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## **Beyond the nexus: UNHCR's evolving perspective on refugee protection and international migration**

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## Introduction

“Antonio Guterres, UN High Commissioner for Refugees, explained that while UNHCR has a precise mandate in relation to refugees, the complexity of today’s displacement goes well beyond the asylum-migration nexus. More and more people are forced to move because of extreme deprivation, environmental degradation and climate change, as well as conflict and persecution. Meeting the needs of people who have left their country to find food and sending them back to extreme deprivation if they are not refugees are some of the complex questions that arise. While the answers go beyond UNHCR’s mandate, it is UNHCR’s duty to alert states to these problems and help find answers to the new challenges they present.”<sup>1</sup>

Until the 1990s, UNHCR rarely made any reference to the issue of international migration in its policy documents and public statements. Indeed, the organization made a determined effort to separate the issue of refugee protection from that of international migration, so as to underline the special status and protection needs of people falling within its mandate.

From the early 1990 onwards, however, UNHCR's traditional reluctance to acknowledge or discuss the issue of international migration was challenged by a number of related developments, including:

- a significant growth in the number of people seeking asylum in other states;
- a decline in the proportion of asylum seekers being granted refugee status;
- a widespread belief that many of the new asylum applications were ‘manifestly unfounded’ in nature;
- the introduction of indiscriminate measures to prevent or deter the arrival of refugees, asylum seekers and irregular migrants;
- an rapid expansion of the international ‘migration industry’, including the phenomena of human smuggling and trafficking;
- the difficulties encountered by states in preventing ‘asylum shopping’ and in ensuring the return of unsuccessful asylum seekers; and,
- the establishment of numerous global and regional initiatives and consultative processes which addressed both migration and refugee issues.

While UNHCR continued to insist that a fundamental distinction could be made between refugees and people who had left their own country for reasons unrelated to persecution and armed conflict, the organization nevertheless became increasingly

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<sup>1</sup> ‘Today at the GA’. 8/9 November 2007, UN, New York.

engaged in the broader migration discourse.<sup>2</sup> The organization also embraced one of the central notions of that discourse, namely the ‘asylum-migration nexus’. This concept featured prominently in the organization’s landmark 2002 document ‘Agenda for Protection’ and in a range of subsequent official statements. As recently as June 2007, for example, UNHCR submitted a report to its governing body, the Executive Committee, titled ‘UNHCR’s activities in relation to the asylum-migration nexus’.

### **Changing terminology**

In the nine months that have passed since that report was prepared, UNHCR has given further consideration to the ‘asylum-migration nexus’ and has chosen to distance itself from this concept and to replace it with the lengthier and more prosaic notion of ‘refugee protection and durable solutions in the context of international migration’.

What exactly has prompted this change of terminology? Apart from the fact that the international migration space has become somewhat cluttered with nexi (e.g. the ‘migration and development nexus’, the ‘migration and security nexus’, and most recently, the ‘climate change and migration nexus’) UNHCR has some serious intentions in adopting this new vocabulary.

First, the asylum-migration nexus notion has become too closely associated with the issue of South-to-North population movements, when the reality is that some of the largest migratory flows, and the vast majority of the world’s refugees, are to be found in developing regions. By embracing the asylum-migration nexus concept, UNHCR was reinforcing the widespread and misleading assumption that the most important migration issue of our times concerns the movement of people from low-income regions to the industrialized states.

Second, UNHCR’s terminological turnaround was prompted by the rather sad conclusion that the word ‘asylum’ (and even more so that of ‘asylum seeker’) now has overwhelmingly negative connotations in the minds of policymakers, the public and the media, especially in the more prosperous regions of the world. The notions of ‘refugee protection’ and ‘durable solutions’ have a more positive resonance and also provide a more direct link to the mandated functions of the organization.

Third, and as a natural corollary of the preceding considerations, UNHCR recognizes that the asylum-migration nexus concept has become a shorthand for a limited number of policy issues, most notably those of irregular movements, border controls, abusive applications for refugee status, as well as the return and readmission of asylum seekers whose claims to refugee status have been rejected. In other words, the asylum-migration nexus concept tends to represent the agenda of the industrialized states - an agenda which can conflict with the protection mandate of UNHCR.

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<sup>2</sup> For a relatively recent restatement of UNHCR’s longstanding position, see Erika Feller, ‘Refugees are not migrants’, *Refugee Survey Quarterly*, vol. 24, no. 4, 2005.

## **The High Commissioner's Dialogue on Protection Challenges**

In December 2007, UN High Commissioner for Refugees Antonio Guterres convened a two-day meeting in Geneva that was titled a 'Dialogue on Protection Challenges'.<sup>3</sup> It was an unusual gathering in a number of ways.

First, unlike the Executive Committee, which is comprised solely of states, the Dialogue was opened to a wide range of stakeholders – governments, UN organizations, NGOs, civil society representatives and individual experts, all of them participating on an equal basis.

Second, whereas Executive Committee meetings are held in plenary throughout and are characterized by lengthy and formal prepared statements, most of the Dialogue took place in four multistakeholder working groups, and was characterized by a far more spontaneous and interactive debate than has ever been possible in the Excom context.

Third, the High Commissioner attempted to use the opportunity provided by the Dialogue to change both the content and the tone of the established discourse on the asylum-migration nexus. Thus in his opening statement, the High Commissioner asked, "Why have we chosen to focus this first Dialogue on the issue of refugee protection, durable solutions and international migration? The answer to that question is to be found in the fact that human mobility is growing in scale, scope and complexity. New patterns of movement are emerging, including forms of displacement and forced migration that are not addressed by international refugee law."

"Unfortunately," he continued, "the debate about mobility and migration is not always a rational one. Electoral opportunism, political populism and the sensationalist media have combined to poison the debate on this issue, promoting a sense of fear, intolerance and rejection."

Subsequent sections of the High Commissioner's opening statement were similarly adventurous, both in challenging the assumptions of some stakeholders and in addressing issues which have traditionally been considered to lie beyond the concern of UNHCR:

"We must recognize that in the current and very dynamic phase of the globalization process, migration is inevitable. It is an illusion to believe that goods, capital, services and information can move increasingly freely across state borders without a simultaneous expansion in the scale and scope of human mobility."

"International migration cannot be effectively managed by border controls or by migration policies alone. A more coherent, comprehensive and integrated approach is required, incorporating appropriate initiatives in a wide range of other policy areas."

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<sup>3</sup> All of the documents relating to the Dialogue have been published as a compilation and can be accessed at: <http://www.unhcr.org/research/RESEARCH/47fe0e532.pdf>.

“I encourage states to acknowledge the need to balance effective border controls with the provision of additional legal migration opportunities. In an environment where irregular migration prevails, human traffickers and smugglers are bound to prosper. Irregular migration can only be curtailed if people who want to move can aspire to do so in a safe and legal manner.”

“In exactly a week from now, we will be celebrating International Migrants Day. Let us use that day, and let us use this Dialogue, to reaffirm the need to respect the rights of all those people who have left their own country, irrespective of their legal status or their motivation for moving. In making that remark, I am not seeking an expansion of my Office's mandate... I do believe, however, in the universality and indivisibility of human rights. By creating a global environment in which migrant rights are respected, we will also be creating an environment in which UNHCR can more effectively exercise its mandate for refugee protection and solutions.”

### **Broadening the discourse**

As indicated in preceding section, UNHCR's discomfort with the notion of the asylum-migration nexus derives in part from an awareness that the concept has become associated with a narrow range of problems and policy issues, most notably those related to the arrival of asylum seekers and irregular movements in the industrialized states. In a discussion paper prepared for the December 2007 Dialogue on Protection Challenges, UNHCR elaborated on this theme.

The paper opens with a strong statement about the nature of the agency and the purpose of its programmes. “UNHCR is not a migration organization and does not consider its role activities to fall within the function that is commonly described as ‘migration management’, a task which is undertaken by states and other international actors, most notably the International Organization for Migration.”

At the same time, the paper suggests that there are numerous points at which issues of refugee protection and international migration intersect, and which lead UNHCR to have an active interest in the latter. Indeed, the underlying argument of the paper is that if it is to exercise its mandate for refugee protection and solutions in an effective manner, then UNHCR has an obligation to become involved in specific aspects of international migration, including those summarized below.

#### *Mixed movements*

Refugees and other migrants increasingly move alongside each other, often in an irregular manner, making use of the same routes and means of transport and engaging the services of the same human smugglers. While UNHCR's primary concern in such situations is to ensure that refugees have access to the territory and asylum procedures of states and are provided with international protection, the organization has, by means of its ‘10 Point Plan of Action on Refugee Protection and Mixed Migration’, adopted an increasingly comprehensive approach to this phenomenon, addressing

(and encouraging other stakeholders to address) the situation of all the people involved in such movements, and not just the refugee component.<sup>4</sup>

### *Stranded migrants*

Irregular migrants who have left their own country for reasons unrelated to refugee status are often exposed to destitution, exploitation and human rights violations in the course of their journey and may become stranded in a transit country, unable to go home or to move on. As a rights-based organization, UNHCR cannot ignore the plight of such people, even if it does not become operationally involved with them.

### *Mixed motivations*

UNHCR maintains the position that it is possible to make a meaningful distinction between refugees and other people who are on the move. At the same time, the organization recognizes that people are prompted to leave their own country by a combination of fears, uncertainties, hopes and aspirations which can be very difficult to unravel. UNHCR's primary concern in relation to this issue is to ensure that states have high-quality RSD procedures, access to timely and accurate country of origin information, and that they apply the 'benefit of the doubt' principle.

### *Onward movements*

Refugees often move on from the country where they have been given protection, while asylum seekers may transit through a number of different countries before they eventually submit a claim to refugee status. UNHCR is grappling with the question as to whether such movements should be considered as part of the process of flight (in which case the people concerned are protected from refoulement) or whether they should be considered migratory in nature (in which case they become subject to the immigration controls of the country in which they have arrived).

### *Trafficking victims*

While the victims of human trafficking do not normally leave their own country in search of international protection, such people may become of concern to UNHCR by virtue of human rights violations experienced during the trafficking process, coupled with the risk that they would be re-trafficked or subjected to ill-treatment should they go back to their country of origin. Asylum seekers and irregular migrants who rely on the services of smugglers may also become victims of trafficking, as can refugees who are desperate to move on from the country where they have been granted asylum.

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<sup>4</sup> The 10 Point Plan provides a framework for UNHCR, states and other stakeholders to address the phenomenon of mixed movements in a principled manner. The 10 points are: 1. Cooperation among key partners. 2. Data collection and analysis. 3. Protection-sensitive entry systems. 4. Reception arrangements. 5. Mechanisms for profiling and referral. 6. Differentiated processes and procedures. 7. Solutions for refugees. 8. Addressing secondary movements. 9. Return arrangements for non-refugees and alternative migration options. 10. Information strategy.

### *Regular migration opportunities*

As indicated in the statement made by the High Commissioner, UNHCR has an interest in promoting regular migration opportunities which avert the need for people (both refugees and others) to engage in irregular and dangerous forms of movement. The organization is also eager to find such opportunities for people who have been recognized as refugees but who are unable to remain or integrate in the country where they have been granted asylum.

### *Migration as a solution*

UNHCR has traditionally operated on the assumption that there are three solutions to refugee situations: voluntary repatriation, local integration and resettlement, all of which are based on the notion that refugees should become fully-fledged citizens of the country in which they reside. UNHCR now recognizes the advantages to be gained from enabling refugees to acquire the status of legal migrants in their country of asylum, thereby enabling them to remain there and to retain a place in the labour market, even if the causes of flight have disappeared in their homeland.

### *Migration and development*

In recent years there has been intense international interest in the issue of migration and development, much of it focused on issues such as migrant remittances, the migration of skilled personnel and the contribution of migrants to the economies of destination countries. Refugees have been largely absent (and to some extent deliberately excluded) from this discourse, despite the direct relevance of these issues to people who have left their own country as a result of persecution and armed conflict. UNHCR's efforts to correct this omission constitute an important component of the organization's efforts to escape from the limitations of the asylum-migration nexus concept.

### *Displacement unrelated to conflict*

With the introduction of the Cluster Approach, UNHCR has become more systematically involved situations of internal displacement caused by both armed conflict and natural disasters. A debate is now taking place with regard to the extent that the organization should also play a role in situations where people are obliged to move as a result of climate change, environmental degradation and conditions of serious economic and social distress.

While UNHCR has firmly rejected the notion of 'environmental refugees' and opposes any extension of the 1951 UN Refugee Convention to include people who have been displaced for reasons unrelated to persecution or armed conflict, a draft position paper observes that "UNHCR's own mandate has progressively and pragmatically been extended over the years to persons considered to be in a 'refugee-like' situation... UNHCR could be called upon to become involved with those displaced for



environmental reasons who find themselves in a ‘refugee-like’ situation, should this be deemed necessary by the international community.<sup>5</sup>

### **An evolving role**

At the end of the Dialogue on Protection Challenges, the head of one government delegation approached another and whispered in his ear, “UNHCR started this meeting by telling us that they do not want to become a migration organization, and then spend the next two days trying to convince us that’s exactly what they should become.” While the author of this paper would not concur with this interpretation of the proceedings, the outcome of the Dialogue does appear to represent a significant step in the evolution of UNHCR’s role in relation to international migration.

First, there was a broad consensus that the traditional UNHCR notion of ‘people who are in need of protection’ can no longer be restricted to refugees. As the Chairman’s Summary observes, “it has been repeatedly stressed that there are protection gaps... this especially applies to migrants who are deemed to be ‘irregular’ by the authorities, *who fall outside the international refugee protection framework*, but who nevertheless need humanitarian assistance and/or different kinds of protection (emphasis added). Even more significantly, UNHCR was asked to play a ‘convener role’, establishing an informal working group of international organizations and states that “would take a more in-depth look into this question of existing gaps.”

Second, while underlining “the primacy of state sovereignty” in this area, the Dialogue also mobilized support for a rights-based approach to the issue of international migration. According to the Chairman’s Summary, “you have repeatedly emphasized the need to set in place specific rights-based methodologies and approaches to address these gaps, as well as the need for the human rights and dignity of all migrants to be at the core of all activities.” At the same time, the Dialogue supported the notion that “the issue of migrant rights could be given more prominence in the state-led Global Forum on Migration and Development,” as well as in the many regional consultative migration processes that have been established in recent years.<sup>6</sup>

Third, the Dialogue gave particular attention to the issue of irregular maritime migration, “placing a primacy on the right to life and on the need to address humanitarian concerns... regardless of meeting specific criteria for refugee status.” Moreover, while it is generally recognized that most of the people travelling irregularly by boat in locations such as the Mediterranean, West Africa’s Atlantic coast and the Gulf of Aden are not refugees, UNHCR agreed at the conclusion of the Dialogue to convene a meeting of the international organization’s concerned (ILO,

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<sup>5</sup> ‘Climate change, natural disasters and human displacement: a UNHCR perspective’, draft paper, Policy Development and Evaluation Service, UNHCR, May 2008.

<sup>6</sup> As the Global Commission on International Migration has pointed out, “the officials participating in these processes have generally represented ministries responsible for immigration, and it has therefore been difficult for such processes to engage in other important issues, such as the human rights of migrants.” *Migration in an Interconnected World: New Directions for Action*, Global Commission on International Migration, Geneva, 2005, p. 65.

IMO, IOM, etc.) “to work on an inter-agency plan of action relating to rescue-at-sea.”<sup>7</sup>

Finally, while UNHCR has traditionally emphasized the need for states to accede to and respect the 1951 UN Refugee Convention and other instruments of international and regional refugee law, the Dialogue recognized the value of a broader approach. In the words of the High Commissioner, “you encouraged my Office to continue to explore innovative ways to use migration, labour and human rights frameworks as a means of strengthening protection in countries and regions that have not established legal and policy frameworks relating specifically to refugees and asylum seekers... You also encouraged UNHCR to engage with states on how labour migration can benefit refugees.”

## **Conclusion**

UNHCR is currently engaged in a difficult balancing act. On one hand, the organization recognizes the need to underline the distinctive status, rights and obligations of refugees, and is sensitive to charges that it wishes to extend its mandate to broader migration issues that lie beyond its legitimate concern. At the same time, UNHCR is aware that human mobility is growing in scope, scale and complexity, and acknowledges that other stakeholders, especially states, increasingly regard the movement of refugees, asylum seekers and irregular migrants as part of a single (and often unwanted) phenomenon.

By insisting that it “is not a migration organization”, while at the same time going beyond the narrow range of issues associated with the asylum-migration nexus concept, UNHCR is seeking to resolve this dilemma in a manner that is consistent with its principles and in a way that will satisfy the varying expectations of its different constituencies: states in the North and South, other international organizations, as well as the NGO and human rights communities.

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<sup>7</sup> The prominent role that UNHCR currently plays in relation to the issue of rescue-at-sea is to a significant extent a legacy of its extensive involvement with Indo-Chinese boat people in the 1970s and 1980s.