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Refugee Protection and the Management of International Borders

Challenges and Good Practices

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# Borders and *Non-Refoulement*

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- International borders are a defining element in international refugee law.
- To qualify for refugee status, persons fleeing wars and persecution must find themselves outside the international border of their country of origin.
- Borders must be managed according to international standards, including the customary law principle of *non-refoulement*.
- The principle of *non-refoulement* protects refugees and asylum seekers from being turned back to countries where they would face persecution, ie. a “threat to life and freedom” (article 33, 1951 Refugee Convention). *Non-refoulement* is the corner-stone of refugee protection.

# The United Nations High Commissioner for Refugees (UNHCR)

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- Established by the UN General Assembly in December 1950 to provide international protection and seek permanent solutions for the problem of refugees.
- The “guardian” of the 1951 Refugee Convention, through article 35 of the 1951 Refugee Convention.
- Its work is humanitarian and non-political, it cooperates with government for the exercise of its mandate.
- UNHCR’s mandate includes promoting a management of mixed migration flows that is protection-sensitive and in accordance with international refugee law.

# International Migration Fora and Processes

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- The Global Forum on Migration and Development: government-led, informal, non-binding, voluntary process open to all members of the UN.
- The Global Migration Group: UN inter-agency group to promote internal coordination and standards in international migration. Present Chair: ILO.
- The Regional Processes: government-led process focusing on regional coordination and cooperation on migration issues and to combat trafficking and smuggling. Examples of regional process are: the Budapest and Prague processes in Europe and Eastern Europe; the Almaty Process in Central Asia; the Puebla Process and South American Conference in the Americas and the Caribbean; the MTM and 5+5 Dialogue in the Mediterranean; IGAD-RCP, MIDSA and MIDWA in Africa; the Abu Dhabi Dialogue and Colombo Process for Asia and Oceania; and the Bali Process, more specifically on people smuggling, trafficking in persons and related transnational crime.

# The UNHCR's 10 Point Plan

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A framework of principles and practices designed to assist in the management of mixed migration flows and provide global best practices and multilateral cooperation.

1. **Cooperation among key partners:** affected states, governmental bodies, regional and international organizations with relevant mandates (e.g. UNHCR, OHCHR, UNICEF and IOM) as well as local and international NGOs. Border authorities play a crucial role as often are “first action officers” in the context of mixed-migration flows.

2. **Data Collection and analysis:** A key to any coherent and comprehensive strategy. Such data should typically include information relating to conditions in countries of origin, motivations for movement, modes of transport, transit routes and entry points. An international or regional organization may be well placed to offer support for this function.

Data Protection Safeguards: As regards personal data, refugee law and specific international instruments requires a confidential treatment of asylum seekers' personal data, especially with regard to countries of origin.

# The UNHCR's 10 Point Plan

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**3. Protection-sensitive entry systems:** The importance of border control. Need for protection safeguards to ensure that border control do not lead to *refoulement*. Training programmes for border guards and immigration officials on how to respond to asylum applications and how to handle the needs of separated children, victims of trafficking and other groups with specific needs. Safeguarding lives at sea.

**4. Reception arrangements:** Appropriate reception arrangements: addressing basic material and psychosocial needs of all arrivals (e.g. accommodation, food, clothing, and medical services). Identification of protection needs, early registration and temporary documentation.

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**5. Mechanisms for profiling and referral:** non-binding mechanisms to facilitate the individual processing of migrants and asylum seekers, including at international border level, prior to any formal status determination procedure.

Legal and social counselling to initially assess protection needs or alternative solutions, including return, migration options, etc.

**6. Differentiated processes and procedures:** expedited or regular procedures for refugee status determination, specific needs of trafficked persons, partnership with legal and civil society institutions.

Different people have different needs and required different procedures.

# The UNHCR's 10 Point Plan

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**7. Solutions for refugees:** durable solution for refugees or people in need of international protection. Beyond the classic durable solutions, legal migration opportunities may open up a complementary avenue for some refugees.

**8. Addressing secondary movements:** Addressing the situation of refugees and asylum seekers who have moved on from countries where they had already found adequate protection requires a more defined strategy. This strategy should take into account both the legitimate concerns of states about irregular onward movement and the rights and well-being of the people concerned. To date efforts to articulate such a strategy have failed to muster international consensus.

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**9. Return of non-refugees and alternative migration options:** For people who are found not to be refugees, and for those who do not wish to seek asylum, expeditious return in safety and dignity is usually the preferred response of states. UNHCR may, on a good offices basis, assist states in the return of people who are not in need of international protection. Non-refugees may access alternative temporary migration options. Efforts to address mixed population movements should also explore a place for regular migration options, temporary or even longer term.

**10. Information strategy:** Information campaigns in countries of origin, transit and destination. The dangers of irregular movement and the difficulties faced upon arrival should be known, as well as any alternatives to irregular migration. The root causes of irregular migration.