

SECOND NOTE ON REVIEW OF THE PROCESS FOR DRAFTING EXECUTIVE
COMMITTEE CONCLUSIONS ON INTERNATIONAL PROTECTION

A. Introduction

1. An Informal Consultative Meeting (ICM) was held on 18 November 2005 to review the process for the drafting of Executive Committee (ExCom) Conclusions. This Note supplements the earlier note submitted to the ICM of 18 November 2005 by presenting the outcome of a small survey on the value of the ExCom Conclusions and, based on the discussions in the ICM, puts forward some suggestions as possible ways forward to improve the ExCom Conclusions negotiations process.

B. Outcome of a minor survey on value of ExCom Conclusions

2. UNHCR Headquarters regularly updates the thematic compilation of ExCom Conclusions and distributes these to field offices. In addition, at the end of every annual ExCom meeting, the ExCom Conclusions of the year, along with the Note on International Protection, are sent to all field offices. These are sent under cover of a memorandum from the Director of International Protection clarifying the issues addressed in the Note and the ExCom Conclusions, and highlighting the importance of maximizing the use of the ExCom Conclusions as advocacy tools. A few UNHCR offices translate the Conclusions into local languages.

3. Since a number of ExCom Members have expressed a keen interest to know more about the value of ExCom Conclusions and whether UNHCR offices find them useful, a mini survey was undertaken among a selected number of field offices. The scope of the inquiry was limited, both in terms of the number of field offices approached, as well as the questions posed; however, from the responses received, it is clear that the use of ExCom Conclusions as an advocacy tool varies widely among different UNHCR offices. While some are fully aware of the process and use the Conclusions routinely, others perceive the process as Headquarters-based and the Conclusions as not “operational” enough for use in the Field.

4. Based on the experience of UNHCR offices which use the Conclusions, the following broad observations may be drawn:

- most offices find the thematic Conclusions more helpful than the General Conclusions since the thematic Conclusions provide detailed guidance in specific refugee protection areas;
- nevertheless, the General Conclusions are viewed as helpful in so far as they reaffirm fundamental refugee protection principles;
- UNHCR offices in countries signatory to the 1951 Convention use the Conclusions more actively than offices in non-signatory States;

- among offices in countries signatory to the 1951 Convention which use the Conclusions, those in developed countries with advanced asylum systems tend to use them more frequently;
- among offices in non-signatory States which use the Conclusions, those in States which are members of the ExCom find the Conclusions more useful;
- Conclusions are found to be helpful as advocacy tools and for providing guidance in relation to the following:
 - developing refugee legislation: in this regard, UNHCR offices have used Conclusions in advocacy activities with government interlocutors, members of parliament, and in legislative bodies, in particular in regard to those areas of refugee protection where refugee law is unclear and guidance has been provided by ExCom;
 - establishing national refugee status determination mechanisms: in this regard, specific ExCom Conclusions have been helpful in providing guidance on more specific aspects of procedural issues;
 - conducting training activities with government officials: in this regard, ExCom Conclusions have been found to be very useful training materials on specific issues;
 - planning of programmes in specific operations in relation to which legal guidance is lacking in refugee law: these include planning of voluntary repatriation and reintegration programmes; planning in applying cessation to groups of refugees; and formulating protection programmes for women and children;
 - making specific protection interventions with government officials: in this regard, ExCom Conclusions can reinforce existing international instruments and provide more detailed guidance.

5. Many offices reported that NGOs make use of ExCom Conclusions, both as a source of guidance for standards to be applied in the protection of refugees as well as in their advocacy with governments.

6. Where ExCom Conclusions do serve as helpful advocacy and guidance tools for UNHCR offices, field offices consider that government interlocutors do not always give due weight to the Conclusions. In a number of situations, their “soft” or non-binding nature has been used in arguments against applying their standards. Some government counterparts appear disinterested in drawing guidance from ExCom Conclusions, possibly due to a lack of a sense of ownership, or, in some cases, possibly a lack of understanding of the ExCom process itself.

7. In summary, ExCom Conclusions have proved useful in providing guidance in areas not directly addressed by existing international refugee law and have added value as advocacy tools in the work of UNHCR. Nonetheless, the impact of the Conclusions on governments is somewhat limited, and there would appear to be a need to generate more awareness among concerned governments in regard to the ExCom process and the value of ExCom Conclusions. Monitoring of the use of ExCom Conclusions has now been incorporated more specifically into the UNHCR Annual Protection Reports.

C. Identified issues and some possible ways forward

Need for a process which would permit more in-depth debate and conceptual agreement on the themes selected, prior to preparatory consultations on the Conclusions

8. Given the overall emphasis during the ICM discussions on the need for selected themes to have a longer gestation period prior to the start of the preparatory consultations for drafting the Conclusions, a possible way forward would be to initiate discussions during the March Standing Committee, followed by informal consultative meetings as necessary. This would enable the theme to benefit from greater in-depth examination and, when the preparatory consultations commence after the June Standing Committee, the proposed contents of the draft Conclusions would already be well understood and critical issues delineated. The longer period between the presentation of the thematic papers and the start of the formal drafting process would also allow more time for missions to consult capitals on the broad themes and specific issues.

Methodology for an agreed text

9. The authoritative value of the Conclusions lies in the consensus on which they are based. UNHCR therefore believes it is important to strive to achieve a consensus rather than going for a vote. If there is no consensus, there should be no Conclusion.

Role of NGOs

10. There is broad acknowledgement among ExCom members that NGOs provide very useful input to the texts of draft ExCom Conclusions. In 2005, a process was initiated to allow NGOs to submit their written views on the initial and later draft texts to the Rapporteur and to attend a meeting convened prior to the Informal Preparatory Consultations on individual Conclusions for a consolidated presentation of their views. In practice, there were difficulties in ensuring that NGOs' proposals were fully taken into account during the actual negotiations. It was found that due to the demands of the role of the Rapporteur as Chairperson of the Informal Preparatory Consultations and the sometimes rapid pace of the negotiations, it was difficult simultaneously to put forward NGO suggested texts and have them properly considered by Members. In this context, a suggestion to have representatives from UNHCR put forward NGOs' comments and to inform NGOs of developments in textual changes was found to be unviable.

11. Nonetheless, should discussions on the themes for the Conclusions commence in March, and should informal consultative meetings on the thematic papers follow thereafter, this would enable the NGOs to express their views at an early stage on specific themes, and thereby contribute to enriching the development of the themes as the discussions progress. It is, however, suggested that the contribution of NGOs in the Informal Preparatory Consultations be reviewed, in order to explore ways to maximize their contribution to the draft Conclusions, within the current agreed framework.

Selection of themes for ExCom Conclusions

12. There is currently no clear formula for selection of themes for ExCom Conclusions. Possible themes for Conclusions are raised by States and UNHCR for discussion at the annual ExCom Planning Meeting usually held in December. Past practice has generally been for UNHCR to suggest the proposed themes, although ExCom member States have also put forward proposals for themes to be taken up. Over the last few years, the themes were drawn from the Agenda for Protection.

13. As general guidance, a particular thematic should be selected only if there is value to be added to the subject through further debate. In general, themes selected should relate to areas of refugee protection where there are “gaps” in the normative protection framework, or in the application of such a framework, and guidance from States needs to be developed.

Use of previous language

14. While there could be value in reaffirming old language, re-opening previous texts could also run the risk of erosion of previously achieved positions. As general guidance, ExCom Conclusions should build on previous texts, not simply repeat them.

Facilitating the monitoring of changes to draft texts

15. There was a suggestion that a possible way facilitating the process of following the various amendments made to the texts in the drafts would be to have changes to successive drafts undertaken in track change mode, and for clarifications on the changes to be presented in PowerPoint form. While track change is already the current mode for effecting adjustments to the texts, the value of using Powerpoint as a methodology for presentation could be further reviewed, in particular since delegates are expected to have familiarized themselves with the amendments prior to each ICM session.

Factoring in State interests

16. While States are expected to put forward their views and positions based on their practices and interests, refugee protection should remain the focus of the negotiations for progressive development of international protection principles, so that UNHCR and other pertinent actors are appropriately guided by the Conclusions. An aim of the negotiations is to find points of convergence between States interests’ and refugee protection.

The General Conclusion on International Protection

17. The need for a General Conclusion has been questioned by some ExCom members. It was suggested that possible ways forward would be to have a General Conclusion biennially, or to draft one only if there are significant developments during the year which need to be reflected. It is suggested that the need for a General Conclusion for the year be reviewed based on issues raised in the Note on International Protection presented at the June Standing Committee.

18. As general guidance, General Conclusions should be shorter and should focus only on a few key issues which are sufficiently significant to require ExCom’s attention.