



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **High Commissioner's Dialogue on Protection Challenges** (11-12 December 2007)

Theme: Refugee Protection, Durable Solutions and International Migration

### **Chairman's Summary** 12 December 2007

Excellencies, Distinguished Participants, and Friends,

We have come to the end of this first Dialogue on Protection Challenges, which has focused on the theme of refugee protection, durable solutions and international migration.

I now have the difficult task of summing up the discussions we have had over the past one and one-half days. Let me begin by thanking all of you for having contributed individually to what I have found to be an enriching and thought-provoking discussion on a very complex topic. Many of you felt that the theme chosen for this first Dialogue was very timely. I come away from the Dialogue on Protection Challenges with the following observations and recommendations for follow-up.

There were three main themes that emerged: "protection gaps" in mixed population flows; UNHCR's mandate in this area of "mixed movements"; and partnership.

#### Protection gaps

Echoing the keynote statement made by the IFRC's Special Envoy on Migration, it has been repeatedly stressed that there are protection gaps or grey areas affecting those involved in mixed movements. This especially relates to migrants who are deemed to be "irregular" by the authorities, fall outside the international refugee protection framework, but who nevertheless need humanitarian assistance and/or different kinds of protection.

There were strong calls to uphold the rights and protect the welfare of people who are moving for reasons unrelated to refugee status, but who become vulnerable to abuse and exploitation, both in the course of their journey and following arrival. No single agency has the capacity or mandate to address the complex issue of mixed migration alone. However, the solution lies not in redesigning mandates, but in forging more effective partnership mechanisms. There was a strong call for UNHCR to work in close partnership with States

and other organizations, notably with IOM, to create synergies and fill the gaps in this area.

You have repeatedly emphasized the need to set in place specific rights-based methodologies and approaches to address the grey areas and fill these gaps, as well as the need for the human rights and dignity of all migrants to be at the core of all activities. Some speakers reminded us that while it is important to address human rights and humanitarian concerns, political developments, security aspects and regional specificities should not be neglected. In this regard, you have emphasized both the primacy of State sovereignty and State responsibility in this area and the importance of taking into account specific national interests. By the same token, you have stressed that the goal of better “managing” migration and refugee protection can be achieved by developing national legislation and building capacity through robust international solidarity and burden-sharing. This solidarity must be translated into practical arrangements to address specific situations.

Although we have discussed the gaps a great deal, we have not analyzed them in-depth. Many observed that there are contexts in which UNHCR can appropriately play a “convenor role”, specifically where the preservation of protection space is at issue. My idea, building on the suggestion just made by the Netherlands, would be to establish an informal working group, involving IOM, ICRC, the IFRC, OHCHR, the ILO, the NGO community and perhaps UNDP. The informal working group should take a more in-depth look into this question of existing gaps, the different agencies that operate and how better cooperation and partnership can address these gaps.

This more concrete analysis should take place in an open framework. I would be willing to act as a convenor of such a group, which in my view should not be composed just of agencies. I think States, from different parts of the world, need to be involved. It would also need to be both a relatively open and representative group. If not, it would not be effective.

Some of you questioned how the issue of migrant rights could be given more prominence in the State-led Global Forum on Migration and Development. It is not for UNHCR, or UNHCR’s Excom, to shape the Global Forum’s agenda. However, some of you felt that this Dialogue on Protection Challenges has provided useful insights into an array of human rights and refugee protection issues, as well as development challenges, and that it might be useful to explore these further in regional consultative migration processes and in the Global Forum.

You also discussed the phenomenon of irregular maritime migration, especially during the side event on rescue-at-sea, which was convened as an integral part of the Dialogue. While such movements account for only a small component of international migration, they raise very specific and complex challenges which need to be addressed.

You confirmed the need to preserve and protect the safety of life at sea and to facilitate rescue-at-sea and the search and rescue regime. Most speakers

placed a primacy on the right to life and on the need to address humanitarian concerns that arise in the context of rescue-at-sea – regardless of definitions and of meeting specific criteria for refugee status. You emphasized that the safe and timely disembarkation of persons rescued at sea requires a collaborative response that involves a wide range of actors, including intergovernmental organizations. You also recognized the need to develop more predictable responses, drawing upon long-standing maritime and humanitarian traditions. In this regard, you took note of the Third Interagency Meeting on the Treatment of Persons Rescued at Sea, convened by UNHCR on 11 December 2007, and expressed appreciation for the supportive role being played by UNHCR and other agencies in helping States to find solutions for migrants and refugees rescued at sea.

Rescue-at-sea is one area where I believe we *can* move forward with the instruments we have and with decisions that have already been taken. I will convene a meeting next semester of the heads of the different agencies that have been involved in this, namely IOM, ILO, IMO, the Office of the High Commissioner for Human Rights and UN-DOLOAS – the portion of the UN Secretariat that deals with these issues. We will look at what kind of action we undertake in our specific fields of activities and what forms of cooperation we can establish. I hope that the first meeting will allow us to work on an interagency plan of action relating to rescue-at-sea.

Together with IMO, UNHCR will issue a new edition of guidance on rescue-at-sea for shipmasters. At the same time, we are proposing that our Executive Committee consider drafting a Conclusion on rescue-at-sea, specifically in areas relevant to UNHCR activities. According to our discussions, I believe that this is an area in which this Dialogue should be contributing and moving forward.

### UNHCR's mandate

Regarding refugees and persons of concern to UNHCR, you acknowledged that UNHCR has a role to play in mixed migration, not least by ensuring access to protection systems. This is not a new role for UNHCR, but fits squarely within its mandate to create protection space for refugees.

You urged the international community to maintain a distinction between refugees and migrants. Many States raised concerns that failure to distinguish between those who have international protection needs under the 1951 Convention relating to the Status of Refugees or complementary forms of protection, and “other” migrants, would undermine the integrity of asylum systems and reduce public support for the reception of those in need of international protection.

Yet, you also recognized that refugee and migration issues intersect at a number of key points, and must therefore be addressed in a complementary and mutually reinforcing manner. International migration cannot be effectively “managed” by border controls or by migration policies alone. In this regard, you recognized the imperative to reconcile the task of refugee protection with

that of border control and migration management. A more coherent, comprehensive and integrated approach is required, incorporating appropriate initiatives in a wide range of other policy areas.

There were some serious concerns raised about UNHCR's mandate with regard to migration management, the provision of information and assistance to migrants not in need of protection, the return of failed asylum-seekers and the need to ensure value added when taking on a convenor function. These concerns were raised loudly and clearly, and I heard them.

#### Partnership: The 10-Point Plan on Refugee Protection and Mixed Migration

I would also draw from our discussions that a key objective is to strengthen partnerships, even in the protection of refugees, which is primarily a State responsibility. States will, of course, have a key role to play in these partnerships.

You acknowledged the direct relevance of the areas covered in the 10-Point Plan of Action on Refugee Protection and Mixed Migration for better management of asylum and migration nexus issues. In view of our discussions, I believe that we need to look at the 10-Point Plan from a dual perspective – as both a work in progress and a framework for closer cooperation.

The 10-Point Plan is work in progress because it is not a document that enshrines a “doctrine” forever. It would not make sense to consider it in this way. It has aspects that need to be improved, adapted and made more precise. But this needs to be done by examining specific circumstances around the world where we have to act together. These will change over time in the light of new challenges. So, as I said, it is a work in progress.

But the 10-Point Plan also needs to be an instrument for action. This means that we cannot spend 10 years discussing the “perfect” document, only to discover that it is completely useless, because realities have changed. We need to be able to enhance it in partnership, because many of the areas referred to in the document do not relate specifically to the activities of UNHCR. And, of course, the 10 points do not cover all global migration and asylum problems, and much less all aspects of international migration per se.

Therefore, the 10-Point Plan is an instrument that can be enhanced, and which needs some additional fleshing out. I was particularly attentive to several interventions in the debates on areas that require further work, for example, responsibility sharing and the need to ensure that the rights given to and considered for refugees do not in any way undermine the human rights of migrant workers. This is something that needs to be stressed. This cannot be an instrument that excludes people from a rights-minded approach, but must include everybody in such an approach.

You highlighted a number of areas of particular concern. For example, you discussed the importance of terminology and of achieving a common

understanding of the terms and concepts used when we speak about “mixed migration” or “persons in need of protection.” You also stressed the need to revisit and update terminology based on developments in law and practice. We have heard concerns about the term “profiling”, especially since the 10-Point Plan is not an instrument to exclude anybody from access to refugee procedures.

We also heard very relevant concerns about the role UNHCR might play in the return of those people found not to be in need of international protection. Some cautioned against UNHCR becoming involved, whereas others pointed to examples where the Office’s involvement in the return of non-refugees in mixed flow situations could actually produce “protection benefits” for refugees. I think that we need to be very cautious about the way we handle this specific problem. We need to recognize that the assistance of UNHCR might be required more when it comes to capacity building in some parts of the world, rather than in regions where States have the capacity to handle those situations with their own means and with bilateral agreements.

You also recognized that the status of refugees and asylum-seekers who engage in onward movements remains an issue requiring further discussions, notably on the practical measures required to address such onward movements. Referring to the work in this area during the Global Consultations on International Protection and the Convention Plus Initiative, my Office was asked to explore with the Executive Committee how the Committee might address this issue in future.

So there are concerns and precautions that need to be taken into consideration, and there are precisions that need to be made. I believe that we can continue to work in cooperation around the 10-Point Plan of Action, with States at the very centre of all that is done, because refugee and migration movements are primarily the responsibility of States.

Many of you referred to capacity-building in a broad sense. We have an instrument, the Strengthening Protection Capacity Project that probably needs to be improved and developed. There are other capacity-building instruments in relation to this area. IOM has several capacity-building programmes. The European Commission, for instance, has its regional protection programmes. Since there are many instruments for capacity building, once again it does not make sense for my Office to work alone. This is obviously an area in which the capacity of the international community to support the efforts of States to build their institutions is absolutely crucial.

At the same time, you encouraged my Office to continue to explore innovative ways to use migration, labour and human rights frameworks, as a means of strengthening protection in countries and regions that have not established legal and policy frameworks relating specifically to refugees and asylum-seekers. Such legislation can provide a useful framework to ensure that those people in need of protection find it. In this regard, you encouraged UNHCR to engage with States on how labour migration can benefit refugees, without restricting opportunities for durable solutions.

## High Commissioner's Dialogue on Protection Challenges

Finally, I believe this model of “dialogue” on protection challenges makes sense, although I think we can improve the methodology. Several speakers appreciated the format of the breakout sessions and highlighted the value of hearing a cross-section of views. My suggestion is that we should have one such Dialogue each year. Each Dialogue should be about one key protection challenge. The selection of the topic will be, of course, discussed with ExCom Member States and with the organizations with which we are in permanent contact during the year. I would suggest that we convene the next Dialogue in the 3<sup>rd</sup> quarter of 2008, focusing on another protection challenge relating to refugees.

If this can be agreeable to you, as a way to move forward, let us proceed.

**21 January 2008**

UNHCR Headquarters