

**ANNUAL CONSULTATIONS WITH NGOs
17 – 19 JUNE 2014 - International Conference Center Geneva**

THEMATIC SESSION

BACKGROUND PAPER

Protection at sea – Women’s perspectives

Wednesday 18 June 2014, 09h00 – 10h45 - Room 4

The challenges of protecting refugees, asylum-seekers, stateless people and migrants travelling irregularly¹ by sea are complex and ever more urgent. Desperate people risk death by taking to the sea, often in dangerous and unseaworthy vessels or as stowaways. Amongst these, the situation of refugee women is particularly precarious due to increasing exploitation, abuse and violence en route. Distress situations resulting in casualties are a regular occurrence.

This global phenomenon of mixed migratory movements by sea will continue as long as there are drivers of flight. These may include conflict and war, persecution, protracted refugee situations, statelessness, the absence/ inadequacy of protection systems, family separation, poverty and economic inequality. Climate change and natural disasters are also potential drivers of forced migration by sea.

When people are found in distress at sea, the first priority is to protect life by ensuring timely rescue and safe disembarkation, regardless of immigration or refugee status. This duty to rescue people in distress is a longstanding maritime tradition, but practical and operational challenges remain. Strengthening search-and-rescue (SAR) arrangements and addressing the causes of irregular flight by sea require regional cooperation and burden-sharing by coastal as well as non-coastal States. Further, as those fleeing conflict or persecution by sea typically travel alongside people moving for other reasons, efforts to address irregular migration and limit loss of life must not jeopardize access to international protection for refugees, asylum-seekers and stateless people.

The objectives of the Protection at Sea session at the UNHCR-NGO Consultations are to give a better understanding of the feminine perspectives and motivations that compel refugee women to undertake hazardous journeys at sea. The discussions will contribute towards the High Commissioner’s Dialogue on Protection at Sea in December 2014, which will present an opportunity to bring together key stakeholders for deliberations on rescue at sea, disembarkation, responsibility sharing, and to craft comprehensive approaches to protection, both at sea and on arrival. The Global Initiative on Protection at Sea described below build upon UNHCR’s 10-Point Plan of Action on Refugee Protection and Mixed Migration and a series of regional consultations on mixed migration².

Partners

¹ “Irregular” movement by sea is commonly understood to refer to travel involving unauthorized departure or arrival by sea.

² These include, among others, the Djibouti Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea (see infra, note 5); the Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows, held in Nassau in 2013 (Summary Report available at: <http://www.refworld.org/docid/51e3c0384.html>); and the Regional Roundtable on Irregular Movements by Sea in the Asia-Pacific Region, held in Jakarta in 2013 (Co-Chairs’ Summary available at: <http://www.refworld.org/docid/51e3bcfe4.html>).

The partners with whom UNHCR cooperates to advance protection at sea include States; private actors, such as shipping companies; civil society partners; and international agencies, including the International Maritime Organization, the International Organization for Migration, the Office of the High Commissioner for Human Rights, the United Nations Children's Fund, the United Nations Office on Drugs and Crime and the United Nations Office of Legal Affairs.

The Global Initiative

UNHCR's *Global Initiative on Protection at Sea* is an initial two-year plan of action with the core goal of supporting action by States to:

- reduce loss of life at sea, as well as exploitation, abuse and violence experienced by people travelling irregularly by sea, and
- establish protection-sensitive responses to irregular mixed migration by sea.

Achievement of these objectives must be underpinned by effective SAR systems, including predictable arrangements for the disembarkation of those rescued at a safe place. It also requires early identification of those needing international protection, humane treatment and prevention of *refoulement*, as well as access to fair and efficient asylum procedures and timely solutions.

Limiting loss of life further requires addressing the drivers of irregular movements in a way that preserves access to asylum and international protection. Countries of departure, transit and destination all play a part. The *Global Initiative* thus recognizes that action to protect people fleeing persecution by sea cannot be isolated from the broader regional challenges of mixed migratory flows.

Regional cooperation and predictable burden-sharing is essential to both SAR and providing alternatives to sea movements. Insufficient regional burden-sharing is often a disincentive to SAR and disembarkation. Non-coastal and other States play an important role by sharing responsibilities with those that enable disembarkation.

Achieving Protection at Sea

Reducing loss of life at sea requires:

- strengthening regional and national SAR capacities and coordination
- removing disincentives to rescue, including agreeing on regional mechanisms for identifying "safe places" to disembark those rescued and not penalizing those undertaking rescues
- implementing the existing international legal framework and IMO guidelines on SAR and disembarkation.

Ensuring that responses to people travelling by sea (including rescued people) take into account the international protection needs of specific individuals and groups requires:

- access to safe territory and protection from *refoulement*, so individuals are not disembarked or returned to a place where they may be at risk
- humane treatment and attention to immediate needs, including medical treatment, shelter, food and water, contact with family members
- early identification of those needing protection, including refugees, asylum-seekers and stateless people, as well as victims of trafficking, unaccompanied or separated children
- access to fair and efficient asylum procedures and to solutions, or to other forms of international protection, for refugees and asylum-seekers
- referral to appropriate processes and support for victims of trafficking, unaccompanied or separated children and others with specific needs
- limiting and finding alternatives to deterrent, punitive and burden-shifting responses.

Regional arrangements for cooperation and responsibility sharing following rescue operations could be based on the *Djibouti Model Regional Framework*, which provides a good model that can be adapted to different contexts.ⁱ

Equitable regional burden-sharing between coastal and non-coastal States entails stable and predictable mechanisms for:

- supporting adequate reception arrangements in countries of disembarkation
- allocating responsibility for processing and providing durable solutions, including exploring opportunities for joint processing
- implementing temporary protection or stay arrangements at the regional level (where protection under the 1951 Refugee Convention is not available or pending transition to other solutions)ⁱⁱ
- providing capacity-building and other support for States of disembarkation (for instance, through multidisciplinary, rapid-response mobile protection teams to assist with initial reception, protection profiling and referral of rescued people).ⁱⁱⁱ

Addressing the drivers of irregular maritime movements, including onward movements, will include:

- improving and harmonizing conditions for asylum-seekers at regional levels
- strengthening access to family reunification
- expanding pathways for legal migration and orderly entry
- enhancing efforts to find durable solutions to protracted refugee situations
- combatting trafficking in human beings and people smuggling
- where appropriate, making available counselling and assisted voluntary return for people not needing international protection.^{iv}

Ultimately, addressing irregular movements at sea requires dealing with the root causes via peacebuilding; development; and awareness raising in countries of origin, asylum and transit.

States are entitled to manage their borders and to ensure national security, combat crime and reduce the likelihood of people risking their lives at sea. However, such measures must conform with international obligations to refugees, asylum-seekers and stateless people, as well as international human rights law. In particular:

- Non-rescue-related interceptions at sea must not lead to a risk of *refoulement*, prevent asylum-seekers and refugees from seeking protection, shift burdens elsewhere or otherwise weaken international protection and responsibility sharing.
- Interceptions must incorporate protection safeguards and respect for international law, and must not endanger safety.
- Punitive, arbitrary or deterrent use of immigration detention for those exercising their right to seek asylum must be avoided.

Analysis by States, UNHCR and other stakeholders of “lessons learned” will identify best practices. One objective of the *Global Initiative* is to facilitate inter-agency cooperation for the creation of a global knowledge base on irregular mixed migration by sea, including information on incidents of distress, rescue, interception and stowaways, and on current practices by States and others. UNHCR will work with its partners to develop and disseminate guidance materials for State, international and commercial actors.

Moderator: Janice MARSHALL, *Deputy Director, Division of International Protection, UNHCR*

Speakers:

Katrine CAMILLERI, *Director, Jesuit Refugee Service, Malta*

Since 1997, Dr. Katrine Camilleri has lead the legal advice team of the Jesuit Refugee Service (JRS) which has provided counsel to hundreds of persons kept in administrative detention centres

in Malta, focusing her efforts on the most vulnerable. A lawyer who has fought for the rights of people fleeing across the Mediterranean Sea, she was awarded the 2007 Nansen Refugee Award for her tireless efforts to lobby and advocate for refugees.

François CREPEAU, *United Nations Special Rapporteur on the Human Rights of Migrants*

François Crépeau is a full Professor and holds the Hans and Tamar Oppenheimer Chair in Public International Law, at the Faculty of Law of McGill University. He is a Guest Professor at the Université catholique de Louvain and Fellow of the Royal Society of Canada. In 2011, he was appointed the United Nations Special Rapporteur on the Human Rights of Migrants (2011-2014) by the United Nations Human Rights Council. In this capacity, he has conducted official visits to Albania, Tunisia, Turkey, Italy, Greece and Qatar. He has dedicated thematic reports to the detention of migrants, the protection of migrants' rights at the external borders of the European Union, climate change and migration, and global migration governance. His current research includes migration control mechanisms, the rights of foreigners, the conceptualization of security as it applies to migrants, and the Rule of Law in the face of globalization.

Testimony of a female Asylum Seeker

An Eritrean asylum-seeker who left her home traveling through the Sahara and the Mediterranean to reach the shores of Southern Europe.

ⁱ See UNHCR, *Refugees and Asylum-Seekers in Distress at Sea - how best to respond? Summary Conclusions* ("Djibouti Summary Conclusions"), 5 December 2011, <http://www.refworld.org/docid/4ede0d392.html>, p 4 and Annex 1.

ⁱⁱ See UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, <http://www.refworld.org/docid/52fba2404.html>.

ⁱⁱⁱ See *supra*, note 5.

^{iv} UNHCR, *Protection Policy Paper: The return of persons found not to be in need of international protection to their countries of origin: UNHCR's role*, November 2010, <http://www.refworld.org/docid/4cea23c62.html>.