

## International Cooperation to Share Burden and Responsibilities

Expert Meeting in Amman, Jordan, 27 and 28 June 2011

### Discussion Paper

International cooperation is both a key principle of the international refugee regime, and a practical necessity in responding to common challenges. Several successful initiatives have been taken in the past to enhance international cooperation and burden sharing, but these have yet to translate into a coherent global framework. Building on the outcomes of the High Commissioner’s Dialogue on Protection Gaps and Responses in December 2010, the purpose of this paper is to analyze, from a concrete and operational perspective, parameters, lessons learned and positive aspects of previous cooperative arrangements to share burden and responsibilities. This will form the basis for discussion at the Expert Meeting in Amman, Jordan, on 27 and 28 June 2011. This paper, as well as the results of the Expert Meeting, could also be used to inform the development of a Common Framework on International Cooperation to Share Burden and Responsibilities.

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### Introduction

1. The international refugee regime is predicated on cooperation between States. The importance of international cooperation reflects the reality that refugee challenges are inherently transnational and cannot be addressed by any one State alone. The need for international cooperation is referred to in the Preamble of the 1951 Convention relating to the Status of Refugees (“1951 Convention”)<sup>1</sup> as well as regional instruments governing refugee protection, such as the OAU Convention,

<sup>1</sup> 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 137, entered into force 22 April 1954, and the 1967 Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force 4 October 1967, <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

the Cartagena Declaration on Refugees, and European Union instruments.<sup>2</sup> International cooperation has also been a core element of a significant number of General Assembly Resolutions<sup>3</sup> and UNHCR Executive Committee (“ExCom”) Conclusions.<sup>4</sup>

2. Despite the significance of international cooperation, the refugee protection regime offers no agreed parameters for how it could be concretized in practice. Efforts to develop more consistent benchmarks or frameworks for international cooperation, including burden and responsibility sharing arrangements, are not new and have been the subject of a number of initiatives by States, UNHCR and other actors.<sup>5</sup> There have also been a number of successful examples of international cooperation to respond to and resolve specific refugee situations from which lessons learned and common elements can be drawn. But these have not yet translated into a coherent global framework.
3. At the 2010 High Commissioner’s Dialogue on Protection Challenges: “Protection Gaps and Responses” (“High Commissioner’s Dialogue”), held in Geneva on 8 and 9 December 2010, participants recognized that the need for better international cooperation in the refugee area is a longstanding issue of concern to many States and recommended that this be included as a focus of the 60<sup>th</sup> Anniversary Commemorations in 2011.<sup>6</sup> Participants also suggested that the development of a “Common Framework on International Cooperation to Share Burden and Responsibilities” would assist to identify core parameters that could underpin future arrangements for international cooperation. This framework could be supported by

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<sup>2</sup> Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, Article II.4, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>; *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, Part II, para. K, <http://www.unhcr.org/refworld/publisher.AMERICAS...3ae6b36ec.0.html>; European Union, *Treaty on the Functioning of the European Union*, Articles 67(2), 78(2)(g) and 80, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF>.

<sup>3</sup> See, e.g., *UN General Assembly, Declaration on Territorial Asylum*, 14 December 1967, A/RES/2312 (XXII), <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3b00f05a2c&page=search>; UN General Assembly, *United Nations Millennium Declaration*, 18 September 2000, A/RES/55/2, <http://www.un.org/millennium/declaration/ares552e.pdf>.

<sup>4</sup> For a complete list see UNHCR, *A Thematic Compilation of Executive Committee Conclusions (4<sup>th</sup> edition)*, August 2009, <http://www.unhcr.org/3d4ab3ff2.html>, pp. 38-62.

<sup>5</sup> UNHCR, Annual Theme: International Solidarity and Burden-Sharing in all its Aspects: National, Regional and International Responsibilities for Refugees, UN DocA/AC/96/004, 7 September 1998, para 28, <http://www.unhcr.org/refworld/pdfid/4a54bc2f0.pdf> (“Annual Theme”); UNHCR Global Consultations process between 2003-2005: see, e.g., UNHCR, *Mechanisms of International Cooperation to share Responsibilities and Burdens in Mass Influx Situations*, EC/GC/01/7, 19 February 2001, <http://www.unhcr.org/3ae68f3cc.html>, UNHCR, *Agenda for Protection, 2003*, <http://www.unhcr.org/refworld/pdfid/4714a1bf2.pdf> (“Global Consultations”); the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, *Study on the Concept of Burden-Sharing*, November 1997 (“IGC Study”); EU Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ddc2e24> (“Temporary Protection Directive”).

<sup>6</sup> UNHCR, *Breakout Session 2: International cooperation, burden sharing and comprehensive regional approaches - Report by the Co-Chairs*, 8 December 2010, <http://www.unhcr.org/4d09e4e09.html>. See also UNHCR, *High Commissioner’s Closing Remarks, 2010 Dialogue on Protection Gaps and Responses*, 9 December 2010, <http://www.unhcr.org/4d0732389.html>.

an operational toolbox identifying some basic triggers and elements of cooperative arrangements.<sup>7</sup>

4. One important first step towards this goal will be to develop a more coherent understanding of the necessary elements of cooperative arrangements, and the forms that international cooperation might take, based on lessons learned from and positive elements of previous efforts. **The purpose of this paper is to provide some background for discussion in this regard.** This paper, as well as the results of the Expert Meeting, could be used to inform the development of a Common Framework on International Cooperation to Share Burden and Responsibilities.

## I. The Meaning of “International Cooperation” in the Refugee Regime

5. The term “international cooperation” is grounded in the UN Charter and general international law.<sup>8</sup> As used in this paper, it refers broadly both to a framework for cooperation among States (i.e. a “**cooperative arrangement**”), as well as to a **set of specific actions for the sharing of burden and responsibilities** to address and resolve refugee situations (for example, diplomatic negotiations and efforts, the provision of financial and material resources, or the sharing of responsibility for processing, protection or providing durable solutions).
6. While the focus of this paper is on cooperation between States, the important role of other actors in cooperative arrangements, including regional bodies, international organizations, non-governmental organizations (NGOs) and civil society, is also considered. The role of UNHCR is reflected specifically in Part III.
7. Various terms are often referred to when discussing the principles and mechanisms that are the subject of this paper. These include **international solidarity, burden sharing, responsibility sharing, and good neighbourliness**. For the purposes of this paper, “international cooperation” has been selected as the broadest expression, and should be seen as encompassing all these principles and the arrangements designed to implement them.<sup>9</sup>
8. International cooperation can take many different forms. It includes small-scale, cooperative arrangements between two or more States involving actions to address an imbalance in capacity for one phase of the response to a particular refugee situation or sub-group of refugees. It can also involve bilateral and multilateral agreements between certain States to allocate responsibility, especially for determination of refugee protection claims or the provision of durable solutions, or to create a pool of shared resources. At the other end of the spectrum, international

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<sup>7</sup> Ibid.

<sup>8</sup> *The Charter of the United Nations*, entered into force 24 October 1945, Articles 1, 13, 55 and 56, <http://www.un.org/en/documents/charter/index.shtml>; *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, 24 October 1970, 4<sup>th</sup> Principle, <http://www.unhcr.org/refworld/docid/3dda1f104.html>.

<sup>9</sup> For further analysis of (and of the differences between) these terms see, e.g., Agnes Hurwitz, *The Collective Responsibility of States to Protection Refugees* (2009); James Milner, “Burden Sharing” in Matthew J. Gibney and Randall Hansen (eds), *Immigration and Asylum: from 1900 to the present* (2005); Astri Suhrke and Asha Hans, “Responsibility sharing” in James C. Hathaway (ed), *Reconceiving International Refugee Law* (2007); J. L. Fonteyne, J.-L. “Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees”, 1983 *Australian Yearbook of International Law*, 8, 162–188.

cooperation can take place through “comprehensive regional approaches”, or broad strategies adopted by certain interested States – often with instrumental support from outside the region – to address shared challenges.<sup>10</sup> Moreover there are different ways of structuring cooperative arrangements: one option may be to have a broad framework agreement, and within that framework a series of smaller, more targeted cooperative arrangements between interested States.

9. Cooperative arrangements can address all phases of the “displacement cycle” involved in any given refugee situation, from prevention through to the provision of durable solutions, via reception arrangements, profiling and referral mechanisms to manage new arrivals, registration, refugee status determination and development of self-reliance. A particular cooperative arrangement could address several phases of this “cycle”, or just one of them. Cooperative arrangements themselves may have different temporal scopes: some may last only a few months, others may be established processes over the course of years. Most cooperative arrangements have been developed in response to particular refugee situations. However, there are also cooperative agreements that determine contributions of States in advance of any particular refugee situation arising. The most appropriate and useful arrangement will depend on the situation to be addressed.

## **II. The Role of Cooperative Arrangements in Addressing Refugee Challenges**

10. This Part analyses different types of cooperative arrangements that have been developed in response to typically five situations: larger-scale situations (mass influx); protracted situations; rescue at sea operations involving asylum-seekers and refugees; irregular onward movements; and refugee protection and mixed movements. These situations may overlap or be interlinked.
11. Despite the importance of international cooperation, each State needs to meet its international legal obligations towards refugees within its jurisdiction regardless of the existence of mechanisms for cooperation. Cooperative arrangements should not be considered a means for States to divest themselves of responsibility otherwise falling to them under international law.<sup>11</sup>

### **A. *Larger-scale situations (mass influx)***

12. Larger-scale situations (or mass influx) can involve a sudden number of arrivals from particular country(ies) of origin, or a more gradual but steady and frequent number of arrivals over time. In most cases, departures involve primarily asylum-seekers, refugees and others with international protection needs. However there are also situations of large-scale outflows of “mixed movements”, involving many people without international protection needs.<sup>12</sup> Various initiatives and ExCom

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<sup>10</sup> The concept of “comprehensive” can be understood in terms of the broad set of stakeholders involved, the focus on addressing the full “cycle” of displacement, and/or the range of actions and activities adopted. Comprehensive Plans of Action (CPAs) have been used as vehicles in the adoption of comprehensive regional approaches, see below Part III.

<sup>11</sup> Annual Theme, above n [5], para 6; ExCom Conclusion No. 85 (XLIX) (1998), <http://www.unhcr.org/41b041534.html>.

<sup>12</sup> Refugees from Kosovo fleeing to neighbouring FYR Macedonia and Albania in 1999 are an example of the former. The Indo-Chinese “boat people” during the late 1980s, as well as the initial outflow of migrant workers and other non-nationals from Libya in 2011 to Tunisia and Egypt, are examples of the latter. Cooperative arrangements to address mixed movements are considered in Sub-Section E below.

conclusions have specifically sought to improve international cooperation in the context of mass influx.<sup>13</sup>

*Why is cooperation necessary?*

13. Mass influx is paradigmatic of the challenges that can arise in the absence of international cooperation. Host countries may be unable to support refugees and other groups arriving en masse in need of assistance. Large number of arrivals may cause security or other concerns, and place significant demands on resources and the environment, especially in countries already struggling with existing socio-economic challenges. An absence of international cooperation to ensure adequate assistance, protection and solutions to refugees may increase the risk of irregular onward movements, often through transnational smuggling networks, or aggravate tensions between refugees and host communities. Mass influx situations may also lead to border closures by neighbouring States or develop into protracted situations.

**Examples of cooperative arrangements to address mass influx**

***Kosovo Humanitarian Evacuation Programme (HEP) and Humanitarian Transfer Programme (HTP) (1999)***

*Background:* Following conflict in the Former Federal Republic of Yugoslavia in late March 1999, more than 850,000 refugees fled from Kosovo to Albania, the Former Yugoslav Republic of Macedonia (FRY Macedonia) and Montenegro. FRY Macedonia, concerned about the potentially destabilising effects of a large influx of refugees, closed its border in April 1999 and requested a system of international burden sharing be put in place.

*Cooperative arrangements:* Under a settlement negotiated by the North Atlantic Treaty Organization (NATO), FRY Macedonia agreed to admit refugees on the understanding that they would then be evacuated to third States on a temporary basis. By the end of the emergency, almost 96,000 refugees were temporarily evacuated to 28 countries (including the United States, Germany, Canada and Norway). An additional 1,400 persons were transferred from FRY Macedonia to Albania. In Albania, UNHCR, the World Food Programme (WFP), other international organisations, and some 180 NGOs worked together to provide food, water, shelter, sanitation and emergency assistance to 460,000 refugees. UNHCR also provided support to Albanian families hosting refugees, including cash grants.

*Stakeholders:* FRY Macedonia, Albania, 28 temporary host countries, UNHCR, the International Organisation for Migration (IOM), NATO, and NGOs.

*Further information:* UNHCR, “Kosovo Emergency”, *UNHCR Global Report 1999*, <http://www.unhcr.org/3e2d4d5f7.pdf>

*Characteristics of cooperative arrangements*

14. Cooperative arrangements to address mass influx often focus initially on provision of emergency assistance to host States to meet basic material needs of new arrivals, as well as registration and documentation issues. In other words, cooperative arrangements relate to the initial phases of the “displacement cycle”. The use of temporary protection arrangements, including emergency evacuation/transfer to

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<sup>13</sup> See, e.g., Convention Plus, IGC Study, Temporary Protection Directive, above n [5]; ExCom Conclusion No. 22 (XXXII) (1981) and ExCom Conclusion No. 100 (LV) (2004), <http://www.unhcr.org/41b041534.html>.

third countries, has been a particularly prominent feature of cooperative responses to mass influxes during this initial phase.<sup>14</sup>

15. Given the scope and scale of most mass influx situations, responses usually require a wide set of stakeholders from within the region directly affected, as well as those outside the region. Coordination through international organizations, including UNHCR, can be helpful where there are a large number of stakeholders. Cooperative arrangements are usually established on an ad hoc basis in response to a particular situation, but it is possible to establish an arrangement setting out in advance how roles and contributions may be allocated in the event of mass influx.<sup>15</sup> While many responses to mass influx involve comprehensive approaches, smaller-scale approaches can also be useful to address discrete phases of the response.

### *Lessons learned*

16. The duration of mass influx situations will vary. Some situations can be resolved quickly allowing refugees or persons arriving as part of mixed flows to return home in safety and dignity. In such cases, engagement by and provision of support to the country of origin early on will be crucial, particularly in order to support large scale voluntary repatriation.<sup>16</sup> But in many cases the situation in the country of origin is not able to be stabilized rapidly. It is therefore important to envisage not only mechanisms to meet basic needs of refugees in the short term, but also to facilitate self-reliance and to find durable solutions for them in the longer term – including local settlement and resettlement. Experience also demonstrates that cooperative arrangements to provide financial assistance, alone, may not be sufficient to address mass influx. Financial assistance is best combined with provision of material resources, personnel and technical expertise, and/or mechanisms to share the hosting of people. It is in this context that emergency evacuation and transfer of people to third countries on a temporary basis has played a key role.<sup>17</sup> Pre-established arrangements for pooling of funds and technical expertise can also form part of broader cooperative arrangements to address mass influx.<sup>18</sup>

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<sup>14</sup> See, e.g., HEP and HTP in Kosovo, above. See also the Temporary Protection Directive, above n [5]. Emergency evacuation arrangements were also carried out following unrest in Libya in 2011, although evacuations involved migrant workers that had been present in Libya being evacuated to their home countries rather than refugees being evacuated to temporary host countries: for further information see UNHCR, *North Africa Humanitarian Situation*, 2011, <http://www.unhcr.org/pages/4d7755246.html>.

<sup>15</sup> See, e.g., the Temporary Protection Directive, above n [5]. Note that the Temporary Protection Directive has not yet been implemented in practice by EU Member States.

<sup>16</sup> For cooperative arrangements involving support to countries of origin for voluntary repatriation see, e.g., the Plan of Action of the International Conference on Central American Refugees (“CIREFCA”), discussed in Alexander Betts, “Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA”, *UNHCR New Issues in Refugee Research, Working Paper No 120*, January 2006, <http://www.unhcr.org/43seb6a152.html> (“Betts”).

<sup>17</sup> See above n [14].

<sup>18</sup> For instance, elements of the Common European Asylum System such as the European Asylum Support Office (“EASO”) and the European Refugee Fund: European Commission, *The European Refugee Fund III*, 22 December 2010, [http://ec.europa.eu/home-affairs/funding/refugee/funding\\_refugee\\_en.htm#part\\_2](http://ec.europa.eu/home-affairs/funding/refugee/funding_refugee_en.htm#part_2) (ERF) ; European Commission, *Asylum – a common space of protection and solidarity*, 20 July 2010, [http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm).

## ***B. Protracted situations***

17. A protracted situation places refugees in a long-lasting and intractable state of limbo. Refugees may remain dependent on external assistance, with restrictions on employment possibilities and confinement to camps. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfilled after years in exile.<sup>19</sup>

*Why is cooperation necessary?*

18. Protracted situations result principally from a lack of self-reliance opportunities and durable solutions. Such situations can lead to frustration and inactivity amongst refugees caused by lack of educational or livelihood opportunities, tensions with host communities, heightened risks of trafficking and smuggling, irregular onward movement and, in the event of future refugee flows to that host country, could even lead to border closures. They entail significant financial, economic and social costs for host States and the international community.

### **Examples of cooperative arrangements to unlock protracted refugee situations**

#### ***Resettlement Programme for Refugees from Bhutan (from November 2007)***

*Background:* Several hundred thousand refugees from Bhutan fled to Nepal between 1990 and 1993. They were recognized as refugees on a prima facie basis and housed in refugee camps.

*Cooperative arrangements:* Under a large-scale resettlement initiative coordinated by UNHCR, about 40,000 refugees have been resettled from seven camps in Eastern Nepal. The refugees were resettled to eight countries, most of them – 34,129 – to the United States. Of the 72,000 remaining in the camps, about 55,000 have expressed an interest in resettlement and are expected to depart for third countries within the next four years. In Nepal's camps, UNHCR provides information to refugees about resettlement and other options. Refugees are also offered English language classes and vocational and skills training. UNHCR continues to advocate for the option of voluntary return to Bhutan for those refugees who wish to do so.

*Stakeholders:* Government of Nepal, resettlement countries (US, Australia, Canada, Denmark, the Netherlands, New Zealand, Norway, and the United Kingdom), UNHCR, IOM, NGOs.

*Further information:* UNHCR, "Resettlement Programme for refugees in Nepal passes 40,000 mark", 13 December 2010, <http://www.unhcr.org/4d061d906.html>

#### ***Brazil-Ecuador Agreement for Integration of Colombian Refugees (2010)***

*Background:* 3.4 million Colombians have been displaced both internally within Colombia and in countries in the region.

*Cooperative arrangements:* Under an agreement between Ecuador and Brazil signed in September 2010, Brazil pledged to actively support the integration of an estimated 15,000 Colombian refugees in the remote community of Sucumbios in Ecuador. The Brazilian government is funding projects in the areas of education, sexual and gender based violence, and water and sanitation infrastructure that will have benefits for refugees, as well as for the local Ecuadorian population. UNHCR-Lago Agrio is overseeing implementation of these projects.

*Stakeholders:* Ecuador, Brazil, UNHCR.

<sup>19</sup> UNHCR, *Protracted Refugee Situations*, June 2004, EC/54/SC/CRP.14, <http://www.unhcr.org/refworld/docid/4a54bc00d.html>.

Further information: UNHCR, “Brazil helps ease local integration of refugees in northern Ecuador”, 17 February 2011, <http://www.unhcr.org/4d5d4afd6.html>

### *Characteristics of cooperative arrangements*

19. Cooperative arrangements to address protracted refugee situations generally focus on actions at the end of the “displacement cycle” – essentially on support and capacity-building in host States, encouraging self-reliance for refugees and searching for durable solutions, including local settlement in the host country.<sup>20</sup> Strategic use of resettlement can help to “unlock” protracted situations or assist persons at risk.<sup>21</sup> Opportunities for refugees to migrate to third countries (for example through work, study, family reunification), or cooperative arrangements to support host countries in extending migration frameworks to refugees in protracted situations could also be explored.<sup>22</sup>

### *Lessons learned*

20. The development of political momentum has often been the most challenging aspect of cooperative arrangements to unlock protracted situations. In some cases, use of a “process” (with a designated coordinator or secretariat, regular meetings, working groups, and follow up activities) has been more successful than one-off pledging events.<sup>23</sup> UNHCR, in partnership with other organizations, can play an active, catalytic role in initiating such processes and provide expertise and coordination. Resolution of protracted situations often benefits from engagement from both within and outside a particular region, including extra-regional donor support for capacity building in host countries, or development of national legal frameworks. Strategic

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<sup>20</sup> See, e.g., the International Conference for Assistance to Refugees in Africa (I and II): UN General Assembly, *International Conference on Assistance to Refugees in Africa (ICARA I): Report of the Secretary-General*, 11 June 1981, A/36/316, <http://www.unhcr.org/refworld/docid/3ae68f3f8.html> ; UN General Assembly, *Office of the United Nations High Commissioner for Refugees: Second International Conference on Assistance to Refugees in Africa (ICARA II): Report of the Secretary-General*, 22 August 1984, A/39/402, <http://www.unhcr.org/refworld/docid/3ae68f3e8.html>; UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*, May 2003, <http://www.unhcr.org/refworld/docid/4124b6a04.html>.

<sup>21</sup> Strategic use of resettlement is “[t]he planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting State, other States or the international protection regime in general”: UNHCR, *Strategic Use of Resettlement*, 4 June 2010, <http://www.unhcr.org/refworld/docid/4c0d10ac2.html>. See, e.g., Resettlement Programme for Refugees from Bhutan, above; and the Regional Solidarity Resettlement Programme under the Mexico Plan of Action: UNHCR, *Solidarity Resettlement in Action: Policies, Programmes, and Needs: Opportunities for Cooperation*, 2006, <http://www.unhcr.org/refworld/pdfid/441047bb4.pdf>. See further, UNHCR, *Protracted Refugee Situations: A discussion paper prepared for the High Commissioner’s Dialogue on Protection Challenges*, December 2008, <http://www.unhcr.org/492ad3782.pdf>.

<sup>22</sup> See, e.g., Regularization of Sierra Leonean and Liberian Refugees in Nigeria: UNHCR, *Refugee Protection and Mixed Migration: the 10-Point Plan in action*, February 2011, p. 202, <http://www.unhcr.org/4d52864b9.html>.

<sup>23</sup> For example, it has been suggested that CIREFCA was more successful than ICARA I and II, which were seen as one off pledging conferences with little follow up, while CIREFCA involved integration of solutions for refugees into the broader political peace process in the region: see further Alexander Betts, “International Cooperation in the Global Refugee Regime”, *CEG Working Paper 2008/44*, <http://www.globaleconomicgovernance.org/wp-content/uploads/Betts%20WP%20International%20Cooperation%20in%20the%20Global%20Refugee%20Regime%205B1%5D.pdf>.

use of resettlement can play an important role, whether it is intra-regional or extra-regional.<sup>24</sup> However, support to host countries to provide local settlement may also be necessary in many situations.<sup>25</sup>

### ***C. Irregular onward movements***

21. Irregular onward movements involve refugees and asylum-seekers who move in an irregular manner from countries in which they have already found protection in order to seek asylum or permanent settlement elsewhere.<sup>26</sup> Irregular onward movements can occur both from a particular first host country or region to a destination country in another region, or between several receiving countries. Irregular onward movements can have an adverse effect on structured international efforts to provide appropriate solutions for refugees. They can also feed smuggling and trafficking networks and contribute to the growth of international crime.

*Why is cooperation necessary?*

22. The reasons for irregular onward movements are complex. One reason often is lack of educational and employment possibilities in the host country, and inability to access durable solutions. Another may be differences in processing standards or available durable solutions between countries for similarly situated caseloads and/or the uneven quality of access to protection within a particular region. Measures to address these and other reasons for onward movements, as well as responding to irregular onward movements after they occur, can benefit from cooperation and harmonized approaches between concerned States and other actors.

#### **Examples of cooperative arrangements to address irregular onward movements**

##### ***Canada-US Safe Third Country Agreement (2004)***

*Background:* The Canada-US Safe Third Country Agreement is an agreement between the governments of Canada and the United States to better manage the flow of asylum-seekers at the shared land border, and to allocate responsibility for asylum claims made by persons who have moved between these two countries.

*Cooperative arrangements:* Under the Canada-US Safe Third Country Agreement, persons seeking international protection must make a claim in the first country they arrive in (United States or Canada), unless they qualify for an exception under the agreement. Exceptions are based on principles that take into account the importance of family unity, the best interests of children and public interest.

*Stakeholders:* United States, Canada

*Further information:* Canada Border Services Agency, “Canada-US Safe Third Country Agreement”, <http://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html>

<sup>24</sup> See above n [21].

<sup>25</sup> See the combination of local settlement and resettlement referred to under the Mexico Plan of Action for refugees in Latin America: *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*, 16 November 2004, <http://www.unhcr.org/refworld/docid/424bf6914.html>; UNHCR, *Mexico Plan of Action: The Impact of Regional Solidarity 2005-2007*, [http://www.en.refugeelawreader.org/index.php?option=com\\_content&view=article&id=54&Itemid=67](http://www.en.refugeelawreader.org/index.php?option=com_content&view=article&id=54&Itemid=67).

<sup>26</sup> ExCom Conclusion No. 58 (XL) (1989), <http://www.unhcr.org/41b041534.html>.

### *Characteristics of cooperative arrangements*

23. Cooperative arrangements to address irregular onward movements vary in scope and form. They may be used to allocate responsibility for determining refugee protection claims made by persons that have moved through one or more destination countries. They can also facilitate return and readmission of refugees to countries in which they have already been recognized as being in need of international protection. Cooperative arrangements to address irregular onward movements can be concluded intra-regionally or between countries in different regions and may be bilateral or multilateral. Some cooperative arrangements also contain or are part of broader provisions to address smuggling and trafficking in persons.

### *Lessons learned from past cooperative arrangements*

24. In addressing irregular onward movements, simple readmission or redistribution of persons between States is often not enough. It is generally helpful to situate such arrangements within a broader framework that seeks to respond to the causes of irregular onward movements (for example, through development aid, capacity building or other assistance to host countries).<sup>27</sup> Multilateral cooperative arrangements can work towards harmonization and improvement of reception arrangements, processing and access to solutions between countries in a region affected by onward movements.<sup>28</sup>
25. To ensure that “burden sharing” does not evolve into “burden shifting”, cooperative arrangements that involve readmission or redistribution of people would need to provide for an equitable distribution of responsibilities between participating States. Factors which could be taken into account in this respect include demographics, absorption capacity and the presence of existing refugee communities. Regardless of how responsibility between States is allocated, it is important that relevant international refugee law standards are respected and persons in need of international protection are properly identified and protected against *refoulement*, their material needs are met, and durable solutions are found.<sup>29</sup> It is also important to take into account humanitarian considerations, for example, allowing people with specific needs and those with family or other ties to remain in the destination country, while others are returned to a first asylum country. In addition, resettlement outside the region could be made available to specifically defined cases.

### ***D. Rescue at sea operations involving refugees and asylum-seekers***

26. Asylum-seekers and refugees may seek to travel to a country of asylum by sea, including as part of irregular “mixed movements”.<sup>30</sup> Often, they are compelled to use vessels that are overcrowded or unseaworthy. Distress situations are frequent

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<sup>27</sup> See, e.g., Strengthening Protection Capacity Project: UNHCR, *Strengthening Protection Capacity*, <http://www.unhcr.org/pages/4a1673d46.html>.

<sup>28</sup> The Common European Asylum System had this goal: see above n [18].

<sup>29</sup> UNHCR, *Maritime Interception Operations and the Processing of International Protection Claims: legal standards and policy considerations with respect to extraterritorial processing*, 2010, <http://www.unhcr.org/refworld/docid/4cd12d3a2.html> (“Extraterritorial Processing”); ExCom Conclusion No. 58 (XL) (1989), <http://www.unhcr.org/41b041534.html>.

<sup>30</sup> For cooperative responses with regard to mixed movements see Sub-Section E below.

occurrences. International law requires all shipmasters to render assistance to people in distress at sea regardless of the nationality or status or the circumstances in which the persons are found.<sup>31</sup>

#### *Why is cooperation necessary?*

27. Rescue at sea operations involving asylum-seekers, refugees and migrants in an irregular situation can implicate a number of States. In the absence of cooperative arrangements, State responsibility and jurisdiction may be disputed leading to refusal to allow disembarkation or loss of life at sea.<sup>32</sup> In addition, some coastal States experiencing large numbers of sea arrivals may lack capacity to address all protection and humanitarian needs. A collaborative response may be necessary to preserve the integrity of the global search and rescue regime; or to ensure disembarkation of rescuees in a place of safety, and to guarantee their access to reception arrangements in line with international standards, asylum procedures and durable solutions or other outcomes.<sup>33</sup>

#### **Examples of cooperative arrangements following rescue at sea operations**

##### ***Francisco y Catalina (2007)***

*Background:* The Spanish trawler “Francisco y Catalina” rescued 51 people (including 44 Eritreans, two Ethiopians and five persons of other nationalities) in distress on the Mediterranean Sea in July 2007. The rescue took place in international waters, on the line between the Maltese and Libyan search and rescue (SAR) zones.

*Cooperative arrangement:* After high-level negotiations, a burden-sharing agreement, sponsored by the European Commission (EC), was developed to allow for the disembarkation of all 51 rescuees in Malta, followed by their processing in several European countries – Spain, Italy, Andorra and Malta. Rescuees were accordingly disembarked in Malta, and from there transferred by two Spanish planes to Madrid and onwards to relevant countries for processing.

*Actors and roles:* Malta, Spain, Italy, Andorra, EC, UNHCR.

*Further information:* UNHCR, *Refugee Protection and Mixed Migration: the 10-Point Plan in action*, February 2011, p. 95, <http://www.unhcr.org/refworld/pdfid/4d9430ea2.pdf>

#### *Characteristics of cooperative arrangements*

28. Cooperative arrangements in such situations involve the full “displacement cycle” – from facilitating disembarkation, providing reception arrangements, processing, asylum procedures, and the search for durable solutions or other outcomes. Resettlement can be used strategically to share responsibilities following disembarkation in coastal States where the caseload largely consists of refugees.<sup>34</sup>

<sup>31</sup> For an overview of applicable legal standards see IMO and UNHCR, *Rescue at Sea: A guide to principles and practices as applied to migrants and refugees*, <http://www.unhcr.org/450037d34.html>.

<sup>32</sup> Interception operations can also create challenges with respect to international cooperation, although different legal and operational conditions apply. For further guidance see Extraterritorial Processing, above n [29].

<sup>33</sup> UNGA, The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees, 23-27 June 2008, A/AC.259/17, <http://www.unhcr.org/refworld/pdfid/49997aeb27.pdf>.

<sup>34</sup> See, e.g., Disembarkation Resettlement Offers (DISERO) and Rescue at Sea Resettlement Offers (RASRO) to address the Indo-Chinese “boat people” in the 1970s and 1980s: UNHCR, *Problems related*

Mechanisms to support countries of disembarkation to establish and maintain adequate reception arrangements are important. Where caseloads consist of mixed movements, cooperative arrangements can also provide for joint reception and profiling and referral mechanisms, involving teams from several concerned States and relevant international organizations and NGOs.<sup>35</sup>

### *Lessons learned*

29. In many regions, there is a reliance on ad hoc cooperative arrangements to resolve issues of State responsibility following rescue at sea operations. While in some instances ad hoc responses are appropriate, in others the scope and frequency of rescue at sea situations require a more sustained and predictable response to avoid loss of life at sea, delays in disembarkation and tensions between States. Where no bilateral or regional agreement can be concluded, practical guidelines, framework agreements or standard operating procedures (SOPs) can be useful. Cooperative arrangements may also provide for different States to share responsibility for processing and provision of durable solutions, including through strategic use of resettlement.<sup>36</sup> In addition to determining State responsibility, it is helpful if cooperative arrangements provide for capacity building and financial support to disembarkation States, for example through joint rapid response teams to assist States with processing rescuees.<sup>37</sup>

### ***E. Refugee protection and international migration (mixed movements)***

30. “Mixed movements” involve individuals or groups of persons travelling generally in an irregular manner along similar routes and using similar means of travel, but for different reasons. They may affect a number of countries along particular routes, including transit and destination countries. States faced with mixed movements experience arrivals with varying profiles, including asylum-seekers and refugees, victims of trafficking, unaccompanied or separated children, and migrants in an irregular situation. The ability of refugees and asylum-seekers to access protection may be affected where migration and security strategies adopted by States to protect their borders or to combat trafficking and smuggling are not sufficiently protection-sensitive.

### *Why is cooperation necessary?*

31. The core challenge in mixed movement situations is the management and processing of arrivals with different profiles and needs, that is, the initial phases of

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to the rescue of Asylum-Seekers at sea, 8 July 1985, <http://www.unhcr.org/3ae68cbc20.html>. The pilot “EUREMA” project in the EU, under which a small number of refugees have been relocated from Malta to other EU States, is another example: UNHCR, *Refugee Protection and Mixed Migration: the 10-Point Plan in action*, February 2011, p. 115, <http://www.unhcr.org/refworld/pdfid/4d9430ea2.pdf> (original Netherlands bilateral arrangements); European Commission, *Over 300 refugees in Malta to be resettled in other European countries*, 12 May 2011, [http://ec.europa.eu/malta/news/over\\_300\\_refugees\\_resettled\\_en.htm](http://ec.europa.eu/malta/news/over_300_refugees_resettled_en.htm).

<sup>35</sup> For example, Strengthening Reception Capacity to handle migrants reaching the island of Lampedusa (“The Praesidium Project”): UNHCR, *Refugee Protection and Mixed Migration: the 10-Point Plan in action*, February 2011, p. 113, <http://www.unhcr.org/refworld/pdfid/4d9430ea2.pdf>. See further Sub-Section E below.

<sup>36</sup> See above n [34].

<sup>37</sup> See, e.g., EASO, above n [18]. For further details see UNGA, above [n 33], p. 5.

the “displacement cycle”. Excessive demands on limited State capacities, in the absence of cooperative arrangements to address mixed movements, can lead to shortfalls in responses to refugees and asylum-seekers. Issues include inadequate reception capacity and insufficiently developed differentiated processes and procedures to ensure that arrivals are not always channelled into asylum procedures, regardless of their protection needs. Other challenges are criminalization of illegal entry and an inability or failure to provide international protection in line with legal entitlements. Further, return of people without international protection needs may be complicated by financial and administrative challenges.

#### **Examples of cooperative arrangements to address mixed movements**

##### ***Comprehensive Plan of Action for Indo-Chinese Refugees (1989)***

*Background:* Starting in the 1970s, multilateral arrangements had been developed to address the large numbers of refugees leaving Vietnam and Laos, principally by sea (including “RASRO” and “DISERO”<sup>38</sup>). By the late 1980s, however, departures increasingly consisted of persons without international protection needs.

*Cooperative arrangements:* The Comprehensive Plan of Action (CPA) was adopted in June 1989. Its objectives were to protect refugees from Vietnam and Laos, while discouraging further departures for non-protection related reasons. The success of the CPA was dependent on a series of interlocking commitments by countries of origin, countries of first asylum and resettlement countries to process and provide solutions for refugees and migrants. It included measures in countries of origin (including mass media campaigns) to deter departures for non-protection related reasons and orderly departure migration programmes to provide alternative avenues to leave Vietnam and Laos legally. At the same time, temporary protection and refugee status determination was provided for new arrivals in countries of first asylum in the region, on the understanding that those determined to be refugees would be resettled in third countries. Support for return of persons found not to be refugees was provided through economic assistance for reintegration in countries of origin and counselling. The CPA involved close cooperation between UNHCR and IOM, and the establishment of a steering committee for coordination and follow-up. Over one million refugees were given temporary asylum in South East Asia and then resettled in countries outside the region.

*Stakeholders:* Countries of origin (Vietnam, Laos), first asylum countries (Indonesia, Malaysia, The Philippines, Hong Kong, Thailand), resettlement countries outside the region (including Australia, Canada and the United States), UNHCR, IOM.

*Further information:* Alexander Betts, “Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA”, *UNHCR New Issues in Refugee Research, Working Paper No 120*, January 2006, <http://www.unhcr.org/43seb6a152.html>

#### *Characteristics of cooperative arrangements*

32. Cooperation to address mixed movements can support and enhance arrangements to manage mixed arrivals, including by providing training and twinning opportunities to State officials. Cooperative arrangements can also help to address root causes of mixed movements, by providing for development and other assistance to countries of origin and discouraging departures for non-protection related reasons through information campaigns.<sup>39</sup> Cooperative arrangements can be used to encourage and

<sup>38</sup> See above n [34].

<sup>39</sup> CPA, above. See further UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, 2011, Chapter 10, <http://www.unhcr.org/4d52864b9.html>.

facilitate voluntary return for persons without international protection needs.<sup>40</sup> Cooperative arrangements on a regional level can also work towards harmonization of protection-sensitive migration policies and strategies (and reduce the risks of intra-regional irregular onward movements).<sup>41</sup> In light of the varying profiles and needs of the people involved in mixed movements, cooperative arrangements require engagement by a range of stakeholders, including countries of origin<sup>42</sup> and international organizations with complementary mandates and expertise.

### *Lessons learned*

33. Mixed movements are complex and require comprehensive responses, with coordination between relevant stakeholders. Cooperative arrangements to address discrete aspects of these mixed movements can be appropriate, but often such arrangements work best as part of a broader regionally-focused process.<sup>43</sup> This is particularly important as mechanisms to respond to mixed movements will, usually, require integration of protection concerns into broader regional approaches to migration and security.

## **III. Elaborating Cooperative Arrangements to Address Refugee Situations**

34. This Part contains a list of questions and “building blocks” for cooperative arrangements, drawn from the characteristics of and lessons learned identified in Part II. It provides a basis for discussion about the various elements of cooperative arrangements to address a range of refugee situations.

### ***A. Scope, Objective and Structure of Cooperative Arrangements***

*What common challenges can cooperative arrangements address?*

- Larger-scale situations (mass influx)
- Mixed movements
- Irregular onward movements
- Rescue at sea operations involving asylum-seekers and refugees
- Protracted situations
- General lack of capacity in host States

*What phase(s) of the “displacement cycle” can cooperative arrangements address?*

- Prevention (e.g., financial assistance, diplomatic/political engagement)
- Initial displacement or emergency response (e.g., registration, profiling and referral, temporary protection/prima facie refugee status, reception, emergency evacuation, financial burden sharing)

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<sup>40</sup> This was an element of the CPA, above.

<sup>41</sup> See cooperative arrangements to address irregular onward movements in Sub-Section C above.

<sup>42</sup> For example, the role of the country of origin in the CPA was crucial, see above.

<sup>43</sup> See, e.g., UNHCR’s 10-Point Plan Regional Conference in Dar es Salaam which was preceded by National Consultations in 12 or 13 participating countries. Further information on UNHCR’s 10-Point Plan Project on International Migration and Refugee Protection and the five regional stakeholder conferences to address refugee protection and mixed movements that were organized under this project is available at: UNHCR, *Mixed Migration*, <http://www.unhcr.org/pages/4a16aac66.html>.

- Medium term (e.g., asylum procedures, other processes and procedures for those not seeking international protection, reception/accommodation, self-reliance, financial burden sharing)
- Outcomes (durable solutions for refugees, other outcomes for those without international protection options, migration alternatives)

*Who can be the stakeholders?*

- Countries of origin (can play an important role, where appropriate and feasible)
- States in a particular region or those who are commonly affected by a refugee situation
- Countries from outside the region immediately affected (while many cooperative arrangements are regionally focused, support from countries and other stakeholders outside the region can be instrumental including transit and destination States or States with a political interest or cultural/religious ties)
- Regional organizations
- International organizations, including UNHCR, according to mandate and expertise
- NGOs and civil society
- Asylum-seekers, refugees, others in need of international protection, persons with specific needs including refugee women at risk, children at risk, older people and others

*What type of instrument can be used?*

This will depend on the scope of the cooperative arrangement and the situation it is designed to address. Formats include (may also have a combination):

- Memorandum of Understanding
- Comprehensive Plan of Action
- Bilateral or multilateral agreement
- Harmonized policy guidelines or regulations
- Special agreements
- Standard operating procedures
- Framework agreements
- Stakeholder meetings

### ***B. Types of Actions Involved in Cooperative Arrangements***

*What methodology for sharing burden between stakeholders exists?*

- Mechanisms for sharing burdens can be **more or less formal**.
- Contributions by various participating States may be **differentiated based on capacity**.
- Especially for more comprehensive cooperative arrangements, two methods could be considered:

- **Voluntary contribution**, where each State determines the scope of its own participation based on self-assessed targets;
- **Allocation according to established criteria**, where the level of contribution is determined by certain characteristics of each State, as well as the needs of the situation to be addressed.

*What forms of financial assistance may be considered? (“sharing financial resources”)*

- Financial support for building capacity or specific projects in host countries or countries of origin for the benefit of refugees and host communities
- A permanent refugee emergency fund on a regional level (e.g., European Refugee Fund<sup>44</sup>)
- Host States can be made eligible for emergency financial assistance under specific agreements (e.g., Article 72 Cotonou Agreement<sup>45</sup>)
- Debt relief or development assistance for host countries or countries of origin
- Central fund for the operationalization of cooperative arrangement

*What material and technical assistance may be provided? (“sharing material resources”)*

- Direct material assistance to host States and international organizations, including basic materials (shelter units, medical equipment, medication) and logistical equipment (vehicles and telecommunications)
- Qualified personnel (medical experts, relief operations experts, asylum specialists)
- Sharing of information, best practices and lessons learned
- Training programmes and twinning exercises for government officials
- Assistance to host countries to transpose international legal obligations into national law
- Exchange of data on asylum-seekers, refugees, and migrants
- Multifunctional emergency response teams made up of experts from various States
- Joint profiling and referral, refugee status determination or other processing by States (or establishment of a regional support office, e.g., European Asylum Support Office<sup>46</sup>)
- Combining resources for joint returns of persons found not to be in need of international protection
- Diplomatic and political engagement and leadership

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<sup>44</sup> See above n [18].

<sup>45</sup> Article 72 of the “Cotonou Agreement” places an obligation on the European Commission to provide financial assistance to African, Caribbean and Pacific Group States in dealing with refugee crises: *The Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part*, entered into force April 2003, [http://ec.europa.eu/development/geographical/cotonouintro\\_en.cfm](http://ec.europa.eu/development/geographical/cotonouintro_en.cfm).

<sup>46</sup> See above n [18].

*What support for the provision of protection can be included? (“hosting people”)*

States may share responsibility for processing or providing protection to asylum-seekers and refugees at various stages of the “displacement cycle”:

- Sharing or transfer of responsibility for processing and refugee status determination: arrangements for transfer of responsibility must respect the international protection needs of the persons concerned, as well as basic principles such as family unity or humanitarian concerns
- Temporary or interim protection: States offer to provide international protection to persons with such needs on their territory for a certain defined period of time
- Humanitarian transfer or evacuation: the voluntary movement of persons with international protection needs from countries of first asylum to other States willing to host them temporarily on humanitarian grounds
- Resettlement: where appropriate, resettlement can be an effective tool to provide long-term protection when used strategically as part of a cooperative arrangement.<sup>47</sup> The concept of “relocation” is sometimes used to refer to the transfer of refugees between destination States, and may raise different practical and legal considerations
- Migration alternatives: use of migration frameworks can create opportunities for refugees in third countries or within a host country and may enlarge the protection space otherwise available to refugees through the traditional durable solutions

### ***C. Role for UNHCR***

*What support can UNHCR provide to States?*

- UNHCR can play a catalytic role in crafting cooperative arrangements. UNHCR can also promote constructive dialogue and negotiations, provide diplomatic leadership and foster political will.
- While responsibility for processing asylum-seekers and providing protection and durable solutions remains with States, UNHCR can assist with certain practical elements as part of cooperative arrangements, e.g., training and capacity building, facilitating the search for durable solutions, and monitoring return or voluntary repatriation.
- UNHCR’s involvement is best undertaken in conjunction with State authorities, other international organizations and civil society. Involvement by UNHCR will not be appropriate where it could call into question UNHCR’s impartiality or mandate, or lead to UNHCR being seen as favouring one or the other of the States involved in a cooperative arrangement. It is also not appropriate if it is seen or portrayed as relieving States of their international, regional or national legal obligations towards persons seeking international protection; these are maintained even when UNHCR or others play a direct operational role in such situations.

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<sup>47</sup> For the definition of strategic use of resettlement see above n [21].

## **Conclusion**

35. International cooperation is both a key principle of the international refugee regime, as well as a practical necessity in order to improve responses to many refugee situations.
  
36. This paper has analysed a broad range of cooperative arrangements. The parameters, lessons learned, and positive elements that have been identified in this paper will facilitate discussion on the role of cooperative arrangements, and the ways in which they may be designed and improved. The characteristics of cooperative arrangements identified in this paper, coupled with the deliberation of the Expert Meeting in Amman, will, it is hoped, inform the development of a Common Framework on International Cooperation to Share Burden and Responsibilities.

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