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**Safeguarding Protection: UNHCR initiatives
in the asylum-migration-development nexus**

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Introduction

I would like to thank the Jesuit Refugee Service Europe for inviting UNHCR to participate to this debate. It is a pleasure and an honour to be here to commemorate 25 years of JRS's existence. UNHCR looks forward to continue the excellent cooperation it has enjoyed with JRS for so many years.

As you know UNHCR considers the asylum-migration nexus as a priority issue, including in the Mediterranean. Certainly the issue is the main priority at our office here in Rome as it is for other UNHCR offices in Mediterranean countries such as Spain, Cyprus, Greece and Malta. All these offices, like Italy, face the challenge of being confronted with important migration flows while ensuring that adequate responses are provided to asylum-seekers and refugees. As for development and its impact on asylum and migration, it is an important UNHCR concern, as has been spelt out in many of High Commissioner Guterres' recent statements.

It is worth noting, though, that the attention currently being given to these issues is the most recent expression of concerns frequently noted by UNHCR's and associated NGOs in earlier periods; for instance, in late 2000, when UNHCR launched the Global Consultations on International Protection, which was a broad-ranging discussion among States, and other partners including NGOs to explore ways of revitalizing existing international protection. The conclusions of the consultations are directly relevant to the subject of this paper.

One broad conclusion of the Consultations was that effective international protection world-wide required enhanced multi-lateral coordinated action and a commitment among States and other international actors to implement practical solutions for the range of refugee problems in a changing world: a world where large-scale refugee movements are linked with migration flows, where population displacements which include asylum-seekers and refugees result from a combination of all or some of the following factors: poor governance, disrespect for human rights, sharp social distinctions, insufficient social coverage and limited economic development; a world, moreover, where a majority of refugees are concentrated in the developing parts of the world, while restrictive asylum systems are being established in parts of the developed world.

The Consultations led to the development of practical guidelines to complement the corner-stone of international protection, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. Launched by High Commissioner Lubbers, the approach was called the Convention Plus approach and indeed consisted of practical guidelines meant to ensure that protection goals continued to be met in the global context, including through the three durable solutions available to refugees: repatriation, local integration and resettlement.

Section I

The approach found its most systematic expression in the Agenda for Protection. This paper is mainly based on the Agenda, for its contents remain as valid today as when it was first issued in 2002. I begin with the asylum-migration nexus; that is, I consider the question how to protect refugees within broader migration flows.

The distinction between refugees and migrants is clear. Refugees move through compulsion, not on the basis of meaningful choice. Also they are a group which is well catered for. Indeed, UNHCR was created more than half a century ago to protect them and work with States to find lasting solutions for their problems. Also, refugees have a legal personality recognized at the very least by the States which are party to the 1951 Convention and /or its 1967 Protocol. These States are expected to protect the rights of refugees.

As for migrants, the focus of States has been on managing and controlling their movements, while they are not or not yet a recognized group with a cohesion and status like that of refugees. Significantly, the International Convention on the Protection of the Rights of All Migrant Workers and their Families, which dates from 1990, has just 33 State Parties, all of which are countries of origin of migrants but none of which are industrialized countries. By comparison, 146 are Parties to the 1951 Refugee Convention and/or its 1967 Protocol and the Convention on the Rights of the Child, adopted in 1989, earlier, has been ratified by 198 countries.

A number of factors have led to increasingly restrictive immigration policies in a number of countries: the large scale of a number of migration flows moving in a south-south direction or south-north direction, the difficulties faced by host States and countries of origin in establishing systems for the legal movement of migrants (as for employment and family reunification), the insufficiency of viable legal migration channels and consequent high number of migrants who resort to illegal channels of entry, the prominent role played by smugglers in promoting and sustaining illegal migration.

In addition, since the 11th September attacks, migration carries with it the fear of the export of terror, exacerbating the concern with the security of the State. When politicians focus on the negative aspects of migration, and the media tend to report on the same negative aspects, while largely ignoring the positive contributions of immigration, the

public develops hostile attitudes towards migrants and foreigners in general which then further justify the restrictive policies.

In this context refugees are also perceived through the lens of public hostility and are stigmatized and even criminalized in the public mind. Such attitudes and restrictive policies in respect of refugees are indeed encouraged by the interconnections between the two groups. For instance, migrants who are not refugees use asylum channels as the only available channel for entering a country and remaining there, while refugees sometimes resort to smuggler networks as they flee persecution and search for international protection.

It is easy to see how the large number of controlling concerns regarding illegal immigration, which touch upon sensitive issues of national sovereignty, national identity and national security can lead States to neglect their responsibilities vis-à-vis asylum-seekers and refugees. Therefore States are encouraged to find a balance between the various controlling aspects of migration management and refugee protection imperatives in order to ensure a better identification of asylum-seekers and refugees and a proper response to their needs.

This is absolutely critical. When we observe what is happening even within the European Union, we can ask ourselves whether asylum-seekers are being properly identified and their needs met. We still have countries in Europe where access to the territory is difficult, where reception conditions for asylum-seekers are inadequate, where asylum-seekers are routinely detained, where status determination procedures take years, where appeals procedures are deficient even when first instance refugee status determination operates according to international standards.

One aspect of an asylum system that States need to address is the return of persons found not to be in need of international protection. In 2003, UNHCR's Executive Committee adopted a Conclusion on the return of persons not in need of international protection. The credibility of asylum systems, the Committee said, is seriously affected by the lack of prompt return of persons not in need of protection.¹ Yet return is frequently thwarted when countries of origin do not consent to readmit their nationals, and when individuals themselves do not cooperate.

The identification of asylum-seekers and refugees depends upon the application of criteria but also, critically, on the availability of information. In order for States and officials processing asylum applications to gain a clearer understanding of the similarities and differences between refugees and migrants, the Agenda for Protection further recommends better data collection and research on the complex relation between asylum and migration. For instance, the distinction between a refugee and a migrant can be blurred: the push-factors pushing persons to migrate might also affect a refugee's decision to seek asylum, while a refugee's decision to seek asylum in one country rather than another may be unrelated to his or her need for protection but could be influenced by economically-related factors. Also a refugee situation may well be part of a broader

¹ Excom Conclusion 96 (LIV) 2003.

migratory movement or may even metamorphose into one. Continual investigation and research clarifies the importance of the context in which migrant or refugee movements occur. It also permits an understanding of the range of complex factors which need to be considered in determining whether a person is a refugee or is a person in need of subsidiary protection.

Recognition of the interconnection between asylum and migration leads to the recognition that the world's refugee and migration agencies need to work closely together, in a cooperative spirit. UNHCR is solidly engaged in a variety of activities designed to respond to refugee needs, within a broader migration context. But of course, UNHCR is not alone in having to situate its mandate responsibilities within a qualitatively changed migration environment. The United Nations as an institution is currently looking at whether it has a role to play here, in the context of its Charter commitments to the promotion of human rights and peace and security. A recent report to the Secretary General advised against any new institutions at this point, but called for closer collaboration and policy coordination among the concerned agencies. UN agencies have started to work more cooperatively on migration issues, each from the perspective of its own mandate. UNHCR is also an active contributor to the work of the Global Commission on International Migration, which has, as one of its mandate objectives, analyzing gaps in current approaches to migration and examining inter-linkages with other issue areas.

Section II

Let me now turn to the second part of this paper: the refugee-development nexus. The assumption here is that the presence of refugees in the first country of asylum or in a third country is a burden on the host country, as is the return and reintegration of refugees in their country of origin. Hence the Agenda for Protection in Goal 3 promotes multilateral ownership of refugee problems and their resolution, and advocates international burden-sharing so that responsibilities vis-à-vis refugees are distributed more equally.

Concerning countries of first asylum, the focus of concern is on cases of mass influx and protracted stay which can drain the host country of scarce resources and can result in chronic assistance dependence and in the weakening or loss of existing skills. The international community (including international organizations and local or international NGOs) is therefore asked to help hosting States with limited resources, so that opportunities for local integration can be created. The integration can be permanent when other solutions such as repatriation or resettlement are not possible; or it can be temporary in the sense of temporary incorporation into the social and economic dynamics of local communities as a preparation for return to the country of origin.

From a global perspective the funding of semi-permanent or permanent solutions reduces the need for refugees to move in the search of better protection conditions in neighbouring

countries of the same region or beyond (including to Europe), is a concrete contribution to the development of first asylum, and can constitute a preparation for repatriation and successful reintegration. For when there is insufficient physical protection, sub-standard conditions or a lack of opportunity for meaningful activities, so-called secondary movements occur, that is to say, the displacement of refugees moving on from in-camp or out-of-camp situations in a country of first asylum.

It should be recognized, however, that when the number of refugees in the host country is high, the development of projects covering all or most persons is problematic. The challenge is compounded by the frequent reluctance of host countries to give a signal of agreement to protracted permanence, insisting on the transitory nature of the refugee's presence. Moreover, even when political agreement is obtained, the costs involved may be prohibitive. Thus in the case of Afghan refugees, local integration in the countries of refuge only came to be considered as a realistic and acceptable option once a major proportion of the refugees had returned home to Afghanistan.

Let me now turn to Repatriation. This continues to be recognized as the preferred solution for refugees. The linkage between repatriation and development was given much attention by UNHCR in and outside the Agenda for Protection, and by many of the relief NGOs UNHCR works with. One formulation of the linkage was the "4 Rs approach": "Repatriation", "Reintegration" "Rehabilitation" and "Reconstruction". The main objective of the 4Rs approach was to provide a frame-work to bridge the gap between relief and development. The 4Rs programmes envisaged UNHCR and its associated NGOs taking the lead on repatriation, while the lead on the remaining 3 Rs was to be carried out by development actors. Thus in 2002 and 2003, UNHCR and associated relief-oriented NGOs, UNDP, the World Bank and the UN Country Team, initiated 4Rs pilot projects in four post-conflict countries: Afghanistan, Eritrea, Sierra Leone and Sri Lanka, with only some success.

It should be noted that the emphasis given since the Global Consultations of 2002 to placing refugee related projects within the emergency-relief continuum is a restatement of an approach that had been adopted in an earlier period. Thus, working with development actors was a feature of UNHCR repatriation programmes in the 1980s. This can be illustrated by the close collaboration between UNHCR and UNDP in Central America within the so-called CIREFCA process, the Conferencia Internacional para Refugiados Centro-Americanos. Within that frame-work, a UNHCR-UNDP Joint Unit based in San Jose Costa Rica coordinated the efforts of both agencies, donor countries and the Central American countries Belize and Mexico in the design and implementation of multi-sectoral projects, making it possible for returnees to reintegrate in Nicaragua, El Salvador and Guatemala.

The multi-sectoral nature of the projects must be emphasized: since the ultimate goal of this regional programme was the stabilization of the region and prevention of further displacement, the projects were designed to include economic, social and political aspects

in the definition of sustainable development. In this framework, interesting dynamics developed in which UNDP learned from UNHCR and its associated relief NGOs the method for designing the so-called UNHCR “QIPs” (quick impact projects), while UNHCR and associated NGOs learned from UNDP how to design the “QIPs” within the frame-work of multi-sectoral local development plans, such as municipal or regional plans. The process of mutual learning between the two agencies and associated NGOs resulted in the implementation of some successful sustainable multi-sectoral projects.

Another more recent example of an even more complex instance of inter-institutional cooperation between emergency relief actors and development agencies within a complex political and ethnic environment is provided by Bosnia and Herzegovina, where again some success stories can be recorded.

It should be noted, however, that both the Central American experience of the 1980s and the Bosnia-Herzegovina experience of the 1990s attest to the fact that the application of a relief-to-emergency multi-sectoral approach can only be successfully applied when certain political conditions are satisfied. It was only when members of the governments of Honduras, Nicaragua, Guatemala, Salvador and Costa Rica could be invited to sit around the same table, that UNHCR and UNDP were able to carry out their joint interventions. As for Bosnia and Herzegovina, the implementation of projects required a degree of reconciliation among the Bosnian Croats, Bosnian Muslims and Bosnian Serbs before project implementation could begin. By contrast, the example of Kosovo shows that when broad political and local inter-ethnic animosities remain unresolved, multi-sectoral relief-and-development solutions, established with much effort and investment, can collapse. In the spring of 2004, many of the houses built by the International Community as part of sustainable multi-sectoral solutions for Kosovo Serbs returning to Kosovo were burnt down in an unexpected explosion of violence.

Outside the countries in which the projects are implemented, the failure to ensure sustainability is sometimes related to dysfunctions in the collaboration of international institutions, in a process that can be exacerbated by the impact of different or even conflicting strategies of relief and development cooperation when these are poorly coordinated by some donor countries.

Last but not least, the point should be made that continued funding of well designed and implemented programmes is key to their success and survival. There is abundant proof of the reality of international solidarity and multi-lateral coordination as advocated at the completion of the Global Consultations; without them, programmes could not have been implemented. But international solidarity and coordination, as much as the selection of the locations of intervention, are subject to internal political constraints and the dynamics of international politics. Therefore it is not a rare phenomenon that programmes in which relief and development have been well integrated do not reach sustainability due to a premature partial or total interruption of funding. In countries emerging from conflict, insufficient consolidation of projects can be the basis for new divisions and new conflict.

The links between the sustainability of projects and social and political stabilization have been noted by UNHCR in the eighties, in the nineties under High Commissioner Sadako Ogata, and in 2002 after the Global Consultations, within the Convention Plus framework launched by High Commissioner Ruud Lubbers. More recently, High Commissioner Antonio Guterres has also mentioned the development and stability link, in the context of repatriation particularly, bringing attention to the fact that roughly half of all post-conflict situations in which returnees are a factor slide back into violence within five years of their apparent resolution. UNHCR has accordingly urged all involved actors to make renewed efforts to ensure the sustainability of solutions.

But UNHCR has also something to say about prevention more broadly, inasmuch as it concerns the link between development and immigration flows. Recently, the issue has been considered in the context of Europe, in connection to the increasingly restrictive immigration policies being implemented there as a response to mixed population flows moving from Africa. It is noted that even the most efficient border management in the world cannot solve the problem of immigration without tackling its roots. The roots are in the destroyed economies in Africa and in the millions of uprooted, jobless Africans who have nowhere to go but north. The conclusion here is that this is not a problem of border management. It is a question of tackling the root causes of displacement where it originates, by strong economic social and political development in-puts.

In this context, it is encouraging to see that the subject of migration and development has risen to the top of the political agenda. For instance migration has irrevocably entered the development policy agenda of the European Union: the European Commission issued its first Communication on migration and development in December 2002 as a follow-up to the Tampere and Seville European Councils, and is due to issue another this year. The Commission's Green Paper on managing economic migration was published in January of this year, and the new EU multi-annual programme in the area of Justice and Home Affairs, known as the Hague Programme, calls for a comprehensive approach to migration. At the international level, the UN Secretary-General submitted a report on migration and development to the 58th session of the UN General Assembly last year², and this will be the theme of the General Assembly's high level dialogue in 2006. The independent Global Commission on International Migration was established in late 2003 to study how to provide a comprehensive response to migration issues, and will present its recommendations to the UN Secretary-General and other stakeholders this autumn. Many other examples of the prominence of the subject could be quoted.

But realistically, in the mid-term, even a very significant intensification of effective development in-puts in migration producing countries could result in only some reduction of the migration flows; it would certainly not stop them. For as the Director of the International Organization for Migration, Brunson McKinley, has recently said in response to the question whether there is too much or not enough migration: migration is here to stay, "so get used to it".³ Therefore we can expect that extracting refugees from

² UN Doc. A/58/98, "International Migration and Development," Report of the Secretary-General.

³ Brunson McKinley, "Migration is here to stay, so get used to it," *International Herald Tribune*, June 24, 2004.

migratory movements, and ensuring their access to asylum-systems will continue to be a challenge in the foreseeable future. Other challenges facing the international community including UNHCR and national and international NGOs, are promoting a culture of tolerance and solidarity in host countries, and encouraging politicians and the media to distinguish between security, terrorism, migration and asylum issues. In addition, it will continue to be necessary for host States working closely with international agencies, and national and international NGOs to ensure that refugees are offered conditions for sustainable self-reliance in countries of first asylum or third countries, so that their basic personal needs can be satisfied and secondary movements prevented . Finally, strong and effective State and NGO support of returnees in their communities of return and successful incorporation of these communities into sustainable development will continue to be a major factor of stabilization and will continue to prevent the renewed development of animosities, conflict and repeated displacement.