

GLOBAL INITIATIVE ON PROTECTION AT SEA

Background

The challenges of protecting refugees, asylum-seekers, stateless people and migrants travelling irregularly¹ by sea are complex and ever more urgent. Desperate people risk death by taking to the sea, often in dangerous and unseaworthy vessels, or as stowaways. Increasingly, they also face exploitation, abuse and violence during their journey.

This global phenomenon will continue as long as there are drivers of maritime flight, among them: conflict and war, protracted refugee situations, statelessness, the absence or inadequacy of protection systems, family separation, poverty and economic inequality.² When people are found in distress at sea, the first priority is to protect life by ensuring timely rescue and safe disembarkation, regardless of immigration or refugee status.

Strengthening search-and-rescue (SAR) arrangements and addressing the causes of irregular flight by sea require regional cooperation and burden-sharing by coastal as well as non-coastal States. Further, as those fleeing conflict or persecution by sea typically travel alongside people moving for other reasons, efforts to address irregular migration and limit loss of life must not jeopardize access to international protection for refugees, asylum-seekers and stateless people.

The 2014 High Commissioner's Dialogue on Protection at Sea presents an opportunity to develop a broad consensus on rescue-at-sea issues, disembarkation arrangements and responsibility sharing, and the need for comprehensive approaches to protection at sea. This year's Dialogue and the *Global Initiative on Protection at Sea* described below build upon UNHCR's 10-Point Plan of Action on Refugee Protection and Mixed Migration³ and a series of regional consultations on mixed migration.⁴

Partners

The partners with whom UNHCR cooperates to advance protection at sea include States; private actors, such as shipping companies; civil society partners; and international agencies, including the International Maritime Organization, the International Organization for Migration, the Office of the High Commissioner for Human Rights, the United Nations Children's Fund, the United Nations Office on Drugs and Crime and the United Nations Office of Legal Affairs.

The Global Initiative

UNHCR's *Global Initiative on Protection at Sea* is an initial two-year plan of action with the core goal of supporting action by States to:

- reduce loss of life at sea, as well as exploitation, abuse and violence experienced by people travelling irregularly by sea, and
- establish protection-sensitive responses to irregular mixed migration by sea.

Achievement of these objectives must be underpinned by effective SAR systems, including predictable arrangements for the disembarkation of those rescued at a safe place. It also requires early identification of those needing international protection, humane treatment and prevention of *refoulement*, as well as access to fair and efficient asylum procedures and, ultimately, timely solutions.

Limiting loss of life further requires addressing the drivers of irregular movements in a way that preserves access to asylum and international protection. Countries of departure, transit and destination all play a part. The *Global Initiative* thus recognizes that action to protect people fleeing persecution by sea cannot be isolated from the broader regional challenges of mixed migratory flows.

Regional cooperation and predictable burden-sharing is essential to both SAR and providing alternatives to sea movements. Insufficient regional burden-sharing is often a disincentive to SAR and disembarkation. Non-coastal and other States play an important role by sharing responsibilities with those that enable disembarkation.

Discussions on how to respond to people risking their lives at sea are not new, yet implementation of existing tools and frameworks could have a real impact. A number of these are listed in the Annex to this document.

Achieving Protection at Sea

Reducing loss of life at sea requires:

- strengthening regional and national SAR capacities and coordination
- removing disincentives to rescue, including agreeing on regional mechanisms for identifying “safe places” to disembark those rescued and not penalizing those undertaking rescues
- implementing the existing international legal framework and IMO guidelines on SAR and disembarkation.

Ensuring that responses to people travelling by sea (including rescued people) take into account the international protection needs of specific individuals and groups requires:

- access to safe territory and protection from *refoulement*, so individuals are not disembarked or returned to a place where they may be at risk
- humane treatment and attention to immediate needs, including medical treatment, shelter, food and water, contact with family members
- early identification of those needing protection, including refugees, asylum-seekers and stateless people, as well as victims of trafficking, unaccompanied or separated children
- access to fair and efficient asylum procedures and to solutions, or to other forms of international protection, for refugees and asylum-seekers
- referral to appropriate processes and support for victims of trafficking, unaccompanied or separated children and others with specific needs
- limiting and finding alternatives to deterrent, punitive and burden-shifting responses.

Regional arrangements for cooperation and responsibility sharing following rescue operations could be based on the *Djibouti Model Regional Framework*, which provides a good model that can be adapted to different contexts.⁵

Equitable regional burden-sharing between coastal and non-coastal States entails stable and predictable mechanisms for:

- supporting adequate reception arrangements in countries of disembarkation
- allocating responsibility for processing and providing durable solutions, including exploring opportunities for joint processing
- implementing temporary protection or stay arrangements at the regional level (where protection under the 1951 Refugee Convention is not available or pending transition to other solutions)⁶
- providing capacity-building and other support for States of disembarkation (for instance, through multidisciplinary, rapid-response mobile protection teams to assist with initial reception, protection profiling and referral of rescued people).⁷

Addressing the drivers of irregular maritime movements, including onward movements, will include:

- improving and harmonizing conditions for asylum-seekers at regional levels
- strengthening access to family reunification
- expanding pathways for legal migration and orderly entry
- enhancing efforts to find durable solutions to protracted refugee situations
- combatting trafficking in human beings and people smuggling
- where appropriate, making available counselling and assisted voluntary return for people not needing international protection.⁸

Ultimately, addressing irregular movements at sea requires dealing with the root causes via peacebuilding; development; and awareness raising in countries of origin, asylum and transit.

States are entitled to manage their borders and to ensure national security, combat crime and reduce the likelihood of people risking their lives at sea. However, such measures must conform with international obligations to refugees, asylum-seekers and stateless people, as well as international human rights law. In particular:

- Non-rescue-related interceptions at sea must not lead to a risk of *refoulement*, prevent asylum-seekers and refugees from seeking protection, shift burdens elsewhere or otherwise weaken international protection and responsibility sharing.
- Interceptions must incorporate protection safeguards and respect for international law, and must not endanger safety.
- Punitive, arbitrary or deterrent use of immigration detention for those exercising their right to seek asylum must be avoided.

Analysis by States, UNHCR and other stakeholders of “lessons learned” will identify best practices. One objective of the *Global Initiative* is to facilitate inter-agency cooperation for the creation of a global knowledge base on irregular mixed migration by sea, including information on incidents of distress, rescue, interception and stowaways, and on current practices by States and others.

UNHCR will work with its partners to develop and disseminate guidance materials for State, international and commercial actors.

The High Commissioner’s Dialogue

The High Commissioner’s Dialogue on Protection Challenges takes place annually and provides a unique forum for open exchange of views between States, non-governmental and intergovernmental organizations, the academic community and other stakeholders. The 2014 Dialogue, to be held on 10-11 December, will be on protection at sea, with aim of reinvigorating action to address the global challenges of refugee protection at sea.

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¹ “Irregular” movement by sea is commonly understood to refer to travel involving unauthorized departure or arrival by sea.

² Climate change and natural disasters are also potential drivers of forced migration by sea. The *Nansen Initiative on Disaster-Induced Cross-Border Displacement* is a key intergovernmental process to address the challenges of cross-border displacement in the context of natural disasters.

³ See UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, February 2011, <http://www.refworld.org/docid/4d9430ea2.html>.

⁴ These include, among others, the Djibouti Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea (*see infra*, note 5); the Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows, held in Nassau in 2013 (Summary Report available at: <http://www.refworld.org/docid/51e3c0384.html>); and the Regional Roundtable on Irregular Movements by Sea in the Asia-Pacific Region, held in Jakarta in 2013 (Co-Chairs' Summary available at: <http://www.refworld.org/docid/51e3bcfe4.html>).

⁵ See UNHCR, *Refugees and Asylum-Seekers in Distress at Sea - how best to respond? Summary Conclusions* ("Djibouti Summary Conclusions"), 5 December 2011, <http://www.refworld.org/docid/4ede0d392.html>, p 4 and Annex 1.

⁶ See UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, <http://www.refworld.org/docid/52fba2404.html>.

⁷ *See supra*, note 5.

⁸ UNHCR, *Protection Policy Paper: The return of persons found not to be in need of international protection to their countries of origin: UNHCR's role*, November 2010, <http://www.refworld.org/docid/4cea23c62.html>.

Annex Selected Tools and Frameworks

- UNHCR's *10-Point Plan on Refugee Protection and Mixed Migration* provides practical suggestions to assist States in forming strategies.¹
- The Executive Committee of the High Commissioner's Programme (ExCom) has adopted a number of Conclusions on rescue, protection and interception measures at sea and stowaway asylum-seekers.²
- The *Djibouti Summary Conclusions* on distress and rescue at sea propose tools for incidents involving asylum-seekers and refugees. These include mobile protection response teams and a model regional framework agreement on SAR, disembarkation and burden-sharing.³
- The international normative framework for SAR, which codifies maritime custom, makes clear the obligation to assist those in distress at sea. It also regulates the global SAR system. The International Maritime Organization's (IMO) guidelines and principles on the treatment and disembarkation of persons rescued at sea provide important directions to States.⁴
- Recent jurisprudence has reinforced the principle of *non-refoulement* in the context of "pushbacks" and interdictions at sea.⁵
- UNHCR's *Central Mediterranean Sea Initiative* sets out a 12-point plan to prevent deaths in the Mediterranean.⁶
- The *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* has endorsed a regional cooperation framework on irregular movements and refugee protection in Southeast Asia.⁷
- The *Jakarta Declaration* and *Sana'a Declaration* lay foundations for regional mobilization on protection at sea.⁸
- UNHCR's guidelines on temporary protection or stay arrangements and on inter-State arrangements for the transfer of asylum-seekers are relevant to some rescue-at-sea situations.⁹

¹ See UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, February 2011, <http://www.refworld.org/docid/4d9430ea2.html>.

² See 'Asylum-Seekers at Sea / Rescue at Sea' and 'Interception' in UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, 6th edition, June 2011, <http://www.refworld.org/docid/4f50cfbb2.html>. See also ExCom Conclusion No. 53 (XXXIX) of 1988, *Stowaway Asylum-Seekers*, 10 October 1988, <http://www.refworld.org/docid/3ae68c4374.html>.

³ See UNHCR, *Refugees and Asylum-Seekers in Distress at Sea - how best to respond? Summary Conclusions*, 5 December 2011, <http://www.refworld.org/docid/4ede0d392.html>.

⁴ See IMO, *Guidelines on the Treatment of Persons Rescued at Sea*, 20 May 2004, MSC.167(78) and *Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea*, 22 January 2009, FAL.3/Circ.194.

⁵ *Hirsi Jamaa and Others v Italy*, Application no. 27765/09, European Court of Human Rights, 23 February 2012.

⁶ UNHCR, *Proposal for a Central Mediterranean Sea Initiative: EU solidarity for rescue-at-sea, protection and comprehensive responses*, 16 October 2013, <http://www.refworld.org/docid/52c172f84.html>.

⁷ See <http://www.baliprocess.net/regional-cooperation-framework> and UNHCR, *Regional Cooperative Approach to Address Refugees, Asylum Seekers and Irregular Movement*, November 2011, <http://www.refworld.org/docid/4e92d7c32.html>.

⁸ *Jakarta Declaration on Addressing Irregular Movement of Persons*, 20 August 2013, <http://www.refworld.org/docid/530db94f4.html>; *Sana'a Declaration*, 13 November 2013, <http://www.refworld.org/docid/530483644.html>.

⁹ See UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, <http://www.refworld.org/docid/52fba2404.html>; and UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, May 2013, <http://www.refworld.org/docid/51af82794.html>.