



Learn & Connect



Introduction to Mixed Movements

INTRODUCTION TO MIXED MOVEMENTS

INTRODUCTION

Patterns of displacement and migration have become increasingly complex in recent years, and refugee and migratory movements now intersect in many ways. UNHCR's priorities in increasingly common mixed movements situations are to protect refugees, stateless people and other people who come under UNHCR's mandate and who are traveling in these mixed movements; promote the integrity of the international protection regime; and preserve protection space within States' migration management initiatives. To exercise its mandate effectively in this context, UNHCR must actively engage with mixed movements. UNHCR's work in mixed movements situations is part of its core protection role: UNHCR cannot protect refugees, stateless people and other people under its mandate without engaging in mixed movements.

Management of both regular and irregular migration has an indisputable impact on access to international protection. Many phenomena affecting migrants also impact directly on refugees (e.g. smuggling, trafficking, protection at sea, integration in host countries).

For these reasons, engaging with mixed movements must be a key component of every UNHCR operation. This entails a wide range of activities that span from protection, to external relations (inter-agency and public information), to programming and solutions. This module builds on UNHCR's key policy framework for mixed movements, the 10-Point Plan in Action. The module is designed to sensitize staff to the connections between migration and asylum flows. It presents existing legal frameworks relevant to mixed movements. It lays out coordination mechanisms and introduces UNHCR's current approach.

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Greece. Refugees arrive on the shores of the island of Lesbos after crossing the Aegean sea from Turkey. A boat full of refugees and migrants reaches the shores of Lesbos, after crossing the Aegean sea from Turkey.

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OVERALL OBJECTIVE

This module introduces and enhances participants' understanding of the nexus between asylum and migration.

✓ LEARNING OBJECTIVES

By the end of this module, you will be able to

- 1 Define mixed movements and the interlinkages between refugee flows and migration;
- 2 Describe existing legal frameworks and mechanisms for international protection.
- 3 Explain how the legal frameworks relate to roles, responsibilities, mandates and terms of reference of key actors responding to mixed movements of refugees and migrants; List stakeholders, UNHCR partners with and their respective roles in international migration situations.
- 4 Summarise the key areas requiring protection interventions according to the 10 point plan of action.
- 5 Explain the relevance of the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees for mixed movement situations.

METHODS OF LEARNING ASSESSMENT

At the end of each unit, you will be asked to test your knowledge by answering some self-reflection questions as well as some review summary Q&As.

Effective completion of this module is contingent on passing a formal multiple-choice single-answer assessment on Learn & Connect.

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UNIT 1: THE MIXED MOVEMENTS PHENOMENON

This unit introduces you to key terms and concepts related to mixed movements. You will also learn about the broader global context for UNHCR's engagement with mixed movements. Knowledge of how UNHCR uses key terminology and concepts, including how this may differ from that of other actors (and supported by your understanding of why and how UNHCR engages with mixed movements) will enable you to have informed discussions within UNHCR and with key stakeholders and support effective protection responses, advocacy and coordination in contexts of mixed movements.

1.1 TERMS AND CONCEPTS

Terminology is important. A shared specialist vocabulary facilitates interaction in complex environments because it provides a shorthand way to communicate a complex idea in just a word or two. This facilitates the effective delivery of protection and advocacy and ensures consistent messaging and reporting to internal and external audiences. To this end, this unit aims to create a common understanding of what UNHCR means by 'mixed movements' and related terms and concepts.

It is important, however, to be aware that terminology is not always used consistently across organizations, especially when terms are not legally defined, which is the case for 'migrant' and 'mixed movements'.

UNHCR always refers to 'refugees' and 'migrants'

Referring separately to refugees and migrants keeps causes and character of refugee movements clear and helps us not to lose sight of the specific obligations owed to refugees under international law. Blurring the terms 'refugees' and 'migrants' takes attention away from the specific legal protections refugees require and undermines public support for refugees and the institution of asylum. There is a crucial legal difference between refugees and migrants. While both refugees and migrants can experience similar risks while on the move together, for refugees and other persons in need of international protection it is too dangerous to return home because of a well-founded fear of persecution, conflict, violence or other circumstances that have seriously disturbed public order. Thus, we use the terms 'refugees and migrants' or 'mixed movements' when referring to movements people where both groups may be present.

Let's look at the meanings of the following key terms and concepts:

- Refugee;
- Migrant; and
- Mixed movement (mixed movements or flows).

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Refugee

Any person who meets the eligibility criteria under an applicable refugee definition, as provided for in international or regional refugee instruments, under UNHCR's mandate, or in national legislation.

Under international law and UNHCR's mandate, refugees are persons outside their countries of origin who are in need of **international protection** because of a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder.

This definition is based on the [Convention relating to the Status of Refugees of 28 July 1951](#) (called the 1951 Convention) and its [1967 Protocol](#) as well as subsequent regional instruments such as the [1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa](#) (the 1969 OAU Convention) and the [1984 Cartagena Declaration on Refugees](#), [UNHCR's Statute](#), successive [United Nations \(UN\) General Assembly](#) and [United Nations Economic and Social Council \(ECOSOC\) resolutions](#) and [UNHCR Executive Committee conclusions](#).

Refugees are occasionally referred to as 'forced migrants'. However, 'forced migration' is not a legal concept. And similar to the concept of 'migration', it has no universally accepted definition. The term 'forced migration' shifts attention away from the specific needs of refugees and the legal obligations the international community has to address them. To prevent confusion, **UNHCR avoids using the term 'forced migration' to refer to refugee movements and other forms of displacement.**

Persons otherwise in need of international protection

Individuals who are outside their country of origin (typically because they have been forcibly displaced across international borders) but who may not qualify as refugees under international or regional law, may in certain circumstances also require international protection, on a temporary or longer-term basis. In such situations, a need for international protection would reflect the inability of the country of origin to protect against serious harm. Such people may include, for example, people who are displaced across an international border in

the context of disasters or the adverse effects of climate change, but who are not refugees.

Temporary protection or stay arrangements might be suitable responses in these situations. This is a developing area of international law and is the subject of ongoing discussions and debate.

People who are displaced across an international border in the context of disasters or the adverse effects of climate change may fall within the refugee definition when their displacement is linked to situations rooted in racial, ethnic, religious, or political divides, or where such disasters disproportionately affect particular groups. Similarly, the [1969 OAU Convention](#) extends the definition of a 'refugee' to people fleeing "events seriously disturbing public order", which may equally apply to people fleeing disasters.

Further information is available in UNHCR's notes '[Persons in need of international protection](#)' and '[Legal considerations on refugee protection for people fleeing conflict and famine](#)'.

Migrant

There is no universally agreed legal definition of the term 'migrant'.

Stakeholders understand the term 'migrant' in various ways. For example, according to [IOM's Glossary on Migration](#), 'migrant' is an umbrella term. It is not defined under international law and reflects the common lay understanding of a migrant as a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; people whose particular types of movements are legally defined (such as smuggled migrants); and those whose status or means of movement are not specifically defined under international law (such as international students).

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In IOM's view, this definition includes refugees, and is therefore not accepted by UNHCR. It is also inconsistent with the [New York Declaration for Refugees and Migrants](#), and the two global compacts, which recognize refugees and migrants as distinct groups.

For the purposes of the [10-Point Plan in Action](#), UNHCR uses the term 'migrant' to mean someone who is not in need of international protection and who moves across an international border for a period that is not intended to be short. Further information on terminology relating to refugees and migrants is available in UNHCR's [Frequently Asked Questions](#) document on refugees and migrants.

Global statistics on international migration typically use a definition of 'international migrant' that includes many asylum-seekers and refugees. For example, the definition used by the United Nations Department of Economic and Social Affairs defines an international migrant as a person who changes his or her country of usual residence.

Mixed movements

UNHCR defines 'mixed movements' as:

“...a movement in which a number of people are travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. People travelling as part of mixed movements have varying needs and profiles and may include, e.g., asylum-seekers, refugees, victims of trafficking, unaccompanied/separated children, and migrants in an irregular situation.”

This definition is from the [10-Point Plan in Action, 2016 - Glossary](#).

Mixed movements are of concern in most, if not all parts of the world, including notably in the Mediterranean Sea, the Gulf of Aden, Central and South America, throughout Africa, and in South-East Asia.

1.2 MIGRANT OR REFUGEE? THE GREY LINES

Determining whether an individual is a refugee or a migrant might seem complex.

The following situations can cause confusion:

- **Reasons for leaving and mixed motivations:** There is not always a clear line between 'voluntary' migration and displacement. When a person decides to leave their country, they may be motivated by a mixture of fears, uncertainties, hopes and ambitions. They might leave their homes for a variety of reasons. When determining whether someone is a refugee under the [1951 Convention](#), their reasons for moving and the extent to which the movement was forced may be irrelevant, for example in the case of refugees sur place (people who, when they left their country of origin, were not refugees, but due to a subsequent risk of persecution become refugees at a later date). The relevant question is instead whether someone can safely return to their country of origin or place of former habitual residence, and whether they require international protection.
- **People who have not sought international protection:** A person is a refugee as soon as he or she fulfils the criteria contained in the definition. He or she does not become a refugee because of recognition but is recognized as such because he or she is a refugee. The fact that a person has not applied for asylum or has yet to have their status as a refugee determined does not mean that he or she is not a refugee.
- **Refugees moving onward:** Once an individual is determined to be a refugee, their status is maintained unless or until their refugee status ceases (because they are no longer in need of international protection), or their status is cancelled or revoked. Refugees who leave their host state and engage in onward movement do not 'turn into' migrants, nor do they lose their protection under international refugee law.

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- **Complementary pathways for admission to third countries:** Similarly, refugees benefitting from complementary pathways for admission to third countries such as family reunion, study schemes or labour mobility arrangements remain refugees until their status ceases or is cancelled or revoked. This means that a refugee on a 'migrant' visa, such as a working visa, remains a refugee under international refugee law.
- **Refugees sur place:** A person who was not a refugee when they left their country but who becomes a refugee at a later date is called a refugee sur place. A person who left their country to work or study could therefore become a refugee sur place due to circumstances arising in their country or origin during their absence.

1.3 TAKEAWAY POINTS

 Before moving on, please review the following key takeaway points:

- Under international law and UNHCR's mandate, refugees are people who cannot return to their country of origin due to serious threat to their life, physical integrity or freedom as a result of persecution, conflict, indiscriminate violence or other events seriously disturbing public order.
- There is no universally recognized or international legal definition of 'migrant'.
- UNHCR defines migrants as people outside their country of origin for a time that is not intended to be short, and who are not in need of international protection.
- UNHCR defines mixed movements as movements in which different groups of people, refugees and migrants, travel together, generally in an irregular manner, for different reasons.
- UNHCR always refers to 'refugees' and 'migrants' as two distinct categories.
- Actors outside UNHCR might have a different understanding of the same terms.



1.4 ADDITIONAL RESOURCES

READ MORE!


UNHCR, [‘Refugees’ and ‘Migrants’ – Frequently Asked Questions \(FAQs\)](#)

[UNHCR, Persons in need of international protection, June 2017](#)

[UNHCR, Legal considerations on refugee protection for people fleeing conflict and famine affected countries, April 2017](#)

UNHCR, [10-Point Plan in Action General References and Glossary](#)

UN General Assembly, [In safety and dignity: Addressing large movements of refugees and migrants](#), 21 April 2016, A/70/59

 **VIDEO:** In this [10-minute video](#) from The Migration Observatory at the University of Oxford, Dr. Nicolas Van Hear explains the various meanings of, and policy challenges and opportunities related to, mixed movements.

Marina Sharpe, [“Mixed Up: International law and the meaning\(s\) of ‘mixed migration’”](#), an article in Refugee Survey Quarterly, Volume 37, Issue 1, 1 March 2018, pp. 116–138.

1.5 TEST YOUR KNOWLEDGE

SELF-REFLECTION EXERCISE

In your own words:

Can you explain the difference between refugees and migrants?

Can you state UNHCR’s definition of mixed movements?

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? QUIZ QUESTIONS

Answer the following questions to test your knowledge of the topics of Unit 1 you have just completed.

	True	False
UNHCR defines migrants as any people who change their country of usual residence, irrespective of the causes that triggered their movement.		
UNHCR always refers to refugees and migrants separately.		
Migrants can become refugees.		
Refugees become migrants when they move to another country.		

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UNIT 2: INTERNATIONAL LEGAL FRAMEWORKS RELEVANT TO REFUGEES OR MIGRANTS

All people have basic rights under international law regardless of their legal status.

The [International Protection Regime module of CP-IP](#) comprehensively details the legal frameworks applicable to refugees. In this module, only selected key State obligations in the context of mixed movements are highlighted.

States have the primary responsibility to ensure the enjoyment of the rights of all individuals, including refugees and migrants, within their jurisdiction.

States have the responsibility to provide protection to all people on their territory or under their jurisdiction, in accordance with their obligations under international law.

In managing their borders, States must balance sovereignty and national security with these legal obligations. In situations of mixed movements, striking this balance might be more challenging.

Specific categories of people on the move are entitled to additional rights related to their specific protection needs.

We will review the general provisions protecting all individuals on the move before turning to additional mechanisms set up for the protection of individuals in vulnerable situations.

2.1 KEY STATE OBLIGATIONS IN THE CONTEXT OF MIXED MOVEMENTS

Six international legal regimes that are particularly relevant to situations of mixed movements are covered here. In addition to international law, regional and national law can both bear on mixed movements.

2.1.1 International refugee law

As seen in Unit 1, refugees are specifically defined and protected under international refugee law.

Refugees enjoy a special status under international refugee law.

The [1951 Convention](#) is the key legal document that defines who is a refugee, what their rights are and the relevant legal obligations of States. Regional instruments further complement the global legal framework for protecting refugees.

Article 1 of the [1951 Convention](#) asserts that a refugee is any person who

“...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

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The main elements in the refugee definition are:

- a) Being outside of one's country of nationality/former habitual residence;
- b) Well-founded fear;
- c) Persecution;
- d) Reasons of race, religion, nationality, membership of a particular social group or political opinion; and
- e) Unable or unwilling to avail of one's own country's protection or to return there.

The rationale behind the need for international protection lies in the fact that refugees are in a specific predicament because they lack the protection of their own country.

The core principle of refugee protection is non-refoulement, which asserts that a refugee should not be returned to a country where she or he faces serious threats to their life or freedom.

Within the limits of international law set by the principle of non-refoulement, States have the sovereign right to choose who to admit, exclude and expel from their territory. States have a legitimate interest in controlling unauthorized entry to their territory and in combating international crime, including the smuggling and trafficking of persons. However, Article 33(1) of the 1951 Convention prohibits States parties from expelling or returning a refugee:

“...in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” except where “there are reasonable grounds for regarding [a refugee] as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”



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The principle of non-refoulement prohibits States from returning an individual in any manner whatsoever to a country or territory where their lives, physical integrity or freedom may be threatened or where they risk being submitted to torture or inhumane and degrading treatment or punishment at the hands of State or non-State actors.

In addition to the [1951 Convention](#), the non-refoulement principle is also found in a other human rights treaties, such as the [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) and the [International Covenant on Civil and Political Rights](#) (see section 2.1.2, below). Human rights norms may provide protection from refoulement additional to that afforded by refugee law in the following instances:

- A person is at risk of serious human rights violations but has been excluded from refugee status by Article 1(F) of the [1951 Convention](#);
- A refugee is subject to the national security exception in Article 33(2) of the [1951 Convention](#); and
- Someone who is not a refugee may be at risk of arbitrary deprivation of life, or torture or other cruel, inhuman or degrading treatment. Properly interpreted, the [1951 Convention](#) definition would cover all, or almost all people who suffer these serious human rights violations; the existence of this group is subject to ongoing discussion.

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States have a duty to establish whether removal of the person concerned breaches the principle of *non-refoulement*. *Non-refoulement* obligations apply wherever a State exercises jurisdiction.

Protection against *refoulement* applies to all people arriving at the border, irrespective of their immigration status, including during large-scale influxes of people.

Customary international law refers to a legal obligation resulting from a general and consistent practice of States followed out of a sense of legal obligation. UNHCR is of the view that the prohibition of *refoulement* satisfies these criteria and therefore constitutes a rule of customary international law. As such, it is binding on all States, including those that are not yet party to the [1951 Convention](#) or relevant human rights instruments.

In addition to providing the legal definition of ‘refugee’, the [1951 Convention](#) lays out the legal status of refugees in their country of asylum, along with their rights and their obligations.

2.1.2 International human rights law

Human rights are rights and freedoms to which a person is inherently entitled merely for being human.

The [Universal Declaration of Human Rights \(1948\)](#), together with the [International Covenant on Civil and Political Rights \(1966\)](#), the [International Covenant on Economic, Social and Cultural Rights \(1966\)](#) and its two [Optional Protocols](#), are considered the International Bill of Human Rights.

Other [international and regional instruments](#) further expand the human rights legal framework and may be of particular relevance to specific groups of people such as children, women, people with disabilities and migrant workers.

Both refugees and migrants benefit from human rights protection.

Core human rights are inherent to all people, regardless of their nationality or legal status. However, some rights are reserved for certain categories of people. For instance, the right to freedom of movement and choice of residence is limited to lawful residents (Article 12, [International Covenant on Civil and Political Rights](#)). [Other rights](#), such as political participation or economic rights, may also be limited to nationals.

The [International Covenant on Civil and Political Rights](#) elaborates the civil and political rights and freedoms listed in the Universal Declaration of Human Rights. It recognizes several rights that are of utmost importance to all people moving across international borders, including:

- The principle of non-discrimination (Articles 2 and 3) and the right to life (Article 6);
- The interdiction of torture or cruel, inhuman or degrading treatment or punishment (Article 7); and
- Protection from arbitrary arrest or detention (Article 9).

The [International Covenant on Economic, Social and Cultural Rights](#) focuses on economic, social and cultural rights. It distinguishes between immediate minimum standards and the progressive realization of additional standards. At a minimum, States must provide all individuals within their jurisdiction (including refugees and migrants) with the following:

- Adequate standard of living, including adequate food, clothing and housing (Article 11);
- Access to emergency health care (Article 12); and
- Access to minimum educational standards (Article 13).¹

¹ UN Committee on Economic, Social and Cultural Rights, [Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights](#), 13 March 2017, E/C.12/2017/1.

Additionally, States must take steps to progressively achieve the full realization of all the rights enshrined in the Covenant.

This progressive obligation component of the [International Covenant on Economic, Social and Cultural Rights](#) should not be interpreted as allowing States to indefinitely defer efforts to ensure the enjoyment of the rights laid down in the Covenant. The [1951 Convention](#) provides for non-contextual obligations towards refugees and therefore offers a stronger basis for protection.²

The right to leave one's own country and the right to seek asylum are particularly important to refugees.

The right to seek and enjoy asylum is enshrined in Article 14 of the Universal Declaration of Human Rights. Consistent with the [1951 Convention](#), this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. This does not necessarily translate into a State obligation to grant asylum to a certain individual, but States have a duty to prevent *refoulement*.



² Statement of the United Nations Committee on Economic Social and Cultural Rights, [Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights](#), E/C.12/2017/1.

The [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) applies to all migrant workers and members of their families and allocates rights depending on whether these migrant workers and family members are documented or not. It does not apply to refugees and stateless persons.

According to that Convention, all migrant workers and their families have the right to leave (Article 8), protection from collective expulsion (Article 22) and the right to diplomatic protection (Article 23). Moreover, the children of all migrant workers have the right to have their birth registered and to a nationality (Article 29).

Further rights are reserved for migrant workers and members of their families who are documented or in a regular situation, such as freedom of movement and residence (Article 39) and protection from arbitrary expulsion (Article 56).

The [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) may be relevant in mixed movement situations.

2.1.3 International humanitarian law

International humanitarian law is the branch of public international law applicable in times of international and non-international armed conflict. It is also known as the law of armed conflict. The rules of international humanitarian law are applicable regardless of the legality of the parties' use of force. They restrict parties to a conflict from using the means and methods of warfare of their choice and protect people and property affected or liable to be affected by war by balancing military necessity with humanitarian considerations. The basic principle underlying international humanitarian law is that, in any armed conflict, the right of the parties to choose methods or means of warfare is not unlimited.

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The four [Geneva Conventions of 1949](#) (the 1949 Conventions) and their two [Additional Protocols of 1977](#) (the 1977 Protocols) relate primarily to the condition of war victims in enemy hands, the protection of persons placed hors de combat and civilians not taking part in hostilities. The [1949 Conventions](#) have been ratified by 196 States Parties³ and are considered universal (binding on every state in the world). Moreover, much of what is in the [1949 Conventions](#) and the [1977 Protocols](#) is customary international law.

Because refugees and migrants can find themselves in the middle of armed conflict during their journeys, international humanitarian law can contribute to their protection.

Under international humanitarian law, refugees and migrants caught up in armed conflict are afforded protection under the general category of 'protected persons', for as long as they do not, or no longer, take active part in hostilities.

They benefit from the following provisions in particular (the list is not exhaustive):

- In the context of an international armed conflict, the [Fourth 1949 Convention](#) contains provisions prohibiting the use of civilians as human shields, the collective punishment of civilians, pillaging and reprisals against civilians.
- In the context of a non-international armed conflict, Article 3, which is common to the four [1949 Conventions](#), regulates the minimum protection the parties to a conflict must afford to people who are not, or are no longer, taking active part in hostilities. These include protection against:
 - » Violence to life and person, in particular murder, mutilation, cruel treatment and torture;
 - » Taking hostages;
 - » Humiliating and degrading treatment; and
 - » Passing sentences and the carrying out of executions without due process of law.

Additionally, certain [customary rules of international humanitarian law](#) are particularly relevant in the context of mixed movements, notably with regard to:

- Treatment of civilians and persons hors de combat (military personnel who are unable to take part in combat);
- Access to humanitarian relief for civilians in need;
- Search for, collection and treatment of the dead, along with the return of the remains and personal effects of the dead;
- Accounting for missing persons;
- Provision of basic necessities for people deprived of their liberty.

2.1.4 International criminal law

Both refugees and migrants may be affected by trafficking and smuggling. The [New York Declaration on Refugees and Migrants](#) recognizes, among other things, that refugees and migrants in large movements are at greater risk of being trafficked and subjected to forced labour.

The [Convention against Transnational Organized Crime](#) (2000), also known as the Palermo Convention, was supplemented by three protocols, known as the Palermo Protocols. Two of these are relevant to smuggling and trafficking:

- [Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children](#) (2000); and
- [Protocol against the Smuggling of Migrants by Land, Sea and Air](#) (2000).

The Palermo Protocols criminalize trafficking in and smuggling of persons, outline obligations regarding the protection of victims of trafficking in persons including with regard to their physical, psychological and social recovery, and focus on the need to strengthen border controls. Some of the Protocols' provisions may have the effect of limiting access to refugee protection.

³Including the Cook Islands, the Holy See and the State of Palestine.

This risk is addressed by the 'saving' clauses included in both Palermo Protocols (Article 14(1) of the [Trafficking Protocol](#) and Article 19 of the [Smuggling Protocol](#)). These clauses ensure that the rights of the concerned persons under other international law, in particular under the [1951 Convention](#) and particularly in light of the principle of non-ouffement, are not infringed by the measures laid out in the Protocols.

Trafficking and smuggling are often used interchangeably, but in fact they refer to different legal concepts. We will learn about key definitions and differences in the following sections.⁴

People smuggling

The [Protocol against the Smuggling of Migrants by Land, Sea and Air](#) (2000) defines 'smuggling' in its Article 3(a) as the

“...procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

Smuggling is therefore a commercial transaction between someone who wants to go to another country and another person who facilitates this. It involves irregular border crossing and entry into another State. Smugglers commit a crime against the State.

In some circumstances, smuggling may be considered a 'solution' for people who have no other way of escaping persecution, especially as States strengthen their border controls. However, smuggling may also lead to serious human rights violations such as exposure to sexual and gender-based violence and other forms of violence and exploitation. In some cases, smuggling can morph over the course of a journey into trafficking, in particular for the purpose of sexual exploitation.

The fact that a refugee has used the services of a smuggler should have no bearing on refugee status determination and should not result in penalization or criminal prosecution of the refugee.

⁴ See 'What is the Difference between Trafficking in Persons and Smuggling of Migrants?', ICAT Issue Brief 01, 10/2016.

⁵ UNHCR, [Guidelines on International Protection No. 7: The Application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked](#), 7 April 2006, HCR/GIP/06/07.

Human trafficking

UNHCR has a responsibility to ensure that people under its mandate do not fall victim to trafficking. We also have the responsibility to ensure that people who are refugees because of their experiences as a victim of trafficking are recognized and protected in accordance with Guidelines on International Protection No. 7 on the application of the 1951 Convention to victims of trafficking.⁵ The [Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children](#) defines 'trafficking in persons' in its Article 3(a) as the

“...recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”



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While smuggling ends with migrants' arrival at their destination, trafficking involves ongoing exploitation of the victim in some manner to generate illicit profits for the traffickers.

Trafficking victims never consent or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

A key element of the trafficking definition is that the action must be for the purpose of exploitation. The [Trafficking Protocol](#) defines exploitation as including, at a minimum, the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 3(a)).

Although exact figures are difficult to obtain, the risk of trafficking increases significantly in large movements of refugees and migrants.

Because of their past experiences, victims might not realize that they are in exploitative situations or prefer to remain in such situations rather than be returned to their country of origin. They may fear detention or deportation; they may not trust authorities. Moreover, trauma, stigma and feelings of shame can further prevent them from expressing themselves, and binding relationships with traffickers or fear of reprisals against them or their families often prevent them from taking action to change their situation.

Trafficking is a crime that impacts negatively on the dignity of a human being.

As a result, victims of trafficking tend to be affected severely and are in greater need of protection from victimization and other forms of further abuse, including sexual exploitation and forced labour, than are smuggled people.

The experience of having been trafficked may give rise to the need for refugee protection if it creates a well-founded fear of persecution in the country of origin, and the causal link can be established to any one single 1951 Convention ground or to a combination of these grounds.

States have a duty, first and foremost, to protect all victims of trafficking under their jurisdiction, regardless of the person's status.

Where a State's response is inadequate or not in accordance with international or national laws, international or national non-governmental organizations or international organizations, or civil society bodies, may help filling the gap. The United Nations Office on Drugs and Crime (UNODC) is the secretariat for the Conference of the Parties to the [Convention against Transnational Organized Crime](#) and its Protocols. The office plays a leading role in strengthening and coordinating the criminal justice response to human trafficking and smuggling of persons. Key resources on the differences between trafficking and smuggling, the concept of exploitation in the [Trafficking Protocol](#) and databases of case law are available on the [UNODC website](#). UNHCR is a member of the Inter-Agency Coordination Group against Trafficking in Persons (ICAT). The [ICAT website](#) contains a series of very helpful issues briefs and tools on trafficking.

It is becoming increasingly common to see the terms 'modern slavery' and 'trafficking in persons' used interchangeably in the media and in public discussions. UNHCR does not use 'modern slavery' because it is not a legal term. Its use could lead to confusion and consequent non-implementation of the obligations laid out in the Palermo Protocols.

2.1.5 International labour law

International labour law sets out the basic principles and rights that apply at work. It can protect individuals who have been trafficked into an exploitative labour situation. International labour law consists principally of:

- The [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) (1990);
- The International Labour Organization's eight fundamental conventions:
 - » [Forced Labour Convention](#) (1930);
 - » [Freedom of Association and Protection of the Right to Organise Convention](#) (1948);
 - » [Right to Organise and Collective Bargaining Convention](#) (1949);

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- » [Equal Remuneration Convention](#) (1951);
- » [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery \(the Abolition of Slavery Convention\)](#) (1957);
- » [Discrimination \(Employment and Occupation\) Convention](#) (1958);
- » [Minimum Age Convention](#) (1973); and
- » [The Worst Forms of Child Labour Convention](#) (1999).

 The following are key concepts that emerge from these instruments:

Forced labour is defined as all work or service extracted from any person under the menace of any penalty and for which the person has not offered himself voluntarily ([Forced Labour Convention](#), Article 2(1))

Slavery is defined as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised ([1926 Slavery Convention](#), Article 1(1)). **Debt bondage** is defined as the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined ([Supplementary Convention on the Abolition of Slavery](#), Article 1(a)).

Child labour is defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to their physical and mental development.

The worst forms of child labour entail:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, for the production of pornography or for pornographic performances;

- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children ([The Worst Forms of Child Labour Convention](#), Article 3).

2.1.6 The Law of the Sea

Maritime zones have an important role in determining whether an individual falls within a State's jurisdiction.

Under the [Convention on the Law of the Sea \(1982\)](#), the area of sea extending to a maximum of 12 nautical miles from a State's coastline is within the state's exclusive territorial jurisdiction. This area is, for all intents and purposes, within State territory; international legal obligations apply accordingly.

The area of sea extending to a maximum of 24 nautical miles from a state's coastline is known as its contiguous zone. Under the Law of the Sea, the coastal State has limited powers within its contiguous zone.

The international waters beyond the contiguous zone are known as the high seas. Vessels on the high seas and their passengers are under the exclusive jurisdiction of the flag State (the State where the vessel is registered), unless an exception applies.

Both States and shipmasters have the obligation to rescue individuals in distress at sea, regardless of their nationality or status or the circumstances in which they are found.

Distress is a situation where there is reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.

Rescued individuals must be disembarked to a place of safety as soon as is reasonably practicable. Arrangements for the disembarkation of people rescued at sea must not result in their return to a place where they are at risk of persecution or ill-treatment.

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A place of safety is a location where rescue operations are considered to terminate and where:

- The survivors' safety of life is no longer threatened;
- Basic human needs such as food, shelter and medical needs) can be met; and
- Transportation arrangements can be made for the survivors' next or final destination.

State-controlled vessels may not engage in or allow refoulement, whether direct or indirect.

In order to prevent refugees and migrants from reaching their territories, States sometimes intercept vessels.

Search and rescue is a humanitarian act, while maritime interception is carried out by States for border and/or security control purposes and is only lawful in certain limited circumstances.

The Law of the Seas and the [Smuggling Protocol](#) allow for maritime interception in certain limited circumstances to prevent infringement of a State's customs, fiscal, immigration or sanitary laws and regulations, to punish such infringements and to prevent and combat the smuggling of migrants.



However, State action must not lead to a risk of refoulement, prevent refugees from seeking protection, attempt to shift responsibility for providing international protection or otherwise weaken international cooperation on refugee protection. It is sometimes difficult to distinguish between rescue and interception.

Conducting refugee status determination or screening procedures onboard ships is generally not appropriate.

For additional resources on this topic see also: International Maritime Organization, International Chamber of Shipping and UNHCR, [Rescue at Sea: A guide to principles and practice as applied to refugees and migrants](#), 2015; and UNHCR, [General Legal Considerations: Search-and-rescue operations involving refugees and migrants at sea](#), 2017.

2.2 PROTECTION FOR INDIVIDUALS WITH SPECIFIC NEEDS IN MIXED MOVEMENTS

Refugees and migrants can experience similar risks while moving together in mixed movements. Whereas refugees and migrants may have differing needs in the medium- to long-term, it is important to address the immediate needs of all individuals on the move.

Specific needs may arise because an individual is in a vulnerable situation

Both refugees and migrants face common challenges and can be exposed to the same human rights violations and violations of international law due to their individual circumstances or the situations in which they are traveling.

Vulnerability stemming from specific individual characteristics is notably experienced by children, particularly those who are unaccompanied or have been separated from family; older people; people with mobility, sensory, intellectual or other disabilities; people with chronic illnesses or other medical needs; and victims or survivors of sexual and gender-based violence, other forms of violence or trafficking. Vulnerable individuals may or may not fall within the scope of the refugee definition.

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Situational vulnerabilities frequently arise when mixed movements take place along irregular travel or migration routes, resulting in people's exposure to exploitation and abuse, including sexual and gender-based violence and other forms of violence, by smugglers, traffickers, recruiters and corrupt officials. Other situational vulnerabilities include risk of death aboard unseaworthy boats or during hazardous desert and other land crossings. Lack of legal documentation, the absence of family or community support and limited knowledge of the local language or discrimination can all exacerbate risks.

The need for international protection

These immediate and specific needs must be distinguished from the need for international protection. International protection is required for individuals or groups who are outside their own country, who are unable to return home because of a serious threat to their life, physical integrity, or freedom as a result of persecution, armed conflict, violence, , or serious public disorder, against which their country is unwilling or unable to protect them. People in need of international protection are typically entitled to protection against refoulement.

People travelling within mixed movements can have multiple needs and fit into several categories.

The [10-Point Plan](#) recommends the establishment of differentiated processes and procedures for various categories of people travelling as part of mixed movements. This allows tailored and appropriate responses based on the specific needs and profiles of the people involved. Further details about this are provided in Unit 3.

The human rights of refugees and migrants in vulnerable situations must be respected and their immediate and specific needs met.

Although the treatment of refugees and migrants is governed by separate legal frameworks, meeting their needs requires a rights-based approach carried out in a people-centered, sensitive, dignified, gender-responsive way. Their specific and immediate needs – whether they are a migrant or a refugee – should be met.

These immediate needs can include rescue, appropriate and gender-sensitive reception arrangements, family reunification, access to medical assistance (including psychosocial services) and help availing themselves of national or consular services.

The New York Declaration for Refugees and Migrants refers to '**migrants in vulnerable situations**', and this led some actors to include refugees in that category. It is important to recall that refugees are a distinct and independent category that cannot be subsumed under the undefined label of 'migrants in vulnerable situations'.⁶

⁶UNHCR, '[Migrants in vulnerable situations](#)': UNHCR's perspective, June 2017.

2.3 TAKEAWAY POINTS

 Before moving on, please revisit the following key takeaway points:

- States have the sovereign right to choose whom to admit, exclude and expel from their territory within the limits of international law set by the principle of non-refoulement.
- States are responsible for protecting all individuals under their jurisdiction, including refugees, migrants and victims of trafficking.
- Migrants enjoy the protection of their country of origin, which is not the case with refugees and other persons in need of international protection.
- Because of their specific status and particular needs, refugees enjoy the protection of international refugee law as well as international human rights law.
- Because international refugee law is not, by definition, applicable to migrants, international human rights law is particularly important for their protection.
- Non-refoulement is a key principle of international refugee law and international human rights law. It is the cornerstone of the international protection regime.
- A key distinction between trafficking and smuggling is that trafficking is for the purpose of exploitation, which often continues in the country of destination, while smuggling is a commercial transaction.
- Trafficking, and in certain circumstances also smuggling, raise specific protection issues and challenges.

2.4 ADDITIONAL RESOURCES

ILO, [Forced Labour Convention](#) (1930)

UN General Assembly, [Universal Declaration of Human Rights](#) (1948)

ILO, [Freedom of Association and Protection of the Right to Organise Convention](#) (1948)

ILO, [Right to Organise and Collective Bargaining Convention](#) (1949)

ICRC, [The Geneva Conventions of 1949 and their Additional Protocols](#)

UN ECOSOC, [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#) (1956)

ILO, [Worst Forms of Child Labour Convention](#) (1999)

ILO, [Discrimination \(Employment and Occupation\) Convention](#) (1958)

UN General Assembly, [International Covenant on Civil and Political Rights](#) (1966)

UN General Assembly, [International Covenant on Economic, Social and Cultural Rights](#) (1966)

ILO, [Minimum Age Convention](#) (1973)

UN General Assembly, [Convention on the Law of the Sea](#) (1982)

UN General Assembly, [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (1984)

UN General Assembly, [International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families](#) (1990)

UN General Assembly, [Convention against Transnational Organized Crime](#) (2000)

UN General Assembly, [Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime](#) (2000)

UN General Assembly, [Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#) (2000)

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▶ (UNODC), '[Affected for Life](#)', a film that raises awareness of human trafficking and illustrate the elements and different forms of trafficking for practitioners

UNHCR, '[Migrants in vulnerable situations](#)': UNHCR's perspective

UNHCR, [Persons in need of international protection](#)

UNHCR, Guidelines on International Protection No. 7: [The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked](#)

UNHCR, [UNHCR Policy on Age, Gender and Diversity](#)

UNHCR's [10-Point Plan in Action](#) provides examples of good practice from around the world and a variety of tools for timely and effective responses at all stages of the process – from rescue, to entry, reception, screening, referral and differentiated procedures. It contains guidance on addressing specific needs, such as facilitating family reunification, identifying and protecting victims of trafficking, creating protection support hubs for women and children, facilitating access to medical and psychosocial assistance, and linking individuals with national or consular services.

ICAT, [Trafficking in Persons and Refugee Status](#)

ICAT, [What is the Difference between Trafficking in Persons and Smuggling of Migrants?](#)

The Committee on Economic, Social and Cultural Rights, '[Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights](#)'

2.5 TEST YOUR KNOWLEDGE

SELF-REFLECTION EXERCISE

In your own words:

Can you explain how international law protects refugees and migrants?

How would you describe the difference between smuggling and trafficking?

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? QUIZ QUESTIONS

Answer the following questions to test your knowledge of the topics of Unit 2 you have just completed.

	True	False
Migrants are protected under human rights law.		
A refugee who resorted to the services of a smuggler does not qualify as a refugee.		
Children on the move in mixed movements situations face specific protection risks and have specific needs.		
Individuals in mixed movements may have multiple needs.		

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