

## Annex 1

### Background Note

#### Concerning the competence of the United Nations High Commissioner for Refugees (UNHCR), in relation to rescue at sea matters

##### Prepared for COMSAR 6, Working Group 1

#### I. The competence of UNHCR

1. UNHCR's competence with regard to persons rescued at sea relates to the fact that they may include asylum-seekers in need of international refugee protection. UNHCR's mandate stems from the United Nations General Assembly in the form of Resolution 428 (V) of 14 December 1950, to which the UNHCR Statute is annexed.

2. Paragraph 6B of chapter II of the UNHCR Statute defines the Office's competence *rationae personae* in the following terms:

*"6. The competence of the High Commissioner [for Refugees] shall extend to:*

...

*B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence."*

3. The term "asylum-seeker" has been employed by the General Assembly in general resolutions relating to UNHCR since 1981. Historically, this concept is closely related to Executive Committee Conclusion No. 22.<sup>1</sup> The term can refer either to an individual whose refugee status has not yet been determined by the authorities but whose claim to asylum entitles him or her to a certain protective status on the basis that he or she could be a refugee, or to large-scale influxes of mixed groups in a situation where individual refugee status determination is impractical. Clearly, asylum-seekers form part of UNHCR's competence *rationae personae*.

#### II. Treaty and non-treaty instruments for which UNHCR has responsibility and which may contain relevant provisions

4. According to paragraph 8(a) of the UNHCR Statute, UNHCR should provide for the protection of refugees by promoting, supervising and developing international conventions for the protection of refugees.

5. The central instruments in this regard are the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. While the Convention does not directly refer to rescue at

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<sup>1</sup> Executive Committee Conclusion No. 22 (XXXII) on Protection of Asylum-Seekers in Situations of Large-scale Influx; endorsed by General Assembly Resolution 36/125.

sea, the principle that refugees, including asylum-seekers whose status has not been determined and may be refugees, may not be refouled or returned to persecution, as set out in Article 33 of the Convention, applies to those who were rescued at sea as to other asylum-seekers.

6. It should also be noted that the Executive Committee of the High Commissioner's Programme (hereinafter referred to as "the Committee") was established by Economic and Social Council (ECOSOC) at the request of the General Assembly. It currently consists of representatives 61 States, elected by ECOSOC on the widest possible geographical basis from those States with a demonstrated interest in and devotion to the solution of refugee problems. The Committee is not, in the full sense of the word, a governing body. It does not substitute for the policy making functions of the General Assembly and ECOSOC (vis-à-vis the High Commissioner as provided in UNHCR's Statute) but it has its own slate of executive and advisory functions.

7. In the exercise of its mandate, the Committee adopts Conclusions on International Protection (hereinafter referred to as "the Conclusions") addressing particular aspects of international protection. While the Conclusions are not formally binding, regard may properly be had to them as elements relevant to the interpretation of the international refugee protection regime. Conclusions of the Committee constitute expressions of opinion which are broadly representative of the views of the international community. The specialist knowledge of the Committee and the fact that its Conclusions are taken by consensus add further weight.

8. The Committee has formulated standards in relation to rescue at sea, which are formed by an analysis of the interface between international refugee law and international maritime law. They reflect in particular the experience of the 1980s which led to the conclusion that refusal to permit disembarkation, especially if only requested on a temporary basis, might have the adverse effect of discouraging rescue at sea and undermining other international obligations. The relevant Committee Conclusions dealing with rescue at sea are annexed to this Note.

9. The most salient observations/guidelines are the following:

- Conclusion No. 14, para. (c) notes it as a matter of concern: *"...that refugees had been rejected at the frontier...in disregard of the principle of non-refoulement and that refugees arriving by sea had been refused even temporary asylum with resulting danger to their lives..."*.
- Conclusion No. 15, para. (c) states: *"It is the humanitarian obligation of all coastal States to allow vessels in distress to seek haven in their waters and to grant asylum, or at least temporary refuge, to persons on board wishing to seek asylum."*
- Conclusion No. 23, para. 3 states *"In accordance with international practice, supported by the relevant international instruments, persons rescued at sea should normally be disembarked at the next port of call. This practice should also be applied to asylum-seekers rescued at sea. In cases of large-scale influx, asylum seekers rescued at sea should always be admitted, at least on a temporary basis. States should assist in facilitating their disembarkation by acting in accordance with the principles of international solidarity and burden-sharing in granting resettlement opportunities."*

### **Concluding remarks**

10. The international refugee protection regime is based on a number of common core understandings, which are interwoven and which ensure in their entirety a predictable and reliable international co-operative framework for the protection of refugees. These common understandings have evolved over time and proved their resilience in the face of a rapidly changing global environment. They are based primarily on international refugee law, international human rights law and fundamental humanitarian principles. They have been carefully crafted, not least in the context of the Executive Committee, and have responded to varying scenarios and complex refugee situations, including as regards the rescue of asylum-seekers at sea.

11. In the present context, as outlined in this preliminary note, these core understandings include principles designed to ensure:

- Rescue of people in distress at sea, irrespective of their status;
- Disembarkation;
- Respect for the principle of non-refoulement, including non-rejection at the frontier;
- Admission of asylum-seekers, at least on a temporary basis;
- Access to fair and effective asylum procedures;

12. UNHCR recognises that issues relating to rescue at sea have acquired a new importance in the current world environment. In this regard, the UN High Commissioner for Refugees welcomes the initiative of the Secretary-General of the IMO to establish an inter-agency group for the purpose of contributing to efforts currently underway within the IMO.

UNHCR  
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