bonded labour. Had they been teenage girls, their fate might have been even worse.

Relatively few Asian countries have acceded to international refugee instruments, and most do not have formal

asylum systems either. There is a tradition of hosting refugees informally in most Asian countries, but toleration alone is not enough to provide refugees with the security they need.

MIXED RECEPTION

THE COUNTRY WITH THE most known refugees from Myanmar is Thailand, where some 140,000 live in

nine camps along the Thai-Myanmar border. Of those, 128,500 (mainly ethnic Karen and Karenni) are registered refugees and the rest are awaiting a decision on their status by Thailand’s Provincial Admissions Boards.

In Bangladesh, there are 27,000 Muslim Rohingya refugees in two UNHCR-run camps – as well as up to 200,000 other Rohingyas not officially registered as refugees who are living among the local population.

Some Myanmar refugee communities have been in Malaysia – where they live in the cities rather than in camps – for close to two decades. But their technically illegal status has made life difficult, leaving refugees vulnerable to arrest for immigration offenses such as “illegal entry.”

Restrictive measures introduced by countries to curb irregular migration often prevent refugees from accessing safety – with Amin and Hashim almost becoming a case in point: after they crossed the border, they were immediately picked up by the Malaysian authorities and taken to an immigration detention facility. Weeks later, their luck finally changed when UNHCR intervened on their behalf and they were released. Many others, in Asia and elsewhere, may be less fortunate. How many, we will never know. ■

