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# *prima facie*

The Newsletter of UNHCR's Department of International Protection

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January 2002



## First Track

The 1951 Refugee Convention couldn't have received a better 50<sup>th</sup> anniversary gift. In a first-ever meeting of States Parties to the Convention and/or its 1967 Protocol, representatives from 129 of the 142 States Parties adopted an unprecedented Declaration reaffirming the Convention's centrality to the international refugee protection regime. "[This meeting] was remarkable," said High Commissioner Ruud Lubbers in his concluding remarks to the gathering, "...because it proved to be possible to adopt a very powerful document...The key point of this Declaration is that the 1951 Refugee Convention and its Protocol remain fully relevant and valid."

The Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, co-hosted by the Swiss government and HCR, was held in Geneva on 12 and 13 December as the First Track event of HCR's Global Consultations on International Protection. Apart from the impressive number of States Parties that attended, 76 of which were represented at ministerial level, the meeting attracted

representatives from 33 States that are not Parties to the Convention, 48 UN agencies and other intergovernmental organizations, and 63 NGOs. "The level of participation clearly demonstrated governments' interest in protection issues and in the Convention as the basis for protection," noted Director of HCR's Department of International Protection Erika Feller.

The positive tone of the meeting was set during the opening statements by the UN High Commissioner for Refugees, UN Secretary-General Kofi Annan, who addressed the gathering via a videotaped message, Ruth Metzler-Arnold, Swiss Federal Minister for Justice and Police and chairperson of the meeting, and a 14-year-old refugee named Amina, who read aloud the Paris Appeal, which was adopted last June by more than 500 refugees who had been invited to attend a special session of the French National Assembly. The President of Latvia, Vaira Vike-Freiberga, delivered an eloquent and impassioned statement,

recalling her own life as a refugee and entreating the assembly to respond to the plight of refugees with actions that "...can make the difference between life and death, between having a future and having none, between being a human being with dignity or being less than the beasts of the field, trodden under into the dust of this world."

The December gathering provided an opportunity for States Parties not only to recommit themselves to implementing the Convention and upholding the values and principles it embodies, but also to

***"The Declaration considers the Convention as a cornerstone, something which can be built upon. Without that foundation, the edifice will collapse."***

examine current challenges to the protection regime and to begin to work cooperatively toward meeting those challenges. Many delegations from both the developing and the developed world acknowledged the need for greater responsibility-sharing in protecting refugees. HCR will begin more intensive work with States on this issue in the coming months.

While noting the increase in migration around the world and the growing abuse, both perceived and real, of the asylum system, States stressed the need to focus on the Convention as a protection



**"Governments' policies towards refugees and asylum-seekers are often based on fear and mistrust. We must overcome this fear. Political leaders are no leaders when they fuel anti-foreigner and anti-refugee sentiments..."**

High Commissioner  
Ruud Lubbers in his opening  
Statement to the Ministerial  
Meeting of States Parties to the  
1951 Convention and/or 1967  
Protocol relating to the Status of  
Refugees, 12 December 2001,  
in Geneva.

tool and to find or create other means of addressing the problem of uncontrolled migration. Delegations acknowledged the importance of boosting the number of accessions to the Convention and/or its Protocol, called for more funding for HCR to bolster its protection capacity in the field and at headquarters, and recognized the need to resolve protracted refugee situations and to address the root causes of refugee movements.

The Declaration also broke new ground. For the first time, *non-refoulement* is asserted to be a principle of customary international law, binding on all States, whether or not they have acceded to the Refugee Convention. In addition, it acknowledges the complex link between asylum and migration and the need to strengthen the implementation of the Convention and/or its Protocol. "These wordings could have generated heated debate, and potentially blocked adoption of the Declaration," noted Feller. "But all our preparatory work bore fruit. The Declaration turned out to be remarkably uncontroversial, in the best sense of that word."

Most delegations to the meeting specifically praised the Global Consultations process, citing its usefulness in charting the way forward for refugee protection. Although the process formally ends this year, its impact on refugee protection will be evident in the years to come. An *Agenda for Protection*, composed of suggestions for action that were generated throughout the Global Consultations, will be finalized and issued later this year (*see story on page 6*). To revitalize HCR's supervisory role vis-à-vis the Convention, a number of States supported the idea of reconstituting the Sub-Committee on International Protection, a part of HCR's Executive Committee.

At the beginning of the Global Consultations process, the reaffirmation of the Convention was far from assured. The Convention had been attacked by some as an outdated instrument with little relevance in today's world of mass displacement. As a direct result of the Global Consultations, however, the Convention is now back on track, fully supported in an historic Declaration. Says Feller: "The Declaration considers the Convention as a cornerstone, something which can be built upon. Without that foundation, the edifice will collapse."

***It is a painful condition not to know where you are going to lay your head, to look at the lights shining in distant windows, to think of people living their normal lives, sleeping in their own beds, eating at their own table, living under their own roofs. And later when you come to refugee camps...you are living outside of space and of time. You have no roots, you have no past, you don't know whether you have a future...you are not a citizen, you have no papers, sometimes you haven't even got your name. And you have to pinch yourself to reassure yourself that 'yes, I am alive, I am me, I am a human being, I am a person'.***

Latvian President and former refugee Vaira Vike-Freiberga  
in her opening Statement to the Ministerial Meeting, 12 December 2001, in Geneva.

## ***Africa in Focus: High-level Talks on the Way Forward***

Seizing what Khassim Diagne, Senior Policy Officer in HCR's Africa Bureau, called a "golden opportunity", the Bureau invited African delegations to the December Ministerial Meeting to a special session the day after the main meeting. There, representatives from some 47 African nations, 29 at ministerial level, and representatives from donor countries, NGOs, and sub-regional organizations held informal consultations on the major refugee protection problems facing the continent.

The daylong meeting focused on the main protection challenges posed by mass influxes of refugees, including the location of refugee camps, registration, the separation of armed elements from civilian populations, and the special needs of refugee women and children. Participants also reviewed the large number of protracted refugee situations in Africa. The vast majority of refugees in the Horn of Africa, for example, have been living in exile for more than a decade. Some refugees from the Sudan fled their country in 1988; but the on-going civil war there, now in its 17<sup>th</sup> year, makes it impossible for them to return. Some of the increasing numbers of Eritrean refugees who are now returning home have lived in exile for more than 30 years. Continuing conflicts in the Great Lakes region have prevented hundreds of thousands of refugees from returning to their home countries.

Delegations agreed that, until these refugees can return home in safety and with dignity, host governments must empower them, promote their self-reliance by providing greater access to education and work, and incorporate their needs into national development plans. Representatives of donor countries who attended the meeting pledged to support initiatives aimed at achieving these objectives.

"By making this an informal meeting, delegates were free to speak out. We wanted a departure from formal statements," says Diagne. "The High Commissioner and senior management had a frank and open dialogue with the delegations about all these issues." HCR will work with individual governments to design appropriate policies and programs that will turn the recommendations made during the meeting into action on the ground. "This will be a long process," admits Diagne, "but if we can, for instance, influence governments to change their policies on the movements of refugees, if we can get governments to consider including the needs of refugees in their national development plans, that would be a major step."

***"...when I assumed my functions, many politicians and others were making speeches that were understood to be an attack on the Convention. It was being said that it was outdated, that it was time to change things, that we could not live with this Convention any more.***

***From that perspective, we have come a long way. Delegations at this Ministerial Meeting have unanimously declared that the Convention and its Protocol are key for the protection of refugees and they have reaffirmed their desire to continue with it."***

High Commissioner Ruud Lubbers in his closing remarks to the Ministerial Meeting, 13 December 2001, Geneva.

## Second Track

The last in a series of Expert Roundtables that comprised the Second Track of the Global Consultations focused on Article 31 of the 1951 Refugee Convention (the provision protecting refugees from being penalized for unlawful entry or presence in a country of asylum under certain circumstances) and on the issue of family unity. Twenty-eight experts representing 18 countries and drawn from governments, NGOs, academia, the judiciary and the legal profession participated in the two-day event, which was held in Geneva in early November and co-organized by HCR and Geneva's Graduate Institute of International Studies. The experts based their discussions on papers commissioned from Guy Goodwin-Gill, Professor of International Law at the University of Oxford ("Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection") and from attorney Kate Jastram and Kathleen Newland, co-director of the Migration Policy Institute ("Family Unity and Refugee Protection").

During the first day, participants reviewed States' application and interpretation of Article 31. Participants acknowledged that the drafters of the Refugee Convention codified a principle of immunity from penalties for those refugees who come directly from a territory where their life or freedom is threatened and who enter or are present in a country without authorization, as long as they present themselves to authorities "without delay" and "show good cause" for their illegal entry or presence. Among other conclusions, experts broadly agreed that:

■ HCR's Executive Committee has acknowledged in several of its Conclusions that refugees will frequently have justifiable reasons for illegal entry into a country or for irregular movement between countries and has recommended appropriate standards of treatment.

■ Any restrictions on the movements of refugees should only be imposed on a case-by-case basis, in accordance with the provisions of Article 31, and in compliance with international human rights law.

■ To implement the provisions of Article 31 effectively, States should undertake concrete steps to

ensure that refugees who may have entered a territory illegally are promptly identified, and that no penalties for illegal entry or presence are applied pending an expeditious refugee status determination procedure.

■ The detention of refugees and asylum-seekers is an exceptional measure and should only be applied in individual cases, when determined necessary on the basis of criteria established by laws that conform to international refugee and human rights law. UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers offer valuable guidance on the subject.

Participants emerged from the second day's discussions on family unity (where "family" includes, at the minimum, members of the nuclear family) agreeing that:

■ The right to family unity is entrenched in universal and regional human rights instruments and international humanitarian law and applies to all human beings, regardless of their status.

■ The obligation to respect the right of refugees to family unity applies whether or not a country is party to the 1951 Convention.

■ Respect for the right to family unity requires not only that States refrain from actions that would result in family separations, but also that they take measures to maintain the unity of the family and reunite family members who have been separated.

■ The right to family unity is particularly important for refugees. The protection that family members can give one another multiplies the efforts of external actors. In host countries, family unity enhances refugee self-sufficiency.

■ The right to family unity applies during situations of mass influx and temporary evacuation, and is particularly important in the context of voluntary repatriation and reintegration.

Conclusions from the Roundtable are posted on HCR's web site ([www.unhcr.org](http://www.unhcr.org)) under Global Consultations, Second Track.

Participants for each of the four Roundtable discussions were drawn from governments of States

Parties, NGOs, academia, the judiciary and the legal profession. Experts were invited to attend in their personal capacity, although this was not always possible for all experts nominated by their governments. To allow for in-depth examination of the topics and exchange of ideas, participation in the Roundtables was limited to some 30 experts. However, in an effort to promote the widest possible consideration of the topics under analysis, HCR posted the discussion papers on its web site and invited comments. The Conclusions that emerged from the discussions broadly reflect the understandings of the participants, but do not represent

the individual views of each participant or necessarily those of HCR.

To commemorate the 50<sup>th</sup> anniversary of the Convention, HCR will publish the background papers and conclusions of the Roundtables during 2002. The thinking embodied in these documents will inform HCR's work in updating and refining its own guidelines on the issues discussed during the Roundtables. HCR's revised guidelines will appear during 2002 as a supplement to the *Handbook on Procedures and Criteria for Determining Refugee Status*.

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## Regional Meeting

Resettlement was the focus of a two-day Global Consultations regional meeting co-hosted by the Government of Norway and HCR, and held in Oslo in early November. Representatives of the governments of Denmark, Finland, Norway and Sweden and NGOs from each of the Nordic countries met with officials from HCR and observers from the governments of Australia, Canada and the United States to discuss resettlement as a means of enhancing protection and asylum, as a responsibility-sharing mechanism, and in the context of migration. Participants also focused on how to build protection capacities related to resettlement and integration and how to develop leadership opportunities for resettled refugees in host communities. Dr. Demetri Papademetriou, director of the Migration Policy Institute of the United States, presented a talk on "Resettlement in the Context of International Migration".

The Nordic countries emerged from the meeting calling for greater cooperation among HCR, States and NGOs to expand the use of resettlement. They specifically encouraged more countries to establish resettlement programs, recognizing the role of resettlement as a protection tool, a durable solution in particular circumstances, and as part of international responsibility-sharing efforts. They also suggested that more use be made of qualified secondments from governments and NGOs to overcome funding constraints on HCR. Participants agreed that States should use broad, protection-based criteria to determine who should fill their resettlement quotas; and that HCR should make every effort to ensure that the resettlement processing system is not vulnerable to fraud and abuse. Participants acknowledged the progress made in the area of integration during the last few years, but also recognized the need to improve integration capacities and protection measures in resettlement countries.

Conclusions from the meeting are posted on HCR's web site ([www.unhcr.org](http://www.unhcr.org)) under Global Consultations, Regional Meetings.

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**For more information on the  
Global Consultations, including documents,  
speeches, and background papers,  
click on Global Consultations at [www.unhcr.org](http://www.unhcr.org)**

## **An Agenda for Protection**

HCR has been compiling suggestions for action on key protection issues identified during the Global Consultations process. This *Agenda for Protection*, to be finalized in consultation with HCR's Executive Committee in 2002, will serve as a guide for HCR and as an inspiration for States, NGOs and other protection partners in setting objectives and mapping out related activities for the coming years.

Elements of the *Agenda* identified to date fall under five broad objectives:

### **Strengthen implementation of the 1951 Convention and its 1967 Protocol**

**Proposed activities include:**

encouraging universal accession to the Convention and Protocol; improving individual refugee status determination procedures; protecting those who might not fall within the scope of the Convention but nonetheless require international protection; strengthening supervision of how the Convention and Protocol are implemented; fostering respect for refugees; devising more effective and predictable international responses to mass influx situations; and addressing the root causes of refugee movements.

### **Ensure better protection of refugees within broader migration movements**

**Proposed activities include:**

better documenting the link between asylum and migration; strengthening international efforts to combat human trafficking and smuggling; expediting return of persons found not to be in need of international protection; and fostering cooperation between HCR and the International Organization for Migration.

### **Share burdens and responsibilities more equitably and build capacities to receive and protect refugees**

**Proposed activities include:**

increasing predictability of responsibility-sharing arrangements to assist countries of first asylum; strengthening protection partnerships with civil society, including with NGOs; anchoring refugee issues within national and regional development agendas; and promoting resettlement as a responsibility-sharing tool.

### **Handle security-related concerns more effectively**

**Proposed activities include:**

helping states, financially or materially, to separate armed elements from refugee populations; and improving protection of refugee women and children.

### **Redouble efforts to find durable solutions**

This issue will be the focus of discussions during the Global Consultations Third Track meeting in May. Concrete activities will be developed from those discussions.



# UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION

## Regional Meetings Governments, NGOs, Experts, Refugees

- The civilian character of asylum  
February 2001  
Pretoria, South Africa
- The practice of interception  
May 2001  
Ottawa, Canada
- Asylum and protecting refugees  
May 2001  
Macau, People's Republic of China
- Asylum practices  
June 2001  
Budapest, Hungary
- UNHCR's supervisory role  
June 2001  
San José, Costa Rica
- Asylum capacities in the region  
July 2001  
Cairo, Egypt
- Resettlement  
November 2001  
Oslo, Norway

## Respect Our Rights: Partnership for Equality

- Dialogue between refugee women and UNHCR  
June 2001  
Geneva, Switzerland

## Refugee Perspective

- Refugees discuss asylum procedures, local integration and voluntary repatriation  
September 2001  
Rouen, France

## Government/UNHCR Discussions

(all in Geneva, Switzerland)

- Protection in mass influx situations (including the civilian character of asylum, registration, burden-sharing)  
March 2001
- Refugee protection in individual asylum systems (including reception of asylum-seekers and additional forms of legal protection)  
September 2001
- Refugee protection in individual asylum systems (including migration control, interception practices, return of rejected cases and asylum processes)  
June 2001
- Protection-based solutions and protecting refugee women and children  
May 2002

## Expert Roundtables

(Governments, NGOs, Academics, Experts in Refugee Law)

- The Convention provisions for exclusion and cessation  
May 2001  
Lisbon, Portugal
- Non-refoulement and UNHCR's supervisory responsibility  
July 2001  
Cambridge, U.K.
- Definition of a refugee, gender-related persecution and protection alternatives within the country of origin  
September 2001  
San Remo, Italy
- Illegal entry and family unity  
November 2001  
Geneva, Switzerland



## Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol

December 2001 - Geneva, Switzerland

- Adoption of Declaration; and Roundtables on strengthening implementation of the Convention and Protocol, international cooperation to protect masses in flight, and upholding refugee protection in the face of mixed refugee/migrant flows.



## A New Reference on Refugee Law

Parliamentarians around the world now have a new source of information about refugee law. *Refugee Protection: A Guide to International Refugee Law* offers parliamentarians, and others, an easily accessible overview of the principles of international refugee law and guidance on how best to uphold those principles, largely through accession to key international instruments and the design and adoption of appropri-

ate national legislation. Jointly developed by the Inter-Parliamentary Union (IPU), the world organization of parliaments, and HCR, the handbook was launched during December's Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol. It is available in English and French; Spanish, Russian, Arabic and German translations will be published in the coming months. To obtain a

copy of the handbook, contact IPU headquarters in Geneva (tel: 41-22-919-4150 or e-mail: [postbox@mail.ipu.org](mailto:postbox@mail.ipu.org)), the IPU Liaison Office in New York (tel: 1-212-557-5880 or e-mail: [ny-office@mail.ipu.org](mailto:ny-office@mail.ipu.org)), the Protection Capacity Section of HCR's Department of International Protection, at HCR headquarters in Geneva (tel: 41-22-739-7780 or e-mail: [ivanovsk.unhcr.org](mailto:ivanovsk.unhcr.org)) or any HCR branch office.

## GC Calendar

- 24-25 Jan** Meeting on Improving the Security of Refugee and Displaced Women, in Oslo, Norway. The meeting is organized by the Norwegian Institute of International Affairs, the Norwegian Ministry of Foreign Affairs, the International Peace Research Institute, and the Norwegian Refugee Council.
- 27-28 Feb** Meeting on human smuggling, trafficking in persons, and related transnational crime, in Bali, Indonesia. The meeting is co-organized by the governments of Indonesia and Australia.
- 22-24 May** Third Track: Discussions on the Search for Protection-based Solutions and on the Protection of Refugee Women and Children, in Geneva.

### QuoteUnquote

*"Three weeks and three days after my family left the shores of Latvia, my little sister died. We buried her by the roadside; we were never able to return or put a flower on her grave. I like to think that I stand here today as a survivor who speaks for all those who died by the roadside, some buried by their families and others not, and for all those millions across the world today who do not have a voice, who cannot be heard. But they are also human beings, they also suffer, they also have their hopes, their dreams and their aspirations. Most of all, they dream of a normal life."*

Vaira Vike-Freiberga, President of Latvia and former refugee, from her opening Statement to the Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 12 December 2001, in Geneva.