
prima facie

The Newsletter of UNHCR's Department of International Protection

August 2001

Global Consultations **Update**

First Track

The Swiss government has set up an Advisory Group of ambassadors of States Parties to the 1951 Convention and/or the 1967 Protocol to assist with preparations for the 12 December Ministerial Meeting of States Parties. The Group has met twice so far, on 15 June and 19 July, to consult on the draft Declaration to be adopted at the December gathering and to exchange views on the format and rules of procedure for the Meeting. The Declaration, format and related matters are expected to be finalized at the Preparatory Session of the Ministerial Meeting, which will be held in Geneva on 20 and 21 September.

The Ministerial Meeting has already received backing from such diverse bodies as the Inter-Parliamentary Union, the Council of Europe, the Organization of American States and the Organization of African Unity. All have adopted resolutions supporting the Meeting and reaffirming the importance of the 1951 Refugee Convention as the foundation of the international refugee protection regime.

For more information on First Track events, contact either the Secretariat of the Ministerial Meeting, located at the Permanent Mission of Switzerland (secretariat.51convention@eda.admin.ch), or Philippe Leclerc

(leclerc@unhcr.org) and José Riera (riera@unhcr.org) at HCR.

Second Track

The second expert Roundtable of the Global Consultations' Second Track had something of a dual personality. The first day was devoted to a high-level legal discussion of non-refoulement (Article 33); the second day unfolded into a brainstorming session about how best to supervise implementation of the Refugee Convention. Co-organized by HCR and the Lauterpacht Research Centre for International Law, the gathering drew 29 participants from 19 countries, representing governments, NGOs, academia, the judiciary and the legal profession. Participants based their discussions, held in Cambridge, England, on 9 and 10 July, on papers commissioned from Sir Elihu Lauterpacht and Daniel Bethlehem ("The Scope and Content of the Principle of Non-Refoulement") and Professor Walter Kaelin ("Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond").

HCR's intention in commissioning the paper on Article 33 was to obtain, in the words of DIP Director Erika Feller, "an opinion of the purest and

most authoritative type". Interest in this issue is great, not least because it is crucial for HCR to be able to define non-refoulement to States that are not parties to the Convention. Bethlehem commented that he and his co-author did not regard their Opinion as a piece of advocacy, but rather as a well-argued, mainstream document. Among the key conclusions generally endorsed after the first day's discussion:

- Non-refoulement is a principle of customary international law.
- Article 33 applies to refugees, irrespective of their formal recognition, and to asylum-seekers.
- The principle of non-refoulement encompasses any measure that could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his/her life or freedom would be threatened, or where he/she is at risk of persecution, including interception, rejection at the frontier or indirect refoulement.
- The principle of non-refoulement applies in mass influx situations.

During the second day, participants considered Kaelin's paper as well as various written comments on the paper received earlier. Recommendations from the Global Consultations Regional Meeting held in San José, Costa Rica, on 7 and 8 June, also fed into the discussion, as participants at that gathering compared HCR's supervisory role to

Giving "a Face to HCR's Protection Mandate": A Mid-term Assessment of the Global Consultations

Midway through the Global Consultations, DIP Director Erika Feller assessed the process to date and looked ahead to the Ministerial Meeting and beyond.

pf: Are you satisfied with the results of the Global Consultations process thus far?

EF: The Global Consultations process has proved its worth already in that protection has never been on so many agendas before, both inside and outside HCR, and in such a detailed way. We should not underestimate the importance of that. The Consultations have given a face to HCR's protection mandate and given a content to the idea of protection that States and individuals can relate to. Also, it has thrown up important suggestions that we are now following up.

pf: Such as?

EF: Such as looking at the 1951 Convention regime and its application in mass influx situations, identifying gaps and figuring out how to fill those gaps; finding an implementing review mechanism complementary to and reinforcing of the High Commissioner's role under Article 35 of the Convention. Part of this process is promoting better understanding of each other's positions and modes of cooperation. The debate on the asylum/migration nexus [that occurred during the Third Track meeting in late June] offered States the opportunity to put their

concerns on the table. The proposals made by States to address protection dilemmas inherent in the connection between asylum and migration were quite encouraging. This process is helping to focus and concretize suggestions as well as to promote better understanding and cooperation across the board.

pf: Are you disappointed that some States are balking at the idea of including a reference to regular review mechanisms in the Declaration that will be adopted at the Ministerial Meeting of States Parties in December?

EF: It doesn't surprise me that the suggestion that there be a mechanism in place to review implementation of the Convention is not being met with overwhelming enthusiasm by a number of States. Mechanisms in place under other instruments have been onerous for States, requiring extensive reporting obligations, meetings, etc. It has been our

Second Track, continued

that of the Inter-American human rights bodies. Because of their preliminary and wide-ranging nature, discussions on Article 35 did not, in the end, coalesce into definitive conclusions. Instead, participants agreed on several broad points. Among them:

- While exploring ways to strengthen implementation of the Convention, HCR's supervisory authority should be affirmed and the pre-eminence of the High Commissioner's voice should be preserved.
- HCR's capacity to collect, analyze and disseminate information is essential and must be strengthened.
- The discussions held in Cambridge should be regarded as only the beginning of a process.

The third expert Roundtable, co-organized by the International Institute of Humanitarian Law, will be held in San Remo, Italy, from 6 to 8 September. Participants will focus on membership of a particular social group (Article 1A[2]), gender-related persecution, and internal protection/relocation/flight alternative.

All papers on which Roundtable discussions are based are posted on HCR's web site (click on Global Consultations at www.unhcr.org). For further information, contact Cindy Woodall at HCR (woodall@unhcr.org).

Third Track

It was a groundbreaking, and apt, moment. Never before had ExCom invited a refugee speaker to one of its gatherings. The refugee woman's statement to the second Third Track meeting was heartfelt and urgent. "Action, please", she concluded: a fitting request to delegates convened to improve refugee protection in practical, tangible ways.

The theme of the late June meeting in Geneva was "Protection of Refugees in the Context of Individual Asylum Systems". Under that broad topic, delegates discussed the link between refugee protection and migration control, and asylum processes. Participants broadly endorsed the joint International Organization for

experience that, for many States, protection is not as popular in practice as it is in theory.

But the proposal should be seen positively. Proper implementation of a global instrument is in everybody's best interest: refugees, the intended beneficiaries; and States Parties, to ensure that each party pulls its weight. This is not about setting up a kind of problematic, counterproductive new set of relations between HCR and States Parties. We see our role as providing advisory services. We do not see ourselves in an adversarial role, although we will not shy away from playing an adversarial role if the Convention is not implemented properly.

pf: But what would be the point of adopting a Declaration that simply reiterates an acknowledgment that the 1951 Convention is the cornerstone of refugee protection?

EF: Well, the why and how of

strengthened implementation will be one of the important issues we must resolve before the December meeting. I never expected it would be easy. What we want is endorsement of strengthened implementation of the Convention and recognition of the need to put in place measures to achieve this. Of course it's a worry if States Parties to the Convention are not prepared to take measures to ensure proper implementation of the Convention. Perhaps we can come up with a mechanism that is not onerous for States, in terms of the burden of reporting, but puts in place some process that keeps the High Commissioner better informed so he can, in turn, keep ExCom better informed about protection performance among States Parties. We hope that whatever comes out of the discussion it will be concrete and lead to reinforcement of the authority of the High Commissioner vis-a-vis the 1951 Convention.

pf: What happens when there are no more meetings, no more roundtables? What do you see

as the "legacy", if you will, of the Global Consultations process?

EF: We have to have tangible results. The challenge for us will be to run the 12 December Ministerial Meeting without the process terminating there. Our aim is to set the Agenda for Protection for the coming period, and there will still be problems to analyze and suggestions to incorporate coming out of discussions next year.

I want to add: the Global Consultations process has imposed an enormous workload on our colleagues in DIP, all of whom have done their jobs with enthusiasm and uncomplainingly. This was formally recognized by delegations at the Third Track meeting in late June, who expressed their appreciation for all the organizational work involved and, especially, for all the useful, intelligent thinking that has gone into the process. I am grateful, too.

Migration (IOM)/HCR paper on the relationship between migratory movements and refugee protection, recognizing that the causes of both population displacements often overlap, and include human rights violations, armed conflict, economic marginalization, environmental degradation and scarcity of decent work. Participants also discussed migrants' and refugees' increased resort to smugglers, and States' increasing use of interception to control migration into their territories. They voiced strong support for a proposed HCR/IOM Action Group on Asylum and Migration.

Actions:

- States to provide more detailed data and statistics on migratory movements.
- States are encouraged to accede to, and fully implement, refugee instruments and the United Nations Convention against Transnational Organized Crime and its Protocols, the 1990 Convention on the Protection of All Migrant Workers and their Families, and relevant ILO Conventions (notably nos. 97 and 143).
- States to launch information campaigns to discourage irregular migration, warn of the dangers of smuggling

and trafficking, and promote public recognition of the contributions both migrants and refugees make to host societies.

- HCR to develop Guidelines on Safeguards for Interception Measures, incorporating appropriate protection safeguards.
- HCR to offer training on protection safeguards in interception measures.
- HCR to initiate an independent evaluation of existing interception programmes.
- HCR/IOM to establish Action Group on Asylum and Migration.

A number of follow-up actions were also requested of IOM, including a detailed study on the root causes of irregular migration. IOM was also asked to assume the lead role in returning persons not in need of international protection and to produce and disseminate guidelines on "voluntariness" in the context of such return.

Discussions on fair and efficient asylum procedures were based on a paper drafted by HCR. Participants

prima facie

recognized the importance of upholding basic common standards, derived from international refugee law, while acknowledging the need for flexibility so national and regional particularities can be taken into account. Delegates called for greater burden-sharing, particularly between developed and developing nations. They also noted that asylum-seekers without documentation and uncooperative asylum-seekers are posing major problems for States.

Actions:

- States that have not yet done so to establish fair and efficient asylum procedures.
- HCR and States to continue discussions on basic guiding principles related to asylum procedures.
- HCR to provide guidance to States on how to handle multiple applications.
- States to safeguard rights of asylum-seekers by ensuring that asylum-seekers are advised of procedures, have access to legal counsel, are personally interviewed, are informed of their right to appeal negative decisions, and are informed of key moments and/or decisions during the procedure.
- States to recognize that lack of documentation does not, in itself, render a claim abusive; and that lack of documentation and lack of cooperation should be handled as separate and distinct issues.
- HCR to examine the merits of and possibilities for a single procedure.

The next Third Track meeting, scheduled for 27 and 28 September, will again focus on protecting refugees in the context of individual asylum systems and asylum processes. Specific topics to be discussed include standards of treatment, complementary forms of protection, and strengthening protection in host countries.

For more information on Third Track events, contact Walpurga Englbrecht at HCR (englbrew@unhcr.org).

Regional Meetings

Over the past three months, HCR has convened meetings with governments, NGOs, academics and refugee law practitioners in nearly every region of the world to feed local concerns and recommendations into the Global Consultations. Highlights:

■ Ottawa, Ontario, Canada (14-15 May)

The 21 participants representing the governments of Canada and the United States, NGOs from the two countries, academics and others examined the practice of interception (defined as "...encompassing all measures applied by a State, outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing borders by land, air or sea, and making their way to the country of prospective destination") and how to incorporate refugee protection safeguards into interception measures.

Participants recognized that the practice of interception is here to stay, as States consider it an effective means of controlling irregular migration and combatting smuggling or trafficking of persons. They concluded that more detailed information and data on interception, including methods, numbers and nationalities of persons intercepted, should be made available. There was general agreement that those intercepted, including asylum-seekers and refugees, are entitled to be treated humanely and that the principle of non-refoulement must be fully respected. Officials involved in interception activities, including government representatives and transportation company personnel, should receive training on applicable standards of international law and required procedures. In addition, participants concluded, "best practice" standards should be developed in designing interception safeguards, and a "code of conduct" should be elaborated and extended to apply to personnel in transportation companies.

Procedures and mechanisms should also be in place, the participants concluded, to identify those intercepted persons in need of international

The Paris Appeal: A Plea from Refugees

On 16 June, the French National Assembly and HCR organized a special session of the legislative body to commemorate the 50th anniversary of the Refugee Convention. More than 500 refugees, representing more than 70 nationalities, were invited to participate in the session. At the end of the session, participants adopted The Paris Appeal, a declaration that reaffirms the importance of the 1951 Refugee Convention and its 1967 Protocol, urges States to ratify and implement the instruments, and calls upon States to respect refugee rights and cooperate with HCR. The French National Assembly sent the Appeal to the Presidents of Parliaments around the world. The full text of the Appeal is available at the Global Consultations page of HCR's web site (www.unhcr.org).

protection. Depending on the circumstances, this could be done through screening by the intercepting State or the State that requested the interception, referral to competent authorities in the country where the interception occurred, or referral to HCR or another appropriate agency.

■ **Macau SAR, People's Republic of China (28-29 May)**

Representatives of 15 Asia/Pacific governments, nine national and international NGOs and four regional experts discussed the protection of refugees in the asylum/migration context. While participants agreed there was a need to formulate procedures to identify persons in need of international protection, they also noted that efforts to do so were stymied by the fact that many States in the region have not acceded to the 1951 Refugee Convention. Participants acknowledged HCR's crucial role in screening asylum-seekers and providing expertise and recommended adopting national refugee status determination procedures that conform to the minimum standards set forth in ExCom Conclusion 8 (1977) and related documents.

■ **Budapest, Hungary (6-7 June)**

Twenty-one representatives of governments in the region and observers from the NGO, inter-governmental and academic world discussed the legal and practical aspects of return of persons not in need of international protection. In addition, they examined the closely related issues of the "safe third country" notion and inter-State agreements for the return of third-country nationals for status determination. These topics are particularly relevant to the States in central, eastern and south-eastern Europe given the region's growing importance as an area of both transit and destination for increasing numbers of persons in search of protection and/or better economic opportunities.

Participants agreed that if persons found not to be in need of international protection are not returned expeditiously to their countries of origin, the integrity and credibility of the institution of asylum could be threatened. They stressed that determinations of the need for international protection should be accomplished in fair and efficient procedures; and they noted that collaborative efforts to promote voluntary return of persons not in need of international protection have proven particularly successful, especially when NGOs provide counselling to potential returnees.

Concerning the "safe third country" notion and agreements for the return of third-country nationals for status determination, participants concluded that there should be appropriate allocation of State responsibility for determining refugee status, preferably through multilateral, coordinated approaches reflected in binding agreements. Pending the establishment of such agreements, participants recommended that specific safeguards be in place when the "safe third country" notion and readmission agreements are used. These would include the understanding that any

presumption of "safety" is rebuttable, that any third country receiving a returned asylum-seeker should be notified that the asylum-seeker's claim has not been decided in substance and that the third country should agree to do so, and that appeals against such decisions should be available, with suspensive effect. Participants also stressed that both sending and re-admitting States must ensure that the use of these mechanisms does not lead to refoulement through a chain of deportations.

■ **San José, Costa Rica (7-8 June)**

Twenty experts from the Latin American region and representatives of the Inter-American Court of Human Rights, the Inter-American Commission of Human Rights, Inter-American Institute of Human Rights, the Colombian Commission of Jurists and the University of Lanus of Argentina, among others, met to discuss the growth of restrictive asylum policies in the region, the complementarity of the Inter-American human rights system, and the supervisory role of HCR. They concluded that the restrictive tendency in State asylum practice demonstrates the need to strengthen HCR's supervisory role, to use the Inter-American human rights system more effectively, and to offer human rights education at all levels. Numerous suggestions were made about how to strengthen HCR's supervisory role, such as working more with regional organizations, using judicial and administrative procedures more consistently, and/or creating a new independent and impartial body or procedure. These recommendations were, in turn, discussed among the participants at the Second Track Roundtable held in Cambridge, England, on 9 and 10 July (see Second Track).

■ **Cairo, Egypt (3-5 July)**

During the first two days of the meeting, representatives of 16 countries in Central and Southwest Asia, North Africa and the Middle East, and observers from the League of Arab States, the Organization of the Islamic Conference, the European Union, and the International Organization for Migration, discussed how to strengthen the capacity of States in the region to provide adequate protection to refugees and asylum-seekers. Only 11 out of the 24 States in the area are party to the 1951 Convention and/or its 1967 Protocol, although the region hosts 35 per cent of the world's refugee population. While there has been some progress made in refugee protection, protection systems in the area remain fragile, largely because of the lack of political solutions for protracted refugee situations. Insufficient international support for local capacity-building is seen as imposing a disproportionate burden and responsibility on States in the region, many of which are grappling with other economic and social problems.

While participants emphasized the primacy of State responsibility in the protection of refugees, they also recognized that international protection requires the participation and cooperation of all actors, including both host and donor States, HCR and other inter-governmental, regional, and non-governmental organi-

zations, other members of civil society, and refugees themselves. Given the constraints within the region, participants stressed the need for HCR and its resettlement partners to consider expanding resettlement programmes to a greater number of host countries in the region. Participating States also called on HCR to continue its protection and assistance activities for Palestinian refugees outside UNRWA's area of operation. They also recognized the need to develop complementary legal frameworks for refugee protection and migratory movements that conform to established international standards. Government representatives asked HCR to convene regular sub-regional meetings on refugee protection issues of common concern.

On the third day, NGOs and other members of civil society, including one refugee woman, met with States to discuss the same issues. They developed conclusions that emphasized the importance of collaboration among all actors and acknowledged that the capacity to achieve sustainable protection requires recognition of the link between protection and assistance and respect for social and economic rights. The importance of training, building legal capacity (both in law-making and in legal assistance), awareness-raising, and sharing information was also emphasized, as was the complementary role of other international human rights instruments in refugee protection, especially in protecting the rights of refugee women and children.

GC Calendar

- 6-8 Sep** Second Track: Roundtable on Membership of a Particular Social Group, Gender-related Persecution and Internal Protection/Relocation/Flight Alternative, in San Remo, Italy. This third Roundtable is co-organized by the International Institute of Humanitarian Law.
- 14-16 Sep** The Refugee Perspective, in Rouen, France. Some 80 refugees will be invited to offer their views on asylum procedures, local integration of refugees and voluntary repatriation in a forum jointly organized by HCR and the Institut du Développement Social.
- 20-21 Sep** First Track: Preparatory Session, in Geneva. The draft Declaration and format for the 12 December Ministerial Meeting of States Parties will be finalized.
- 27-28 Sep** Third Track: Continuation of Discussion on Protection of Refugees in the Context of Individual Asylum Systems, in Geneva. Topics to be explored include reception of asylum-seekers, complementary forms of protection and strengthening protection in host countries.
- 6-7 Nov** Regional Meeting, in Oslo, Norway. The meeting will focus on resettlement as a multifaceted protection tool and its relationship to migration.
- 8-9 Nov** Second Track: Roundtable on Illegal Entry and Family Unity, in Geneva. This fourth Roundtable is co-organized by the Graduate Institute of International Studies.
- 12 Dec** Ministerial Meeting of States Parties, in Geneva. This First Track event, jointly convened by HCR and the Government of Switzerland, will reaffirm the commitment of States Parties to full and effective implementation of the Refugee Convention and Protocol. Those States that have not yet acceded to the Convention or Protocol have been invited as observers along with inter-governmental and non-governmental organizations.
- 2 0 0 2
- Feb/Mar** Third Track: Discussion on the Search for Protection-based Solutions, in Geneva (date tentative).
- Jun** Third Track: Discussion on Protection of Refugee Women and Children, in Geneva (date tentative).

QuoteUnquote

"...I ask you to think of that face, think of that human being, think of that refugee on whose life you are deciding, whether here in Geneva or in your countries at home. Please remember that face of the refugee and the suffering which they look to leave behind, which they had no choice but to leave behind. People like me will be affected by what you do. We depend on you; we need your support."

Togolese refugee Aicha Garba, in her Statement to the Third Track meeting, 28 June 2001, in Geneva.