

Protection-sensitive entry systems

CHAPTER 3



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Introduction

Within the limits of international law, States have the sovereign right to choose whom to admit, exclude and expel from their territory. They have a legitimate interest in controlling unauthorized entry to their territory and in combating international crime, including the smuggling and trafficking of persons. In this Chapter, the term “entry systems” is used to describe the procedures and practices used by States to regulate access of persons to their territories.

This term has been chosen because it has a broader meaning than the commonly used term “border control”. It captures the fact that migration policies and strategies regulating access to territory have undergone significant changes and now include activities that do not take place at the physical border of a country. Interception operations (i.e. measures to prevent, interrupt or stop individuals from reaching and/or entering a territory) have always been an important entry-management tool. However, they are increasingly applied further away from State borders, on the high seas and on the territory of third States. Other measures to control migration implemented outside State borders include out-posting immigration officials and delegating certain immigration control functions to private actors through the use of carrier sanctions. Some destination States also provide assistance to strengthen the border control capacities of transit countries in an effort to decrease the number of irregular departures.

Government officials who work in entry systems (“entry officials”) include border police, immigration officials (including out-posted immigration and airline liaison officers) coast guard personnel and others who have “first contact” with migrants and asylum -seekers. The term entry officials also includes legislators, policy makers, judicial officers, civil servants and administrators who establish the relevant framework of law and policies governing the entry system. Private actors, such as carriers, can also be important actors in an entry system.

Entry systems can raise protection concerns. If applied indiscriminately, such procedures can adversely affect the ability of persons with international protection needs to seek asylum and to access other relevant mechanisms to address their needs. Accordingly, the 10-Point Plan advocates the establishment of “protection-sensitive” entry systems. These are systems that take into account the protection needs of individuals seeking access to State territory and the duty of States to respect their obligations under international human rights and refugee law, including the principle of non-refoulement. Protection-sensitive entry systems ensure that legitimate measures to control entry are not applied arbitrarily and that they allow asylum-seekers and other groups with specific protection needs to be identified and granted access to a territory where their needs can be properly assessed and addressed.¹

¹ The practical examples contained in this Chapter include recommendations made at the “10-Point Plan Expert Roundtable No. 1: Controlling Borders while Ensuring Protection”, which was held 20–21 November 2008, in Geneva. The recommendations made at the roundtable as well as other related document are available at: <http://www.unhcr.org/4a27bf566.html>.

Operationalizing protection-sensitive entry systems: Suggestions for stakeholders and support UNHCR can provide to partners

Suggestions for stakeholders

- Communicate protection obligations to entry officials, including by advocating for their inclusion in relevant laws, regulations and guidelines governing the entry system.
- Provide training to entry officials to ensure awareness and implementation of relevant protection-sensitive laws and policies.
- Establish mechanisms for dialogue and cooperation between entry officials and humanitarian actors.
- Develop practical tools to assist entry officials to identify and refer asylum-seekers and other persons with specific needs to the responsible authorities.
- Include carriers and other private actors involved in entry management in protection strategies.
- Ensure cross-border cooperation for the development of protection-sensitive entry systems.
- Advocate for, and participate in, independent monitoring mechanisms.
- Develop mechanisms to address irregular maritime movements in a protection-sensitive manner.

Support UNHCR can provide to partners

- Provide expert advice to States on incorporating international human rights and refugee law into domestic legal regimes governing entry systems, and on developing guidelines, codes of conduct and training material.
- Provide training activities on refugee and human rights principles, in cooperation with States and other partners.
- Make Refworld - UNHCR's leading source of information for quality decisions on refugee status - accessible to entry officials.
- Assist in the development of a protection hotline by providing funding and/or training for staff working in entry systems.
- Enhance coordination between entry officials and asylum authorities, including through the development of agreements or MOUs on cooperation and information sharing.
- Act as a referral point for persons with possible international protection needs, where necessary and appropriate.
- Develop and participate in monitoring arrangements.

3.1. Communicating protection obligations to (first contact) entry officials

International protection obligations are generally included in national legal frameworks governing asylum and migration. However entry officials may not always be familiar with this body of law, especially those, such as border guards, who have first contact with refugees and migrants (“first contact entry officials”). Incorporating protection obligations into specific regulations governing entry systems can be a first step towards ensuring that first contact entry officials, who are not refugee or human rights experts, are aware of such obligations and how they apply to their work. For example, entry system regulations could include a list of basic refugee protection principles and could specify that there are exemptions to entry requirements (travel documents, visas, etc.) for asylum-seekers, and clarify that asylum-seekers are not to be punished for illegal entry.²

Operational guidelines can assist in translating legal responsibilities into practice. Such guidelines may define the roles and responsibilities of (first contact) entry officials and outline how to respond to persons with international protection and other specific needs, including how to screen, identify, and refer them to appropriate processes and procedures. Operational guidelines can also emphasize appropriate standards of treatment for refugees and migrants in an irregular situation consistent with international human rights law.

EU: The Schengen Border Code and the Schengen Handbook 2006

The Schengen Border Code

The EU Community Code on the rules governing the movement of persons across borders (“Schengen Border Code”), which is legally binding and directly applicable in all EU Member States, refers to international protection obligations and provides EU Member States with the option to waive entry requirements.

The Schengen Border Code:

- obliges border guards to respect human dignity when carrying out border checks (Article 6);
- includes a safeguard clause to ensure that the application of the code respects the rights of asylum-seekers and refugees (Article 3b);
- allows for exceptions to the prescribed entry conditions based on humanitarian grounds or international obligations (Article 5c); and
- underlines that refusal of entry needs to comply with the “right to asylum and to international protection” (Article 13, paragraph 1).

² See Article 31 of the 1951 Convention.

The Schengen Handbook

In 2006, the EC developed a Practical Handbook for Border Guards (“Schengen Handbook”) based on the Schengen Border Code. The Schengen Handbook provides non-binding guidance on different aspects of border management.

The Schengen Handbook has a specific chapter on “asylum-seekers/applicants for international protection” which:

- provides information for the identification of asylum-seekers;
- clarifies that persons who want to seek asylum must be given the opportunity to do so, as well as information about the procedure to be followed;
- emphasizes that asylum-seekers are to be referred to the responsible asylum authority; and
- emphasizes that asylum-seekers should not be returned without consulting with the responsible asylum authority.

Although the Schengen Border Code recognizes protection obligations in the context of border control, it does not provide detailed guidance on how to translate the code into practice, and provides only limited information on the procedures to be followed in identifying and referring asylum-seekers. Although the Handbook is not legally binding on EU Member States, the national laws of many EU Member States contain similar provisions.

Annex 1 – European Union, *Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, 15 March 2006, No. 562/2006, available at:

<http://www.unhcr.org/refworld/docid/47dfb0525.html>

Annex 2 – European Commission, Recommendation 06/XI/2006 of 6 November 2006 establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by Member States’ competent authorities when carrying out the border control of persons, available at:

<http://register.consilium.europa.eu/pdf/en/06/st15/st15010.en06.pdf>

For more information on additional safeguards, see UNHCR response to the EC’s Green Paper on the future of the Common European Asylum System, available at:

<http://unhcr.org/refworld/docid/46e159f82.html>.

Belarus and Moldova: Examples of Protection-sensitive Border Legislation in Eastern Europe

Belarus: Non-punishment for illegal entry

2008 Law on Refugee Status and Complementary and Temporary Protection in Belarus provides that persons who were obligated to enter the Republic of Belarus illegally and who declared themselves, without delay, to State authorities shall not be held liable for illegally crossing the State border of the Republic of Belarus or for their illegal stay in the Republic of Belarus (Article 27).

A similar provision is made in the Code of Belarus for Administrative Offences (Articles 23.29, 23.55) and in the Criminal Code of the Republic of Belarus (Article 371).

Moldova: Prompt referral to the asylum authorities

The Border Guard Instruction on Processing Asylum Applications at the Border in Moldova establishes a mechanism for the receipt of asylum applications and for the transfer of asylum-seekers to the Refugee Authority. It provides, inter alia, for the establishment of a special logbook at every Border Crossing Point (BCP) and Border Guard Post (BGP) in order to register asylum claims made at the border, containing a model asylum application and instructions for completion.

Indonesia: Directive of the Director General on the Procedures Regarding Aliens Expressing their Wish to Seek Asylum or Refugee Status 2002

Although Indonesia is not a signatory to the 1951 Convention, the Director General of Immigration has adopted a Directive that sets out the duties of immigration offices throughout Indonesia concerning asylum-seekers and refugees. Since the Directive was adopted, the Director General of Immigration has cooperated closely with UNHCR by referring asylum-seekers to UNHCR for processing. The Directive is in force nationwide and is binding on all immigration officials in Indonesia.

The Directive establishes that:

- immigration measures, such as deportation, shall not be applied to non-nationals who seek asylum in Indonesia;
- non-nationals who seek asylum in Indonesia are to be referred to UNHCR for RSD;
- where non-nationals seek asylum at immigration checkpoints that are far from a UNHCR Office, immigration officials shall coordinate with UNHCR, as appropriate;
- the status and presence of non-nationals holding attestation letters issued by UNHCR, declaring that they are asylum-seekers, refugees or persons of concern to UNHCR, must be respected;
- asylum-seekers and refugees who break the law shall be processed in accordance with relevant criminal law regulations;

- the Head of Immigration Office or the designated officers shall register the presence of non-nationals for monitoring purposes; and
- a report on developments should be prepared every month for the Director of Supervision and Enforcement.

Annex 3 – Government of Indonesia, Directive of the Director General of Immigration No. F-IL.01.10-1297 on the Procedures Regarding Aliens Expressing their Wish to Seek Asylum or Refugee Status, 30 September 2002, available at: <http://www.unhcr.org/refworld/country,,NATLEGBOD,,IDN,4562d8cf2,3ed8eb5d4,0.html>.

UK: UK Border Agency (UKBA) Code of Practice for Keeping Children Safe from Harm 2008

The UKBA Code of Practice for keeping children safe from harm (“Code of Practice”) is designed to ensure that the UKBA takes appropriate steps, in exercising its daily functions, to ascertain that all arriving children, regardless of whether they are seeking asylum, are safe from harm while in the UK. The Code of Practice is issued under section 21(1) of the UK Borders Act 2007. All UKBA staff must adhere to the Code of Practice, which outlines how children should be treated at ports of entry, during stay in detention and while being transferred to local child protection authorities.

The Code of Practice obligates UKBA staff to:

- provide all children with treatment equal to that of national children;
- make the best interests of the child a primary (but not the only) consideration;
- apply a policy of non-discrimination;
- ensure that children’s asylum applications are considered in a timely fashion;
- identify those children who might be at (heightened) risk of harm;
- make referrals, where appropriate, and cooperate with other national agencies;
- participate in child-focused sensitivity training;
- use oversight, monitoring and reporting mechanisms to ensure accountability in the system.

Annex 4 – UK Border Agency Code of Practice for Keeping Children Safe from Harm, 2008, also available at: <http://www.unhcr.org/refword/docid/4948f8662.html>.

3.2. Assisting entry officials in identifying and referring asylum-seekers and other persons with specific needs to the responsible authorities

Entry officials are often the first to come into contact with persons who may have international protection needs. They are responsible for deciding who to intercept and who to allow access to the territory. In short, they are the “gatekeepers” to the procedures through which protection claims are assessed.

Entry officials are not responsible for making substantive decisions on the merits of asylum claims and/or other needs; it is also not appropriate for them to do so as they generally lack the time, expertise and access to information that is necessary to make a proper assessment of protection claims. They are responsible for identifying and referring asylum-seekers and other persons who may have specific needs to the responsible expert authorities.

Identifying individuals within mixed groups of arrivals who may be in need of international protection is not always easy. A profiling and referral exercise (outlined further in Chapter 5) undertaken by entry officials, with or without the support of other actors, could facilitate this task. Some countries have also developed specific tools to assist entry officials in conducting profiling and referral of arrivals at entry points.

COLOMBIA: PRACTICAL GUIDE FOR THE IDENTIFICATION AND TREATMENT OF ASYLUM-SEEKERS 2007

A. Background and Rationale

In 2007, UNHCR, the Government of Colombia (Ministry of Foreign Affairs and Vice-Ministry of Multilateral Affairs) and the Social Ministry of the Church (*Secretariado Nacional de Pastoral Social* - SNPS) jointly developed a Practical Guide for officials of the Administrative Department of Security responsible for migration control [the *Departamento Administrativo de Seguridad* (DAS)] in order to facilitate the identification of asylum-seekers and the processing of asylum claims (“the Practical Guide”). The first 2007 version was updated in December 2009 with information from the new Colombian refugee decree of November 2009.

B. Actors

- DAS;
- SNPS;
- UNHCR; and
- the Vice Ministry of Multilateral Affairs (*Vice-Ministerio de Asuntos Multilaterales*).

C. Actions

- The Practical Guide provides a short introduction on the right to seek asylum as well as basic principles of the 1951 Convention, including the principle of *non-refoulement*, non-penalization for illegal entry and the right to be issued documents.
- It emphasizes the importance of training immigration officers to respond effectively to asylum-seekers and refer them to the competent authorities.
- The Practical Guide sets out a series of questions to identify persons seeking international protection. These questions include:
 1. Why did you leave your country of origin?
 2. Under what circumstances or events did you leave your country of origin?
 3. Did someone or something force you to leave your country?
 4. What problem would you fear if you had to return to your country?
 5. What would happen to you if you were to return to your country at this time?
- The Practical Guide also provides sample responses that would indicate that an individual is an asylum-seeker and provides information regarding entities to which asylum-seekers should be referred and applicable standards of treatment.

D. Review

The Practical Guide has been used in training activities with migration officials, with DAS authorities and as a reference document for referrals at border points. It will be distributed at all border points in 2011.

E. Further Information

Annex 5 – UNHCR, Guía Práctica para funcionarios de DAS – Recomendaciones de tratamiento ante Solicitantes de la Condición de Refugiado (Spanish Only), 2009

New Zealand: Immigration Operational Manual, Section on Border Entry 2009

Section Y 6.1 of the New Zealand Immigration Operational Manual governing border entry reiterates New Zealand's responsibility to admit asylum-seekers to its territory and provide them with access to the asylum procedure. It provides practical guidance for border officials on how to respond to persons who wish to claim asylum. It also provides a list of statements that may indicate an intention to seek asylum. Specifically, it provides that "[p]eople may express an intention to seek refugee status in a variety of ways, including, but not limited to, statements of the following kind":

- they have been persecuted; or
- they are in fear of being persecuted; or
- they have been imprisoned for political reasons; or
- they are afraid of being imprisoned in their home country; or
- they want to "see the UN" (i.e. UNHCR); or
- they want to know if there is a UN Office in New Zealand; or
- they are "stateless" or "homeless"; or
- they want to see a lawyer; or
- they are afraid to return to their home country; or
- they will be killed if they are returned home; or
- they simply "do not want to return".

Annex 6 – New Zealand Immigration, Operational Manual: Border Entry, 2010, available at: <http://www.immigration.govt.nz/NR/ronlyres/731882A3-EBAF-446E-AEE6-EC653C7D1B50/0/BorderEntry.pdf>

UK: SAVE THE CHILDREN-UK GUIDE FOR IMMIGRATION OFFICERS AT PORTS OF ENTRY AND YOUNG PERSONS ADVISER PROJECT 2003, 2001 – 2008

A. Background and Rationale

The 2003 Guide for Immigration Officers at Ports of Entry ("the Guide") issued by the British NGO, Save the Children-UK, was designed to assist immigration officers working at ports of entry in the UK, in particular those working with unaccompanied asylum-seeking children.

The post of Young Persons Adviser (YPA) was established under the YPA Project in 2001 for Heathrow and other UK airports by two NGOs: the Refugee Arrivals Project-UK and Save the Children-UK.

The objective of both the Guide and YPA Project is to help immigration officials identify those young persons who might be in need of international protection and refer them to the appropriate asylum authorities.

B. Actors

- Refugee Arrivals Project-UK;
- Refugee Council-UK; and
- Save the Children-UK.

C. Actions

The Guide has been distributed to the NGOs listed above and to immigration officers at airports. It answers frequently asked questions about asylum-seeking children and provides recommendations and information on how to manage unaccompanied children upon arrival. The Guide also provides contact details and information about the YPA Project.

The YPA:

- provided direct support to unaccompanied asylum-seeking children who were deemed at risk when they arrived at the Heathrow Airport;
- trained immigration officers, social services personnel and voluntary staff on how to provide appropriate support to unaccompanied asylum-seeking children on arrival;
- provided advice and support to immigration officers at Heathrow Airport and social workers at Hillingdon Hospital to ensure that appropriate referrals were made and that the young persons received appropriate support;
- offered telephone advice to professionals working with children at other ports of entry in the UK; and
- provided support in age dispute cases, ensuring that the young person understood what was happening and that a fair assessment was conducted.

D. Review

The YPA Project provided support to unaccompanied asylum-seeking children, in addition to training and advisory services to immigration officers, social service personnel, voluntary staff and other professionals working with unaccompanied asylum-seeking children. During the first six months, the YPA Project provided support to 87 unaccompanied children, from the age of six years, either by talking directly to the children during the reception process or by providing advice to social workers and immigration officers on particular cases. Since the project was implemented at UK airports, it did not reach children who arrived at land borders. The project ended in June 2008 due to a lack of funding.

E. Further Information

Annex 7 – Save the Children, *Young Refugees: Working with Unaccompanied Asylum-seeking Children at Ports*, 2003

Additional Examples of Assisting Entry Officials in Identifying and Referring

Belarus: The 2006 Border Guard Internal Manual for Investigation of Cross-Border Incidents includes specific instructions on the steps that border guards should take in the event of irregular border crossings by non-nationals who subsequently ask for asylum in Belarus. A leaflet developed in 2007 for border guards focuses on protection-related issues and provides definitions as well as instructions on how to work with asylum-seekers and persons with specific needs.

Central America: The UNHCR Guide on Refugee Protection in Central America has been designed for immigration officials in Central America. It includes information on the identification of asylum-seekers, trafficked persons, and victims of sexual and gender-based violence (SGBV), as well as details on referral mechanisms and procedures. It also provides a list of useful contacts in each country in the region including relevant government entities and NGOs.

Annex 8 – UNHCR, *Guía para la Protección de los Refugiados en Centroamérica (Spanish only)*, 2008

Romania: The UNHCR Handbook of Good Practices related to Asylum at the Borders was jointly published by the Romanian National Council for Refugees (CNRR), the Romanian Border Police, the Immigration Office and UNHCR. It provides detailed guidance to entry officials on the treatment of asylum-seekers.

Annex 9 – Romanian National Council for Refugees, *Handbook of Good Practices related to Asylum at the Borders*, 2004

3.3. Training

Regular training, both for junior level and more senior entry officials, helps to ensure broad awareness and understanding of relevant laws, regulations and guidelines and how they are to be implemented in practice. Training can be conducted in specialized sessions on international human rights and refugee law or as a part of the general training curriculum. Refresher courses also help to keep officials up to date on developments in law or policy.

In some situations, such as when there is a high turnover of staff or where a regular rotation policy is implemented, training is an ongoing process. Joint training sessions involving officials from different countries may provide an opportunity to exchange experiences and best practices. Training on protection issues is most effective when it takes into account the institutional culture of the relevant agency (e.g. law or immigration enforcement with a military or security focus). In addition to international human rights and refugee law principles, training can include psychosocial skills, such as conflict and stress management skills and culture, as well as age- and gender-sensitive interview techniques.

Training sessions offered by international agencies provide an opportunity for entry officials and the humanitarian community to engage in dialogue. They also help build trust and mutual understanding. Training entry officials is part of the regular protection work of UNHCR and other humanitarian agencies in many countries.

COSTA RICA AND PANAMA: JOINT CAPACITY-BUILDING INITIATIVE FOR BORDER POLICE AND MIGRATION OFFICIALS 2006 – PRESENT

A. Background and Rationale

Given the permeability of the border between Panama and Costa Rica, irregular movements occur regularly. Groups consist primarily of nationals of both countries, but they also include asylum-seekers from third countries, particularly from Colombia. To ensure that such persons are identified and referred to the responsible asylum authorities, the UNHCR Offices in both countries began a joint training programme for Panamanian and Costa Rican entry officials in 2006.

B. Actors

- Panama and Costa Rica “first contact” entry officials (e.g. border guards and immigration officials); and
- UNHCR-Costa Rica and UNHCR-Panama.

C. Actions

- “First-contact” entry officials from northern and southern entry points between Panama and Costa Rica and from international airports in both countries are invited to a training session, organized by both UNHCR Offices, three to four times per year. Costa Rica organized and facilitated three bilateral coordination workshops with their Panamanian counterparts in 2007 and two similar workshops in 2008. Similar initiatives continued in 2009 and 2010.
- An informal referral mechanism was established, whereby entry officials contact the relevant UNHCR Offices when they identify persons seeking international protection.
- UNHCR-Costa Rica concluded a specific agreement with the Costa Rican Ombudsman’s Office at the southern border, for the deployment of an Ombudsman liaison officer to whom the national authorities can refer individuals who arrive at the border and who may have international protection needs. This liaison officer is in permanent contact with the UNHCR Protection Unit in San José.

D. Review

As a direct result of this joint capacity-building initiative, UNHCR has improved communication with reception authorities in the border region between Panama and Costa Rica. This has resulted in an increase in the number of persons seeking international protection being identified and referred to UNHCR Offices, in both Panama and Costa Rica. Authorities at entry points also contact UNHCR Offices to clarify procedures concerning refugees or asylum-seekers who move between the two countries.

UNHCR Examples of Training on Refugee Law for National Officials

- **Albania:** Training is a component of the “Pre-screening of Asylum-seekers and Migrants” Project in Albania (outlined further in Chapter 5).
- **Angola:** A joint UNHCR-IOM project was initiated in 2007 to enhance the Government’s capacity to address protection challenges in the context of mixed movement. This project includes the training of border police, law enforcement and immigration officers, in the capital and especially at border points. Approximately 400 personnel have been trained each year.
- **Ecuador:** A MOU between UNHCR-Ecuador and the Ministry of Justice and Human Rights includes training 9,000 police and military at the northern border on international protection issues.
- **EU:** The EU Border Management Programme for Central Asia (BOMCA)-UNHCR Training Component includes specialized training on international refugee and human rights law. Further information is available at: http://ec.europa.eu/europeaid/where/asia/regional-cooperation-central-asia/border-management-fight-against-drugs/bomca_en.htm.
- **Japan:** UNHCR organizes regular workshops on refugee and human rights law for national police officers.
- **Moldova:** Institutionalized refugee law courses are provided in the National Border Guard College and for the Police.
- **South Africa:** UNHCR organizes training sessions for entry officials at all levels, including immigration and police officers.
- **Turkey:** In 2002, UNHCR and the Gendarmerie General Command (GGC) of the Republic of Turkey signed a cooperation agreement on training GGC staff about refugee and asylum issues. Under this agreement, UNHCR and GGC have organized seven joint trainings and seminars for officials of the Gendarmerie, coast guard and land forces.
- **Zambia:** UNHCR and IOM collaborate with the National Commissioner for Refugees and provide training on protection-sensitive entry systems to national authorities, including the Department of Immigration, Provincial and District Operations Committees, the army, the police and prison officers.

UNHCR Protection Training Manual for European Border and Entry Officials

Developed in the framework of the UNHCR’s 10-Point Plan, this manual is designed to facilitate the training of European border and entry officials on the rights of refugees in the context of mixed migration movements. As such, it aims to build the capacity of border agencies to establish “protection-sensitive entry systems” in border areas.

The manual is intended for use by European border control authorities, UNHCR, NGOs and regional organizations with border management responsibilities and will be made available at www.unhcr.org by the end of 2011.

3.4. Establishing dialogue and cooperation between entry officials and humanitarian actors

The following examples demonstrate the ways in which entry officials and humanitarian actors can work together to identify and address shortcomings in the mechanisms used to identify persons in need of international protection. In some countries, entry officials and humanitarian actors have institutionalized their cooperation through the establishment of a formal dialogue, working/coordination groups, or specific consultation processes. These arrangements often include training and monitoring components.

EU: FRONTEX-UNHCR Cooperation 2008 – Present

A Cooperation Arrangement between the EU Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) and UNHCR was signed in June 2008 at FRONTEX headquarters in Warsaw, Poland. The main objective of this cooperation is to contribute to an efficient EU border management system fully compliant with international and EU protection obligations through, for example, the exchange of information, expertise and experiences, in particular on mixed movements to EU Member States. Another key element is the preparation of general and specific training materials and tools on international human rights and refugee law, applicable in the context of border management. Bilateral cooperation also extends to more operational aspects of FRONTEX's work: UNHCR (along with IOM) participated for the first time in a FRONTEX-coordinated joint operation (AGELAUS 2010), in an observatory and advisory capacity. Targeting the identification and referral of children arriving at selected EU airports who might be victims of trafficking, this joint operation represents a first test case for practical cooperation on operational matters between FRONTEX and UNHCR.

CENTRAL EUROPE: TRIPARTITE MOU ON BORDER MANAGEMENT WITH NATIONAL BORDER GUARDS, NATIONAL NGOS AND UNHCR 2006 – PRESENT



A. Background and Rationale

Tripartite MOUs were signed by national border guards, national NGOs and UNHCR in several Central European countries. They create an institutional framework and structure for monitoring the entry of persons in need of protection to the territory of the relevant State and their access to the asylum procedures, as well as their protection against *refoulement*. The MOUs formalize the cooperation, roles and responsibilities, and working methodologies among the actors in the area of border management.

The first agreement in Central Europe was concluded in Hungary in December 2006, followed by similar arrangements in:

- Slovakia - September 2007
- Romania - July 2008;
- Slovenia - October 2008;
- Poland - October 2009; and
- Bulgaria - April 2010.

B. Actors

- Border guards;
- NGO/civil society actors; and
- UNHCR.

C. Actions

The MOUs:

- clarify the protection responsibilities of the border guards;
- reiterate UNHCR's right to have access to, and intervene on behalf of, persons falling under its mandate;
- establish a monitoring framework with specific responsibilities assigned to all three actors;
- provide that border guards are to give UNHCR and NGOs access to entry points, detention facilities and other locations, as well as to records of arrivals, justifications of refusal of entry and other data;
- designate UNHCR as the actor responsible for ensuring the coordination and mobilization of funds, and the NGOs responsible for undertaking monitoring activities;
- establish a Tripartite Working Group to oversee the implementation of the agreement, and follow up on the results of monitoring exercises; and
- include the possibility of organizing joint educational and awareness-raising activities.

D. Review

The MOUs formalized cooperation among the parties and established a framework for ongoing dialogue. The MOUs helped increase mutual understanding and transparency, develop confidence and identify and address training needs, as well as the need for changes to existing laws. The MOUs have improved the access of asylum-seekers to the territory and to asylum procedures, as well as the access of UNHCR and NGOs to persons of concern and to border-related data. They also enabled the identification of trends and patterns in the movements and profiles of persons of concern.

UNHCR RRCE organized a Trans-regional Conference on Border Management and Protection of Refugees in Budapest, Hungary, 24-26 November 2010 to further develop existing mechanisms and synergies between the UNHCR Offices in the region and to extend existing cooperation practices and expertise on protection-sensitive border management to neighbouring countries.

A Border Management and Protection of Refugees framework in the Central Europe region is currently under development.

E. Further Information

Annex 10 – Tripartite Memorandum of Understanding on Modalities of Mutual Cooperation and Coordination to Support the Access of Asylum Seekers to the Territory of, and the Asylum Procedures of the Republic of Hungary, 28 December 2006

All Central Europe MOUs are available online at:

<http://www.unhcr-budapest.org/index.php/refugee-protection/access-to-territory>.

Annex 10 bis – Hungarian Helsinki Committee, Hungarian National Police Headquarters, UNHCR, *Report on the Border Monitoring Program 2008 – 2009*, 2010

CANADA: UNHCR AND THE CANADA BORDER SERVICES AGENCY (CBSA) COOPERATION ON PROTECTION 2006 – PRESENT

A. Background and Rationale

Although there is no formal agreement between the CBSA, UNHCR and the NGO community, there is a high degree of engagement and exchange among these actors, leading to good cooperation on protection issues.

B. Actors

- CBSA;
- Citizenship and Immigration Canada (CIC);
- Immigration and Refugee Board of Canada (IRB);
- NGOs;
- pro bono law firms; and
- UNHCR.

C. Actions

- Ensure regular dialogue and information sharing between actors.
- Develop a training manual as well as joint training sessions on protection issues.
- Monitor busy land and air entry points and detention centres with UNHCR having a specific monitoring role under the Canada-USA Safe Third Country Agreement (outlined further in Chapter 8).
- Support NGOs to assist with asylum claims at ports of entry, provide shelter and other services, and advocate for access to asylum procedures and other mechanisms for both individuals and on a general basis.
- Facilitate a “guardian *ad litem*” process for unaccompanied minors and others with special needs through pro bono legal services.
- Conduct ad hoc post-admission interviews/reviews with asylum-seekers in relation to entry procedures in order to assess the treatment of asylum-seekers from the perspective of the individual claimant.
- Facilitate the engagement of Canadian and USA-based NGOs in relation to common border issues.
- CIC and CBSA combined three refugee claim forms into one national form to be used by all ports and inland offices to standardize and simplify the RSD procedure.

D. Review

Constant engagement between UNHCR and government officials creates a healthy working environment where problems are more easily addressed and protection is strengthened through cooperative efforts. UNHCR interventions are informal and effective, and its recommendations are understood and respected by CBSA and CIC. The standardized refugee claim form contributes to efficiency and has reduced the processing time for asylum claims by at least 60 minutes.

The high turnover rate of CBSA staff, however, increases the need for continuous training creating resource strains for UNHCR. To a certain degree, this is being addressed through the engagement of the Canadian Government, NGOs and civil society on protection issues, which occur with limited UNHCR facilitation or independent of UNHCR operational involvement.

Despite the strong cooperation, some instances of return from Canada to the USA, outside the Safe Third Country Agreement framework, have occurred. Further, contrary to UNHCR policy guidelines, asylum-seekers may be detained upon arrival, where they are often mixed with criminal detainees.

E. Further Information

Annex 11 – UNHCR, Questionnaire for Monitoring of Detention Facilities

Annex 12 – UNHCR, Refugee Process Determination Monitoring Form

The 2006 UNHCR monitoring report in the context of the Canada-USA Safe Third Country Agreement is available at:

<http://www.unhcr.org/home/PROTECTION/455b2cca4.pdf>.

3.5. Including carriers and other private actors in the protection strategy

Many States impose sanctions on carriers for the transportation of non-nationals without proper travel documentation to their territory. As a result, carriers may be required to deny embarkation to travelers in an irregular situation, regardless of any potential protection needs. A protection-sensitive entry system could ensure that the legislation imposing sanctions on carriers contains exemptions for transporting an improperly documented person if that person applies for asylum at the point of entry. States may also allow carriers to refer asylum-seekers without proper travel documents to local authorities in the country of departure if the country is a State Party to the 1951 Convention and has a functioning asylum system in place; or to officials from the destination State stationed in the country of departure, such as airline liaison officers, out-posted immigration or asylum officials, the local embassy or consulate, or to relevant international organizations or NGOs.

Carriers and other private actors involved in entry management could be included more broadly in the protection strategies developed by States, as outlined below.

- States can provide carriers with guidelines on practical measures for handling unauthorized and undocumented passengers, including contact points with asylum or immigration authorities in the prospective destination State or, where appropriate, in the country of departure.
- States may encourage carriers to adopt an internal code of conduct for managing persons seeking international protection among unauthorized and undocumented passengers.
- Carriers can be included in protection training sessions for State entry officials, or specific protection training events could be arranged.
- The framework for monitoring protection safeguards in entry systems can extend to carriers.

Netherlands: The Aliens Circular, 2000

The Aliens Circular of the Netherlands of 2000 outlines how carriers should handle travel requests by persons who are seeking asylum.

A2. 7.1.5 states: “When a carrier, during identity control, is confronted with an individual who is not properly documented, he/she is under no obligation to transport this individual. In case the alien declares that his/her life is in direct danger in the country from where (s)he wishes to depart, the carrier may refer the alien to the Dutch representation in order to apply for asylum there. When the carrier in such circumstances considers transporting the alien, the carrier must contact the Immigration and Naturalisation Service (Immigratie en Naturalisatie Dienst, IND). The Director of the IND will decide if the alien concerned can be transported to the Netherlands, despite the lack of appropriate travel documents. When a carrier has transported an alien without documentation or proper documentation to Dutch territory, but has done so with prior authorization of the responsible official, there is no obligation to return the alien, nor will the report be deposited of the suspected offence of Article 4 of the Alien Law. The carrier must submit properly in writing the facts and circumstances as relayed by the alien.”

Available at: <http://www.unhcr.org/refworld/docid/47fdfaea0.html>.

3.6. Ensuring cross-border cooperation on protection, including in the context of rescue at sea operations

Cross-border cooperation on establishing protection-sensitive entry systems can help ensure consistent and coherent approaches between States, including in various regions. Cross-border cooperation is particularly important in the context of distress and rescue at sea operations involving irregular maritime movements, in order to ensure that rescuees are disembarked at an appropriate place of safety, processed and provided access to asylum procedures or other mechanisms to meet specific needs.

BRAZIL: PROTECTION NETWORKS 2004 – PRESENT



A. Background and Rationale

Civil society “protection networks” were developed in Brazil as a pragmatic solution for border monitoring and referral in a country with a large geographic territory. The objective is to provide immediate legal counselling and humanitarian assistance to asylum-seekers at border points.

The protection networks are constantly expanding. They currently include 44 organizations and 100 individuals.

B. Actors

- The protection networks are comprised of an increasing number of participating organizations and individuals; and
- partners of the protection networks, including the National Committee for Refugees (CONARE), NGOs specializing in human rights, local churches, Migratory/Border Officials in Brazil, Special Secretary Sergio Vieira de Mello Chairs (University Chairs dedicated to expand education in international humanitarian law and international refugee law as well as to stimulate the access of refugees to higher education), UNHCR, IOM and UN Office on Drugs and Crime (UNODC).

C. Actions

- Enhance inter-agency cooperation among national stakeholders and local actors;
- improve awareness of refugee protection principles and individual rights;
- provide protection monitoring for the timely identification of asylum-seekers and refugees, as well as legal counselling;
- identify issues which require UNHCR's engagement, and support an integrated strategy to strengthen institutional protection mechanisms and to facilitate the local integration of refugees;
- improve coordination through joint activities and participation in training sessions for border officials;
- implement capacity-building initiatives in key border areas in order to report border movements on a regular basis, identify new arrivals and provide assistance to persons in need of international protection;
- disseminate information at border areas, and engage the community in refugee protection initiatives;
- raise awareness about protection issues at border points, and provide refugees with access to social promotion programmes, including education and professional training; and
- promote cross-border cooperation with protection networks in other countries in the region, and enhance regional solidarity.

D. Review

The development of protection networks is an innovative approach that brings together a diverse group of civil society actors to identify new arrivals and to address the realities and challenges of mixed flows in the border areas in Brazil. The initiative has strengthened the solidarity of support networks in Brazil. It has also strengthened cooperation across borders with protection networks in Argentina and Paraguay. Further, civil society participation in CONARE activities has increased policy coordination on refugee issues.

Establishing a common agenda helped to identify the different roles and mandates of migration/border officials and civil society actors and contributed to the effective implementation of activities. The capacity-building initiatives at border areas resulted in the development of protection-sensitive entry systems and improvement in the identification of potential asylum-seekers and other persons in need of international protection, as well as referral to UNHCR's RSD procedure.

As suggested above, irregular travel by sea is a common, and highly visible, aspect of mixed movements. Persons traveling irregularly by sea can include refugees, unaccompanied and separated children, trafficked persons and others with specific needs. In light of the dangers inherent in such journeys, distress situations are frequent. Responses require cooperation between States and other stakeholders, not only in terms of rescue at sea operations but also in order to ensure that rescuees are disembarked at an appropriate place of safety, processed and provided with access to asylum procedures or other mechanisms to meet specific needs.

Examples of International Cooperation in the Context of Rescue at Sea Operations

Francisco y Catalina: The Spanish trawler “Francisco y Catalina” rescued 51 people (including 44 Eritreans, two Ethiopians and five persons of other nationalities) in distress on the Mediterranean Sea in July 2007. The rescue took place in international waters, on the line between the Maltese and Libyan search and rescue (SAR) zones. After high-level negotiations, a burden-sharing agreement, sponsored by the EC, was developed to allow for the disembarkation of all 51 rescuees in Malta, followed by their processing in several European countries – Spain, Italy, Andorra and Malta. Rescuees were accordingly disembarked in Malta, and from there transferred by two Spanish planes to Madrid and onwards to relevant countries for processing.

Rescue and disembarkation of 71 individuals in Sri Lanka: 71 persons (50 Myanmar nationals and 21 Bangladesh nationals) were rescued by the Sri Lankan Navy in March 2008, after they were found adrift in high seas off the island’s northern district of Mullaitivu. 20 persons on the boat had died during the ordeal. The rescuees were allowed disembarkation at Sri Lanka’s eastern Trincomalee harbour and attended to at the naval base there. After some initial screening by the Sri Lankan authorities, the Bangladesh nationals were returned home while the remaining rescuees were detained near Colombo. Following negotiations they were transferred to UNHCR for the processing of their asylum requests and the identification of durable solutions.

3.7. Setting up independent monitoring mechanisms

Establishing independent monitoring mechanisms for entry systems has proven to be a useful way for States to ensure that entry systems comply with protection goals. Monitoring can also help identify problems, gaps and training needs on protection issues. It provides a platform for dialogue among migration and entry officials, asylum authorities, UNHCR and its NGO partners and other stakeholders.

Establishing a system of record-keeping for new arrivals can facilitate monitoring and encourage entry officials to respect and uphold their protection-related responsibilities. Relevant information includes basic biographical details (i.e. name, date and place of birth, nationality), as well as grounds for admission or refusal of entry, the names of relevant entry officials, referral procedures and any complaints.

Depending on the circumstances, the monitoring body could be composed of government authorities, international agencies (including UNHCR and NGOs), or any combination of these actors. An agreement outlining respective responsibilities between entry authorities and the monitoring body could be concluded, including information and data sharing, as well as access to entry facilities.

Monitoring could include a periodic review of documentation and records on protection issues provided by entry officials and/or direct monitoring of the day-to-day implementation of protection safeguards. Such monitoring activities may include visiting border entry points, accompanying border/coast guard patrols, and reviewing files and other material directly on site. Monitoring missions could be coupled with training exercises and sessions on protection issues. Monitoring processes are often concluded with a confidential or public report detailing the findings and recommendations of the monitoring mission.

Border monitoring is also a component of all of the cross-border cooperation arrangements outlined above, in this Chapter (3.6 “Ensuring cross-border cooperation on protection”).

Slovenia-Croatia: The Border Monitoring Project (BMP) 2006 – Present

The Border Monitoring Project is a pilot project implemented on the Croatian/Slovenian border by the Slovene Border Police and a Slovene NGO, the Legal Information Centre for NGOs (PIC). An MOU between the Ministry of Interior, the Police and UNHCR signed in 2008 has strengthened the BMP framework by regulating cooperation, roles and responsibilities as well as working methodologies.

The main objective is to ensure that appropriate safeguards are provided to persons in need of international protection, thereby ensuring a fair and efficient asylum system and building trust between the police and NGOs in Slovenia working on asylum-related issues.

More specifically, the police inform PIC about all cases of interception of persons who express an intent to seek protection near or at the border with Croatia or at the international airport and the port. PIC monitors procedures and methods of work used by the border police to facilitate entry to the territory and access to the asylum procedure.

Annex 13 – Kogovšek, N. (ed.), *Border Monitoring Methodologies: Stakeholders' Manual for Establishing a Border Monitoring Mechanism*, Peace Institute, Slovenia 2006

UK: UK BORDER AGENCY (UKBA) INDEPENDENT CHIEF INSPECTOR 2007 – PRESENT

A. Background and Rationale

The post of Chief Inspector (CI) of the UK Border Agency (UKBA) was created as an independent office by the UK Borders Act 2007 to provide transparent assessment and monitoring of the UKBA and its services.

B. Actors

- Chief Inspector and Inspectorate; and
- UK Border Agency (UKBA).

C. Actions

The Chief Inspector has a general duty to inspect and report on the functioning of the UKBA. The CI:

- ensures the overall efficiency and effectiveness across the UKBA's operations, quality of decision making of the UKBA among its contracted partners, enforcement powers, and access to information;

- reviews the processes involved in handling individual cases, including the availability of a complaint mechanism, published service standards for responding to queries, and the actions taken to improve the response to the complaints received;
- examines the UKBA goals and programmes to determine their effectiveness and compliance with international obligations;
- monitors extra-territorial border controls; and
- conducts unannounced inspections at ports and embassies, based on the recommendations made and presented to the British Parliament.

D. Review

Although it is too early to substantively assess the added value of the CI, it is expected that it will improve the transparency, oversight and accountability of the UKBA. The CI has yet to incorporate existing independent inspectorates, including the race, the certification and the accommodation monitors, as well as the complaints audit committee, and eventually the Independent Monitor of Entry Clearance Refusals without the Right of Appeal.

The work of the Advisory Panel on Country Information (APCI) was also transferred to the CI, for the review of country information as part of the annual CI's report to Parliament. Such restructuring may present organizational challenges.

E. Further Information

Reports from the Chief Inspector are available at:

<http://icinspector.independent.gov.uk/inspections/inspection-reports/>.

USA: MONITORING IN THE CONTEXT OF THE USA “EXPEDITED REMOVAL PROCEDURE” 2005 – PRESENT

A. Background and Rationale

Since 2005, American law has allowed for the immediate removal of any person apprehended while attempting to enter the USA by means of fraud or misrepresentation, without valid travel documents, or who is apprehended within two years of such unlawful entry (“expedited removal”). Individuals who are placed in expedited removal are deported without a hearing or review, unless they express a desire to apply for asylum or a fear of persecution in their home countries.

If they express such a desire or fear, they will be detained and referred for an interview with an examining officer to determine whether they have a “credible fear” of persecution. They are subject to mandatory detention, unless and until they are found to have a “credible fear”. If a credible fear is established, they are allowed access to regular asylum proceedings and are eligible for discretionary release from detention, with some notable exceptions. To demonstrate a “credible fear”, there must be a “significant possibility” that the individual would qualify for asylum in the USA. Expedited removal is not subject to any judicial oversight, but the Government has allowed some agencies, including UNHCR, to monitor the implementation of the procedure.

B. Actors

- NGOs;
- UNHCR;
- USA Commission on International Religious Freedom (USCIRF); and
- USA Department of Homeland Security (DHS).

C. Actions

- Section 235.3 (b) of the Code of Federal Regulations requires an examining officer to create a record of the facts of the case and statements made by the asylum-seeker.
- UNHCR has access to ports of entry and can provide the Government with recommendations. NGOs also have access, but this is more limited.
- In 2003, UNHCR undertook and presented to the Government a monitoring study based on six months of field research at five major ports of entry. The report was followed by a series of technical meetings between UNHCR and relevant DHS agencies. A number of the recommendations were adopted.
- The Government has provided funding to a Commission with a congressional mandate to conduct monitoring of expedited removal proceedings [the USA Commission on International Religious Freedom (USCIRF)]. The Commission tasked a group of experts to prepare a comprehensive study, which was released in February 2005. The study identified significant gaps in the implementation of the process and included a number of recommendations to DHS.

D. Review

The possibility given to UNHCR and other agencies to monitor the expedited removal procedure enables them to present information on the implementation of the procedure and to make concrete suggestions for improvements. A number of these recommendations have been taken up by the Government.

E. Further Information

Annex 14 – Code of Federal Regulations of the US, Paragraph 235.3, Inadmissible Aliens and Expedited Removal, December 2005

Annex 15 – USCIRF, Asylum-seekers in Expedited Removal, 2005

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