

**Regional Conference on Refugee Protection and  
International Migration in the Americas**

**“Protection Considerations in the Context of Mixed Migration”**

*San Jose, Costa Rica, 19-20 November 2009*

**Keynote speech by Erika Feller, Assistant High Commissioner – Protection, UNHCR**

Honourable Minister of Interior, Police and Security,  
Honourable Minister of Foreign Affairs,  
Co - Chair Madame Vice Minister of Security,  
Distinguished Ambassadors and Representatives of Partner Organizations,

I would like to join with our host in welcoming you to Costa Rica and in thanking you for your attendance today. In fact a particular thank you is to be offered from the outset to our host the Government and people of Costa Rica. Having welcomed more than 12, 000 refugees from over 30 nationalities and being also an important country of transit and destination for mixed migratory movements, Costa Rica is certainly a very suitable venue for our conference.

It is a real pleasure for me to be once again back in the Americas region. This is a continent with a long-standing tradition of hospitality and asylum and one which has shown leadership in translating the commitments embodied in the Cartagena Declaration and the Mexican Plan of Action into innovative protection responses for refugees and the internally displaced. At a time when protection is to be realized in an increasingly challenging environment, it is refreshing to see that humanism and solidarity continue to be fundamental principles guiding State policies in this region.

This Conference is the third of a series of four regional conferences complemented by three experts’ roundtables, aiming at sensitizing key stakeholders to the protection challenges arising in the context of mixed migration movements. It is organized as part of a project on the 10-Point Plan covering the Americas region, Western and Eastern Africa and Southern Asia, which has been generously funded by the European

Commission and the US Department of State, Bureau for Population Refugees and Migration.

It is especially gratifying for UNHCR to co-organise the conference with the International Organization for Migration (IOM), the Organization of American States (OAS) and the Office of the High Commissioner for Human Rights (OHCHR) and to have the support of a number of additional organisations. We are cooperating ever more closely globally and positively with IOM, and it is a pleasure to share this podium with Laura Thomson, long a supporter and friend of UNHCR. The OAS is also a key partner on people movements in the region. Over recent years the Organization has adopted a series of resolutions and has developed specific initiatives to protect the human rights of people on the move, including refugees (i.e. Inter-American Programme for the protection of human rights of migrants). The broad range of international and regional organizations that are present here, along with Representatives of States, the academia and civil society organizations, demonstrates once again the commitment to partnership and the importance of synergies in dealing with mixed migratory flows.

#### REFUGEE PROTECTION AND MIXED MIGRATION: UNHCR'S ROLE

UNHCR is not a migration management agency and does not seek to become one. This does not, though, mean that UNHCR is not an important partner in the discourse and actor when it comes to international migration issues. In fact, the nature of modern migratory movements requires this of us. Movements are more often than not composed of migrants and refugees travelling side by side, using the same routes and means of transport, and often both engaging the services of the same smugglers. Both migrants and refugees are vulnerable to become victims of human trafficking. In both categories, there will be individuals whose motivations for moving are multiple. This is what we mean when we speak of mixed movements. Take, for example, Haitians who may be fleeing violence in their home country, but also searching to lift their lives out of poverty and a dead end. Iraqi Christians may be coming to the region fleeing religious persecution, but their choice is influenced by family reunion imperatives. Being part of a mixed movement, or having several reasons for a particular voyage, is a regular feature of refugee flight. This does not negate a refugee claim, much less consign UNHCR's role to the periphery.

## PROTECTION AS THE CHOSEN FOCUS OF THE CONFERENCE

It follows that there has to be a place allowed for refugee protection in the context of mixed migration, which explains the choice of this as the topic of this conference.

What do we mean when we use the term “protection”?

Refugee protection is a multifaceted concept with a variety of applications. It both describes the needs of individuals, and identifies core responsibilities of governments to address them. It is the defining feature of the international framework within which States are called upon to structure their responses to the mixed movement of people.

Within mixed movements, different types of protection needs are present including those of refugees. Refugees are a distinct category of people whose needs stem from the absence of capacity or will in their own countries to protect them against persecution or serious threats to their physical security or integrity. The international community has recognized the right of refugees to have these needs addressed which creates concomitant obligations on States, including most importantly the obligation not to return refugees to countries where they would be at serious risk.

There will be a variety of other needs requiring a response: health, shelter, trauma counseling or family tracing to name but a few. Refugees and non-refugees alike will be impacted and our co-organisers of this Conference have mandates which will often be more directly relevant than UNHCR’s in this regard.

## PROTECTION AS A NEED AND A RESPONSIBILITY

Protection of whatever sort is of course primarily and in the first instance the responsibility of States. Neither UNHCR nor any other international organization can be an effective substitute. For protection to be genuinely available, it has to be practiced by the responsible states with its humanitarian objectives to the fore, in a manner consistent as much with the spirit as the letter of applicable refugee, human rights, or other law-based regimes.

In this region, human rights bodies (the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights) have been clear in emphasizing the importance of State responsibility and the human rights context for this regardless

of the migratory status of third country nationals. Migration policies and practices are required to comply with international and regional human rights law and draw on a generous and long-standing asylum tradition of the countries in the Americas, which is comprehensively underpinned by solid legal frameworks for the protection of asylum-seekers and refugees already established in most countries.

These frameworks had their origins not least in the considerable refugee movements in the region particularly in the 70s and 80s. While in many respects the situation has changed it would be wrong to assume that refugees and others in need of international protection in the Americas are virtually a thing of the past. If the region currently is not experiencing situations of mass trans-border displacement, mixed migratory movements, including refugees from outside the region, with all the attendant demands are a matter of growing interest, even concern.

It is interesting to note that the Americas host some 10% of the overall number of persons of concern to UNHCR worldwide. The USA and Canada remain among the 10 main asylum countries. There is an important number of Colombian refugees and persons in need of international protection, living in the Andean region, albeit that many have opted to remain unregistered and/or have not formally sought asylum/refugee protection. Furthermore, the region is receiving, still in small numbers, refugees from far distant countries, mostly from Africa but also from Asia. Some have come more or less directly from their own countries, while others have arrived in a more indirect manner, after having spent years in protracted exile in refugee camps without any durable solutions in sight. Together they comprise the asylum seeking population, which is different from, if augmented by the resettled refugees, who are accepted on the continent through resettlement programs operated by individual countries against agreed quotas.

#### PROTECTION AS A NEED – SPECIFIC PROTECTION CHALLENGES

If this region enjoys a long-standing and admirable asylum tradition, not all evolving responses are so positive in practice. The increase in arrivals of undocumented migrants, which will undoubtedly continue, continues to test the capacity of States, and migratory control arrangements like interception, detention and non voluntary returns which indiscriminately affect also asylum-seekers and refugees are starting to

consolidate. Access to territory and to refugee authorities is not guaranteed in many countries with rejections at points of entry, *refoulement*, detention and extortion as real consequences for many who attempt to seek protection. Several countries in the region lack the material resources to satisfy the basic needs of arrivals at border areas with reception capabilities sometimes non-existent. Of particular concern is the prolonged and indefinite detention of asylum-seekers. Automatic detention policies are widespread in the region for individuals who enter the territory in an irregular manner. Migrants and asylum-seekers are spending weeks or even months in such facilities.

There are also concerns with respect to denial of access to the territory and Refugee Status Determination procedures as governments increasingly invoke reasons of security and crime control to deny access to territory and asylum procedures. In some countries, undocumented arrivals are not systematically interviewed on an individual basis, or by trained authorities. Similarly, border authorities are not given enough guidance regarding their responsibilities towards asylum-seekers. There have been reports of the repatriation of individuals, even of groups, without their nationality having been definitively established, let alone the reasons for departure or possible consequences upon return.

The problems are compounded where the media does not address migration in a responsible manner. State policies, which are positive and comprehensive, are regrettably sometimes equated to legitimizing irregular migration. Migrants and refugees are sometimes associated with social problems such as rising rates of unemployment or of violence and criminality. Relatively little attention is given by the media to the human side of people movements and to the root causes of migration, or the consequences, including separation of families, unaccompanied minors or trafficking. Nor are the positive contributions of foreigners sufficiently recognized.

Such attitudes and practices can have very unfortunate results, particularly when it comes to the physical safety of migrants, including refugees. The conference poster is telling in this regard, just as was a mission I undertook sometimes ago to Tapachula in Mexico. I was horrified to discover that persons forced to move underground increasingly include in effect what has become a discrete class among them, formally

classified as ‘the amputees’, i.e. those who have lost their limbs as a result of failed attempts to jump trains. Maras are also making their presence felt along the same migration routes – including on the trains – extorting money in exchange for ‘protection services’. Persons who cannot pay are physically abused or otherwise expeditiously dealt with.

Loss of life at sea is now a real and constant threat here, as in other regions of the world. In the Caribbean, in addition to the thousands of migrants rescued/intercepted at sea each year, UNHCR is aware of a number of confirmed maritime incidents, which resulted in significant loss of life. In the Caribbean during the period of January to August 2009 more than 350 persons, women and children included were affected by such incidents, with 46 victims confirmed dead (bodies recovered), 118 victims missing at sea (bodies never recovered), and 188 survivors (victims were predominantly Haitians, although two of the incidents also involved deaths of Cubans and Sri Lankans). These incidents took place in diverse locations, off the Florida coast, off the coast of Turks and Caicos Islands, off Haiti's southeast coast, and in waters off the British Virgin Islands.

In Mexico, we have come to know of kidnappings of migrants and asylum-seekers for the purpose of extortion, accompanied by serious human rights abuses, including rape, torture and murder. Borders here are a high-risk area. Researchers working at Mexico's southern border have reported as a phenomenon the “normalization of violence” accompanying mixed migration movements because it is becoming routine to hear people take it as a given that they will be victimized en route. It is accepted as what just has to be endured.

The upward trend of extra-regional migrants and refugees in various countries in Latin America (Colombia, Panama, Nicaragua, Costa Rica and El Salvador) and the Caribbean of asylum-seekers from other regions (mainly from Africa and Asia/Sri Lanka), carries with it its own particular challenges.

In the first instance, this is feeding into wrong or simplified conclusions about the justification of their claims. Extra-regional asylum-seekers and refugees are first and foremost approached as abusers of national systems, particularly where their travel, is

facilitated by smugglers. This impression is compounded where they have transited through several countries en route and may even have registered as asylum-seekers or refugees in countries neighboring their own.

It is wrong to make an automatic equation between being smuggled and asylum abuse. That people use the services of smugglers does not strip them of refugee character. Similarly so, their claim does not fall because they pass through several countries en route. There is nothing in international law that requires refugees to only be protected in countries contiguous to the country of origin. This is not though, to say, that all or even the majority of irregular arrivals will be refugees. There is some misuse of asylum systems, intentional or otherwise. Quite a number of manifestly unfounded asylum applications are now choking up the systems, and constitute a misuse of asylum resources. This has to be addressed in tandem with consolidating protection options for genuine refugees.

The emphasis should be on making the national asylum and migration systems fair, efficient and able to effectively differentiate between and deal properly with the range of claims made upon them. This of course includes the protection needs of children and victims of trafficking. A strong tension can exist between law and policies designed to protect children, and the actual experiences of children confronting the migration and asylum systems of national States. This is the case in the Americas region as anywhere else. UNHCR has been concerned that automatic and immediate repatriation of children is becoming quite a standard response in a number of countries, without resort to well-established protections such as the best interest of the child determination. Political support for assistance to the very vulnerable is widespread but it does not automatically translate into the required multi-disciplinary and partnership-based support programs by those in charge of front-line implementation.

This was for example the finding of a UNHCR/Save the Children joint study of the problems of unaccompanied children present at the Mexico/Guatemala border. Child arrivals are in the thousands annually. Mexico's response, in the form of the creation of a team of Child Protection Officers (CPOs) has been very commendable. There are now some 268 CPOs actively following children's cases through to their solution,

whether the child is repatriated, granted refugee status or receives another sort of protection and solution within Mexico.

There is also a need for a more holistic response to the human trafficking problem. UNHCR has been particularly concerned about the hesitation of some States to grant refugee status to trafficked persons who demonstrably fulfill the refugee criteria. The first hurdle is achieving access to the asylum system. Arguments used to justify denial of access include the pull factor and a fear to creating a precedent. The fact that refugee status has been granted to some trafficked individuals in Brazil, Costa Rica and Panama is a very positive sign.

#### PROTECTION AS A DELIVERABLE

Protection is not only a need and a responsibility. It has to be translated into concrete deliverables. Here UNHCR has a role to assist States to provide protection outcomes within the context of programs fully respecting sovereignty and national interests considerations. In fulfilment of its responsibilities, UNHCR developed its **10-Point Plan of Action**. We have been pleased with the extent to which States and other partners, together with our own offices, are increasingly finding it useful to resort to the Plan in developing management strategies for mixed movements.

UNHCR has recently made available a compilation of practices relevant to implementation of the 10-Point Plan, across its various sectors. We provisionally released this in June, inviting governments and partners to provide further practical examples to add to its utility. The nearly 100 practices from 55 different countries presented in the first compilation were chosen for the balance they try to strike between States' interests and the needs and rights of those seeking to enter their territories and their protection systems. The compilation has been translated into Spanish for you.

Practical examples from across the Americas are represented in the compilation (altogether 22 from Mexico, Costa Rica, Panama, Canada, Colombia, USA) ranging from the crosscutting (i.e. multilateral initiatives within the *Mexico Plan of Action*), to the cross border (i.e. capacity building for border police and immigration officials in



Costa Rica and Panama) to the very specific (like the Casa del Migrante ‘Albergue Belen’, a reception centre run by a Catholic priest at the southern Mexican border, or the creation of child protection officers within the Mexican National Institute of Migration). These examples evidence a solid basis on which further initiatives can be built.

## CONCLUSIONS

UNHCR will continue to support governments in addressing mixed migration challenges, including through furthering the implementation of the 10-Point Plan. In this context and in preparation for this conference, our offices in the region have, with governments and partners in the countries of their accreditation, been undertaking an analysis as to how the 10-Point Plan might best be utilised. We are in the process of synthesized the suggestions into a matrix and we are confident that the discussions in the working groups will help to transform these suggestions into an implementable and supported plan of action. It is hoped that such plan of action could be used to integrate refugee protection in the context of mixed migration movements into the Mexico Plan of Action and to steer a broad range of related protection initiatives at the continental, regional and national levels.