



*Check against delivery*

UNHCR Statement to the 88<sup>th</sup> Session of IOM Council  
Geneva, December 2004

UNHCR welcomes the opportunity to comment on issues in focus at this meeting. Our presence here is but one aspect of the broader co-operation that we have pursued with IOM in recent years.

Through this statement, UNHCR would like to make three basic points. First, refugees are not migrants, at least classically defined, and it is detrimental to refugee protection to suggest otherwise. Second, the notion of there somehow being a body of “International Migration Law” which subsumes as a subset the established body of refugee law – amongst other such subjects – is doubtful at best, and needs further and closer reflection. Third, better synergy between migration management efforts, and refugee protection and asylum regimes, is necessary. This in turn warrants enhanced cooperation between IOM and UNHCR, to which, I believe, both agencies are clearly committed, with important steps having been made in this regard over recent years. There is, though, still a way to go.

Mr Chairman

A central issue for this Council has been how to achieve better management of migration, be this through improved bi-lateral co-operation between states, or through more global, multi-lateral approaches, for example the “Berne Initiative”, led by the Government of Switzerland. UNHCR welcomes the fact that strengthened international cooperation, long recognised in the refugee field, is now a prominent feature in the migration debate. A more orderly system for migration can reinforce, in a complementary way, the separate and distinct regime for the protection of refugees, and vice versa.

There is, though, a caveat here – and this is my first point. Certain directions in the broader migration debate do give us cause for concern, in particular the tendency to subsume refugees and other victims of forced displacement, as but sub-groups of the broader class of “migrant” with asylum policies, in turn, being integrated within the broader migration control framework. As the line between “migrant” and “refugee” blurs progressively as the result, so does the distinction between migration control and refugee protection in the policies and practices of many states.

This blurring of the distinction between the two categories of persons is flawed. If persons are defined as migrants solely by virtue of the fact that they move from their own country to another, and regardless of the reasons and their needs, then refugees may be loosely called migrants. However, if the causes of flight are the defining feature, together with the framework of rights

and responsibilities within which the flight has to be managed, then there is a clear distinction between the two categories of persons: and refugees are not migrants.

Confusing the two categories is also rather dangerous, particularly for refugee protection. For as long as refugees are seen as little more than a sub-group of migrant, the control of their movement, particularly where it is unauthorized, is likely to take clear precedence over meeting their protection needs. *Refoulement* is but one, potentially grave, consequence. Merging the categories also overlooks – perhaps conveniently – the important distinctions between the responsibilities states have and should exercise for these two different categories.

UNHCR is only too aware that modern migratory patterns make it sometimes difficult to distinguish between the various groups “on the move”. Population flows are rarely homogeneous, but very often of a mixed character. And refugees are increasingly part of those flows. While the immediate causes of forced displacement may be readily identifiable as serious human rights violations, or armed conflict, these causes may well overlap with, or even themselves be aggravated by factors such as economic marginalisation and poverty, environmental degradation, population pressures and poor governance. Refugees may resort to migrant smugglers as one way to leave their countries. At the same time, persons who do not require international protection may resort to asylum channels, in the absence of legal migration options, in the hope of gaining either temporary or permanent stay abroad.

These facts do not support confusing the categories. They are though an argument for better management of the international refugee and asylum challenge. A great deal more can be done to provide a more efficient and equitable system of international refugee protection that includes asylum. This challenge is central to the work of UNHCR and to its ExCom. We recognise clearly, the importance of ensuring that national asylum systems can sift out, with the necessary safeguards but quickly, those in need of refugee protection from those who are not, and of ensuring the prompt return to their countries of origin of those found not to be in need of international protection. We also see a need on all our parts – UNHCR’s and States’ included – to be more sensitive to the evolving stages of a refugee situation, to appreciate, for example, when such a situation may metamorphose even imperceptibly into a migration one, for which migration- tailored responses are more appropriate than refugee protection ones. A significant part of the Agenda for Protection deriving from UNHCR’s Global Consultations on International Protection, is dedicated to specific and practical areas where States, UNHCR and also IOM, need to address the challenges of the asylum-migration interface more effectively.

But in so doing we have to remain aware that the protection situation of forced displacees and the reciprocal protection responsibilities that this places on States and agencies such as UNHCR, cannot be managed in the same way as ordinary migration, nor can they be packaged neatly within a comprehensive “migration management framework”. Instead, we need to

explore and reinforce the complementarity between any regime for migration management and the regime for international refugee protection.

This brings me to my second point. UNHCR has noted the proposal by IOM to group a wide range of instruments which impact in some way on migration, under a single collective heading of “International Migration Law”. Whilst we do not question the value of a reference document collating these instruments into a readily accessible format, any assumption that this exercise, of itself, can create a discrete body of international law on par with international humanitarian law, human rights law and refugee law, at best bears much more careful reflection. We have reservations here, particularly since the collection of instruments draws heavily from these well-established bodies of international law. In the same vein, we have reviewed the recently-published IOM Glossary on Migration. We are concerned that important refugee principles and asylum concepts have been subsumed as if they were simply subject headings within an established body of “International Migration Law”, with key principles and concepts having, as a result, been loosely and often inappropriately defined.

Mr Chairman

My third and last point relates to the importance of co-operation between UNHCR and IOM as a common objective for both agencies. While progress has been made in this regard, there is certainly more that can be done. Since the signing of a Memorandum of Understanding in 1997 between the two agencies, there has been a gradual shift from ad-hoc operational co-operation towards a more clearly defined and strategic relationship. During the course of the Global Consultations on International Protection UNHCR and IOM co-operated in the preparation of a joint paper on Refugee Protection and Migration Control (copies of which are made available). The Action Group on Asylum and Migration (AGAMI), which grew out of that process, could be a useful inter-agency forum, but it has yet to realise its full potential.

At this point, we do see the imperative to delineate our operational responsibilities more clearly; just as there is a need to explore the possibilities for joint policy dialogue and the forging of common approaches. We are different organisations with different mandates, different areas of expertise and sometimes different perspectives. But in well-defined areas, especially where asylum and voluntary migration intersect and our mandates converge, then we should complement each others strengths, to create genuine synergy. There are important discussions still to be had in this regard.

In conclusion, let me re-affirm UNHCR’s direct interest in the many consultations currently underway on migration related issues, not least in the Global Commission in International Migration (GCIM) and the Geneva Migration Group (GMG) in Geneva, as well as in New York. We welcome all such efforts and are committed to active participation, within the context of our mandated role.

Thank you.