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## Europe: a Region of Migration and Protection

### Session 1 Manual

-  Objectives
-  Session Outline
-  1.1. Sharing experiences
-  Facilitation Tip 1: Facilitating the discussion
-  1.2. Presentation:  
Europe as a region of migration and protection
-  Facilitation Tip 2: Delivering effective presentations
-  Background documents and further reading  
for facilitators

**Usefull Tip:** click on these icons for quick navigation



# Objectives

In the area of expanding knowledge, after this Session, participants will:

- Be conversant with key provisions of the international, regional and national legal instruments related to international protection in the context of mixed migration movements;
- Strengthen their knowledge and understanding of the specific situations faced by refugees and migrants, including related age, gender and cultural aspects.

In the area of skills and attitudes, it is foreseen that they will:

- Strengthen their interest in furthering their knowledge and skills with regard to the protection aspects of their work;
- Assess their own feelings and perceptions in respect of their work with arrivals.



# Session Outline

Methodology	Material required	Duration (Total: 3h 25min)
<b>1.1. Sharing experiences</b>		90 mins
<b>a) Story-telling</b>	Individual case cards (to be prepared, if desired, by the trainer)	30 mins
<b>b) Plenary discussion</b>	A5 cards (1 x participant)	15 mins
<b>c) Card writing</b>		
<b>1.2. Presentation</b>	<ul style="list-style-type: none"><li>- Power Point projector &amp; large screen</li><li>- Key messages</li><li>- Power Point presentation</li></ul>	1hour (divided into a 30 min presentation + 30 min Q &A)



## 1.1. Sharing experiences

### a) Introductions through story-telling

1. This Session aims to set the tone for the workshop. As such, it intends to bring the **human** aspect of border controls to the workshop and ensure that the workshop's discussions go beyond theoretical questions and look into:
  - the situation of persons arriving at borders as bearers of rights;
  - the role of border and entry officials with regards to ensuring the respect of those rights;
  - how border and entry officials can be effective and make a difference based on their own personal commitment and understanding of the situation.
2. Story telling is an excellent training tool, which allows for relating the experiences of participants of the workshop, bringing to light values, beliefs and assumptions, and fostering engagement.
3. To this end, the facilitator will invite participants to introduce themselves, not with their real names but using the (fictitious) name of a person who they may have come across in the course of their duties, and who may have had a particular impact on them. Such a person can be a migrant or an asylum-seeker. The participants will speak as if they were that person who, in turn, will introduce the relevant entry official and give some information about the latter. Each participant will have three minutes for their introduction.
4. Taking the role of a migrant or asylum-seekers they may have previously met, participants should describe:
  - Whether the person was an asylum-seeker or a migrant
  - The situation in which he/she met the entry official (if known) and his or her function.
  - What the entry official did in that situation
  - What the consequences were for the migrant or asylum-seeker.
5. One example could be the following: *“My name is Sheila. I come from Nigeria. I met Mr. Mancini three years ago at Rome airport. He was at passport control and he noticed that I was carrying a false passport. He took me to a room at the airport’s immigration police station and spoke to me until he realized that I did not understand anything he said. Later, he came back with an interpreter. I was able to explain that I was in my seventh month of pregnancy and needed help. Then other people came and helped me.”*
6. To create a welcoming atmosphere, the facilitator can invite participants to approach the centre of the room with their chairs, forming a circle.
7. In order to ‘break the ice’ and encourage participation, the facilitator should kick-start the Session by taking up the role of a migrant or asylum-seeker him or herself and relating a personal experience. Facilitators do not need to be border or entry officials, this can be also done by UNHCR or NGO staff (e.g. *“I was sitting in a detention centre in Malta and somebody with a smile approached me saying he was a ‘Protection Officer’”...*).
8. It is often useful to refer to a frustrating experience (e.g. *“This Protection Officer was kind, but actually, did not help too much. When I went back looking for her to show her my documents, she had disappeared and I wondered why she had asked me so many questions”*). This can set the standard for ensuing interventions at a reasonable level, thus not giving the impression that participants should portray themselves as “heroes” or only share positive experiences. The most important thing is to “humanize” the debate, to describe real situations that have an impact on them personally as well as on others.

9. If participants are for one reason or another reluctant to speak out, the facilitator could invite fewer participants to present their stories.
10. In larger groups, or especially if facilitators sense that the participants might be reluctant to do this exercise in front of a recently-formed group, participants may split up into smaller groups for the purposes of this exercise. After talking in small groups and going through the ‘introductions’, the facilitator could ask each group to describe some of the experiences brought up during these ‘introductions’. During the different presentations, a co-facilitator should note on a flipchart the different kinds of functions carried out by the different participants in their day-to-day jobs.

## b) Plenary discussion

- In the ensuing plenary discussion, the facilitator should raise the following questions with the participants (See also *Facilitation Tip 3: Asking participants questions to induce learning or commitment, in Session 2*):

### - Questions that help with organizing the facts mentioned in the stories:

“What are some of the aspects of these stories that caught your attention?”

Possible answers may include: *“The people arriving at the border have human needs”, “There are lots of children among the migrants” or “Sometimes they look really exhausted and frightened”, etc.*

### - Questions that trigger personal reflection:

“Have you had experiences and reactions that you have never or hardly dared share with colleagues in response to stories or experiences you learned of when dealing with migrants and refugees?”, “Did you personally identify with some of the other stories?”

Possible answers may include: *“As an entry official I feel helpless when I see the needs of these people when they arrive”; “Why should we - the entry officials - carry the burden of helping these people?” or “I felt that it is possible to help specific individuals, and this makes me feel good”.*

### - Questions on the relevance of the exercise for the workshop:

“What is the significance of these stories for our workshop?”

Possible answers may include: *“It shows that entry officials can make a real difference to people’s lives”, “This indicates that it is important for entry officials to work closely together with other institutions that have experience in helping people with difficulties.”*

### - Questions that may encourage further interest:

“If we now start with the next Session, what conclusions of the stories should we put on the wall as a reminder throughout the workshop?”

Possible answers may include: *“Migrants/asylum-seekers are human beings; “Many people may have gone through a difficult journey”*

- The co-facilitator should put the answers to the last question<sup>1</sup> on a flipchart and place the paper on the wall of the workshop room.
- Finally, the **facilitator should go through the compiled list of the day-to-day functions** of the participating entry officials and other possible participants to the workshop (see paragraph 10 under previous section 1.1 a) 10). Participants should confirm whether the list includes their main functions and correct it as appropriate. When looking at the overall list, the facilitator should brainstorm with participants on the main tasks and responsibilities involved under each of the listed functions.
- This will constitute an important point of reference throughout the workshop, to recall the kind of scenarios where both facilitators and participants need to apply their knowledge and experiences.

<sup>1</sup> Known to some trainers as “decisional questions”, these questions may lead a person to take a decision for the future, which implies a commitment to take action.



## Facilitation Tip 1: Facilitating the discussion

Story-telling is a sensitive exercise in general as it deals with personal experiences and feelings. It is even more so in this case, as it constitutes the first activity of the workshop. One of the most important zones of learning is the affective one. Much can be learned by looking at one's own personal experiences and feelings, as well as those of other peers, if done in an appropriate manner.

### To this end, as a facilitator:

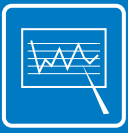
- Do not judge comments made by participants, either positively or negatively. Feedback should build upon participant's contributions to transform them into a learning experience.
- Respect the other person's feelings, beliefs and opinions. If a participant expresses a negative feeling as a result of his/her experience with an asylum seeker or migrant, the facilitator should find out which was the exact feeling and ask the participant what he or she would have needed in order to overcome that feeling? (e.g. resources, knowledge, time, etc.)
- Avoid general comments such as "That was good". Instead, point at what was relevant in the participant's statement from the point of view of the Session's objectives and seek out from the group of participants what was the lesson learned, e.g. "That experience shows how hard it is to take a decision that determines somebody's future in such a drastic manner and, therefore, how helpful it is to be aware of the basic legal principles and obligations to reduce the margin of subjectivity."
- **To ensure that the group understands the interventions by participants, the following techniques can prove useful, particularly in difficult discussions:**
  - **Repeating:** the facilitator repeats verbatim contributions to confirm understanding and ensure that the relevant participant is heard by the whole group.
  - **Rephrasing:** the facilitator repeats back in his or her words what he or she understands a participant to be saying.
  - **Summarizing:** a summary is similar to a paraphrase, but it condenses the content of several comments that may have been made over the course of many minutes
  - **Re-framing:** extracting the "inflammatory" impact of a statement and expressing the "legitimate" underlying motivation for that statement.
- **If a participant expresses an opinion that is contrary to international human rights standards or humanitarian principles, the facilitator should note:**
  - As this is the very first Session of the workshop you should highlight the complexity of the issue and announce that it will be looked at later in another Session. This is to avoid entering into an in-depth analysis of an issue at this stage.
  - Make a personal note of it and plan when you will bring up the issue in a later Session, without personalizing the discussion. Make sure you do follow up.
  - However, in any of the other Sessions, feel free to take the necessary time to clarify the issue, as it is important to provide clarity.
  - A useful approach is to invite the rest of the participants to give their views. There will always be participants who can provide a helpful reply, from where you can start reasoning with the group in a different direction.

## c) Card writing: Defining expectations

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- Following that discussion, the facilitator should **distribute a card to each participant and ask them to write down one expectation** they have regarding the workshop. The expectation should have some kind of relation with each participant's field of responsibility in the context of border controls.
- The facilitator should put the expectations on the wall so that participants can look at them in the coffee break.
- The **co-facilitator** should **group the expectations into sets** based on similar objectives, note them on a computer and present them to the participants (with the help of a projector) at the end of the day under "Conclusions".





## 1.2. Presentation: Europe as a region of migration and protection

The Power Point presentation is available by means of the [current link](#).

To assist you in the preparation of the presentation, please also see *Facilitation Tip 2: Delivering effective presentations, in Session 1*.

**Remember!** You may need to adjust the content of this presentation to the level and background of participants, as a result of your learning needs assessment.



### Key messages corresponding to the different slides

#### Introduction

The objective of this presentation is to provide an overview of the profile of persons crossing European borders, the nature and scope of mixed migration movements, as well as regional and international protection obligations in respect of different categories of persons. This presentation also aims to provide an introduction to **the role of each stakeholder** in helping to ensure that persons in need of protection attempting to cross European borders have access to adequate procedures and responses.

#### 1. Who crosses the external borders of the EU?

- Movements of people from one country to another may include some persons who are in need of international protection and others who are not. This is likely to be the case when, as often happens, a country of origin is simultaneously affected by human rights violations, conflict, economic decline and an absence of livelihood opportunities. Such flows of people involving both refugees and migrants are commonly referred to as “mixed movements”.
- Mixed movements represent a wide spectrum of nationalities, gender or age groups, religious, social and political backgrounds, legal status etc. It is this variety of personal experiences and backgrounds that has led to the development of a migration control system that deals with different situations and people in a different manner.
- European States making use of their sovereignty differentiate between persons who have the required documentation to cross their borders and those who do not. These two categories are known as ‘regular’ or ‘irregular’ migrants, or “legal” and “illegal” migrants. In this training we will use the terms ‘regular’ and ‘irregular’ migrants, as asylum-seekers in particular have important legal entitlements under international law, even where they may not fulfil some national legislative provisions on entry and stay.
- International and regional law applicable in European States obliges these States to make an important differentiation that goes beyond having the required “documentation” to enter a European country. States have the obligation to **refrain from returning individuals to any place where they may face persecution** as well as inhumane or degrading treatment or punishment, including torture, **even if they are in an irregular migratory situation**. It is amongst this category of persons that we find persons in need of international protection.
- **In this context it becomes vital that migration control authorities familiarize themselves fully with the implications of international protection and human rights obligations.** These authorities, as representatives of the State, will need to find effective methods to ensure a State abides by its obligations in a whole array of new and complex situations.



## 2. Respect for and protection of international human rights norms

- States are bound by commitments in human rights conventions that they ratify, as well as by customary international law norms. Most human rights are guaranteed irrespective of an individual's immigration status: they are a function of a person's status as a human being, not as a citizen of a particular state. In other words, a person's status as an 'alien' or non-national does not exclude him or her from the protection of human rights law.
- The International Bill of Rights which is composed of the Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1966 International Covenant on Civil and Political Rights, and its two additional protocols, forms the cornerstone of international human rights law. Most of these related provisions have been translated into national legislation and policies.
- The international instrument specifically addressing the protection of migrants is the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). However, to date this Convention has only been ratified by 36 States. These are not generally among those seen as "countries of destination" for migrants.
- The European Convention on Human Rights (ECHR) also provides minimum safeguards as it requires that contracting States take measures for the effective prevention of human rights violations against vulnerable persons including irregular migrants.
- Non-citizens, like citizens, are entitled to rights that are absolute or not subject to derogation or limitation. They are also entitled on equal terms with citizens to those rights whose denial would never be justifiable. These include, for example, the right to life, prohibition against torture and cruel, inhuman, and degrading treatment or punishment, rights guaranteed in the criminal process, freedom of thought, conscience and religion, the right to leave a country, the prohibition of retroactive criminal penalties and the right to marry.

### Which rights?

- **The right to life:** State authorities should not use unreasonable force to prevent the entry of non-nationals into a country. The authorities must also endeavour to save those whose lives may be in danger in seeking to enter a country; this includes refraining from sending them to a place where their lives may be in danger.
- **Prohibition against torture and inhuman or degrading treatment or punishment.** European States must ensure that nobody is sent to a place where they could face torture or inhuman or degrading treatment or punishment. This includes the obligation to refrain from sending migrants back to their home country if they could be subject to such acts.

Additionally, the return process of irregular migrants should be carried out with full respect for the inherent dignity of returnees, taking into account, inter alia, their age, sex, state of health and disabilities. Coercive measures during expulsion should be kept to an absolute minimum.

- **Freedom from slavery and forced labour:** victims of trafficking should be protected in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea (referred to as the "Palermo Protocols") as well as the Council of Europe Convention on Action against Trafficking in Human Beings.
- **Right to non-discrimination** on grounds of race or ethnicity in granting or refusing admission, in authorising a stay or an expulsion of an irregular migrant.
- **Freedom of movement:** detention of irregular migrants should be used only as a last resort and not for an excessive period of time. In this context:
  - Where detention is necessary, irregular migrants should be held in special detention facilities and separate from convicted prisoners;
  - Children should only be detained as a measure of last resort and then for the shortest possible period of time;
  - Detention or the holding of other vulnerable persons (pregnant women, mothers with young children, older persons and persons with mental or physical disabilities) should, whenever possible, be avoided.

- **Right to a hearing, with the assistance of an interpreter**, in order to explain the reasons for entering the country.
- **Right to an adequate standard of health care:** emergency health care should be available to irregular migrants taking into account, in particular, the situation of persons with specific needs, such as children, older persons, single parents, pregnant women, as well as persons with mental or physical disabilities.

### 3. The most important obligation of States in relation to refugees is that they cannot return them to persecution

#### A refugee is:

*“A person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”*

We will look more closely at the refugee definition later in the workshop. At this stage, however, it is important to note some of the key elements in the definition:

1. the element of fear of persecution;
  2. that the law foresees five possible grounds for persecution;
  3. and that the person is outside the country of nationality (or residence) and cannot or does not wish to return to it because of that fear.
- This definition is contained in the **1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereafter the 1951 Convention)**. The Convention has been signed by 46 European countries, including all 27 EU Member States, who have therefore undertaken to abide by it. This Convention is part of the EU *acquis*, which is the set of norms, standards and practices adopted by the EU as a whole.
  - The refugee definition provided in the 1951 Convention is important because States are obliged to grant ‘international protection’ to those who qualify for refugee status on the basis of criteria laid down therein. UNHCR also has the competence to provide international protection to refugees who come within the extended refugee definition under UNHCR’s mandate because they are outside their country of origin or habitual residence and unable or unwilling to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. Countries have established procedures to determine refugee status, also known as “asylum procedures”. At the regional level, EU Member States have in the past few years been developing common policies on asylum as part of the European Union’s objective of progressively establishing a common European asylum system.
  - **What happens when a person is recognized as a refugee?** Once recognized as a refugee, a person is granted international protection by the hosting state, which includes the right not to be sent back to his/her country of origin or any other place where they may fear persecution. The term ‘international protection’ points to the fact that refugees do not have the protection of their own governments and national institutions. Specific rights are attached to the status of refugee which we will discuss later during the workshop.
  - The right not to be returned to the place of persecution is generally known, in its French denomination, as ***non refoulement***. The 1951 Convention spells it out very clearly as follows:
 

*Art. 33. 1: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”*
  - As seen above, *refoulement* is also used in international human rights law, in reference to the expulsion or return of any persons who may face a risk of being subjected to torture or inhuman or degrading treatment or punishment. Furthermore, major human rights treaties prohibit the forcible return of persons to countries where they may be exposed to torture or cruel, inhuman or degrading treatment or punishment. The UN Convention against Torture (CAT) spells it out very clearly as follows:

Art. 3: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

- As the refugee definition signals, most persons fleeing persecution are confronted with life-threatening situations of violence, which rarely give them the opportunity to gather the requisite documentation to be granted access to the EU through legal channels. Although some manage to access the EU with visas, most asylum-seekers or refugees do not have this privilege and often see themselves forced to resort to smuggling or trafficking networks in a desperate attempt to reach international protection.
- It is for this reason that border control mechanisms need to be sensitive enough to recognize those who may wish to seek international protection, amongst those attempting to cross the border, often through irregular means.

#### 4. Victims of trafficking are recruited for the purpose of exploitation

- **An important category of persons whose presence at the border should ideally be detected by the authorities for protection purposes are victims of trafficking.** Sometimes, victims of trafficking also qualify for refugee status, since they cannot return to their country of origin without fearing persecution in the form of e.g. reprisals by members of the trafficking networks that tried to exploit them. While this is not always the case, victims of trafficking still have the right to specific forms of protection by the State that receives them.
- **The international community has acknowledged that trafficking in persons is a “transnational crime”**, and has adopted legislation to fight this crime and ensure protection for the victims. As explained above, this legislation is known as the “Palermo Protocols”, which supplement the United Nations Conventions against Transnational Organized Crime.
- All states in the EU have signed the Convention and the Protocols and have subsequently reviewed their national legislation in order to make it compliant with that treaty or are in the process of doing so.
- Later in the training materials we will also look at the situation of persons who fall in the hands of traffickers or smugglers, whether voluntarily or not, as well the specific obligations of States with regard to such persons. At this stage, however, let us look at the **definition of trafficking in persons**, as it is stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (part of the Palermo Protocols), which at the same time provides us with the **definition of a victim of trafficking**:

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”*

The definition can be broken down into three key elements:

- **acts:** *recruitment, transportation, transfer, harbouring or receipt of persons;*
- **the means used to commit those acts:** *the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;*
- **Purposes or goals:** *exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

#### 5. Statistics: Migration routes to Europe are also asylum routes

The statistics show that:

- The number of irregular entries into the EU is a very small fraction of the total number of border crossings at the external frontiers.

- The number of those seeking asylum amongst irregular migrants is even lower, which tells us that narrowing the possibilities to access asylum procedures in all likelihood will not help stem irregular migration.
- While the figure of border crossings has remained relatively stable in the EU, during the last five years, the number of asylum applications in the EU27 has gone down drastically. This can have many explanations, including the end of the conflict in the Former Yugoslavia, and also increasing constraints faced by refugees who often have no documentation or any regular means to enter Europe.
- However, if we take into account that approximately 40% of those asylum-seekers who manage to reach Europe AND have access to asylum procedures are granted international protection, the vital role of border authorities to facilitate access to such procedures becomes even more evident, as it shows that many of those seeking protection actually *deserve* protection.
- Because refugees often arrive in the context of larger migratory movements and are therefore subject to regular border control mechanisms, the challenge is to ensure that border control mechanisms are sensitive enough to identify persons in need of protection, so that refugees will not be mistakenly returned to places where they fear persecution.

## 6. The role of the EU: Crossing external borders

EU involvement in border management emerged in connection with the establishment of the Schengen area in 1985, after which State Parties agreed to dismantle their internal borders in 1990. Schengen States include all EU Member States, with the exception of the UK and Ireland, and some non-EU States, namely Iceland, Norway, and Switzerland. With this change Member States' attention focused on the strengthening of the EU's external borders. With the entry into force of the Amsterdam Treaty in 1999 the EU acquired new competences under Title IV "*Visa, asylum, immigration and other policies related to the free movement of persons*". Article 62 of the Treaty constitutes the legal basis for border controls and visa policy. Article 63 of the same Treaty makes illegal immigration, and residence and related activities part of the competence of the EU, including repatriation.

The process of dismantling Europe's internal border controls through the *Schengen process* has placed unprecedented and visible pressure on Europe's external borders. To ensure that external borders are effective in maintaining the integrity of the inner EU space, the EU has embarked in recent years on a complex and interrelated process, in the area of migration, asylum and the fight against terrorism, built up around three main pillars, namely common legislation, common operations and financial solidarity. **EU Member States have developed sophisticated "entry management systems"**, which have moved controls away from the actual physical borders and created 'virtual borders'. States have set in place measures which can already take effect outside their own territory, e.g. on the high seas and on the territory of third States, which include visa agreements with third States, the out-posting of immigration and airline officials in border areas in third countries, and extraterritorial interception operations. They have also delegated certain control functions to private actors, for example through the employment of carrier sanctions.

a) With regard to the **crossing of external borders**, efficient border management and border security has been a top priority for the European Union and to this end, the EU has developed a so-called "Integrated Border Management" system (IBM). The system is based on the understanding that borders not only have to be protected against illegal activities and threats to national security, economy and public health, but also have to be open to the freedom of movement of goods (legitimate trade) and persons. Some of the most important measures taken in this area have been:

1. The adoption of the Community Code on the Rules Governing the Movement of Persons across Borders (Schengen Borders Code). The Code provides rules regulating the crossing of the external borders, the conditions for entry and the controls at external borders. Regarding human rights safeguards, the Schengen Borders Code insists that border checks must be carried out with respect for human dignity. It also mentions the respect of fundamental rights as set out in the Charter of Fundamental Rights of the EU and of international protection and *non-refoulement* obligations. Article 3 of the Schengen Code adds that the Regulation applies "*without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement*". This means that persons seeking international protection cannot be refused entry for not complying with the entry requirements of Article 5 of the Code, as stated in Article 13 of the Code.
2. The establishment of the External Borders Fund for the period 2007-2013 as part of the General Programme «Solidarity and Management of Migration Flows».

3. The creation of FRONTEX, the European Agency for the Management of Operational Cooperation at the External Borders of the EU. This is a co-ordinating body between Member States, which monitors land, air and sea borders and is key in the implementation of a common EU policy for integrated border management. Its main tasks include:
  - coordinating operational cooperation at external borders;
  - assisting Member States to train national border guards;
  - carrying out risk analyses;
  - following up the development of research;
  - providing technical and operational assistance at external borders;
  - developing a joint training programme for border guards and offering training seminars;
  - carrying out an inventory of national means that could be made available to other Member States;
  - assisting in the organisation of joint return operations of irregular immigrants.
4. Adoption of a Council Decision containing Guidelines on Surveillance and Interception at Sea (April 2010). These Guidelines provide a set of principles to be observed in the context of Frontex-coordinated maritime border operations, underlining among other things the importance of the principle of *non-refoulement* which binds all Member States in the conduct of border management. While there may be challenges to be met in the implementation of the Guidelines, they represent a step forward in acknowledging key international refugee law and fundamental rights principles at EU level.
5. The creation of the *Rapid Border Intervention Teams (RABITs)*. The rapid intervention teams are designed to provide rapid technical and operational assistance to a Member State facing a large influx of irregular migrants by allowing those teams directly to assist the national border guard services of this Member State on a temporary basis.
6. The development of the «European border surveillance system» (EUROSUR). This system is designed to support the Member States in their efforts to reduce irregular migration by improving their situational awareness at their external borders and increasing the reaction capability of their information and border control authorities.
7. A Council Regulation creating an EU *immigration liaison officers* network (ILOs). These officers are representatives of the Member States who are posted in non-Member States in order to implement measures to combat irregular immigration.
8. Carrier sanctions: under EC legislation carriers are made liable for transporting into EU territory persons who are not in possession of the travel document, such as a visa, required for entering the EU. Article 4 (2) states that carrier sanctions must be introduced “*without prejudice to Member States’ obligations in cases where a third country national seeks international protection.*”
9. Development of a Common EU Visa Policy, consisting of a number of instruments: the Community Code on Visas; the Visa Information System (VIS) (an EU system for collecting and storing data on visa applicants and ensuring the exchange of visa data between Member States), the determination of applications by non-EU nationals in need of entry visas; the harmonization of visa formats; and transit arrangements. In principle, visas for entering Schengen countries must be issued in advance at diplomatic and consular posts as stated in the Convention implementing the Schengen Agreement. However, the Council introduced derogations to this rule in 2003 which allow the issuance of visas at the border to a person in transit who has not been able to apply in advance for a visa, but is in position to provide an explanation and evidence of his reasons, and complies with the Schengen conditions laid down in its Article 5. The same applies to seamen in transit who comply with the Schengen conditions and have a good reason for requiring visas at the border.

**Notwithstanding these important developments in EU border management, it is important to note that the responsibility for the control and surveillance of external borders remains with the Member States.**



b) **In the area of migration**, the EU has recognised that it needs migrants in certain sectors and regions to address its economic and demographic needs. Major steps in this context were the adoption of the following instruments:

- The Directive on Family Reunification, which determines the conditions under which family reunification is granted to third-country nationals residing lawfully in the territory of an EU Member State;
- The Directive on EU Long-Term Resident status, designed to grant long-term residence to third-country nationals who have legally resided for five years in the territory of a Member State;
- The Directive on short-term residence permits issued to victims of trafficking who cooperate with the competent authorities;
- The Return Directive, which aims to set out common standards and procedures in Member States for returning irregularly staying third-country nationals, *“in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.”*

c) **In the area of asylum**, in 1999, the EU started working on the creation of a Common European Asylum System (CEAS). The 1997 Treaty of Amsterdam set the legal framework by prescribing legally binding instruments for refugee protection and set minimum standards in a number of areas. The purpose was to harmonize national asylum systems and to ensure that all asylum-seekers in the EU are treated under similar conditions, irrespective of the EU Member State where asylum is being sought. A 1999 European Council meeting in Tampere, Finland, set the political agenda to inform this legislative process. European Union Member States agreed at the highest levels to work towards a common asylum system. They confirmed that the system should be based on absolute respect for the right to seek asylum and full application of the 1951 Convention.

During the first phase of the creation of the CEAS (1999-2004) Member States adopted a set of legal instruments. The adopted legislation reflects some good practice in refugee protection, such as recognition of persecution by non-state actors. It also grants subsidiary protection status to individuals who do not fall within the definition of a refugee in the 1951 Convention but are in need of protection under international human rights law. Furthermore, the legislation obliges Member States to provide a minimum standard of support, known as reception conditions, to asylum-seekers during the determination procedure, including health care, accommodation and other benefits.

- However, Member States found it particularly difficult to agree on procedures to determine just who should qualify for international protection and what rights they should enjoy. Most Member States sought to maintain key elements of their existing asylum systems, leading to agreement in some areas at the level of the lowest common denominator. Throughout the process for the negotiation and adoption of the new EU legal instruments, UNHCR, other international organizations, as well as NGOs, advocated strongly, though not always successfully, for the maintenance of the highest possible protection standards.
- Since the beginning of the harmonization process, the EU directives and regulations in the area of asylum have aimed at:
  - Establishing EU-wide minimum standards on the issue of temporary protection for displaced persons (Temporary Protection Directive)
  - Defining who can be considered a refugee or otherwise in need of protection (Qualification Directive)
  - Harmonizing asylum procedures in all Member States (Asylum Procedures Directive)
  - Ensuring a set of common reception conditions in all Member States (Reception Directive)
  - Establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States (the Dublin Regulation).
  - Establishing a database of fingerprint records aimed at facilitating application of the Dublin Regulation (the EURODAC Regulation).
  - Establishment of the European Asylum Support Office (EASO), which with responsibility for facilitating practical cooperation on asylum among EU Member States.

**What next?** The EU has acknowledged that, in spite of all the above mentioned measures, there are still considerable challenges in ensuring access to equal standards of protection for asylum in all EU Member States. A second legislative phase is therefore underway, which aims to establish common asylum procedures and standards, going beyond the minimum standards adopted in phase 1.

## 7. The role of UNHCR globally: To support Governments in ensuring that all those who require international protection under the terms of the 1951 Convention are granted refugee status

- UNHCR was conceived in the aftermath of the Second World War, at a time when the issue of human rights was high on the agenda of the international community. The Office of the United Nations High Commissioner for Refugees was established on 14 December 1950 by the United Nations General Assembly. The High Commissioner is elected by the General Assembly and reports to that body through the Economic and Social Council. Policy directives are provided by the General Assembly. UNHCR's Headquarters are located in Geneva, while it has field offices throughout the world.
- In accordance with its Statute, UNHCR's work is humanitarian and non-political in character. UNHCR has two core mandate functions:
  - to provide international protection to refugees;
  - to seek lasting solutions to their problems;
  - Governments bear the primary responsibility for protecting refugees on their territory, and often do so together with local NGOs. However, in many countries, UNHCR staff work alongside Governments, NGOs and other partners in a variety of locations ranging from capital cities to remote camps and border areas. They attempt to promote and provide legal and physical protection, and minimize the threat of violence, including sexual and gender-based violence, to which many refugees are subject, even in countries of asylum.
- UNHCR's activities to protect and assist refugees include:
  - securing the admission of asylum-seekers, especially when States are tempted to close their frontiers indiscriminately;
  - preventing *refoulement*, which implies opposing measures that expel or return refugees to a country where they face persecution or their lives or liberty may be threatened;
  - assuring that the treatment of asylum-seekers corresponds to certain basic humanitarian standards; it is UNHCR's duty to encourage governments to make adjustments to their national laws and regulations, and make sure they are properly applied;
  - ensuring that asylum-seekers have access to refugee status determination;
  - protecting the rights of asylum-seekers/refugees in detention; and
  - promoting the reunification of separated refugee families. This is particularly important when family members stay behind in the country of origin or of first asylum and wish to join the refugee in an asylum country.
- In addition to refugees as defined by the 1951 Convention, persons of concern to UNHCR include:
  - Asylum-seekers, namely persons who request protection, but whose claims have not yet been definitively evaluated through national asylum systems. Asylum-seekers who have been denied access to an asylum procedure are also included, as they may yet to be found to need international protection once their procedure is completed.
  - People who are entitled to complementary or subsidiary forms of protection under other international and regional treaties.
  - Stateless persons, who are not considered to be nationals by any state under its laws. A stateless person can also be a refugee when, for example, he or she is forced to leave his/her country of habitual



residence because of persecution. However, not all stateless persons are refugees, and not all refugees are stateless.

- Internally displaced persons (IDPs), namely people who have been forced to flee their homes as a result of armed conflicts, situations of generalised violence, violations of human rights, or natural or human-made disasters, who have not crossed an international border. While the problems of refugees and IDPs are often similar and interlinked, unlike refugees who have crossed an international border, the internally displaced remain uprooted within their own territory.
- Returnees. UNHCR works to ensure that, where possible, uprooted women, men, girls and boys can voluntarily return to their homes in safety and with dignity. Upon return, they and their families should have access to shelter food, medical care, education, a livelihood, and equal treatment before the judicial system, just like any other citizen. In many situations, UNHCR and its partners continue to work with returnees in their places of origin until they are successfully reintegrated into their communities.

## 8. UNHCR's specific role: The protection of refugees in mixed migration movements

- UNHCR does not consider itself to be, nor does it intend to become, a migration organization. However, together with States, it has identified specific **aspects of international migration that are relevant to its mandate and which require strong multilateral commitment and cooperation**. In a nutshell, UNHCR's objectives in the area of mixed migration movements include:
  - to raise awareness of the need for migration policies to contain adequate mechanisms to identify and make provision for those in need of international protection;
  - to contribute more effectively to international efforts to combat and address the consequences of human trafficking.
- In 2006, **UNHCR issued a [10-Point Plan](#) to assist States in recognizing and addressing refugee protection needs in situations of mixed migration**. This Plan was developed to address protection concerns arising with movements of "boat people" in the Mediterranean and in the Atlantic Ocean off the coast of West Africa.
  - The Plan is **especially relevant to situations where refugees are at risk of refoulement or hazardous onward movements**. It sets out ten areas in which UNHCR has an interest and a potential role to play in partnership with other key actors. These are areas where UNHCR believes initiatives are called for and could make a positive impact on the overall management of challenges arising in the context of mixed migration movements.

The areas 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; and
- 10) Information strategies.

- Examples of good practice, such as reception arrangements in Lampedusa, Italy, involving cooperation between the Italian authorities, UNHCR, the International Organization for Migration (IOM) and the Italian Red Cross, are being used to guide the implementation of the Plan and are being proposed for wider application. Many of the mentioned 10 Points are of relevance to border controls. In fact, UNHCR is leading a consultation process on the 10 Point Plan through a series of round tables with key stakeholders in the most relevant regions worldwide, where the need for entry officials, training is consistently raised as a key recommendation.

## 9. The role of entry officials: To protect the border and the rights of those crossing border

- Entry officials play a key role as a representative of the State obliged to ensure that persons approaching the border can exercise their rights. In the case of refugees or asylum-seekers, this includes the right to gain access to the asylum procedures.
- The Schengen Borders Code, which entered into force in 2006, is the main legal instrument for border control in the European Union. An operational dimension was added with the establishment of the FRONTEX agency. **Although it contains provisions that call for the full compliance with the 1951 Convention, the Schengen Borders Code does not include detailed procedural mechanisms to ensure that asylum-seekers are granted access** to the territory of EU Member States nor to asylum procedures to determine the validity of their claims. This creates challenges as refugees do not arrive with such status and, sometimes, they are not even aware that they are entitled to such a status.
- **International protection can only be provided if individuals have access to the territory of States where their protection needs can be assessed properly.** This means that an asylum-seeker needs to:
  1. gain access to the territory of the State;
  2. apply for asylum;
  3. access the national asylum procedures;
  4. be recognized as a refugee by the national authorities in that state.
- Whether steps 1 and 2 are in chronological order or not is a question of specific national asylum systems. In the majority of European countries, refugees can apply for asylum at the border. However in some countries they need to first have access to the territory to address themselves to the asylum authorities and lodge their asylum application.
- The role of entry officials is vital as they are the first authority to come into contact with persons arriving. They need to be aware and alert regarding the possible presence of refugees among the people approaching their borders and ensure that border control measures do not impede their access to protection. To this end, they must be able to recognize persons who may wish to seek international protection amongst those crossing the border, independently of whether they explicitly ask to make an asylum application or not. Many do not know that they are entitled to such protection and careful attention needs to be paid to the specific circumstances of the case to ensure the full respect of the principle of *non refoulement*.
- Whether the asylum-seeker has a strong claim or whether or not he/she is ultimately recognized as a refugee is NOT relevant at the border. What is important is that anyone fearing to return to his or her country of origin is given the possibility to apply for asylum.
- Refugees and migrants travelling in mixed migration movements often find themselves in extremely vulnerable situations, with different humanitarian and protection needs which need to be addressed by the State through specific responses. As representatives of the State at the borders, entry officials need therefore to be able, to the extent possible, to identify such needs and refer the individuals to the relevant services.
- However, entry officials often have to juggle conflicting priorities, including the prevention of irregular entries and of crime. Pressures to adequately fulfil border control responsibilities may at times make it difficult for entry officials adequately to respond to individuals who may wish to seek international protection at their borders.
- One way that can help entry officials overcome such dilemmas is to become familiar with the legal framework relevant to their role and functions at the border. The entry official's daily on-the-job decision-making should be based on adherence, not only to the Schengen Borders Code, but also to the rule of law and respect for

fundamental human rights thus ensuring ‘protection-sensitive entry systems’. These also include fair and impartial treatment of all individuals in due respect of the principle of non-discrimination, sensitivity to racial, ethnic, sexual, gender and religious factors and an awareness of cultural diversity.

- To develop such systems, entry officials also need to develop, where relevant, national “standard operating procedures”. Linked to this is the need to establish close working relationships with national asylum institutions and to define referral procedures of persons with specific protection needs.
- But none of the above can be done if entry officials are not able to communicate properly with those crossing the borders. This often requires a set of specialized skills, since it involves dealing with victims of trauma, with children, with illiterate persons and with victims of transnational crimes, who may be inhibited by their traffickers from communicating their protection needs.
- Throughout these training materials, we will look in detail into different scenarios to see where and how entry officials can play this key role effectively, including at land borders, air and sea ports, as well as in high seas.



## Facilitation Tip 2: Delivering effective presentations

It is commonly acknowledged that the maximum attention span during a presentation is of 45 minutes. This means that participants will not retain any comments made by the facilitator after that. Particularly in presentations of a technical or legal nature, participants can lose concentration or be distracted during the initial 20 minutes. In order to help them integrate the content of the presentation, facilitators should ensure the following:

### Preparation

- Preparation is the key to success. At a very minimum, rehearse your full presentation twice.
- **Be very clear about how much time you have** - and stick to that time in preparing your presentation. It's very difficult to 'cut' a Power Point presentation at the event itself, and it is a great mistake to run out of time.
- **Make sure you know the substance** of the presentation well enough so that you do not need to read. You should be able to complement the text in the Power Point presentation without additional notes.
- **Be sure to fully understand the sequence or logic** of your presentation. This is the only way that participants will also understand it. If the Power Point presentation referred to at para.1.2 of Session 1 does not follow a logical sequence that you feel comfortable with, modify it until you feel at ease with it.
- **Be very clear about your key message** - and ensure that everything in your presentation is both consistent with, and supportive of, that key message. You should be able to articulate the message in a phrase or a sentence.

### Opening of the presentation

- Depending on the subject, the opening of a presentation can be humorous, questioning or even provocative. It can also be a citation or an anecdote. A connection to a previous speaker or facilitator can also be a very good way to start. Some can even create a connection between the place of the training activity and the subject matter, which shows a very professional preparation on their part.
- Often it is best to give them a **high-level overview first**, and then plunge into the details; then, while listening to the details participants can relate to the high-level picture and understand where you are. This also helps them save important brain power for later parts of the talk which may be more important.

### Delivery of the presentation

- **Direct eye contact** is the initiator of communication. Facilitators should not face the display screen behind them and talk to it. The presentation should be pitched towards the back of the audience, especially in larger rooms. Eye-contact enables the facilitator to recognize whether the participants are still wholly engrossed in the subject or maybe need a break. It can also provide hints as to whether or not the content was understood by the group. However, it is important to avoid fixing on an individual - this can be intimidating.
- **Avoid sounding mechanical or robotic** to reach the audience. Be spontaneous and energetic in whatever you say. Involve the audience and make them the centre of attraction.
- **Speaking with conviction.** The only way to make the audience believe in what you say is to believe it yourself.
- **DO NOT read from your slides verbatim.**
- **Make brief statements, concentrate on the point and be target oriented.** Condense what you say: every word should be needed. Make simple statements. Use familiar words. Explain technical terms. Be precise.
- **Add some humour and interesting facts or examples.** Just the aids in your presentation are not going to help you to make the presentation interesting. Try to be innovative and draw from your own personal experience to illustrate the different parts of your presentation.
- **Deliberately pause at key points** - this has the effect of emphasizing the importance of a particular point you are making.

- **Make sure that the group maintains an overview of structured content.** When the participants cannot identify a clear structure, they easily lose orientation and overview. Ensure that one statement is logically linked to the next.
- **Stick to the plan for the presentation,** don't be tempted to digress - you will eat up time and could end up in a dead-end with no escape!
- **Do not go overtime under any circumstances.** If you can, keep it short. It's better to under-run than over-run. As a rule of thumb, allow 2 minutes for each general overhead transparency or PowerPoint slide you use, but longer for any that you want to use for developing specific points.

### Closing of the presentation

- The end of a presentation can be learned by heart. It should consist of three to five sentences summing up the key messages of the presentation. It will give you confidence when delivering your presentation and you will transmit a sense of clarity to the participants.

### Asking for questions

- Some trainers feel that they have done their duty by professing the material to the participants. There is an argument that unless trainers help their participants to learn, they are not really training.
- Give participants real opportunities to ask questions. Invite questions through motivating statements, rather than rhetorical statements. Give participants time to formulate their questions before you move on. Look at the participants to make sure you do not miss someone with his or her hand up.
- Asking for questions at the end of the presentation, may help to save time and ensure that participants listen to your message until the end, which may solve some of their doubts. However, if you become aware that some participants are confused, asking for questions at that point becomes necessary to clear possible misunderstandings and to help them concentrate on the rest of the presentation.
- See *Facilitation Tip 4: Answering adequately participants' questions, in Session 3.*



## Background documents and further reading for facilitators

- Regulation (EC) No 81/2009 of the European Parliament and of the Council of 14 January 2009 amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code [↗](#)
- Communication from the European Commission, Policy Plan on Asylum: an Integrated approach to Protection across the EU, 17 June 2008 COM (2008) 360 [↗](#)
- Communication from the European Commission, A Common Immigration Policy for Europe: Principles actions and tools, 17 June 2008 COM (2008) 359 [↗](#)
- Jeff Crisp, Beyond the nexus: UNHCR's evolving perspective on refugee protection and international migration, New Issues in Refugee Research, Research Paper No 155, April 2008 [↗](#)
- UNHCR's Response to the European Commission's Green Paper on the Future Common European Asylum System, Sept 2007 [↗](#)
- Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers [↗](#)
- Standing Committee Paper of the Executive Committee of the High Commissioner's Programme, UNHCR's Activities in Relation to the Asylum-Migration Nexus, 4 June 2007 [↗](#)
- Communication from the European Commission, Reinforcing the management of the European Union's Southern Maritime Borders, COM (2006) 733 final [↗](#)
- Communication from the European Commission on policy priorities in the fight against illegal immigration of third-country nationals, COM (2006) 402 [↗](#)
- Council of Europe Resolution on the Human Rights of Irregular Migrants, CoE Res. 1509 (2006) (Text adopted by the Assembly on 27 June 2006, 18th Sitting) [↗](#)
- Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), 15 March 2006 [↗](#)
- European Council, Presidency Conclusions, Brussels 4/5 November 2004, Annex 1: The Hague Programme: strengthening freedom, security and justice in the European Union [↗](#)
- Council Regulation of 26 October 2004 establishing a European Agency for the management of Operational Cooperation at the External Borders of the Member States of the European Union, (EC) No 2007/2004 [↗](#)
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [↗](#)
- Council Regulation of 19 February 2004 on the creation of an immigration liaison officers network, (EC) No 377/2004 [↗](#)
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents [↗](#)
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [↗](#)
- Council Regulation of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit, (EC) 415/2003 [↗](#)

- Council Directive of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, Ref: 2002/90/EC [↗](#)
- Council Directive of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, 2001/51/EC (Carrier Sanctions) [↗](#)
- Council Regulation of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, (EC) No 539/2001 [↗](#)
- Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 [↗](#)
- Stockholm Programme – Lisbon Treaty Art. 78. [↗](#)