



Contribution to the

13th Meeting of the OSCE Ministerial Council

Ljubljana, Slovenia, 5-6 December 2005

Over the past years, UNHCR's interface with the OSCE has developed into a comprehensive strategic partnership based on shared values about the need to address the human dimension of conflict prevention and resolution processes. The basis for this partnership is the recognition that for any refugee, statelessness, displacement or returnee issue, durable solutions can be found in civil societies in which democratic institutions and human rights are fully respected. Strengthening democratic institutions and the rule of law are therefore issues of importance not only to States, but also to actors who support and positively influence the political promise and international obligations of OSCE participating States to comply with democratic and human rights standards.

As a protection agency, UNHCR is faced today with increasingly complex challenges. Some of these challenges are also reflected in the OSCE set of priorities as elaborated and further developed in OSCE's Strategy Papers, Ministerial Declarations and Action Plans. UNHCR would like to outline three of these challenges, which are of particular relevance to both organisations: preserving asylum in mixed migration flows; confronting rising intolerance in modern societies; and addressing the gap between emergency and development assistance.

Preserving Asylum in Complex Migration Flows

A first trend deriving from the emergence of larger and complex migration movements is that globalization is being used by an increasing number of States as a reason to redefine their responsibilities to all non-citizens, including persons who might be in need of international protection and are therefore of concern to UNHCR. In particular, the growing migration towards developed countries and the abuse of the asylum procedure by migrants without protection needs, have in turn led to an increasing unwillingness of

States to admit refugees. UNHCR is therefore concentrating its efforts on ensuring access to asylum procedures, in order to avoid any *refoulement* of asylum-seekers who could have a legitimate fear of persecution. Even though the global number of asylum-seekers has decreased substantially over the past years - often attributable to an improvement of the circumstances in their countries of origin hitherto forcing departures but also because recipient countries have tightened access to their territories and asylum procedures - those arriving in asylum countries still have to confront a plethora of State controls which inadequately distinguish between individuals who have protection needs and those who do not.

The asylum policies of States are often being developed as a subset of States' migration policies, rather than as part of a distinct refugee policy. As a result, many asylum policies are becoming more control-oriented, losing the humanitarian/protection character that is associated with refugee policies.

For UNHCR, refugees and asylum-seekers are not migrants in the ordinary sense of the word. We believe that this distinction needs to be preserved for two important reasons because - and unlike migrants:

- The movement of refugees is involuntary in that their displacement is caused by events such as persecution, serious human rights violations or conflict in their own countries: events which are beyond their control. Refugee protection is thus required because of coercive "push" factors in the country of origin, rather than caused by "pull" factors in countries of transit or final destination.
- Refugees have the right to benefit from a specific international regime that places legal responsibilities on States to provide effective protection to those in need.

It is important therefore that all actors are sensitive to the inter-linkages between migration and asylum flows, so that the management of migration respects the differences between the various groups and interests at stake, and approaches are adopted which recognise these differences.

Whereas migration policy is essentially about finding practical areas of convergence between States' sovereign interest on migration issues, refugee and asylum policy is built on binding international obligations to protect refugees.

The challenge for all of us, therefore, is to find ways in which these different policy "spheres" can complement and mutually reinforce each other, and that they do not duplicate or undermine one another.

A second trend relates to the smuggling and trafficking of human beings. Of course, all States have a duty to manage their borders and to act forcefully to eliminate and punish the profiteers. But guarding borders must not prevent physical access to asylum procedures or fair refugee status determination. A tough and uncompromising crackdown on criminals must go hand-in-hand with a humanitarian concern to protect their needy victims.

Ensuring Respect, Tolerance and Non-Discrimination

Refugees, asylum-seekers and other people of concern to UNHCR all too often face discrimination in the communities where they seek safety. Political manipulation, irresponsible media or lack of education and awareness among the host population can easily cause or aggravate such intolerance further undermining public support for the reception and integration of these groups. Refugees, asylum-seekers and victims of human trafficking are often associated in the media with crimes, adding to the rising tide of xenophobia and discrimination. Preserving asylum also means challenging the notion that refugees and asylum-seekers are the agents of insecurity or terrorism rather than its victims. Terrorism must be fought with total determination. But asylum is and must remain a central tenet of democracy.

Discrimination, racism and xenophobia are major causes of human displacement and the successful combating of such practices and challenges is therefore decisive to all efforts aiming at the creation of conditions conducive for sustainable integration in countries of first asylum or resettlement and reintegration in countries of origin upon return as well as prevention of further displacement.

Root Cause of Refugees' Displacement

Often, the development of inter-ethnic conflict is the result of mutual lack of inter-ethnic tolerance. Conflict and tension escalate over time, both sides feeling that they are the victims and that their use of violence is merely a response to violence inflicted against each other. Such cycles must be broken, and the earlier the efforts to do so begin, the higher the chances for success.

A pre-requisite for the prevention of refugee flows and the promotion of durable solutions to refugee problems is sufficient political will by the States directly concerned to address such issues as non-respect for human rights, the use of force, inter-ethnic disputes and economic and social degradation.

UNHCR's Role in Protecting Refugees against Intolerance

Respect for human rights, in particular for the principle of non-discrimination vis-à-vis all persons within a State's territory, is a precondition for the development and maintenance of a general culture of inter-ethnic tolerance. Non-discriminatory legislation and practices should therefore tackle not only discrimination based on religion and on political opinion, but all forms of discrimination including racial discrimination, nationality issues, and discrimination based on membership of a particular social group. Interestingly enough, these five areas which have just been mentioned are also the five Refugee Convention's grounds to establish whether an asylum-seeker has "a well-founded fear of being persecuted".

UNHCR therefore fully endorses and is an active partner in the broad range of OSCE efforts in the field of combating racism, xenophobia and discrimination. UNHCR remains concerned with expressions of racism, xenophobia and discrimination throughout the OSCE area and beyond, which seriously endanger refugees' rights to international

protection including their integration prospects into host societies. UNHCR therefore stands ready to join forces to engage in a broad effort, with Governments and civil societies, to combat intolerance.

The UNHCR-OSCE partnership in combating intolerance and discrimination is therefore more relevant than ever, starting from the need to promote a strong counter-offensive vis-à-vis negative public opinion, in favour of respect and tolerance, as opposed to xenophobia and racism. People must understand that societies will be multiethnic and multicultural and that neither rejection nor assimilation will enhance people's basic human rights. Social cohesion will be more and more the result of cultural diversity with different communities living together within the constitutional framework of a democratic State, as guarantor of human rights. UNHCR appeals to OSCE participating States to be those guarantors.

Lack of an Effective Link between Relief and Development

In any discussion about migration, it should be recognized that refugees and other persons in need of international protection are a distinct group. They do not enjoy the protection of their countries of origin, and their particular situation often means that they have less contact with their home countries, and even with their own families, than other migrants. It would nonetheless be a mistake to neglect refugees, asylum-seekers and returnees in the broader discussion of migration, or to ignore their economic potential.

Refugees are often the beneficiaries of humanitarian aid, but they are frequently excluded from long-term development programmes. Yet ignoring the potential of refugees and returnees to participate in the development of regions in which they are living - or to which they are returning - may hamper efforts to attain durable solutions.

The lack of an effective link between relief and development remains a great handicap for UNHCR's work. While in the past such a "transition" was largely regarded as sequential progression from relief to development, it is now recognized that the various facets shaping transition processes exist and must be addressed simultaneously. The gap is not only an internal problem for the countries concerned. It also comes from dysfunctions in the collaboration of international institutions and can be exacerbated by the impact of different or even conflicting strategies of relief and development cooperation agencies, when poorly coordinated.

The absence of a transition from short-term assistance to longer-term self-reliance and development strategies reduces the life expectancy of solutions. This is particularly true of repatriation. Large-scale population returns are difficult to sustain if development stalls and instability grows. Hard-won solutions may in fact be tenuous, even after years of effort to build them.

Roughly half of all post-conflict situations slide back into violence within five years. Prevention, post-conflict management and the establishment of the rule of law are therefore crucial to avoiding population displacement. This is why UNHCR is extremely enthusiastic about the advent of the UN Peacebuilding Commission and supports the OSCE's interest in this new endeavour as recently stated in the OSCE Secretary-

General's address to the UN Security Council thematic debate on "Cooperation between the UN and regional organizations in maintaining international peace and security", held in October in New York. UNHCR intends to play an active role in the Support Office of the Commission because any consolidation of peace necessarily includes durable solutions for refugees, returnees, and displaced persons.

The OSCE has been particularly successful in helping war-torn societies develop democratic institutions and strengthening the rule of law. OSCE efforts have helped narrow the gap between relief activities and the democratic development of post-conflict societies and countries in transition.

UNHCR is particularly pleased with the so-called "3x3 Initiative" jointly undertaken by the OSCE, the EU and UNHCR, that brings together the Governments of Bosnia and Herzegovina, Croatia and Serbia and Montenegro, and is aimed at setting up a political framework to complete refugee returns in the Balkans by the end of 2006.

Another example of a concerted action is the Concluding Meeting of the CIS Conference Process, jointly organised by UNHCR, IOM, OSCE and the CoE, that took place in Geneva in October this year. Participants acknowledged that despite the progress over the last ten years, the range and complexity of issues that need to be addressed in the displacement, asylum and migration spheres in the broader Euro-Asian neighbourhood still require a partnership of international actors with relevant interests and expertise. UNHCR looks forward to continuing to work with the OSCE to build on what has been achieved.

UNHCR would also welcome an increased role of regional organizations such as the OSCE in the promotion of economic security, advocating for specifically targeted development aid towards areas hosting refugees, internally displaced persons and returnees. This approach requires new partnerships between humanitarian, development actors and security organisations, and can yield many benefits, including reducing tensions between refugees and host communities, enhancing the self-reliance of refugees and local communities, redressing the economic or environmental impact of the presence of large numbers of refugees, easing pressures which generate secondary movements, supporting local integration of refugees, ensuring the sustainability of return, and generally contributing to peace and security.

UNHCR greatly appreciated the efforts and the support of the Slovenian Chairmanship-in-Office during the current year, the ongoing excellent cooperation between the Vienna-based UNHCR Liaison Unit to the OSCE and the OSCE Secretariat, other OSCE bodies, institutions, and UNHCR and OSCE field operations that have further consolidated the OSCE-UNHCR strategic partnership and led to effective actions in a number of areas of mutual interest and concern. We are confident that the incoming OSCE Chairmanship-in-Office, Belgium, will sustain and foster this partnership.