

GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION

REGIONAL MEETING
BUDAPEST
6-7 JUNE 2001

CONCLUSIONS

The Regional Meeting held in Budapest, Hungary was co-hosted by the Hungarian Ministry of the Interior and UNHCR. It was attended by representatives of the Governments of Albania, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Republic of Moldova, Poland, Romania, Slovakia, Slovenia, Sweden, Turkey, the Ukraine, and the Federal Republic of Yugoslavia. The representative of The former Yugoslav Republic of Macedonia was unable to attend. Also in attendance as observers were representatives of the European Commission, several NGOs and academic experts working in the region, the International Organisation for Migration (IOM), the International Centre for Migration Policy Development (ICMPD), the European Council on Refugees and Exiles (ECRE), and UNHCR.

The deliberations focused particularly on the situation in Central, Eastern and South-Eastern Europe, a region which is increasingly becoming one of both destination and transit for substantial movements of persons in search of protection and/or better economic opportunities. The origin of these flows is an indicator that many of these persons may have genuine claims to international protection, but they may not present their claims in the region for any number of reasons, including: the existence of family or other ties elsewhere; lack of knowledge and information about asylum procedures; and/or decisions made on their behalf by smugglers into whose hands they have fallen, for lack of other viable options.

Against this background, the Meeting discussed the following topics:

- legal and practical aspects of the return of persons not in need of international protection;
- the application of the “safe third country” notion and its impact on the management of flows and on the protection of refugees; and
- inter-State agreements for the re-admission of third country nationals, including asylum-seekers, and for the determination of the State responsible for examining the substance of an asylum claim.

**Topic 1: Legal and Practical Aspects of the
Return of Persons Not in Need of International Protection**

The Meeting concluded that:

- 1) The non-return of persons found not to be in need of international protection to their countries of origin may negatively impact upon the integrity and credibility of the institution of asylum.
- 2) There is no clear causal link between stages of development and international migration. Returning migrants, however, if managed well, contribute positively to development. Conversely, if not managed carefully, the return can have an adverse effect on reconstruction and development, as well as raise protection issues.

- 3) A need for international protection, or the absence of such a need, must be determined in a procedure that is both fair and efficient. A single procedure in which all protection needs are considered in a holistic way is likely to be the most effective and timely way to determine such needs.
- 4) Among the factors obstructing the return of persons not in need of international protection, the uncooperative attitude of some countries of origin is particularly problematic. Such attitudes can be reflected in a denial of the issuance of travel documents, or a denial of the person's entitlement to return. The Meeting wishes to reaffirm international law standards establishing the responsibility of States to accept back their citizens.
- 5) Other obstacles arise in the country of stay. One example is the lack of financial resources to manage return programmes, as priority tends to be allocated to border control measures; another is the lack of organisational capability.
- 6) Rights acquired by the asylum-seeker during the course of the asylum procedure, in particular where this procedure is unduly prolonged, also make it difficult and in some cases inadvisable to pursue the return option. The asylum-seeker inevitably develops links in the country in which s/he seeks asylum, even though his or her claim may eventually fail.
- 7) The individuals concerned may themselves place obstacles in the way of their return, for example, by deliberately withholding information about their nationality/identity; or by failing to report for the continuation of the procedure.
- 8) Those unsuccessful asylum-seekers who cannot be returned through no fault of their own should have timely access to some form of lawful residence and legal status.
- 9) Solutions to the obstacles described above can best be reached through frank and open dialogue among countries of origin, destination and transit. To be successful, this dialogue must encompass a variety of issues and address the respective interests of all relevant parties. Political will is best nurtured through a multifaceted approach, in a multilateral setting.
- 10) Voluntary return of persons not in need of international protection is the most desirable modality of return and should therefore be promoted. Whether voluntary or not, return must be accomplished in dignity and with respect for the human rights of the individual concerned.
- 11) In promoting the voluntary return of persons not in need of international protection, the value of counselling should not be underestimated, especially if counselling measures are undertaken early in the process. NGOs have a particularly important role to play in this respect.
- 12) Specific programmes aimed at facilitating voluntary return of irregular migrants have proven to be particularly successful where there has been a collaborative effort involving international organisations, such as IOM, alongside governments and NGOs as appropriate. Examples include mass information campaigns, repatriation and reintegration packages, monitoring of potential "push factors", and programmes tailored to the return and reintegration of traffickers' victims.
- 13) The returned persons should be treated by the receiving State in accordance with human rights principles in general, and the standards set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention Against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, in particular.

Topic 2: The application of the “safe third country” notion and its impact on the management of flows and on the protection of refugees; and

Topic 3: Inter-State agreements for the re-admission of third country nationals, including asylum-seekers, and for the determination of the State responsible for examining the substance of an asylum claim.

The conclusions on these two closely inter-related topics were debated and adopted together. The discussion suggested that the ultimate objective of the “safe third country” notion and the consequent transfer and re-admission of asylum-seekers was the appropriate allocation of State responsibility for determining refugee status.

The Meeting concluded that:

- 14) This objective is best achieved through the establishment of multilateral, coordinated approaches to the allocation of State responsibility for determining refugee status, preferably in the form of binding agreements. Such agreements, involving regional groupings of concerned countries, would both allocate responsibility for determining refugee status and have elements of burden-sharing, taking into account the relative capacities of the concerned States. This would provide a preferable mechanism to the unilateral and bilateral arrangements currently in place.
- 15) Pending the establishment of such arrangements, the most difficult of the problems associated with the operation of the “safe third country” notion as currently practised could be alleviated by the implementation of the following safeguards:
 - Common criteria for the notion of “safe third country” exist, and the safeguard that any presumption that a country is “safe” for a particular individual must be a rebuttable one.
 - The re-admitting country expressly agrees to receive back third country nationals, to determine their asylum claims and to provide any needed protection.
 - Information is available concerning the reasons for and conditions of re-admission, including the status of the claim. The State from which the asylum-seeker is transferred provides the asylum-seeker with a document stating that the application for asylum has not been examined on its merits.
 - An appeal against the decision to return to a “safe third country” is possible and has suspensive effect.
 - The applicant is fully informed about the consequences of the return and that s/he has access to the full procedure in the receiving State.
 - The receiving country grants the right to stay during the whole procedure.
 - The applicant has access to UNHCR in the third country, as well as to NGOs where appropriate.
- 16) It is desirable that updated and correct information concerning the safety of third countries is shared among those countries that intend to apply the notion.
- 17) Adequate financial and technical assistance should be provided to the less prosperous States, enabling them to discharge their refugee protection responsibilities effectively.

- 18) The reasonable preferences of the individual asylum-seeker and the meaningful links s/he has with a particular country should be taken into account to the maximum possible extent.
- 19) Resettlement programmes are desirable for those persons who are unable or, for valid reasons, are unwilling to stay in the country of first asylum.
- 20) The sending and re-admitting States share the responsibility for ensuring that the combined application of the notion of "safe third country" and re-admission agreements does not lead to *refoulement* by way of chain deportation.