

## Conclusion on Protection Safeguards in Interception Measures

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*The Executive Committee,*

*Noting* the discussions which took place on interception measures at the Standing Committee<sup>1</sup> as well as in the context of the Global Consultations on International Protection;<sup>2</sup>

*Concerned* about the many complex features of the evolving environment in which refugee protection has to be provided, including the persistence of armed conflict, the complexity of current forms of persecution, ongoing security challenges, mixed population flows, the high costs that may be connected with hosting asylum-seekers and refugees and of maintaining individual asylum systems, the growth in trafficking and smuggling of persons, the problems of safeguarding asylum systems against abuse and of excluding those not entitled to refugee protection, as well as the lack of resolution of long-standing refugee situations;

*Recognizing* that States have a legitimate interest in controlling irregular migration, as well as ensuring the safety and security of air and maritime transportation, and a right to do so through various measures;

*Recalling* the emerging legal framework<sup>3</sup> for combating criminal and organized smuggling and trafficking of persons, in particular the Protocol Against the Smuggling of Migrants by Land, Sea and Air, which, *inter alia*, contemplates the interception of vessels enjoying freedom of navigation in accordance with international law, on the basis of consultations between the flag State and the intercepting State in accordance with international maritime law, provided that there are reasonable grounds to suspect that the vessel is engaged in the smuggling of migrants by sea;

*Noting* the saving clauses contained in each of the Protocols<sup>4</sup> and the reference to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and the principle of non-refoulement;

*Recalling* also the duty of States and shipmasters to ensure the safety of life at sea and to come to the aid of those in distress or in danger of being lost at sea, as contained in numerous instruments of the codified system of international maritime law<sup>5</sup>; *recalling also* Conclusions of the Executive Committee of relevance to the particular needs of asylum-seekers and refugees in distress at sea<sup>6</sup> and *affirming* that when vessels respond to persons in distress at sea, they are not engaged in interception;

*Recognizing also* that States have international obligations regarding the security of civilian air transportation and that persons whose identities are unknown represent a potential threat to the security of air transportation as contained in numerous instruments of the codified system on international aviation law;<sup>7</sup>

*Understanding* that for the purposes of this conclusion, and without prejudice to international law, particularly international human rights law and refugee law, with a view to providing protection safeguards to intercepted persons, interception is one of the measures employed by States to:

- i. prevent embarkation of persons on an international journey;

- ii. prevent further onward international travel by persons who have commenced their journey; or
- iii. assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law;

where, in relation to the above, the person or persons do not have the required documentation or valid permission to enter; and that such measures also serve to protect the lives and security of the travelling public as well as persons being smuggled or transported in an irregular manner;

(a) *Recommends* that interception measures be guided by the following considerations in order to ensure the adequate treatment of asylum-seekers and refugees amongst those intercepted;

- i. The State within whose sovereign territory, or territorial waters, interception takes place has the primary responsibility for addressing any protection needs of intercepted persons;
- ii. All intercepted persons should be treated, at all times, in a humane manner respectful of their human rights. State authorities and agents acting on behalf of the intercepting State should take, consistent with their obligations under international law, all appropriate steps in the implementation of interception measures to preserve and protect the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment of persons intercepted;
- iii. Interception measures should take into account the fundamental difference, under international law, between those who seek and are in need of international protection, and those who can resort to the protection of their country of nationality or of another country;
- iv. Interception measures should not result in asylum-seekers and refugees being denied access to international protection, or result in those in need of international protection being returned, directly or indirectly, to the frontiers of territories where their life or freedom would be threatened on account of a Convention ground, or where the person has other grounds for protection based on international law. Intercepted persons found to be in need of international protection should have access to durable solutions;
- v. The special needs of women and children and those who are otherwise vulnerable should be considered as a matter of priority;
- vi. Intercepted asylum-seekers and refugees should not become liable to criminal prosecution under the *Protocol Against the Smuggling of Migrants by Land, Sea or Air* for the fact of having been the object of conduct set forth in article 6 of the Protocol; nor should any intercepted person incur any penalty for illegal entry or presence in a State in cases where the terms of Article 31 of the 1951 Convention are met;
- vii. Intercepted persons who do not seek or who are determined not to be in need of international protection should be returned swiftly to their respective countries of origin or other country of nationality or habitual residence and States are encouraged to cooperate in facilitating this process;<sup>8</sup>
- viii. All persons, including officials of a State, and employees of a commercial entity, implementing interception measures should receive specialized training, including available means to direct intercepted persons expressing international protection needs to the appropriate authorities in the State where the interception has taken place, or, where appropriate, to UNHCR;

(b) *Encourages* States to generate and share more detailed information on interception,

including numbers, nationalities, gender and numbers of minors intercepted, as well as information on State practice, having due consideration for security and data protection concerns subject to the domestic laws and international obligations of those States;

(c) *Encourages* States to further study interception measures, including their impact on other States, with a view to ensuring that these do not interfere with obligations under international law.

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<sup>1</sup> EC/50/SC/CRP17, 9 June 2000

<sup>2</sup> EC/GC/O1/13, 31 May 2001, Regional Workshops in Ottawa, Canada and in Macau.

<sup>3</sup> The United Nations Convention Against Transnational Organized Crime, 2000 and its Supplementary Protocols Against the Smuggling of Migrants by Land, Sea and Air; and to Suppress and Punish Trafficking in Persons, Especially Women and Children.

<sup>4</sup> Article 19 of the Smuggling Protocol and Article 14 of the Trafficking Protocol.

<sup>5</sup> Including *inter alia* the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, 1974, as amended and the International Convention on Maritime Search and Rescue, 1979, as amended.

<sup>6</sup> In particular No. 15(XXX), No. 20(XXXI), No. 23(XXXII), No. 26 (XXXIII), No. 31 (XXXIV), No. 34 (XXXV) and No. 38 (XXXVI);

<sup>7</sup> Including, *inter alia*, the 1963 Convention on Offenses and Certain Other Acts Committed on Board Aircraft, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.

<sup>8</sup> See Conclusion on the return of persons found not to be in need of international protection. (A/AC.96/987, para. 21)