



**Remarks at the Opening Plenary Panel of the UN High Commissioner for  
Refugees' Dialogue on Protection at Sea by Kathleen Newland,  
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Geneva, 10 December 2014

I want to thank High Commissioner Guterres for convening this dialogue on a truly compelling subject, and for inviting me to join this opening panel. I am a naval captain's daughter, and so protection at sea has always had a particular resonance for me.

Stepping a bit outside the usual terms of reference for discussion of this subject, I want to make five observations, about

- Unintended consequences
- Blind men and elephants
- Squeezing balloons
- Wicked problems
- And, finally, lest you think I have completely lost my mind, about international cooperation

1) So first, on *unintended consequences*: On a global basis, travel by sea accounts for a small proportion of refugees and migrants, but it gets a disproportionate share of attention from policymakers, the media, and the public, partly because it is so dangerous, and presents such challenges to sovereign control of national borders. It conjures up echoes of “invasion” to some people, and presents heart-rending images of suffering and death when boats founder. For all these reasons, unauthorized travel by sea is often met with crisis-driven responses, ranging all the way from rescue to harsh deterrence. The crisis-driven policy responses to maritime migration are rife with unintended consequences. For example:

- Border control measures intended to deter unauthorized migration often leave refugees with no legal way to escape their persecutors.
- More intense and sophisticated measures to intercept unauthorized boats have taken the journeys out of the hands of amateurs and placed them more firmly in the hands of professional smugglers, many of them part of ruthless criminal networks. The increasingly sophisticated tactics used by smugglers pose a major challenge to policymakers, and layer an additional danger on to the refugee’s experience of persecution and flight. Criminals have perfected the art of “engineered helplessness,” no longer seeking to evade authorities, but deliberately sabotaging boats as soon as rescuers come into view.
- People may be encouraged to take greater risks, and allow themselves to be crammed into unseaworthy boats because of the false confidence that search and rescue operations are more comprehensive than they can ever be on a vast and unpredictable sea. These dilemmas have no simple solutions.

2) *The blind men and the elephant*. I'm sure you all know the story of the six blind men who went to observe an elephant and came up with completely different ideas of what the creature was, because each one touched a different part. One felt the ear, one felt the tusk, another felt the leg, and so forth.

Maritime migration involves an enormous array of different actors, and each has a different perspective on the issue. Refugees, asylum seekers, stateless people, and other migrants travel together on clandestine sea voyages using similar means to serve different needs. Other actors include states and their official structures like border control agencies and navies, private-sector interests like fishing vessels and commercial shipping, international and humanitarian organizations like UNHCR, regional bodies like the European Union's border control agency (Frontex), civil-society organizations that defend human dignity and human rights, and criminal syndicates that profit from the desperation of migrants. Like the blind men and the elephant, each of these different actors perceives unauthorized maritime migration through a different lens—one sees it as an issue of humanitarian protection, another as law enforcement, another as national security, or politics, or profits. And not only does each actor have a different perspective, each responds to different laws, regulations, incentives, norms, and operational standards. This makes coherent policies very difficult to achieve and implement.

3) *Squeezing the balloon*. As you know, a state's obligation to refugees and certain other categories of people requiring international protection is very different from its obligations to other migrants. When people are rescued at sea, states must enter a sometimes arduous process of distinguishing between those who are refugees and those who are not. Then the question arises of where those who need protection might be able to find it. The answer is often a matter of controversy among states, and delays in answering it can discourage passing ships from coming to the aid of people in distress, or raise the costs to them of providing rescue. When states attempt to deflect responsibilities for protection at sea to other parties, the problem is not solved, but simply pops up in a different place or in a different form. Maritime migration and the protection issues associated with it are just too complex to be able to predict the results of any single action to control it. Apparent resolution of the problem in one particular place and time is likely to reflect not true resolution but deflection or delay—a process of “squeezing the balloon” so that the problem emerges elsewhere. This is particular true when people move by sea, because unlike a border fence on land, a sea barrier is never fixed. It requires continuous, ongoing investment over an indefinite period—or the balloon will bulge out again.

4) *Wicked problems*. This is a term borrowed from urban planning that describes extremely complex, hard-to-resolve social problems that are dynamic and interconnected and resistant to solutions. Two of the major challenges in confronting wicked problems are defining the problem and identifying goals. Defining the problem is difficult because wicked problems are both causes and symptoms of other problems—and, going back to the blind men and the elephant, the explanation of the problem depends on the perspective of the observer. Maritime migration is intimately connected to poverty, repression, violence, inequality, the growth of organized crime, the rise of right-wing populism, the erosion of international norms, and dozens of other equally wicked problems.

Wicked problems are not likely to be definitively solved, “but only re-solved—again and again.” This implies that states will have to learn to live with imperfection, and engage in a continuous process of trial and error.

One thing the participants at this dialogue should not expect to accomplish is to solve the problem. It is too difficult, dynamic, and complex. The multiple state- and non-state actors, the mixed flows of refugees and non-refugees, the overlapping and sometimes contradictory legal regimes, the fluctuating state policies, the secondary movements of people from countries of first asylum, and the constantly shifting sources, routes, and destinations, and the inter-

relatedness with other equally complex problems, guarantee that combining control of sea routes and protection of refugees will require a long, hard, and persistent effort. Policy will have to be flexible, adaptive, and oriented toward the long term. Bringing together the pieces of a puzzle that constantly shifts shape and dimension is a particular policy challenge and one that governments, civil society, the private sector, and international organizations must tackle together.

5) This brings me to my fifth and final point—about *international cooperation*. The failure to cooperate and share the responsibilities of protection at sea will lead—is leading —to greater disorder in international migration corridors and to less protection for refugees. Countries of first asylum and front-line coastal states are experiencing growing pressure from refugee and unauthorized migrant arrivals. If these states are overwhelmed and left to face these challenges unaided, they may resort to push-backs to even less capable countries, or tolerate irregular departures to other countries. They may suffer from growing lawlessness associated with the presence of criminal elements attracted by smuggling opportunities. The costs of not cooperating are high, and they escalate if cooperation does not even begin until a crisis is very nearly out of control.

As I mentioned at the outset, my father was a captain in the U.S. Navy. I grew up singing the navy hymn, still my favorite, which asks protection “for those in peril on the sea.” This dialogue over the next two days is about earthly rather than divine protection, but I hope we will nonetheless keep the focus on “those in peril on the sea.”