

HIGH COMMISSIONER'S DIALOGUE  
ON PROTECTION CHALLENGES

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**DISCUSSION PAPER**

**Refugee protection and durable solutions  
in the context of international migration**

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## Introduction

1. In recent years, the movement of people from one country and continent to another has grown significantly in scale and scope. The world's population is increasingly mobile, with women, men and children leaving their own country and taking up residence elsewhere for a variety of different reasons.

2. While the majority of people move to establish new livelihoods, improve their standard of living, join members of their family or take up educational opportunities, those of concern to UNHCR are forced to flee by human rights violations and armed conflict. Given the uneven outcomes of the globalization process, coupled with the growing impact of climate change on the sustainability of life in many parts of the planet, it seems likely that the issue of human mobility will become increasingly complex and assume a leading role on the global policy agenda.

3. One effect of the developments described above has been to raise new challenges with regard to the relationship between refugee movements and international migration. Hitherto, discussions of this relationship have focused primarily on the 'asylum-migration nexus', a concept that is generally used to denote those issues that arise in mixed movement situations, where refugees and migrants are travelling alongside each other, often by irregular means.

4. While these 'nexus' issues continue to be of central concern to States, UNHCR and other stakeholders, this discussion paper suggests that an alternative approach may now be appropriate, addressing the broader range of topics that connect the questions of refugee protection and durable solutions to that of international migration.<sup>1</sup>

5. The paper, which should be read in combination with the 'Agenda for Protection', as well as the UNHCR document 'Refugee Protection and Mixed Migration: a 10 Point Plan of Action', is divided into three sections<sup>2</sup> The first section sets out the basic understandings that guide UNHCR's involvement in this policy domain. The second identifies those migration-related issues that are of direct relevance to UNHCR's mandate for refugee protection and solutions, and explains the primary concerns and objectives of the Office in each of these areas. The final section of the paper presents the strategy that UNHCR is employing to attain these objectives.

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<sup>1</sup> The paper draws from two policy statements that were published in the context of the General Assembly's September 2006 High-Level Dialogue on International Migration and Development: 'UNHCR, refugee protection and international migration', and 'The High-Level Dialogue on International Migration and Development: UNHCR's observations and recommendations'. Both can be accessed at the 'Protecting refugees' page of the UNHCR website, [www.unhcr.org](http://www.unhcr.org).

<sup>2</sup> The Agenda for Protection is a non-binding document adopted by UNHCR and States, providing an ambitious yet practical programme of action to improve the protection of refugees and asylum seekers around the world. Goal 2 of the Agenda for Protection ('Protecting refugees within broader migration movements') is of particular relevance to this paper, as are a number of Executive Committee Conclusions. These include, most recently, the Conclusion on Women and Girls at Risk (2006) and the Conclusion on Children at Risk (2007).

## Basic understandings

6. UNHCR's approach to the issue of refugee protection and durable solutions in the context of international migration is founded on a number of understandings.

### *I. The distinctive status of refugees*

7. UNHCR considers refugees to be a distinct category of people and to have a unique legal status. Their circumstances, rights and responsibilities are specifically governed by international law, most notably the 1951 UN Convention relating to the Status of Refugees.

8. This instrument describes refugees as people who are outside their country of origin and who are unable or unwilling to return there because of a well-founded fear of persecution. Since the 1951 Convention was established, the refugee notion has been broadened to encompass a wider group of people who have fled the indiscriminate effects of generalized violence or serious public disorder.<sup>3</sup>

9. UNHCR's approach to the issues addressed in this paper is premised on the international community's recognition of the specific rights and needs of refugees, as well as the concomitant obligations of States, including the obligation not to return refugees to countries where they would be at risk.

### *II. UNHCR's protection mandate*

10. UNHCR's mandate is to provide protection and solutions for refugees and other people who are of concern to the Office. All of UNHCR's activities relating to the broader issue of international migration derive from this mandate.

11. UNHCR is not a migration organization and does not consider its 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 (IOM).<sup>4</sup> Moreover, the Office has no interest in seeing migration situations turned into or treated as if they were refugee situations.<sup>5</sup> Indeed, UNHCR considers that such an approach would be detrimental to the integrity of the international refugee protection regime.

12. While UNHCR considers refugee protection and migration management to be distinct and different functions, the Office adheres to the principle that they should be

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<sup>3</sup> The broadening of the notion has taken place by means of regional legal instruments, through the jurisprudence of a large number of States and in the practice of even more, as well as in the practice of UNHCR.

<sup>4</sup> Many of the issues addressed in this paper have been the subject of consultations between UNHCR and IOM. For a joint contribution to the discourse, see 'Refugee protection and migration control: perspectives from UNHCR and IOM', paper prepared for the Global Consultations on International Protection, 31 May 2001, UNHCR document EC/GC/01/11.

<sup>5</sup> Many migratory movements, it should be recalled, take place on a voluntary basis and in an orderly and organized manner, and thus have no relationship with UNHCR's mandate for refugee protection and solutions.

undertaken in a complementary and mutually reinforcing manner. Unregulated migration can place serious strains on national asylum systems and provoke public hostility towards all foreign nationals, irrespective of their legal status. It can also prompt the imposition of restrictive border controls which fail to make the necessary distinction between prospective entrants on grounds of their need for protection, which lead to incidents of refoulement, thereby undermining the objective of effective refugee protection.

### *III. Individual rights and national interests*

13. UNHCR's fundamental concern is the protection of refugees. This entails assisting refugees to access those rights to which they are specifically entitled under international law. By promoting durable solutions, the Office also seeks to ensure that refugees are able to exercise rights of which they were deprived in the process of flight.

14. UNHCR underlines the need for States to ensure that people living outside their country of origin, whatever their legal status or their location in the world, are able to enjoy the human rights to which they are entitled under international law. In this respect, it should be recalled that States also have a responsibility to protect their own citizens, whether living at home or abroad.

15. The Office also draws attention to the fundamental right of all persons to reside in their own country, if they choose to do so. In this respect, UNHCR fully concurs with the Global Commission on International Migration, which States that "women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfill their aspirations in their country of origin, and hence migrate out of choice, rather than necessity."<sup>6</sup> The refugee movements that UNHCR has been mandated to address constitute a particularly egregious violation of this principle.

16. UNHCR fully recognizes the right of States to control their borders and to regulate the movement of people into and out of their territory. The Office also acknowledges that the presence of foreign nationals in other States can raise sensitive issues relating to cultural identity, social cohesion, public safety and the rule of law, especially when those people have arrived in large numbers and in an irregular manner. In this context, and in accordance with the 1951 Convention and other instruments, UNHCR considers it essential for refugees and asylum-seekers to respect their legal obligations.

### *IV. People in distress*

17. While refugees have specific protection needs and entitlements, UNHCR recognizes that the phenomenon of mixed movements raises broader human rights and humanitarian concerns. As recent experience has demonstrated, the people involved in such flows, irrespective of their legal status, often find themselves in distress and are subject to the same hazards and human rights violations. These include detention and

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<sup>6</sup> *Migration in an Interconnected World: New Directions for Action*, Global Commission on International Migration, Geneva, 2005, p. 4.

imprisonment; destitution and exploitation; trafficking and smuggling; physical abuse and harassment; racial or ethnic discrimination; interception, abandonment and drowning at sea; as well as return or transfer to remote and dangerous locations. People on the move who lose or who have destroyed their travel and identity documents may also find it very difficult to establish their nationality and become effectively stateless.

18. As indicated already in this discussion paper, UNHCR's mandate does not formally or normally extend to an engagement with people who lack a valid claim to refugee status or who have expressed no interest in availing themselves of that status. However, as a rights-based organization, UNHCR considers it appropriate to join with other actors in drawing attention to the plight of people who, in the course of their journey, find themselves in distress.

#### *V. Comprehensive approaches*

19. The issues of refugee protection and international migration affect countries in all regions of the world and at every level of economic development. Indeed, some of the largest cross-border movements of people take place within the global South, involving countries of origin, transit and destination that are striving to meet the Millennium Development Goals.

20. Despite the considerable publicity that has been given to the arrival of irregular migrants, asylum-seekers and refugees in the industrialized States, UNHCR wishes to point out that developing countries continue to host the majority of people who are of concern to the Office. UNHCR consequently underlines the importance of ensuring that the task of providing refugees with protection and solutions, including the solution of resettlement, is firmly underpinned by the principles of international solidarity and responsibility-sharing.

21. As indicated already in this discussion paper, UNHCR considers that there is a need for refugee and migration policies to be formulated in a coherent and consistent manner, so as to ensure their complementarity. At the same time, the Office has concluded that the challenges arising from the cross-border movement of people cannot be effectively addressed by means of refugee and migration policies alone. UNHCR consequently encourages the adoption of comprehensive approaches, taking full account of the way that policies in diverse areas such as human rights, conflict resolution, post-conflict reconstruction, environmental degradation and the development process, impinge upon the issues addressed in this paper.

## Policy issues and objectives

22. The following section of this discussion paper identifies and elaborates upon those areas in which UNHCR's mandate for refugee protection and durable solutions intersects with the issue of international migration. On that basis, the section presents the specific organizational objectives that the Office is pursuing in this policy domain.

### *I. Mixed movements*

23. Cross-border movements of people can be categorized in a number of ways. Some are clearly economic in motivation, while others involve people who are evidently fleeing serious threats to their life and liberty. While mixed movements are by no means a new phenomenon, there would appear to be a growth in the number of movements that involve some individuals who are in need of international protection for refugee-related reasons, and others (usually a larger proportion) who are not. As indicated earlier in this discussion paper, the people involved in such flows often engage in irregular forms of movement, making use of similar routes, employing the services of the same human smugglers and in some cases obtaining fraudulent travel documents from the same suppliers.

24. Such movements have clearly contributed towards a blurring of the distinction between refugees and migrants in public and political opinion. This is particularly the case in situations where considerable numbers of asylum-seekers who are deemed to have no need for international protection are able or obliged to remain in the asylum system for extended periods of time and fail to leave the country in which they have arrived once their claim has been definitively rejected. Some States have further contributed to the blurring of these distinctions by treating refugees as irregular migrants, despite their special status in international law.

25. In response to mixed movements of people, many States have also introduced measures that are intended to prevent and deter foreign nationals from arriving on their territory and submitting claims to refugee status. These measures are often indiscriminate in their application and act as a serious constraint on the efforts of the Office to ensure that people who are in need of or who wish to seek international protection are able to have their claims examined in a fair and thorough manner and are not returned to countries where their life or liberty would be at risk.

26. A principal concern of the Office in mixed migration situations is thus to encourage and assist States to establish protection-sensitive border controls and migration management systems that respect the internationally recognized right of everyone "to seek and to enjoy in other countries asylum from persecution."<sup>7</sup> The Office is particularly eager to examine ways of averting those situations in which persons of concern are intercepted and apprehended in the course of their journey, are unable to

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<sup>7</sup> Article 14 of the Universal Declaration of Human Rights.

have access to the territory and asylum procedures of States, cannot establish contact with UNHCR and are at risk of being returned to or left in dangerous circumstances.

27. When people are moving in an irregular and unsafe manner by sea, the immediate issue is not whether those individuals meet the criteria for refugee status. In accordance with longstanding maritime tradition, the first priority must be to protect the right to life by ensuring that those people are rescued and disembarked in a safe and timely manner. Given the growing scale of the problem, UNHCR considers that further discussion is required so as to reach an international consensus on the attainment of these objectives.

28. UNHCR considers that the task of refugee protection can be facilitated by initiatives which reduce the number of people to submit manifestly unfounded asylum applications. Indeed, it is to the advantage of refugees, as well as States, to reduce the pressure placed on national asylum systems by people who are not in need of international protection but who submit applications for refugee status as a means of attaining a migration outcome.

29. The Office consequently stands ready to discuss and participate in measures that provide people with the information and opportunities they need to make informed choices about their options. Not least, those people should be informed by States and competent international organizations of any opportunities that exist for them to move in a safe, legal and organized manner, including by means of family reunion and labour migration programmes.

30. A related concern, although not one that is linked solely to the issue of mixed movements, is the return of people who have submitted asylum applications and who are found not to be in need of international protection. While such migrants are by definition not of direct concern to the Office, UNHCR recognizes that their continued presence in destination countries can undermine the integrity of asylum systems, contribute to public hostility towards foreign nationals and thereby threaten the objective of refugee protection.

31. To avert such difficulties, UNHCR considers that it would be appropriate to discuss how the Office, in partnership with other actors, might contribute to initiatives that are designed to facilitate the return, readmission and reintegration of rejected asylum-seekers and to ensure that their human rights and dignity are respected. These could include, for example, profiling exercises to establish the number and characteristics of rejected asylum-seekers, the dissemination of information to such people in relation to return and onward movement, as well as the promotion of effective and rights-based return and reintegration practices.

## *II. Mixed motivations*

32. UNHCR recognizes that some of the people involved in mixed movements may also have mixed motivations. When a person decides to leave her or his own country and seek admission to another state, she or he may be prompted by a combination of fears, uncertainties, hopes and aspirations which can be difficult to unravel.

33. This is particularly so when, as is often the case, people are leaving countries that are simultaneously affected by human rights violations, armed conflict, ethnic discrimination, unemployment and deteriorating public services. Increasingly, moreover, such factors are being exacerbated by the problems of climate change and environmental degradation. In these respects, UNHCR acknowledges that the issue of refugee protection and durable solutions cannot be divorced from questions related to underdevelopment and poverty.

34. UNHCR considers that high-quality refugee status determination procedures, supported by accurate and timely country of origin information, make it possible to differentiate between those people who are in need of international protection and those who are not. The Office is consequently eager to discuss how it might best assist States in their efforts to establish such procedures and to access such information. UNHCR also underlines the importance of applying the 'benefit of the doubt' principle in such procedures, so as to ensure that people whose motivations are mixed or unclear are protected from refoulement.

### *III. Onward or secondary movements*

35. A vexing issue for both States and UNHCR concerns the situation of people who have gained refugee status or otherwise accessed protection in one state, whether by means of a refugee status determination procedure or on a *prima facie* basis, and who subsequently move on to another country. An even more problematic question concerns the situation of people who have transited through one or more countries in which they could have found protection before reaching a state in which they eventually submit an application for refugee status.

36. The rights and responsibilities inherent in such complex circumstances are still in need of clarification, and this paper will not seek to examine or elaborate on them in any detail.<sup>8</sup> There are, however, two overriding principles that guide UNHCR policy in relation to this issue and which might benefit from further consideration.

37. First, in situations where refugees are confronted with serious protection problems in their country of putative asylum, UNHCR considers that movements which would otherwise be deemed 'irregular' and 'secondary' in nature are more appropriately understood as part of the process of flight from the country of origin.

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<sup>8</sup> The Convention Plus initiative sought, *inter alia*, to promote understandings on how to address secondary movements. Given sharp differences among participating delegations, negotiations on a framework of understandings in this regard were suspended and Switzerland and South Africa, the co-chairs of this aspect of Convention Plus, issued *Convention Plus Core Group on Addressing Irregular Secondary Movements of Refugees and Asylum-Seekers: Joint Statement by the Co-Chairs*, FORUM/2005/7, 8 November 2005. The Joint Statement reflects, in summary form, the viewpoints expressed within the Core Group on the very complex issues surrounding such movements. See also Executive Committee Conclusion No. 58 (XL) of 1989, 'Irregular movement of refugees and asylum-seekers from a country in which they had already found protection'.

38. Second, a refugee who moves on for reasons that are unrelated to their protection needs does not cease to be a refugee, remains a person of concern to UNHCR and must be protected against *refoulement*. Such refugees are, however, subject to the immigration controls of the country in which they have arrived, which could in principle lead to return to their country of first asylum, as long as that country is prepared to readmit them and is able to offer them adequate protection.

39. UNHCR considers that these principles are central to any response to the issue of onward movement, but that they do not, in themselves, suffice as a framework for a responsible approach to the question of onward and secondary movements. If these principles are to have meaningful and practical application, they must, for example, be complemented by adequate levels of international support to host countries in their efforts to provide refugees with acceptable conditions of life. The application of these principles also relies on international cooperation in providing refugees with durable solutions, thereby averting the need for them to engage in irregular onward movements.

40. At the same time, it must be recognized that refugees and asylum-seekers will seek to move from poorer and less stable parts of the world to more prosperous and peaceful regions unless concerted efforts are made to address and diminish such disparities. In the absence of such efforts, secondary movement seems likely to remain a feature of both refugee flows and mixed movements more generally. Finally, UNHCR acknowledges that onward or secondary movements may also be prompted by disparities in the services provided by the Office in different countries, and will consequently seek to attain a greater degree of harmonization in this respect.

#### *IV. From refugee movement to mixed movement*

41. A refugee exodus may over the course of time become a mixed movement, involving a progressively smaller proportion of people who have a need for international protection and a progressively larger proportion of people who are moving for reasons unrelated to refugee status. This does not provide a rationale for the introduction of responses which ignore the refugee component of a mixed movement, however small that may be. Such situations will, however, require appropriate adjustments in the activities of States and UNHCR.

42. Such situations may, for example, require UNHCR to engage more directly with the circumstances of people found not to be refugees or otherwise in need of international protection. This is particularly likely to be case in situations where the Office already has an extensive presence, enjoys a detailed understanding of the changing character of the movement and has already established effective working relationships with States and other stakeholders that are seeking to address the causes and consequences of that movement.

43. To be more specific, there may be circumstances in which UNHCR can play a useful role in supporting and monitoring the return of non-refugees in their country of origin, especially when other actors cannot. The Office may also be able to engage other stakeholders in the provision of regular migration opportunities to people who might

otherwise be inclined to engage in irregular movements.<sup>9</sup> As well as making effective use of UNHCR's competencies and capacities, such interventions can preserve the 'asylum space' and thereby contribute to the quest for refugee protection and solutions.

#### *V. Human trafficking and smuggling*

44. While the victims of human trafficking do not leave their own country in search of international protection, such people, particularly women and children, 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 or be returned to their country of origin. Irregular migrants who rely on the services of smugglers may also become victims of trafficking and become of concern to UNHCR, even if it was not their original intention to seek refugee status.

45. An important objective for UNHCR in relation to this issue is to ensure that victims and potential victims of trafficking who have a well-founded fear of returning to their country of origin are identified and given access to asylum procedures. The Office also has a responsibility to try to ensure that persons of concern to UNHCR, including refugees and stateless people, are prevented from becoming victims of trafficking by identifying and responding to relevant risk factors in a timely manner. This entails addressing issues related to their documentation, legal status and residency rights.

46. With respect to human smuggling, UNHCR's perspective is twofold. The Office is concerned about the many negative dimensions of this phenomenon, including the threat that it poses to the well-being of people who are smuggled, its illicit nature and its links with others forms of cross-border crime, as well as its role in promoting xenophobia in countries of transit and destination. UNHCR therefore encourages States to accede to the UN Convention against Transnational Organized Crime and its Protocols, and to publicize the penalties imposed on people who are engaged in smuggling and trafficking.

47. At the same time, the Office also notes that many refugees do not have an opportunity to leave their own country and to seek asylum elsewhere by lawful means, and may consequently be obliged to travel in an irregular manner, including being smuggled. In this respect, the Office welcomes further discussion of the way that the imperatives of refugee protection and border control can be reconciled.

#### *VI. Changing status: migration and durable solutions*

48. While UNHCR insists on the fundamental distinction that exists between refugees and migrants, the Office recognizes that there are situations in which people in both categories are required to or would benefit from a change in their status.

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<sup>9</sup> In this respect, some particularly interesting precedents were set by UNHCR's role with Indo-Chinese refugees and asylum seekers in South-East Asia during the late 1970s and 1980s.

49. Migrants who leave their own country for non-refugee-related reasons may nevertheless acquire a need for international protection during their period of residence in another country. An overseas student or contract worker, for example, may become a 'refugee *sur place*' if there is a violent change of regime in that person's country of origin, if a civil war erupts, or if the social group to which they belong becomes the target of persecution. In such contexts, UNHCR's objective is to ensure that the people concerned

are able to benefit from refugee status or have access to some other and adequate form of protection, thereby ensuring that they will not be returned to a situation where their life or liberty would be at risk.

50. While migrants sometimes find it necessary to seek refugee status, there are also situations in which people who have fled their own country in response to armed conflict and human rights violations may prefer to remain in their country of asylum, even if the causes of flight have disappeared in their homeland.

51. By acquiring the status of legal migrants in their country of asylum, people of concern or of previous concern to UNHCR may gain an opportunity to develop their skills, save some money and support families and communities at home by means of remittance transfers. At the same time, by living and working abroad, such people effectively reduce the competition for jobs and other scarce resources in their country of origin, and thereby contribute to the peacebuilding process. As far as countries of asylum are concerned, the continued presence of refugees who have found jobs and established other livelihoods may make a valuable contribution to the growth and productivity of both local and national economies.

52. On the basis of these considerations, UNHCR would welcome further discussion of the concept of durable solutions, which has hitherto been associated with the notion that continued mobility on the part of refugees and former refugees represents a failure of the integration or reintegration process. In a period of globalization, and at a time when many countries of origin cannot yet offer adequate jobs and other livelihoods to their citizens, it may be appropriate to consider whether legal migration opportunities should be incorporated more fully in UNHCR's approach to the promotion of durable solutions.

### *VII. Migration and development*

53. In recent years there has been intense international interest in the issue of migration and development. Two dimensions of this discourse - remittance transfers and the migration of skilled personnel - are of particular interest to UNHCR in the context of refugee protection and durable solutions.

54. With regard to remittances, there is growing evidence to suggest that refugees, especially those in the industrialized States, remit significant amounts of money to members of their household and community, both in countries of origin and in other asylum countries. Such remittances have played an important role in cushioning some refugees from the impact of reductions and blockages in the provision of international assistance to the camps and settlements where they live.

55. Remittances transferred by refugees may also play a role in enabling family members to remain in their country of origin, rather than feeling compelled to move to another country in order to sustain themselves. UNHCR consequently supports the efforts that the World Bank and other actors are making to reduce the transaction costs of remittances and to maximize their impact on poverty reduction and development.

56. With regard to the issue of skilled personnel, it is evident that refugee populations include people whose talents could and should be put to good use, both in countries of asylum and, if and when they choose to return, in countries of origin. In this context, UNHCR's primary interest is to ensure that refugees are not excluded from or discriminated against in national labour markets, and to ensure that the qualifications and credentials they possess are recognized in their country of asylum. The 1951 Convention, it should be noted, promotes both of these objectives.

57. Returning to the more general discourse on migration and development, there is growing international recognition of the fact that migrants contribute to the prosperity of both their destination countries and their countries of origin. Hitherto, however, this recognition has far less frequently been extended to refugees. Indeed, people of concern to UNHCR are often perceived as a drain on public resources and a threat to national security. As a result, serious constraints have been placed on refugees in many parts of the world, including restrictions on freedom of movement, access to agricultural land and the ability to engage in other income-generating activities.

58. UNHCR's objective is to counter these negative perceptions and policies, underlining the fact that refugees have the potential to be agents of development in their country of asylum by boosting economic production, filling gaps in the labour market and by creating new business opportunities. The Office is also eager to gain a wider recognition of the fact that refugees who are able to undertake such activities during their time in exile will be better placed to go back to their country of origin and contribute to its reconstruction, once conditions allow them to return.

59. Finally, UNHCR underlines the need for States and other actors to address the root causes of many refugee and migratory movements by promoting and realizing the right to economic, social, cultural and political development, "in which all human rights and fundamental freedoms can be fully realized."<sup>10</sup>

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<sup>10</sup> Article 1 of the UN Declaration on the Right to Development.

## **Implementation strategy**

60. The preceding section of this discussion paper identified the key linkages that connect the issues of refugee protection, durable solutions and international migration, and used that analysis as a framework for the presentation of UNHCR's principal policy concerns and objectives. The following and final section of the document provides a summary of the implementation strategy that the Office is using in its efforts to address these concerns and objectives. The section focuses on special UNHCR initiatives and arrangements relating to the interface between refugee protection, durable solutions and international migration, and does not seek to summarize the wide range of associated UNHCR activities that constitute the regular and ongoing work of the Office.

### *I. Operationalizing the 10-Point Plan of Action*

61. The heart of UNHCR's implementation strategy is to be found in 'Refugee Protection and Mixed Migration: a 10 Point Plan of Action'. Drawing its inspiration from Goal 2 of the Agenda for Protection, the Plan provides a framework of activities that UNHCR, States and other actors can use to develop comprehensive strategies in mixed migration situations, especially when refugees might be at risk of refoulement. The 10 components of the plan are:

- Cooperation among key partners
- Data collection and analysis
- Protection-sensitive entry systems
- Reception arrangements
- Mechanisms for profiling and referral
- Differentiated processes and procedures
- Solutions for refugees
- Addressing secondary movements
- Return arrangements for non-refugees and alternative migration options
- Information strategy

62. The 10 Point Plan is not a blueprint that requires identical action to be taken in all circumstances. Rather, it identifies main issues and objectives around which a comprehensive strategy can be formulated, in full recognition of the fact that the activities of UNHCR and other actors subsumed within this strategy must be tailored to specific situations.

63. While some elements of the Plan are drawn from well-established UNHCR policies and practices, others are more innovative in nature. These include, for example, the notion of a 'profiling and referral mechanism', which would provide an early understanding of the circumstances and motives of the journey undertaken by a new arrival and facilitate the channeling of individual cases into the most appropriate response mechanism. The Plan also proposes the establishment of differentiated asylum processes and procedures that can be used to assess cases with varying levels of complexity. Finally, the Plan highlights the need to promote the return of non-refugees

and to identify alternative and legal migration options for people who have arrived in an irregular manner and who are not in need of international protection.

64. In order to ensure its effective operationalization, a wide-ranging checklist has been established, identifying the specific activities that UNHCR offices can undertake in relation to all components of the Plan. UNHCR's Regional Bureaux have been asked to examine the Plan and to ascertain its relevance to the mixed movement scenarios with which they are confronted.

65. Additional efforts are now being made to ensure that the Plan is known, understood and used as a consensus-building tool by UNHCR, States, international organizations, NGO partners and civil society institutions. Indeed, the Plan has already attracted considerable interest in this regard. A set of guidelines relating to the Plan are currently being produced, providing a detailed explanation of its 10 components, together with good practice examples.

66. A particular challenge for UNHCR will be to operationalize the 10 Point Plan in regions of the world where States have granted asylum to refugees but are not parties to the 1951 Convention and have not established legal or policy frameworks relating to refugees. In such circumstances, UNHCR's efforts to fulfill its mandate for protection and solutions may benefit from migration, labour and human rights regimes that are applicable to refugees but not specifically refugee-related. In the longer term, however, the UNHCR encourages and will assist all States to establish laws, procedures and policies relating to the distinctive situation of persons who are of concern to the Office.

## *II. Strengthening partnerships*

67. As envisaged in the 10 Point Plan, UNHCR's engagement in the interface between refugee protection, durable solutions and international migration depends on the establishment of partnerships with governmental, international and non-governmental actors that bring complementary competencies and capacities to this policy domain. In accordance with this principle, UNHCR is an active member of the Global Migration Group (GMG), which, since its establishment in 2006, has brought together 10 major international organizations with an interest and involvement in migration-related issues.

68. UNHCR's implementation strategy is also based on the establishment of stronger bilateral partnerships. In this respect, UNHCR places particular importance on its relationship with IOM, which is reinforced by means of an annual high-level meeting between the High Commissioner and IOM's Director General. Similar meetings are held each year between the High Commissioner and the President of the International Committee of the Red Cross, and with the UN High Commissioner for Human Rights. Issues relating to refugee protection and international migration have featured on the agenda of these respective meetings. UNHCR attaches particular value to its partnership with the International Labour Organization, especially in situations where labour migration standards and legal frameworks can be used to promote refugee protection and durable solutions.

69. UNHCR's efforts to address the issue of refugee protection, durable solutions and international migration require the Office to capitalize upon its close working relationship with the NGO community. UNHCR will also look beyond its usual range of partners in order to ensure that appropriate competencies and capacities are brought to bear on the issues addressed in this paper. A good example is to be found in the relationship that UNHCR has established with the International Maritime Organization in the context of issues such as interception, rescue at sea and stowaways.

### *III. Participating in regional migration processes*

70. The last decade has witnessed the establishment of a number of regional migration processes, bringing States and other stakeholders together on a regular basis to address migration-related issues in specific parts of the world. UNHCR is fully supportive of these processes, recognizing the opportunity they provide for dialogue, confidence-building, as well as enhanced cooperation between States and other stakeholders, including on issues of direct concern to the Office.

71. UNHCR is already engaged in a number of these processes, including, for example, the Bali Process in the Asia-Pacific region, the Budapest Process in Europe, the Migration Dialogue for Southern Africa (MIDSA) and the Puebla Process in the Americas. The Office strives to ensure that the agenda and work programmes of such regional migration processes take full account of refugee protection and durable solutions concerns.

72. UNHCR supports the involvement of a wide range of stakeholders in such processes, including NGOs, civil society institutions and government ministries dealing with those dimensions of international migration relating to human rights and development. The Office also sees value in an approach which enables the different regional migration processes to interact with each other, so as to facilitate the transfer of good practice and lessons learned in areas of concern to UNHCR from one part of the world to another.

### *IV. Contributing to global migration initiatives*

73. UNHCR welcomes the fact that the international discourse on migration has broadened beyond issues of control and state security to incorporate a focus on the impact of human mobility on poverty reduction and development. Recognizing the need to ensure that refugee issues are brought fully into this discourse, UNHCR seconded a staff member to the Global Commission on International Migration and participated in the UN General Assembly's High-Level Dialogue on Migration and Development, held in New York in September 2006.

74. UNHCR has also supported the Global Forum on Migration and Development (GFMD), the first meeting of which took place in Belgium in July 2007. At the request of the Belgian government, UNHCR supported the Secretariat that was established for this event. The Office is currently making arrangements to assist the Government of the

Philippines, which will be convening the second meeting of the Global Forum in October 2008.

75. By means of its involvement in such global initiatives, UNHCR hopes to further a number of the objectives outlined in the preceding section of this paper: raising awareness of and mobilizing support for developing countries that are hosting large numbers of refugees; highlighting the contribution that refugees and returnees can make to the development of asylum countries and the peacebuilding process in countries of origin; and underlining the need for development to be pursued in a way that takes full account of refugee protection and human rights issues.

*V. Using presence as a tool of protection*

76. UNHCR considers one of its key strengths to be the extent to which it is 'on the ground', with staff and offices located in close proximity to the locations where refugees and other persons of concern are to be found or through which they are moving. Without such a field presence, it would not be possible for the Office to discharge its mandate for protection and durable solutions.

77. In the context of mixed movements, determining whether and where UNHCR should be present is a particular challenge, given the volatility of such flows and their tendency to shift and divert in response to the border control measures introduced by States. The Office will consequently strive to pursue a flexible and cost-effective approach to this issue, building capacity and expertise on migration-related protection issues in a number of key hubs, while at the same time ensuring that shorter-term deployments can be made in response to specific incidents or crises.<sup>11</sup>

*VI. Building and engaging with national capacities*

78. UNHCR's involvement in the interface between refugee protection, durable solutions and international migration is based on the principle that States have primary responsibility for non-citizens on their territory, whether those people are refugees, asylum-seekers or migrants. States may, however, lack the resources and capacity to address such issues in an effective manner. UNHCR's primary concern in this respect is to support the development of dedicated systems and procedures that enable States to identify and formally recognize refugees, to ensure that they enjoy the protection to which they are entitled, and to enable them to find a durable solution.

79. As indicated earlier, UNHCR will in some situations be required to engage with national institutional and legal frameworks which treat refugees and irregular migrants in an undifferentiated manner. The Office will respond to such situations in a creative way, stressing the need for the establishment of refugee-specific protection regimes,

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<sup>11</sup> The deployment of a UNHCR staff member to the Italian island of Lampedusa, where large numbers of foreign nationals have arrived by irregular means, provides one example of this approach.

while at the same time exploring opportunities for refugee protection and solutions to be promoted by other means.

80. UNHCR recognizes the need for national capacity-building activities to be undertaken in the context of regional and sub-regional approaches, so as to avoid the creation of imbalances and pull-factors which act as an inducement to irregular movement.

#### *VII. Influencing public opinion*

81. Recent responses to mixed movements and other dimensions of international migration of concern to UNHCR have been strongly influenced by public opinion and media coverage. That opinion and coverage has in many instances reflected a considerable degree of confusion in relation to the respective situation and status of refugees, asylum-seekers, irregular and legal migrants. Politicians seeking to mobilize public support have in some instances contributed to this confusion, engendering an environment which is detrimental to the protection of refugees and the well-being of other foreign nationals.

82. While UNHCR's ability to influence these variables is limited, the Office will reinforce and reorient its public information and advocacy efforts, so as to highlight the needs and entitlements of refugees in the context of international migration. To support such efforts, a portal has been established on the UNHCR website providing access to a wide range of relevant UNHCR documents, including the 10 Point Plan of Action. A complementary photo and video portal is currently under construction.

#### *VIII. Ensuring internal coordination*

83. In terms of UNHCR's internal structure, the issue of refugee protection and international migration is a cross-cutting one, in which many different parts of the Office are involved. The implementation strategy presented in this document consequently depends on effective leadership and internal coordination. To attain this objective, the High Commissioner has determined that activities relating to the interface between refugee protection, durable solutions and international migration will be led by the Assistant High Commissioner (Protection) working under his overall authority.

84. Recognizing the growing importance of the linkages between these issues, a multifunctional Migration Working Group (MWG) has been established at UNHCR Headquarters. The Assistant High Commissioner (Protection) will ensure that this body meets on a regular basis and at a suitably senior level, that it establishes a coherent work programme and that it liaises effectively with other UNHCR units at Headquarters and in the field.

#### *IX. Providing staff training*

85. While UNHCR staff are familiar with issues relating to refugee protection and durable solutions, their understanding of the way these issues interface with that of

international migration is less strong. Responding to this need, UNHCR has for the past four years offered staff members a thematic learning programme on 'Protection in the context of broader migration movements', as well as mainstreaming the issue in other learning programmes such as the 'Protection Learning Programme'.

86. The first of these programmes offers UNHCR staff an opportunity to learn about the most recent trends and developments in the rapidly-moving field of international migration, and to consider the implications of these trends and developments for the programmes for persons of concern to UNHCR in which they are engaged.

87. The programme also provides the Office's personnel with an opportunity to interact with and learn from colleagues in other relevant organizations, including IOM, the Office of the UN High Commissioner for Human Rights and the International Labour Organization. UNHCR will update the learning programme on an annual basis, ensuring that it is used as a means of disseminating and supporting the implementation of the 10 Point Plan of Action. The Office will ensure that all of these initiatives are based upon the principle of Age, Gender and Diversity Mainstreaming.

#### *X. Reviewing UNHCR policies and programmes*

88. As observed earlier in this paper, the issue of refugee protection and international migration, and more particularly that of mixed movements, has gained a prominent place on the global policy agenda. Given the predictions that are now being concerning the future movement of people as a result of climate change, natural disasters and global economic disparities, one can expect this issue to remain a high priority for the international community.

89. As part of its implementation strategy, UNHCR will keep abreast of and contribute to the discourse of refugee protection and international migration, as well as developing and articulating its own policies in this policy domain. The Office will also review the effectiveness of its interventions in this area in order to learn lessons from its experience and to ensure that they are incorporated in its policymaking and programming processes.

*UNHCR*