

CONVENTION PLUS
CORE GROUP ON ADDRESSING IRREGULAR SECONDARY MOVEMENTS
OF REFUGEES AND ASYLUM-SEEKERS

Joint Statement by the Co-Chairs

Aim of this Joint Statement

1. Switzerland and South Africa have prepared, with the support of UNHCR, the present Joint Statement, following the decision taken on 11 July 2005 by the Core Group on Addressing Irregular Secondary Movements of Refugees and Asylum-Seekers ("Core Group"), to suspend deliberations on a draft Multilateral Framework of Understandings on Addressing Irregular Secondary Movements of Refugee and Asylum-Seekers ("multilateral framework"), to focus on finalizing the Survey of "Movements of Somali refugees and asylum-seekers and States responses thereto" ("Somali survey"), and to derive suggestions for future work by UNHCR in this area from the Survey and the Core Group's useful protection capacity-building discussions.
2. The present Joint Statement by the Co-Chairs is intended to reflect, in summary form, the viewpoints expressed within the Core Group on the very complex issues surrounding irregular secondary movements of refugees and asylum-seekers.
3. Since the main points of view emerged during discussions on the multilateral framework, the present Joint Statement does not cover the Core Group's deliberations in detail, but highlights instead the issues on which there was a convergence of views and those where further study and reflection will be needed.
4. One of the main objectives pursued by the Core Group was to identify potential responses to irregular secondary movements, in the light of their various causes and related factors. It was initially hoped that the multilateral framework would encourage more consistency and predictability among States regarding their approach towards these movements. During the negotiations, several members of the Core Group expressed the view that the multilateral framework should focus on enhancing the protection of refugees and increasing the capacity of States, particularly developing States, to provide protection effectively through closer multilateral cooperation. On the other hand, several members of the Core Group expressed the view that it would have been preferable, instead, to launch practical initiatives in order to encourage cooperation on specific groups in concrete situations, rather than lingering on legalistic or theoretical discussions. The Co-Chairs hope that work in future on irregular secondary movement, whether within the framework of the Executive Committee of the High Commissioner's Programme (ExCom), expert round-tables that may be convened by UNHCR or other parties, or caseload-specific initiatives, will benefit from the Core Group's reflections, as summarized in this Joint Statement, as well as the findings of the Somali survey.
5. The Core Group's discussions have proven to be of value in elucidating various viewpoints on this issue. Addressing situations of irregular secondary movement more effectively, however, necessarily requires close cooperation between States. We therefore hope that future cooperation in this area will benefit from a deeper understanding of the concerns and motivations of all affected States and experience with addressing irregular secondary movement in specific situations.

6. Background information on the membership and terms of reference of the Core Group, as well as the topics covered in its various meetings are included in Annex I. This Joint Statement should be read in conjunction with ExCom Conclusion 58 (XL), which is attached in Annex II.

Irregular Secondary Movements: Points of Convergence and Points for Further Reflection

7. In our view, the following are the main points of convergence and points for further reflection voiced throughout the Core Group's discussions. They crystallized during the Core Group's consideration of the multilateral framework.

Points of Convergence

- The discussions on this issue have been worthwhile in establishing the context in which movements occur and the challenges facing States in dealing with them.
- There was broad agreement that the issues associated with the topic of irregular secondary movement are complex, including the vexed questions of definitions and asylum-linked responsibilities.
- The current responses to irregular secondary movement require considerable improvement.
- The difficulty of addressing such movements effectively without robust international cooperation was recognized. There was broad agreement that there is a considerable need to deepen the level of international cooperation amongst States and with international organisations, in particular UNHCR, to address both the root causes and the consequences of such movements.
- In this regard, the Core Group recognized the value of multilateral cooperation to share responsibilities and burdens amongst States more effectively in addressing the root causes of irregular secondary movements and to devise appropriate responses.
- Executive Committee (ExCom) Conclusion 58 (XL) made an important contribution to defining what constitutes "secondary movement"¹ and identifying areas where international cooperation in addressing such movements should be strengthened.²
- While ExCom Conclusion 58 remains valid as a guide for future action and reflection on this issue, it was recognized that adherence to its guidance remains limited in a number of respects. There are also some ambiguities inherent in the Conclusion, which the Core Group noted during its deliberations.
- It was also recognized that the phenomenon of irregular movement today is more common and increasingly more complex than that described in ExCom Conclusion 58, which was adopted almost 20 years ago.
- There was broad agreement that it is difficult to derive understandings of universal application regarding irregular secondary movement without additional efforts to identify the causes and scope of such movements in specific situations.

¹ "The phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move on in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern." See ExCom Conclusion 58 (XL), paragraph a.

² It is worth noting that it took the Executive Committee three years to negotiate this Conclusion, further attesting to the complexity of the issues.

- For this reason, the Co-Chairs wish to highlight the appreciation expressed by many Core Group members for the information provided through the Somali survey carried out by the Swiss Forum for Migration and Population Studies (SFM). The Somali survey undoubtedly shed light on a number of the reasons for the movements of Somali refugees and asylum-seekers. Since some members of the Core Group cautioned that the Somali survey would be of limited value in providing insights and drawing lessons valid for other groups, it was suggested that UNHCR and States consider carrying out other such group-specific surveys in future so as to ascertain underlying causes and formulate practical recommendations.
- The information deriving from the Somali survey can also be used by UNHCR in developing related projects, such as the “Preparatory Project for a Comprehensive Plan of Action for Somali Refugees” (Somali CPA), as well as the “Strengthening Protection Capacities Project”.
- While members expressed differences regarding which of the motives for irregular movements identified by the Somali survey could be qualified as being “protection-related”, the survey did identify the following broad motivating factors:
 - ✓ lack of or inadequate knowledge about the availability of asylum, about asylum procedures and/or about the presence and role of UNHCR;
 - ✓ lack of access to UNHCR;
 - ✓ difficulties in accessing an asylum procedure that is fair, efficient and gender- and age-sensitive;
 - ✓ difficulties in accessing registration, either as an asylum-seeker or a refugee, and obtaining corresponding documentation, which is either not made available or not recognized systematically by the authorities;
 - ✓ difficulties for refugees in obtaining a secure legal status;
 - ✓ concerns regarding physical safety, stemming from a range of factors, including lack of security in camps or urban settings and sexual and gender-based violence;
 - ✓ harassment by law enforcement officials, including summary arrest and arbitrary detention, and the risk or threat of *refoulement*;
 - ✓ precarious living conditions (whether in camps or urban areas), when it comes to housing, subsistence support, and access to basic services such as health care;
 - ✓ limitations on freedom of movement, including confinement to camps and restrictions regarding the place of settlement, which in turn limit access to opportunities for employment, self-reliance activities and education;
 - ✓ prohibition of or restrictions on gainful employment;
 - ✓ absence of education, self-reliance and employment opportunities;
 - ✓ limited or no prospects of, as well as unequal access to durable solutions, particularly in protracted refugee situations;
 - ✓ deterioration of conditions of stay and treatment over time;
 - ✓ the desire of refugees and asylum-seekers to reunite with family members; and
 - ✓ the desire of refugees and asylum-seekers to improve their economic situation.
- There was broad agreement that comprehensive approaches are needed to address irregular secondary movements, but the components of such approaches and the correct “balance” amongst the measures proposed remain to be determined. (See Points for Further Reflection)
- There was broad agreement that States, assisted by UNHCR and relevant partners, should establish effective mechanisms to ensure timely appropriate registration and documentation of refugees and asylum-seekers, in line with Article 27 of the 1951 Convention and the basic guidelines set out in ExCom Conclusion No. 91 (LII) of 2001. These mechanisms should encompass measures to identify and document those with specific needs, including women and children as well as vulnerable groups, so as to meet those needs adequately.

Points for Further Reflection

- Important differences of opinion emerged regarding the scope of the multilateral framework. Some Core Group members wished it to focus sharply on irregular secondary movements of asylum-seekers and refugees who had already found or “could have” found protection in an asylum country. For other members the notion of “could have found protection” was unclear. The Core Group’s protection-related discussions had pointed to the fact that people are also moving from country to country because they have been unable to find protection in any country through which they passed or had lost protection over time. In the case of the former, it was felt that inability to access protection was a continuation of direct flight and, hence, should be deemed to be “primary” rather than secondary movement. Regarding the latter, it was felt that such movements could not be equated with “irregular secondary movement” and required a distinct protection-oriented response. This led to differences on the question of the scope of the multilateral framework, and whether it should introduce a definition of this broader category of persons. The difficulty of neatly classifying different types of movement and disagreement over the issue of the extent to which the possibilities for accessing protection should influence the definition of irregular secondary movement, and therefore the scope of the multilateral framework, led to lack of consensus on these matters.
- Closely related to this was the question of the need for a definition in the text of the multilateral framework (or an authoritative statement from UNHCR) on what constitutes “effective protection”. For many Core Group members, the definition of irregular secondary movement hinges on an assessment of whether the persons in question had indeed found protection; a determination which, in their view, could only be informed by a clear definition of the content of effective protection. There were a number of calls for including a definition in the text. Some feared, however, that including an overly brief description in the multilateral framework could encourage States to seek to readmit a larger number of persons to countries of first asylum, placing an additional burden on these States. For other Core Group members, such a definition was beyond the terms of reference of the Core Group and was neither necessary nor advisable in a document focusing essentially on the irregular secondary movements of persons who had *already* found protection. Beyond these differences, many shared concern about language in the multilateral framework which described a number of benchmarks for protection as something to be aimed for over time.
- A number of Core Group members wished the multilateral framework to reflect a strong commitment to international burden and responsibility-sharing, and for these commitments to be informed by human rights principles, in order to enable them to discharge their protection responsibilities and to seek durable solutions as early as possible. They felt that the focus of the multilateral framework should be on enhancing protection and assistance in countries of asylum, particularly countries having been confronted with mass influx or protracted refugee situations. These Core Group members therefore attached particular importance to the section of the multilateral framework on “strengthening protection capacity-building through international cooperation”. Others believed, however, that the multilateral framework focused too narrowly on improving protection and assistance, implying that the search for protection was the dominant motivation for most irregular secondary movements; a viewpoint they contested. They felt that this created an “imbalance” in the multilateral framework and suggested that this imbalance could be corrected by giving analogous attention to issues such as border control and readmission. There was no consensus on the relative weight and inter-relation of the different responses called for in the multilateral framework, including protection capacity-building, durable solutions, development assistance, interception and other measures to discourage irregular secondary movement.

- The place of readmission in any comprehensive response to irregular secondary movements was the focus of considerable discussion. For many Core Group members, readmission is necessarily part and parcel of any comprehensive response to irregular secondary movement, as contemplated in ExCom Conclusion 58. They viewed readmission as being a desirable component to be included in the multilateral framework and a legitimate response to address such movements. In contrast, several raised concerns about State practice in this area. They argued that a section devoted to readmission would need to include clear definitions of “irregular secondary movement” and “effective protection”, without which the text would leave too much room for interpretation. They felt that readmission agreements were being concluded today on the basis of unequal power relationships and are often tantamount to burden-shifting. They were concerned that, without a range of safeguards for the individual concerned, readmission can put refugees at risk of *refoulement* and other human rights violations. In this regard, some pointed out that safeguards were insufficiently addressed in the multilateral framework, which should have protection as a central aim. They also viewed the multilateral framework’s section on readmission as being too vague and lacking a sufficient focus on the need for multilateral approaches, while also not contemplating a clear role for UNHCR. This raised concerns that some States would give priority to readmission in addressing situations of irregular secondary movement, without due regard for addressing the root causes or for other responses, such as resettlement.
- Another set of differences arose regarding the relevance of broader migration movements to the discussion of irregular secondary movement, which also colored views on the component parts of the multilateral framework. Although it was recognized that irregular secondary movements frequently arise in the broader context of “mixed flows” of migrants and people in need of protection, a number of Core Group members opposed the inclusion of any reference to migration movements in general or migration management in particular, since they felt that this was beyond the scope of the multilateral framework. This led to objections, in principle, to the last section of the multilateral framework, dealing with the return of those found not to be in need of international protection. Some members felt that there was no room in the multilateral framework for a section on the return to their countries of origin of asylum-seekers whose claims to refugee status or any complementary form of protection had been rejected after a full and fair hearing. Others, however, viewed irregular secondary movements as part of broader, unauthorized movements seeking a migration outcome. They were of the strong opinion that the return of unsuccessful asylum applicants was an important component of any comprehensive approach to addressing irregular secondary movement, since non-return compromised both the credibility and integrity of their asylum systems.

Annex I

CONVENTION PLUS
CORE GROUP ON ADDRESSING IRREGULAR SECONDARY MOVEMENTS
OF ASYLUM-SEEKERS AND REFUGEES

Membership and Terms of Reference of the Core Group

1. The Core Group on Irregular Secondary Movements of Refugees and Asylum-Seekers was established on 11 March 2004 within the framework of UNHCR's Convention Plus initiative, under the co-chair of Switzerland and South Africa. UNHCR assisted the Co-Chairs and served as the Core Group's secretariat.
2. The following States and organizations participated in the Core Group: Algeria, Argentina, Australia, Austria, Bangladesh, Brazil, Denmark, Dominican Republic, Egypt, Ethiopia, Germany, Ghana, India, the Islamic Republic of Iran, Italy, Japan, Kenya, Mexico, Morocco, the Netherlands, Nigeria, South Africa, Spain, Sweden, Switzerland, Turkey, Uganda, the United Kingdom, the United States of America, the European Commission, the International Organization for Migration (IOM), the International Council of Voluntary Agencies (ICVA), the International Catholic Migration Commission (ICMC), Jesuit Refugee Service (JRS), Amnesty International, the Dutch Council for Refugees, Human Rights Watch and the Women's Commission for Refugee Women and Refugee Children.
3. The Core Group adopted the following terms of reference:
*The Core Group will (on the basis of the Agenda for Protection, Goal 2, Objective 4) develop a framework of understandings related to causes of irregular secondary movements of refugees and asylum-seeker, with a view to addressing them, particularly those of a protection-related nature, based upon international solidarity and burden-sharing. Its work will be informed by the (intermediate) findings of (a) caseload-specific survey(s). The Core Group will also be in a position to review progress in carrying out this (these) survey(s).*³

Meetings of the Core Group

4. The Core Group was formally established on 11 March 2004, following an open meeting of interested States and organizations held on 16 December 2003 to discuss a preliminary project proposal of the survey of movements of Somali refugees and asylum-seekers carried out by the Swiss Forum for Migration and Population Studies (SFM) (as contracted by the Swiss Government). The Core Group met on four occasions prior to commencing deliberations on the draft framework of understandings. Beyond exchanging views on issues relevant to addressing irregular secondary movements, a number of Core Group meetings also served to monitor progress and receive periodic reports on the findings of a survey of movements of Somali refugees and asylum-seekers. By interviewing Somalis in Djibouti, Egypt, Ethiopia, Kenya, the Netherlands, Switzerland, South Africa, and Yemen, SFM's "Somali survey" aimed to provide first-hand information on the causes of secondary movements, as well as the routes and means of travel, along with State responses thereto, so as to inform the work of the Core Group. The Somali survey is also providing valuable inputs for related projects, such as the "Preparatory

³ One delegation stressed that irregular secondary movement of refugees and asylum-seekers cannot be seen in isolation, as they form part of more complex flows also including other types of migrants. The terms of reference were adopted, with one delegation reserving its position on this point.

Project for a Comprehensive Plan of Action for Somali Refugees” (Somali CPA), as well as the “Strengthening Protection Capacities Project”.

5. During its first meeting on 20 September 2004, participants exchanged views on a document tabled by UNHCR entitled “Basic propositions on irregular secondary movements” of June 2004⁴, on which a number of delegations had provided comments in writing prior to the meeting.⁵ The discussion raised a number of issues that the Core Group discussed in greater detail in the following three meetings:
 - The notion of burden and responsibility-sharing, including the underlying human rights principles, how to operationalize this notion, as well as regional experiences and arrangements in this respect.
 - How to identify and register at the earliest opportunity refugees and asylum-seekers who are on the move, in particular in situations of mixed flows, including fair procedures to ensure protection.
 - The reasons for onward movements and how States can better work together in addressing them.
 - How to strengthen protection capacities and to provide genuine prospects for durable solutions.
 - How to develop more regular asylum avenues for refugees in search of protection.
6. Given the importance accorded by many participants to the principle of international burden and responsibility-sharing in the context of irregular secondary movements, the Core Group devoted its meeting of 24 November 2004 to this principle. To inform this discussion, the Core Group considered the following documents: “Basic Human Rights Principles applicable to Responsibility and Burden-sharing Arrangements”⁶; ExCom Conclusion 52 (XXXIX) of 1998 on “International Solidarity and Refugee Protection”; ExCom Conclusion 100 (LV) of 2004 on “International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations”, and a UNHCR document entitled “Mechanisms of international cooperation to share responsibilities and burdens in mass influx situations.”⁷
7. At its meeting of 31 January 2005, the Core Group devoted attention to the issues of: how to identify and register at the earliest opportunity refugees and asylum-seekers that are on the move, in particular in situations of mixed flows, including fair procedures that ensure protection, and how to provide more regular avenues for refugees and asylum-seekers to find protection. The meeting of 23 February 2005 centered on the reasons for onward movements in particular in protracted refugee situations and ways in which States can better work together in addressing them, and how to strengthen protection capacities and provide genuine prospects for durable solutions. All of the above discussions identified issues and actions that the secretariat used to draft, in close consultation with the Co-Chairs, the multilateral framework of understandings on addressing irregular secondary movements of asylum-seekers and refugees.

⁴ Available on the Convention Plus page of UNHCR’s website at www.unhcr.org

⁵ Ghana, on behalf of the African Group, Amnesty International, Argentina, Australia, Denmark, the Netherlands, Sweden and the United Kingdom.

⁶ “UNHCR Forum and Executive Committee: Basic human rights principles applicable to responsibility- and burden-sharing arrangements”, Amnesty International, March 2004, AI Index IOR 42/007/2004.

⁷ EC/GC/01/7 of 19 February 2001. See the “Global Consultations” page of www.unhcr.org

8. The Core Group secretariat tabled the first draft of the multilateral framework on 23 March 2005. The Core Group discussed the multilateral framework in meetings on 9 and 11 May and 1-2 June 2005, before deciding to suspend its deliberations on 11 July 2005.

Annex II

Executive Conclusion No. 58 (XL) on the Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection

- a) The phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern. This concern results from the destabilizing effect which irregular movements of this kind have on structured international efforts to provide appropriate solutions for refugees. Such irregular movements involve entry into the territory of another country, without the prior consent of the national authorities or without an entry visa, or with no or insufficient documentation normally required for travel purposes, or with false or fraudulent documentation. Of similar concern is the growing phenomenon of refugees and asylum-seekers who wilfully destroy or dispose of their documentation in order to mislead the authorities of the country of arrival;
- b) Irregular movements of refugees and asylum-seekers who have already found protection in a country are, to a large extent, composed of persons who feel impelled to leave, due to the absence of educational and employment possibilities and the non-availability of long-term durable solutions by way of voluntary repatriation, local integration and resettlement;
- c) The phenomenon of such irregular movements can only be effectively met through concerted action by governments, in consultation with UNHCR, aimed at:
- i) identifying the causes and scope of irregular movements in any given refugee situation,
 - ii) removing or mitigating the causes of such irregular movements through the granting and maintenance of asylum and the provision of necessary durable solutions or other appropriate assistance measures,
 - iii) encouraging the establishment of appropriate arrangements for the identification of refugees in the countries concerned and,
 - iv) ensuring humane treatment for refugees and asylum-seekers who, because of the uncertain situation in which they find themselves, feel impelled to move from one country to another in an irregular manner;
- d) Within this framework, governments, in close co-operation with UNHCR, should
- i) seek to promote the establishment of appropriate measures for the care and support of refugees and asylum-seekers in countries where they have found protection pending the identification of a durable solution and
 - ii) promote appropriate durable solutions with particular emphasis firstly on voluntary repatriation and, when this is not possible, local integration and the provision of adequate resettlement opportunities;
- e) Refugees and asylum-seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country through action taken by governments and UNHCR as recommended in paragraphs (c) and (d) above;

f) Where refugees and asylum-seekers nevertheless move in an irregular manner from a country where they have already found protection, they may be returned to that country if

i) they are protected there against refoulement and

ii) they are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them. Where such return is envisaged, UNHCR may be requested to assist in arrangements for the re-admission and reception of the persons concerned;

g) It is recognized that there may be exceptional cases in which a refugee or asylum-seeker may justifiably claim that he has reason to fear persecution or that his physical safety or freedom are endangered in a country where he previously found protection. Such cases should be given favourable consideration by the authorities of the State where he requests asylum;

h) The problem of irregular movements is compounded by the use, by a growing number of refugees and asylum-seekers, of fraudulent documentation and their practice of wilfully destroying or disposing of travel and/or other documents in order to mislead the authorities of their country of arrival. These practices complicate the personal identification of the person concerned and the determination of the country where he stayed prior to arrival, and the nature and duration of his stay in such a country. Practices of this kind are fraudulent and may weaken the case of the person concerned;

i) It is recognized that circumstances may compel a refugee or asylum-seeker to have recourse to fraudulent documentation when leaving a country in which his physical safety or freedom are endangered. Where no such compelling circumstances exist, the use of fraudulent documentation is unjustified;

j) The wilful destruction or disposal of travel or other documents by refugees and asylum-seekers upon arrival in their country of destination, in order to mislead the national authorities as to their previous stay in another country where they have protection, is unacceptable. Appropriate arrangements should be made by States, either individually or in co-operation with other States, to deal with this growing phenomenon.