

“Convention Plus”: Questions and Answers

Updated: 20 May 2003

Introduction

1. This note provides additional information on the “Convention Plus” initiative of the United Nations High Commissioner for Refugees, requested by States at preparatory consultations. It describes the legal basis of the special agreements which are envisaged under "Convention Plus", and their links to the Agenda for Protection¹. The note also provides details about the role and functioning of the Forum. The amendments introduced by this update are to be found in paras. 26-40.

What is “Convention Plus”?

2. UNHCR’s Global Consultations on International Protection had a particular focus on the *tools of protection*: those presently available to the international community, and those in need of development for better global management of refugee problems. The intention was to make the international response more reliable and effective, as well as to ensure greater equity in the sharing of responsibilities and burdens. A specific call for the development of new arrangements and tools is made in several parts of the Agenda for Protection. During the fifty-third session of the Executive Committee of the High Commissioner’s Programme (ExCom) in October 2002, the High Commissioner called for the development of such tools, in the form of multilateral “special agreements”, to complement the 1951 Convention. The agreements are intended to set in place joint arrangements in areas where multilateral commitments are called for and where they are negotiable. The High Commissioner termed these tools “Convention Plus”.

Does this mean that the 1951 Convention should be revised?

3. The 1951 Convention and 1967 Protocol remain the foundation for the international protection of refugees. The continued relevance and validity of the Convention was reaffirmed by all States Parties in the Declaration adopted at the Ministerial Meeting in December 2001. While the Convention remains an essential framework of refugee rights, it does not alone suffice. There is a need to clarify the apportioning of responsibilities and to promote a better sharing of responsibilities by States, notably in the context of mass influxes and mixed migratory flows, as well as for durable solutions. “Convention Plus” is *not*, therefore, about revising the Convention, but about *building* on it.

What types of issues have been identified as lending themselves to "Convention Plus" special agreements?

4. Drawing upon the High Commissioner's own suggestions, the following areas of activity have been identified for consideration as possible subjects of "Convention Plus" agreements:

¹ See A/AC.96/965/Add.1, endorsed by the fifty-third session of the Executive Committee in October 2002 (A/AC.96/973, para. 21 (a)), and later welcomed by the General Assembly (A/RES/57/187, para. 6).

- Comprehensive plans of action to ensure more effective and predictable responses to mass influx;
- Development assistance targeted to achieve more equitable burden-sharing and to promote self-reliance of refugees and returnees in:
 - countries hosting large numbers of refugees²
 - refugee-hosting communities facilitating local integration in remote areas
 - countries of origin in the context of reintegration;
- Multilateral commitments for resettlement;
- Roles and responsibilities of countries of origin, transit and destination in "irregular" or "secondary movement" situations (multilateral readmission arrangements; capacity-building; extraterritorial protection arrangements in a responsibility-sharing framework).

What is the legal basis of special agreements and how have they been used in the past?

5. The legal basis for these agreements is paragraph 2(b) of General Assembly resolution 428(V) of 14 December 1950 and paragraph 8(b) of UNHCR's Statute. Their purpose is "the execution of any measures calculated to improve the situation of refugees falling within the competence of the Office and to reduce the number requiring protection". Thus far³, they have mostly been:
 - (i) concluded at the executive level;
 - (ii) by or on behalf of the High Commissioner with a limited number of Governments;
 - (iii) focused on operational measures; and
 - (iv) tied to a specific group of refugees or a specific situation.

Are "special agreements" legally binding?

6. Special agreements are distinct from the "international conventions ... and ... amendments thereto" mentioned in paragraph 8(a) of UNHCR's Statute, which are concluded between States and are meant to be of a law-making character and legally binding.
7. The binding nature of special agreements depends on whether the parties have the intention to give legal effect to their commitments. If so, their mutually accepted rights and obligations would, in theory, be legally enforceable. Agreements that are meant to be legally binding would, in fact, constitute "hard law" and, more specifically, treaties under international law.
8. An important consideration is, of course, the content of the agreement. Specific commitments will lend themselves better to binding agreements than broad policy exhortations. However, a single document may contain a combination of the two, and, in the final analysis, the intention of the signatories is the determining factor.
9. While special agreements do not have to be legally binding *per se*, they must at a minimum reflect an important political commitment on the part of the concerned States to act in a particular and predictable manner. It is indeed standard practice for many Governments to agree on joint statements of policy and intentions that do not necessarily establish legal obligations, but do

² What number of refugees is considered to be "large" for the purpose of this note will be defined further through the Forum process.

³ Typical examples are tripartite agreements on voluntary repatriation and the 1989 Comprehensive Plan of Action for Indo-Chinese Refugees (CPA). A quick review of UNHCR's organisational practice reveals that there have been, for example, some twenty-four special agreements dealing with voluntary repatriation.

determine, or at least substantively influence, their decisions. While not of a “hard law” character, such agreements serve to govern the mutual relations between the States in question.

10. “Special agreements” can generally be characterised as: (i) written arrangements worked out by UNHCR and Governments; (ii) intended, depending on their subject matter, either to be legally binding or to reflect an important degree of political commitment; (iii) reflecting the intention of those involved to act in an agreed manner towards each other; (iv) concluded for the purposes mentioned in paragraph 8(b) of the Statute, i.e. ultimately for the benefit of refugees.

What form could special agreements take?

11. A useful, albeit not the only, model is the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA). UNHCR played an important role in negotiating and implementing the CPA. The final document was agreed upon at an international conference by senior officials who were empowered to commit their Governments. Even though the document was not signed, the level of political commitment was high. The agreed plan did not contain normative or interpretative guidelines, but established roles and responsibilities on how to manage and resolve a refugee situation.
12. Special agreements could therefore take the form of signed documents of a contractual nature or non-signed documents of a declaratory nature adopted in an international forum. They should contain *multilateral commitments in the form of Arrangements or Declarations*. UNHCR will be guided by the wish of States as to whether a particular agreement should be drafted in legally binding form.

Could "Convention Plus" special agreements be generic or situation-specific?

13. Depending on the subject matter and the wishes of those involved, special agreements could be either generic or situation-specific. Paragraph 8(b) of the Statute is broad enough to cover both, even though its historical context, as well as its terms (“... the execution of any measures calculated to ...”) most directly point to specific refugee groups or situations.
14. *Generic* special agreements might serve as commitments by UNHCR and participating States. While incorporating general principles and referring to legal standards, they could focus on the roles and responsibilities of the actors involved. However, the less abstract and conceptual, the more valuable such special agreements will be. *Situation-specific* agreements would address situations in particular countries or involving particular groups of refugees, with a view to achieving durable solutions (for instance, in the case of a massive refugee outflow or a protracted refugee situation).
15. Implementation of the agreements should be measurable in a clear way. There are a number of possible options: a) a quantitative option (that is, the commitments are based on "numbers", for example, as percentages or absolute amounts of development assistance or numbers of refugees); or b) a process option (that is, the establishment of a process for assessing and monitoring the implementation of commitments). Otherwise, commitments are linked only to the good intentions of the signatories, which may or may not suffice to ensure proper implementation.

What could special agreements on mass influx situations potentially cover?

16. **Links with the Agenda for Protection:** UNHCR is encouraged to promote better responsibility-sharing in mass influx situations and “to work on arrangements which might be put

in place to co-ordinate a comprehensive approach based on burden-sharing”⁴. This action point is inspired by the “toolkit” concept elaborated in one of UNHCR’s background papers for the Global Consultations. Also, States are called upon “to consider the usefulness of specific burden-sharing agreements, negotiated either bilaterally or multilaterally,...”⁵ and “to target financial and technical assistance in a manner that boosts the capacity of countries of first asylum to meet basic protection needs and to provide essential services”⁶.

17. Special agreements in this area could, in essence, cover modalities of burden-sharing in the event of mass influx. They would be commitments specific to particular situations of mass influx. Such agreements might include the following elements:
- types of operational and financial assistance;
 - trigger and co-ordination mechanisms;
 - admission and temporary protection;
 - standards of treatment;
 - registration and documentation;
 - separation of combatants;
 - humanitarian evacuation and/or resettlement quotas; and
 - policy parameters for durable solutions.

What could special agreements on the targeting of development assistance potentially cover?

18. **Links with the Agenda for Protection:** The Agenda refers to “specific burden-sharing agreements” for protracted refugee situations⁷; calls on States to consider allocating development funds, possibly a percentage thereof, to programmes simultaneously benefiting refugees and the local population⁸ requests States and UNHCR to encourage international financial institutions to consider to what extent the economic and social costs of hosting large numbers of refugees can be factored into the justification for and conditions of financial lending schemes⁹; requests UNHCR to undertake a systematic review of long-standing refugee situations “with a view to exploring with States and other partners the feasibility of comprehensive plans of action, bringing into play each of the available durable solutions”¹⁰; calls for the early involvement of development partners¹¹; and requests States to work with development actors to contribute to local integration¹².

19. Tapping development assistance to achieve durable solutions is a subject matter that could lend itself to generic special agreements. This could be done in relation to three different situations: i) countries hosting large numbers of refugees; ii) refugee-hosting communities attempting to facilitate local integration in remote areas; and iii) countries of origin in the context of reintegration. In terms of special agreements, two options are possible: a) either a comprehensive agreement reflecting these three different situations in a single text, or b) three separate agreements on each of these situations. A key consideration would be which of these options would better reflect the interest of donors to provide overseas development assistance to host countries/communities for the purpose of providing refugees with solutions in the areas/regions of origin.

20. Elements for consideration could possibly include the following:

⁴ Goal 3, objective 1, action 1

⁵ Goal 3, objective 1, action 3

⁶ Goal 3, objective 2, action 2

⁷ Goal 3, objective 1, action 3

⁸ Goal 3, objective 2, action 5

⁹ Goal 3, objective 1, action 4

¹⁰ Goal 5, objective 1, action 1

¹¹ Goal 5, objective 3, action 3

¹² Goal 5, objective 4, action 3

- recognition of burden and responsibility sharing by host countries and donors;
- general understanding of the search for solutions, preferably in the areas/regions of origin;
- role of host countries;
- role of “donors”;
- role of development actors and other political/regional bodies where appropriate (for example, the Bretton Woods institutions, UNDP, bilateral development agencies, regional banks).

What could a special agreement on resettlement potentially cover?

21. **Links with the Agenda for Protection:** The Agenda calls on States and UNHCR to ensure the availability of increased resources for resettlement opportunities and better use of resettlement both as a tool of burden-sharing and as a durable solution¹³.
22. A generic special agreement on resettlement might cover the following elements:
- its overall purpose and strategic use in durable solutions strategies;
 - the circumstances that would trigger it as a durable solution;
 - streamlined procedures; and
 - quotas.

What could special agreements on secondary flows potentially cover?

23. **Links with the Agenda for Protection:** UNHCR is asked “to work with States of origin, transit and destination ... on a package of measures which might be brought into play, as part of a comprehensive plan of action, for particular irregular or secondary movement situations”¹⁴; States are called upon, “in consultation with ... IOM, but also UNHCR ... to develop strategies, including bilateral and multilateral re-admission agreements, to promote the return of persons not in need of international protection ...”¹⁵; UNHCR and States are requested to seek to reach common understandings on responsibilities in the context of rescue-at-sea ...”¹⁶.
24. The asylum/migration nexus has received heightened attention in a number of different forums but is largely uncharted terrain when it comes to concrete commitments of States. It is therefore particularly important that any initiative in this area be preceded by, and premised on, clear understandings on a number of key issues, such as the following:
- the meaning of “effective protection” in countries of first asylum;
 - "safe country" designations;
 - burden-sharing in relation to countries of first asylum, particularly with a view to strengthening protection (including reception) capacities in host countries;
 - safeguards in interception measures; and
 - responsibilities in the context of rescue-at-sea.
25. Work on some of these complex subjects is already under way and, in fact, foreseen as part of implementation of the Agenda for Protection. On the basis of these understandings, a multilateral framework to address secondary flows could, *inter alia*, cover the following elements:
- better information exchange;
 - capacity building to strengthen national asylum systems, especially in regions of origin;
 - readmission arrangements;

¹³ Goal 5, objective 6, action 6

¹⁴ Goal 2, objective 4, action 2

¹⁵ Goal 2, objective 7, action 1

¹⁶ Goal 2, objective 1, action 5

- extraterritorial protection arrangements in a responsibility-sharing framework (e.g. increased resettlement through embassy procedures; pooled quotas; orderly departure programmes from countries of origin; labour-migration quotas); and
- return of rejected asylum-seekers to countries of origin.

What would be the role of the Forum?

26. The convening of the Forum is at the initiative of the High Commissioner, deriving from his mandate. It is not intended to become a permanent body, but instead to serve as a process of consultations, building on the momentum of the Global Consultations on International Protection, in order to pursue the High Commissioner's "Convention Plus" Initiative. The Forum is intended to identify and set in train comprehensive approaches to solving refugee problems, including through special agreements.

Invitations

27. Forum meetings will be open to all States members of ExCom, as well as to observers of the Standing Committee. In addition, the High Commissioner may extend invitations to other States, intergovernmental and non-governmental organisations, as well as development partners, academic experts and others who can make a positive contribution to the work of the Forum.
28. In view of the benefits which came with the open and participatory character of the Global Consultations on International Protection, the High Commissioner attaches particular importance to canvassing views and inputs from a broad range of actors. The participation of NGOs and experts is therefore considered valuable to inform the work of the Forum. However, when the process moves from discussions within the Forum to negotiating and drafting special agreements, this shall be the responsibility of directly interested States, working together with UNHCR.

Chair of the Forum

29. The High Commissioner, or in his absence the Director of the Department of International Protection, will chair the meetings.
30. To encourage an inter-active dialogue within the Forum, the High Commissioner will chair the meetings in a flexible manner, without recourse to any formal rules of procedure.
31. At the end of each Forum meeting the High Commissioner will make a summary of the discussions, which will be provided to participants in writing following the meeting. This will form the basis for further work and serve to inform the Executive Committee of the proceedings. The High Commissioner will also consult the Chairman of ExCom, as appropriate, on various aspects of the organisation and work of the Forum as it progresses.

Forum Secretariat and documentation

32. UNHCR's ExCom Secretariat will serve as the secretariat of the Forum. Interpretation will be provided into all six official UN languages. Documentation will be made available in English and French only.
33. Documentation for Forum meetings, including an annotated order of business, will be prepared by UNHCR. In addition, the High Commissioner may invite those States that volunteer to facilitate

the crafting of special agreements, to provide the Forum with written materials in a timely manner, to enable the Secretariat to make arrangements for their distribution.

Schedule of Meetings

34. The first meeting will be convened on 27 June 2003, in connection with the meeting of the Standing Committee. Thereafter it is foreseen that the Forum will meet twice a year.

Facilitation by States

35. A State may inform the High Commissioner of its interest in acting as a facilitator for the crafting of a particular special agreement, in collaboration with UNHCR. The role of the facilitating State could include preparing a background note for the Forum and proposing elements that might form the basis of a special agreement; working further with UNHCR and all concerned States to ensure that all views are canvassed in the drafting of the agreement; and assisting the High Commissioner in keeping the Executive Committee and the Standing Committee fully informed of progress made.

Formalization of Special Agreements: Role of the Forum and ExCom

36. The Forum will debate the elements of proposed agreements, including, as appropriate, the form they should take and other potential modalities. When the process moves from discussions within the Forum to negotiating and drafting special agreements, this shall be the responsibility of directly interested States, working together with UNHCR.
37. States subscribing to a special agreement would signal their intention or preparedness to do so to the High Commissioner, so as to enable him to take appropriate action with the States concerned and ExCom.
38. The Forum may also seek to encourage other States to adhere to a given special agreement.
39. The High Commissioner will report on progress made in the Forum, and in the “Convention Plus” process as a whole, to the relevant Standing Committee and/or the annual session of ExCom.
40. In addition, the High Commissioner may decide to present a special agreement, depending on its nature, to the Executive Committee for information or action. The Executive Committee may decide what action is most appropriate (e.g. adoption of a Conclusion, endorsement, etc.) to follow it up within the ExCom framework.

UNHCR/ “Convention Plus” Unit
