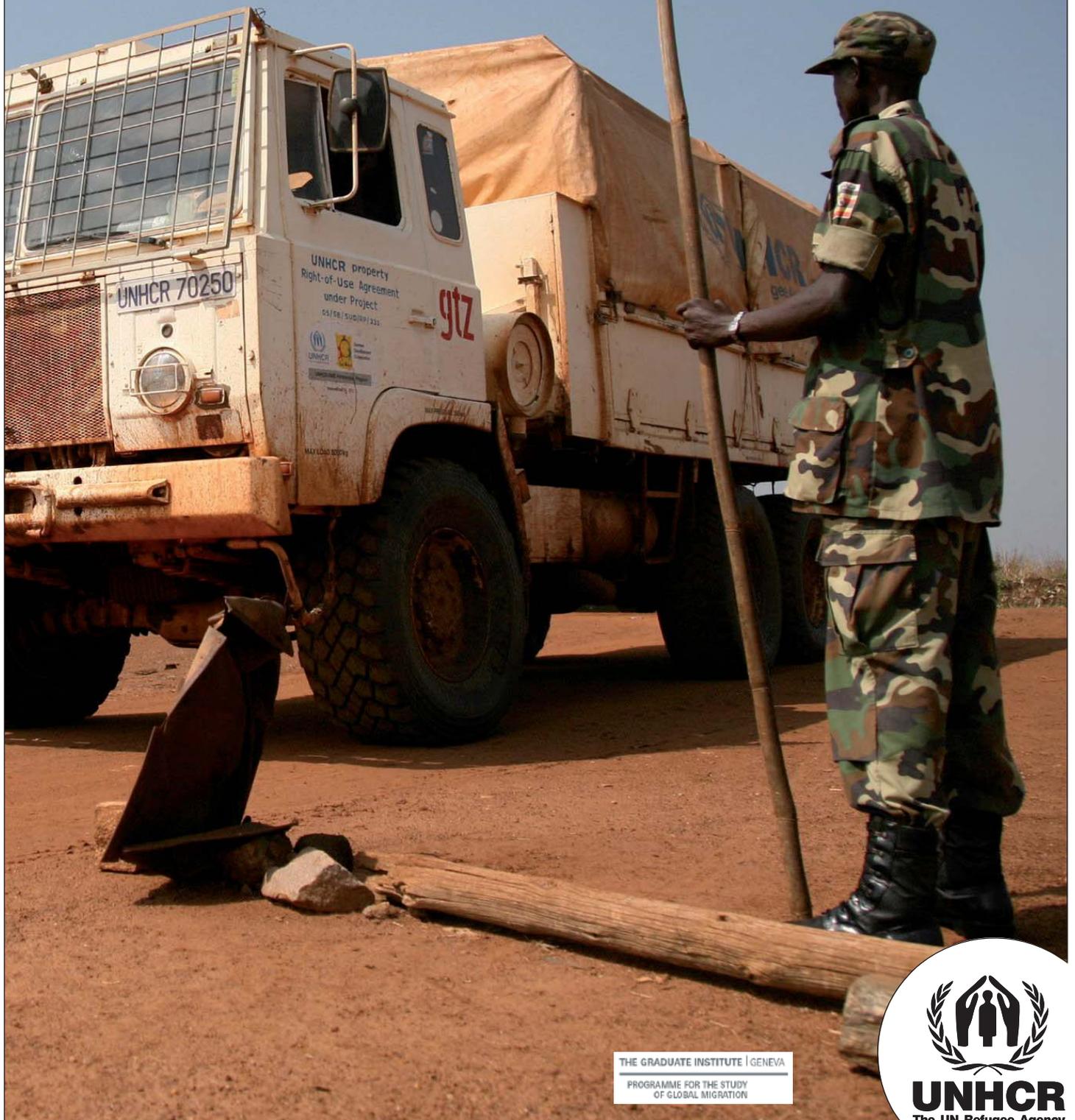


10-POINT PLAN EXPERT ROUNDTABLE NO. 1

Controlling Borders while Ensuring Protection

20-21 NOVEMBER 2008

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THE GRADUATE INSTITUTE | GENEVA

PROGRAMME FOR THE STUDY
OF GLOBAL MIGRATION



UNHCR
The UN Refugee Agency



10-Point Plan Expert Roundtable No. 1: Controlling Borders while Ensuring Protection 20 – 21 November 2008, Geneva

Agenda

Thursday, 20 November

- 8:30 – 9:00 **Registration**
- 9:00 – 9:15 **Welcome**
- 9:15 – 9:30 **Opening Address by the Assistant High Commissioner
(Protection), Ms. Erika Feller**
- 9:30 – 10:30 **Introductory Session: Establishing a working definition of
“protection-sensitive entry systems”**

The opening session will provide an opportunity to develop an understanding of the concept ‘protection-sensitive entry system’ in UNHCR’s 10-Point Plan, which is the central theme of the Roundtable discussion. It will lay the foundation for the following sessions in which different elements of the concept will be examined in greater detail. Participants will first discuss the terms ‘protection-sensitive’ and ‘entry system’ and then elaborate a working definition of the concept.

The following questions, inter alia, will be discussed: What is the meaning of the qualification ‘protection-sensitive’? Who should be protected (all people seeking entry or only specific groups such as refugees, asylum-seekers, children, victims of trafficking, persons with medical needs) and against which threats (return, persecution, human rights violations)? Which elements encompass the term ‘entry system’? Why does the 10-Point Plan employ the notion of ‘entry systems’ and not the commonly used term ‘border control’ or ‘border management’? Are there any new methods of controlling entry into states’ territories? What are these methods and how do they relate to the discussions?

- 10:30 – 11:00 **Coffee Break**
- 11:00 – 12:30 **Working Session I: Reconciling (state) security and (refugee)
protection**

This session aims to further elaborate the objectives of a protection-sensitive entry system and at setting them into relation to each other. States have the right to control their borders, to decide whether or not to allow a non-national to enter their territory and to know who is residing in their territory, at all times. Border control is an important mechanism to combat international crime and to avert security threats. At the same time, individuals wishing to enter a state’s territory may need assistance to meet their own basic needs and support to access their rights, as these individuals, who have

been forced to flee persecution and human rights violations, may not be able to return to their country and require protection.

Many States have mechanisms in place that ensure that protection concerns are taken into consideration in their entry systems. Protection obligations enshrined in international, regional or national law underline the importance that States have given to the protection of individual human rights.

- i. What are the core functions of a protection-sensitive entry system?

Based on the working definition of a “protection-sensitive entry system” agreed upon in the opening session, participants will examine in more detail the different objectives of a protection-sensitive entry system, including those related to ‘control’ and ‘protection’.

- ii. Is there a conflict of interest between border control and international protection objectives?

Participants will look more closely at objectives that can place contradicting demands on entry officials. They will discuss how these contradictions can be solved. The following questions will be discussed: Does access of asylum seekers to the territory, without the necessary documentation, undermine efforts to prevent irregular entry? How can potential security risks related to individual asylum seekers be dealt with? Can entry officials realistically be expected to address humanitarian needs? Would border officials be better able to reconcile different objectives with additional training, guidance and expertise?

- iii. Are there specific protection safeguards required to combat international crimes such as smuggling and trafficking?

International migration, particularly irregular migration, often involves human smuggling and trafficking in persons. Combating these serious crimes raises specific problems for security and law enforcement activities and is challenging from a protection perspective, especially if smugglers and traffickers are among a mixed group of people requesting entry at a state’s border. The following questions will be discussed: How can traffickers and smugglers be identified and separated from those who are victims of their crimes? How should they be punished? Which safeguards are necessary to ensure that measures against smugglers and traffickers do not negatively impact asylum seekers? Are entry officials responsible for the identification of victims of trafficking? Are these officials responsible for addressing the specific needs of victims of trafficking or victims of human rights abuses?

12:30 – 13:30 **Lunch**

13:30 – 15:00 **Working Session II: Protection-sensitive entry systems: A common task**

This session will further elaborate on the roles and responsibilities of different actors involved in entry management. The session will explore the contributions that these

actors can make to a protection-sensitive entry system and identify areas that may require the involvement of additional stakeholders.

- i. Who are the main actors of a protection-sensitive entry system and where are they located?

Primary responsibility for the management of entry systems lies with the State and its authorities. Apart from border and coast guards, these actors may also include other governmental departments, including asylum authorities. Entry officials may be placed at different locations, including outside of their own territory. States have also delegated a variety of tasks relating to entry management to private actors, such as airline companies or the shipping industry. Depending on the national system, the management of the entry system may also include international agencies, such as IOM and UNHCR, or civil society representatives.

The following questions will, *inter alia*, be discussed: Which state bodies are involved in entry management? Where are they located (in the country, at the border, at sea, or in the territory of third States)? Are governmental bodies of third States involved in the management of the entry system and to what extent? Where have border control tasks been (partially) outsourced to private actors? Have the responsible actors changed over time and why? What role have international agencies and civil society representatives played? How do participants view these developments? Are there regional differences?

- ii. What are the respective roles and responsibilities of the main actors of a protection-sensitive entry system?

After having exchanged information on the variety of actors who are involved in the management of entry systems, participants will discuss their experiences with regard to the role and responsibilities of these actors. The following questions, *inter alia*, will be discussed: Is there a division of labour between the different actors involved in the entry system?; How has this division been developed and does it work? Do responsibilities vary in different regions and to what extent?

- iii. Are there any protection tasks that do not fall within the mandate of a specific actor?

Having looked at issues and stakeholders, are there any fields of work that are not adequately covered and why? What possible solutions can be envisaged?

- iv. Other challenges

This session will provide an opportunity for participants to discuss challenges to the establishment and management of a protection-sensitive entry system. The following are some suggested questions for discussion: Is co-operation amongst different actors functioning well? How are conflicting interests resolved? Are there time constraints or can people stay at a state border until their protection needs are examined? Do increased numbers of people requesting entry raise particular challenges? Do difficult geographical settings, such as remote areas, sea borders or the high seas, bring particular operational challenges? How can resource limitations be addressed?

15:00 – 15:30 **Coffee Break**

15:30 – 17:00 **Special Session: Identifying the legal problems implicated in protection-sensitive entry systems**

The roundtable focuses on the operational challenges of a protection-sensitive entry system and possibilities to overcome these challenges. There are, however, a variety of important legal questions in connection with the management of entry systems. This session provides participants with the opportunity to familiarize themselves with some of these legal questions. Legal experts will make short presentations on each of the following topics, particularly as they apply in the context of border control and protection. The presentations will be followed by a discussion involving all participants.

- i. Non-penalization of entry of asylum-seekers
Vincent Chetail, Graduate Institute Geneva

The imposition of entry requirements on non-nationals (eg. documentation, visas) is a long-established mechanism for controlling access to national territory and responds to a range of objectives, including security concerns. It is important, though, that the entry regime contains systematic safeguards to ensure that such mechanisms do not become an insurmountable obstacle to the individual's right to seek asylum. This presentation will elaborate on the circumstances under which international refugee law exempts refugees from penalties for illegal entry.

- ii. Extra-territorial application of the *non-refoulement* principle
Anja Klug, Senior Legal Officer, UNHCR

States are increasingly employing a range of measures against irregular travellers situated outside of their territory, including at high sea and in the territory of third States (e.g. maritime interdiction, out-posted immigration officers). The presentation will examine whether the relevant provisions of international human rights and refugee law, and at a minimum, the prohibition of *non-refoulement*, are binding on States when acting extraterritorially.

- iii. State obligations and private actors in the entry system
Thomas Gammeltoft-Hansen, Legal Expert, Danish Refugee Council

Many States impose sanctions on carriers for the transportation of non-nationals, who do not possess proper travel documentation, to their territory. As a result, carriers can be obliged to prevent the transportation of irregular travellers on their vessels, regardless of any potential protection needs that these individuals might have. This presentation will discuss whether and to what extent a State can be held liable for any breaches of international law by such private entities (carriers).

18:00 – 19:00 **Reception**

Friday, 21 November

9:00 – 10:30 **Working Session III: Establishing and improving protection-sensitive entry systems**

This session will explore practical ways to establish and maintain a protection-sensitive entry system by taking into account different operational realities, including limitations in resources. Different roundtable participants will present projects regarding this topic. Participants will be invited to draw general conclusions from these examples and discuss how these ideas might be replicated in their respective country/region.

i. Presentation of good practice examples:

- Controlling borders and ensuring protection in Angola
Katharina Schnöring, Chief of Mission, IOM Angola
- A Memorandum of Understanding with the Hungarian Border Guards on monitoring and training in Hungary
Marta Pardavi, Executive Director, Hungarian Helsinki Committee
- Establishing a dialogue with UK government officials on protection-sensitive entry systems
Sile Reynolds, Consultant, UNHCR London

ii. Discussion

The subsequent discussion will focus on the following three questions:

- What are the main steps to establish a protection-sensitive entry system?

Participants are invited to refer to the presented examples and their own relevant experiences, to brainstorm ideas on how a control-focused border system can be developed into a protection-sensitive border system.

- What resources and tools are needed?

Addressing protection concerns within the entry system will require resources and expertise. Based on the result of previous discussions and good practice examples, participants are invited to list resources and tools which might facilitate the establishment of a protection-sensitive entry system.

- How can training, monitoring and other support best contribute to the improvement of a protection-sensitive system?

This session will specifically focus on training and monitoring in the context of entry systems. The following questions are intended to guide the discussion: What contributions can training, monitoring, and capacity-building activities make in establishing protection-sensitive entry systems? Where can these activities be best placed in the overall system? What actors can deliver or support the above activities?

10:30 – 11:00 **Coffee Break**

11:00 – 12:30 **Working Session IV: Controlling Borders and Mixed Migration: An international phenomenon requiring international cooperation**

International migration is a global phenomenon and by definition, involves a variety of countries that are situated along migration routes. Addressing the challenges to international migration, including those related to entry systems, is best discussed in the context of international cooperation. This session will discuss in which areas cooperation would be most important and on what level (eg. bilateral, regional, global) co-operation can yield the best results.

i. What is the relevance of information sharing and information networks?

Information sharing is key to any form of cooperation. How can this tool be employed to strengthen the protection component of an entry system? What examples of information networks can be discussed to inspire similar initiatives in the migration context?

ii. What local, regional or global approaches have been useful?

Participants can discuss the following questions: Are there examples of sub-regional or regional initiatives and what are the practical results that they have achieved? What type of facilitator role can international organisations play?

iii. How can ideas and best practices be better exchanged and discussed?

Participants may wish to reflect on the form of exchange and discussion which they think would be most useful. Can this be through cross-border meetings, regional conferences, the establishment of data bases and use of internet, handbooks or manuals? Where do experts see the most urgent need for action?

iv. Are there other good practices of state co-operation?

Participants can discuss further examples of co-operation relating to capacity building, financial support, and joint border surveillance.

12:30 – 13:30 **Lunch**

13:30 – 14:30 **Conclusions, Recommendations and Closure**