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Population Movements Associated
with the Search for Asylum and Refuge

INTRODUCTION

The protection responsibilities of States, UNHCR and the international community at large, for persons seeking asylum or refuge outside their own countries, have lost clarity over recent years. Who should be considered and treated as a refugee - and, therefore, the central beneficiary of the exercise of these responsibilities - is in itself an ever more difficult issue. The reasons for both developments are, generally speaking, well appreciated. They include the growth in the magnitude and complexity of the refugee and asylum problem, the protracted nature of refugee situations without solution in a number of host States, the increasingly mixed motives for departure of individuals and groups and the multiplying financial, social and environmental costs to States. Population movements triggered less by persecution or general insecurity and more by economic and environmental pressures, aided considerably, at the same time, by global mass communications and transportation possibilities, are a major difficulty today, having absorbed and eclipsed refugee movements in the public perception and in many States' policies.

These facts and in particular the current realities of international migration have brought into question certain traditional thinking about appropriate solutions to refugee and related problems and have given rise to new approaches. While these are necessary, difficulties have arisen, or may arise in the future, where measures taken are not always fully consonant with the protection requirements of the refugee component of population movements.

Clearly any new approaches must be based on a sound appreciation of which people are moving and why. International migration is a generic term broadly applied to a range of population movements, motivated by varying factors and giving rise to very different obligations or responsibilities depending on the

circumstances of the departures. Refugees or persons in refugee-like situations are one group among many. While this group is central for present purposes it is often peripheral to the responses taken by States to the overall problem of arrivals of non-citizens. The extent to which the refugee problem can justifiably be said to be peripheral, the circumstances under which it must be made central, and the implications for new approaches to asylum need close analysis. Such analysis might best proceed on the basis of closer examination of the component parts of population movements, leading to identification of groups of direct concern to a protection and solutions oriented effort in the asylum context.

This note is intended as background for such an analysis. It should be read in conjunction also with the annexed statement, which helps to set the analysis against the humanitarian and social mandate of the Office of the High Commissioner for Refugees.

SPECIFIC MOVEMENTS

A) Broad categories of movements

Very generally, to migrate is to move from one country or region to another. The movement may be international, across a State border, or it may be internal within a State. It may be composed totally, partially, or not at all of groups of persons of UNHCR's direct concern (see following paragraphs). Obviously, when seeking to establish a typology of contemporary migration, many problems associated with definition and measurement arise. A number of factors are involved: the notion of state borders and of citizenship, conditions in national law relating to the entry of non-nationals, the subjective intentions of the persons involved, the length of their stay and the conditions in the region of origin which made them move. Altogether, the United Nations has estimated the world population of migrants residing outside their countries of origin (temporarily or permanently) at 80-100 million persons. This estimate includes also the global refugee population.

i) Internal movements

As regards internal migration, two phenomena are of particular interest. One is the large increase of rural-urban migration in non industrialized States. An expected 300-400 million.

people will move from the countryside to the cities in the 1990s, while a proportion of these will migrate to other countries, largely as a result of congestion. The second phenomenon is the rising number of persons who are displaced in their own countries as a result of civil strife, natural disasters, environmental degradation, poverty, or a combination of these factors. Estimates indicate that there are now some 20-30 million internal migrants belonging to this category. Not all, but some, may be brought within the purview of a "good offices" role for UNHCR. (See later paras.)

ii) International movements

International law does not give an individual who leaves one country the automatic entitlement to enter another country, other than perhaps the country of citizenship. States are vested with the authority to determine whom to admit in the case of non-citizens. Usually, tourism and visits within the limit of some months are allowed without prior authorization, although this is changing with expansion of visa regimes, even for short-term visitors. Such short-term visitors like tourists, time-limited migrants like guest-students, pilgrims, and nomads would not seem to be relevant in the present context, insofar as they either do not seek any right of longer-term residence or do not come within UNHCR's competence (through questions of refugee status or the principle of non-refoulement coming into issue).

As regards international migration on economic grounds, there is a need to differentiate between regular and irregular migration. Regular economic migrants are non-nationals who possess an entry authorization of the State where they are entitled, either permanently or for a fixed period of time, both to reside and to take up an economic activity. Among regular migrants one finds basically three sub-categories: new settlers, contract workers (whose conditions are partially regulated by multilateral instruments such as ILO and Council of Europe conventions and the new UN Convention dealing with migrant workers), and official and business migration. The total number of regular economic migrants has been estimated to be in the range of 25-30 million. Irregular migration on economic grounds takes place without the prior authorization of the entry

State, largely when non-nationals do not comply with national entry requirements. The total number of irregular migrants can roughly be estimated at some 20-40 million.

There is also international migration on humanitarian grounds. Under this category there are basically two types: immigration on the basis of prior entry authorization and spontaneous arrivals of asylum-seekers. The humanitarian programmes within the framework of the overall immigration quotas of major receiving States are examples of the former. Annually some 150,000-300,000 refugees and humanitarian cases are resettled in this manner, often directly from the countries of origin or countries of first asylum. These programmes respond to the needs of local populations internally or externally displaced or otherwise seriously affected by situations of human rights violations, war or general violence, serious public order disturbances and ecological disasters. As regards spontaneously arriving asylum-seekers, their number^{1/} amounted to some 2.2 million in 1990, of which there are some 1 million in Africa, 0,5 million in Asia and Middle East, 0,1 million in Latin America and 0,6 million in Europe and North America. In the case of spontaneous arrivals of asylum-seekers, the main reasons for departure, either singly or in combination, include individual persecution, family reunion, draft resistance or evasion, generalized insecurity and violence or severe economic and social disadvantage. A significant percentage of these people, although by no means all, are persons falling within the 1951 Convention definition or broader criteria (OAU/Cartegena) and within UNHCR's competence (see below). In addition, many who might be eligible for refugee status may, because for example of partial or restrictive status determination procedures, choose in effect to remain in a precarious migratory situation. These persons constitute a group of "non-recognised refugees". In addition, there are some 2.3 million Palestinians registered with UNRWA.

^{1/} All figures which follow in this paragraph are UNHCR's best estimates based on Government figures and on U.N. sources. They are, and can only be, approximate and stand to be corrected, depending on available information.

B. Persons of UNHCR's Concern

Among the groups of persons associated with the search for asylum or refuge are those falling within the competence of the High Commissioner. There are five main categories of such persons: (a) those who fall under the Statute definition and thus are entitled to benefit from the full range of the Office's functions; (b) those who belong to a broader category but have been recognized by States as being entitled to both the protection and assistance of the Office; (c) those to whom the High Commissioner extends his "good offices", mainly to facilitate humanitarian assistance; (d) returning refugees, for whom the High Commissioner may provide reintegration assistance and a certain protection; and (e) non-refugee stateless persons whom UNHCR has a limited mandate to assist.

Re: (a) - Persons Covered Under the Statute

Paragraph 6 of the Statute of the Office lists categories of persons to whom "the competence of the High Commissioner shall extend." The most important category is covered by paragraph 6(B) which identifies as refugees those persons who flee their country or stay away from it due to a "well-founded fear of persecution" for reasons of race, religion, nationality or political opinion. A similar definition of the term "refugee" is contained in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which definition also includes "membership of a particular social group" as a ground for persecution. To date, the Statute/Convention definition is the most widely recognized definition of the term "refugee". It should be regarded as the core or classical definition. The international community has accepted UNHCR's competence, on the basis of its Statute and Article 35 of the 1951 Convention, for persons falling under this definition, including the social group category.

Re: (b) - The Broader Category of Persons Deserving Protection and Assistance

Since the late 1950's to the present, the Office has undertaken activities on behalf of a broader category of persons who do not necessarily meet the terms of the classical refugee definition. These are mostly people who have been uprooted and displaced externally as a result of a struggle for independence, a process of decolonization or post-independence internal conflicts.

They are commonly referred to as victims of war or serious civil strife, as opposed to victims of persecution under the Statute/Convention. ECOSOC Resolution 2011 (LXI) of 2 August 1976, endorsed by the General Assembly, described them as 'victims of man-made disaster'.

With regard to this group of persons, the Office's involvement since the 1960's has been explained progressively in the context of its basic mandate, and not simply as an additional ad hoc humanitarian activity. Such involvement has been endorsed, or even required of the Office, by the international community and UNHCR's Statute requires it inter alia to follow General Assembly or ECOSOC directives (see paragraph 3 of the Statute). Various resolutions of the General Assembly have commended the High Commissioner for his activities on behalf of such persons, who have been variously referred to in these resolutions as "refugees who are of his concern" or persons for whom he "is called upon to assist in accordance with relevant resolutions of the General Assembly", (see e.g. GA Resolution 3143 (XXVIII) of 14 December 1973) or "displaced persons of concern to his Office". In resolution 35/41 of 25 November 1980 the General Assembly commended the High Commissioner and his staff for their dedication in "discharging their responsibilities for protecting and assisting refugees and displaced persons throughout the world." The General Assembly has adopted similarly-worded resolutions almost every year to date.

On the question of its protection responsibility towards persons belonging to the broader category, the Office has traditionally taken the position that the repeated requirement by the original mandate-giver, the General Assembly, that the Office undertake "responsibilities for protecting and assisting" persons belonging to this category should be considered as confirmation of the Office's protection mandate for such persons.

Many governments have accepted, either formally or implicitly, the above interpretation of UNHCR's competence with regard to the broader category. In Africa the States Parties to the 1969 OAU Convention governing the specific aspects of refugee problems in Africa have gone so far as formally to incorporate an extended refugee definition in the text [in Article I(2)]^{2/} in order to cover the broader category and have also formally recognized the High Commissioner's competence for this group. In Latin America, the wider concept is embodied in the Cartagena Declaration^{3/} which, though not of a legally binding character in itself, has been reaffirmed by the OAS General Assembly every year since 1984, is respected in practice by most States in the region and in some has been introduced into domestic law. In Asia, where there is no formal instrument embodying the definition, through State practice UNHCR's competence for this broader category has generally been accepted. In Europe, there has been broad accommodation in State practice of the needs of the wider category, variously described as category B refugees, humanitarian refugees or de facto refugees. European States have also supported the Office's activities, including through endorsement of General Assembly resolutions, on behalf of the wider category in the context of large-scale influxes in developing countries. They were able to join the Executive Committee consensus on Conclusion 22 (XXXII) in 1981 recognizing protection and assistance entitlements for persons within the broader category.^{4/}

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- 2/ The term "refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.
- 3/ "The definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."
- 4/ All of the above is said without prejudice to the fact that, over recent years, a number of governments have begun to question or even to deny any general competence of UNHCR for this broader category of persons.

Re: (c) - Persons Covered Under the Broader Category Within the Office's Competence Who Benefit from Good Offices

The Office has sometimes been involved also with persons who are internally displaced for reasons of war or civil strife. With regard to this category, the Office's involvement has been primarily of a humanitarian nature and has largely meant exercising a "good offices" function, not including international protection, to channel international assistance. Thus, for example, Resolution 1388 (XIV) of 20 November 1959, "authorizes the High Commissioner, in respect of refugees who do not come within the competence of the United Nations, to use his good offices in the transmission of contributions designed to provide assistance to these refugees." Similar references to "good offices" functions are mentioned in several subsequent resolutions of the General Assembly.^{5/} The Office has been involved in a good office's capacity in a number of other internal displacement situations, for example in Laos, Viet Nam, Cyprus and, with the Biharis, in Bangladesh. In all these cases, the activities of the Office were subsequently endorsed by the General Assembly.

It also needs to be noted that a new category of persons is emerging for whom, in certain specific instances, UNHCR is being called upon to exercise a limited range of responsibilities. These are persons whose asylum claims have been fully and properly considered and then rejected and for whom some assistance with their return is required.

Finally, the mandated activities of the Office include participation by the High Commissioner "at the invitation of the Secretary-General, in those humanitarian endeavours of the United Nations for which the Office has particular expertise and experience," (GA Resolution 2956 (XXVII) of 12 December 1972, para. 2).

^{5/} (See for example, GA Resolutions 1673 (XVI) of 18 December 1961, 1783 (XVII) and 1784 (XVII) of 7 December 1962, 1959 (XVIII) of 12 December 1963)

Re: (d) Returnees

Governments reassume full responsibility for their nationals once they have returned voluntarily to their countries of origin and thereby have ceased to be refugees. The High Commissioner is mandated to undertake, among other activities, the promotion of voluntary repatriation (paragraph 8 of the Statute) and the General Assembly has recognized that the provision of reintegration assistance to returnees is an important factor in fulfilling this task (see General Assembly Resolution 39/40 of 14 December 1984). Activities within or "inherent in" the High Commissioner's mandate, which should be carried out in connection with voluntary repatriation operations and assistance to returnees, are further spelled out in Conclusion No. 40 (XXXVI), "Voluntary Repatriation", endorsed during the 36th Session of the Executive Committee in 1985 and subsequently reaffirmed on a number of occasions by the General Assembly. This Conclusion accepted that "the High Commissioner should be recognized as having a legitimate concern for the consequences of returns" and identified activities for the High Commissioner as including monitoring fulfilment of the amnesties, guarantees or assurances on the basis of which the refugees have returned.

Re: (e) - Non-Refugee Stateless Persons

In relation to stateless persons who are refugees, UNHCR is required to exercise the full range of its responsibilities pursuant to its Statute (paragraph 6 (A) (II) and the 1951 Convention (Article I (A) (2)). In addition, by General Assembly Resolution 3274 (XXIX) of December 1974, subsequently confirmed in General Assembly Resolution 31/36 (XXXI) of November 1976, the General Assembly designated UNHCR as the body, under Article 11 of the 1961 Convention on the Reduction of Statelessness, "to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority". This means in practice that UNHCR assists non-refugee stateless persons to pursue claims in connection with loss or acquisition of nationality and, in addition, helps to resolve other difficulties accompanying statelessness, such as in relation to personal or travel documents.

Furthermore, in view of the close connection between problems of refugees and of stateless persons (with lack of national protection and problems of residence or of documentation in countries of residence being important common denominators) and given the largely parallel provisions of the 1951 Refugee Convention and the 1954 Convention relating to the Status of Stateless Persons, a "good offices" role in relation to individual stateless persons has been widely accepted by States as being appropriate for UNHCR. In recognition of this fact, UNHCR formally brought the statelessness problem to the attention of the Executive Committee at its 39th Session in October 1988. The Committee adopted by consensus the following general protection conclusion (L):

"Noted the close connection between the problem of refugees and of stateless persons and invited States actively to explore and promote measures favourable to stateless persons, including accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as the adoption of legislation to protect the basic rights of stateless persons and to eliminate sources of statelessness".

FINAL CONSIDERATION

In considering what should be the scope of the present discussion, there is the overriding issue of what makes most sense practically in terms of the purpose of this exercise and the actual, complex nature of population movements today. The treatment to be accorded to the specific "refugee" component of these movements, especially in regard to protection, clearly is most relevant and important. On the other hand, among the major complicating factors, the "non-refugee" aspects of the phenomenon of mass movements associated with the search for asylum and refuge are in pressing need of attention today. Logically, therefore, the scope of the discussions of the Working Group must be extended to embrace these "non-refugee" aspects.