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NON-PAPER
**on key ExCom Conclusions that have contributed to the evolution of international
refugee law and formed the basis of UNHCR guidance**

A. INTRODUCTION

1. The Executive Committee is the only specialised forum which exists at the global level for the development of international standards relating to refugees and other persons of concern to UNHCR, and has as such played a significant role in furthering the international protection regime. In 1975, the Executive Committee established the Sub-Committee of the Whole on International Protection of Refugees through ExCom Conclusion No. 1 (XXVI – 1975), designed to focus attention on protection issues. The aim was to determine existing short-comings in relation to interpretative standards and in relation to broader protection standards. Its recommendations to the Executive Committee formed the basis for the Conclusions on international protection until 1995 when the Sub-Committee was abolished and replaced by the Standing Committee as part of an overall restructuring of the Executive Committee. The Executive Committee's practice of annually adopting Conclusions on different aspects of international protection has continued, and remains the key forum for the advancement of international norms and standards in the area of refugee protection, statelessness and to some extent also protection of internally displaced persons.
2. ExCom Conclusions are of great authoritative value for States, are binding on UNHCR and are important tools of advocacy for the organization in exercising its supervisory role under the Statute and Article 35 of the 1951 Convention.
3. Conclusions on international protection have played a role in confirming the fundamentals of refugee protection such as: the principle of non-refoulement, the right to seek and enjoy asylum from persecution, the institution of asylum, the centrality of the 1951 Convention and its 1967 Protocol, rights related to family unity and reunification, and the importance of durable solutions for refugees. Some have also been particularly central for standard setting. The following represent a few key areas where gaps in legal interpretation and standards were addressed by provisions in ExCom Conclusions, on which UNHCR has since provided more detailed operational guidance.

B. KEY EXCOM CONCLUSIONS

I. Status determination procedures and related issues

4. As the 1951 Convention does not set out procedures for the determination of refugee status as such, either for individual cases or in situations of large-scale influx, the following ExCom Conclusions have been particularly important in partially filling this gap: ExCom Conclusions No. 8 (XXVIII-1977), No. 15 (XXX – 1979), No. 28 (XXXIII – 1982), No. 30 (XXXIV – 1983), No. 58 (XL – 1989) and nos. 81(h), 82(d)(iii) and 85(q), all referring to the need to admit refugees into the territories of

States and access of all asylum-seekers to fair and effective procedures for determining status and protection needs. ExCom Conclusion No. 12 (XXXIX – 1978) also deserves to be mentioned as the key authoritative source for advocacy in relation to the extraterritorial effect of asylum.

5. ExCom Conclusion No. 8 led to UNHCR's issuance of the Handbook on Procedures and Criteria for Determining Refugee Status, with Part I remaining the main interpretative guide of the 1951 Convention refugee definition and Part II setting out many of the core principles on procedures and safeguards in refugee status determination. Other UNHCR policy and position papers based on the aforementioned ExCom Conclusions include the Global Consultations paper Asylum Processes (Fair and Efficient Asylum Procedures),¹ Procedural Standards for Refugee Status Determination Under UNHCR's Mandate,² the UNHCR Background Note on the Safe Country Concept and Refugee Status,³ and the UNHCR Position on Readmission Agreements, 'Protection Elsewhere' and Asylum Policy.⁴ Furthermore, the comments on national legislative proposals that UNHCR produces as part of its supervisory role draw to the extent possible on standards set out in Conclusions.

II. International Protection

Gender related persecution, gender-sensitive asylum procedures and protection of refugee women

6. The Executive Committee has played a key role in promoting the understanding that the refugee definition, which historically has been interpreted through a framework of male experiences, as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status. ExCom Conclusions No. 39 (XXXVI – 1985), No. 73 (XLIV - 1993), No. 77 (XLVI - 1995), No. 79 (XLVII - 1996), No. 81 (XLVIII – 1997) and No. 87 (L – 1999) have all been key in promoting a wider inclusion in States' and UNHCR's protection criteria of the notion that persecution may be gender-related or effected through sexual violence. ExCom Conclusion No.64 (XLI – 1990) also stipulates that women asylum-seekers should be ensured appropriate access to asylum procedures and, wherever necessary, be provided with skilled female interviewers. Last year's ExCom Conclusion No. 105 (LVI – 2006) on Women and Girls at Risk also mentions the importance of ensuring effective access to gender-sensitive procedures and to recognize gender-related forms of persecution.
7. Many of the ExCom Conclusions cited above, as well as Conclusions No. 54 (XXXIX – 1988), No. 90 (LII – 2001), No. 98 (LIV – 2003) and No. 99 (LV – 2004) have also been crucial in both setting standards and in promoting the implementation of

¹ Global Consultations on International Protection, 2nd meeting, "Asylum Processes (Fair and Efficient Asylum Procedures)", EC/GC/01/12, 31 May 2001.

² Procedural Standards for Refugee Status Determination under UNHCR's Mandate, Department of International Protection, Geneva 2005.

³ UNHCR Background Note on the Safe Country Concept and Refugee Status, Department of International Protection, (EC/SCP/68), 26 July 1991.

⁴ UNHCR Position on Readmission Agreements, 'Protection Elsewhere' and Asylum Policy, 1 August 1994.

standards on prevention and response to sexual and gender based violence and exploitation, including trafficking, against women and children.

8. UNHCR's Guidelines on International Protection on Gender-Related Persecution,⁵ the UNHCR Guidelines on International Protection on Membership of a Particular Social Group,⁶ the Guidelines on Prevention and Response to Sexual and Gender-Based Violence against Refugees and Internally Displaced Persons,⁷ as well as the 1991 Guidelines on the Protection of Refugee Women, which are currently being revised, have all built, to a larger or lesser extent, on the standards developed in the aforementioned ExCom Conclusions.

Refugee children

9. The 1951 Convention neither contains any provisions concerning an age-sensitive interpretation of the refugee criteria, nor any standards on the treatment and rights of asylum seeking and refugee children. The three ExCom Conclusions specifically devoted to the theme of children – No. 47 (XXXVIII – 1987), No. 59 (XL – 1989) and No. 84 (XLVIII – 1997) - together with references in numerous other Conclusions to the rights and specific protection needs of children have thus greatly contributed towards filling the gap in the 1951 Convention, and served to complement the Convention on the Rights of the Child and related human rights instruments.
10. UNHCR's 1988 Guidelines on Refugee Children were published upon a request by the Executive Committee in its Conclusion No. 47. The UNHCR Policy on Refugee Children, which was presented to and welcomed by the Executive Committee in 1993, built on the standards set out in Conclusion nos. 47 and 59. Furthermore, the 1994 Guidelines on the Protection and Care of Refugee Children, as well as the 5 Priorities for Girls and Boys of Concern to UNHCR all build on standards set out in these ExCom Conclusions.

Cessation of refugee status

11. One of the truly standard setting ExCom Conclusions that has helped to provide detailed interpretative guidance on the application of Articles 1C(5) and (6) in the 1951 Convention is No. 69 (XLIII – 1992) on Cessation of Refugee Status. Provisions in ExCom Conclusions No. 18 (XXXI – 1980) and No. 65 (XLII – 1991) have also contributed to setting standards in relation to the application of cessation.

⁵ UNHCR's Guidelines on International Protection on Gender-Related Persecution⁵ within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002.

⁶ UNHCR Guidelines on International Protection on Membership of a particular social group within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/02, 7 May 2002.

⁷ UNHCR Guidelines on Prevention and Response to Sexual and Gender-Based Violence against Refugees and Internally Displaced Persons, Geneva May 2003.

12. These Conclusions, and in particular No. 69, form the basis of UNHCR's Guidelines on International Protection on the Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees.⁸

Civilian and humanitarian character of asylum and personal security of refugees

13. The Executive Committee has greatly contributed to developing standards on the civilian and humanitarian character of asylum, which is one area not addressed by the 1951 Convention. While the main ExCom Conclusion on this theme is No. 94 (LIII – 2002) on the civilian and humanitarian character of asylum, these previous conclusions are also highly relevant: Conclusions No. 27 (XXXIII - 1982), No. 32 (XXXIV - 1983), No. 47 (XXXVIII - 1987), No. 48 (XXXVIII - 1987), No. 64 (XLI - 1990), No. 72 (XLIV - 1993) and No. 84 (XLVII - 1997).
14. UNHCR's recently issued Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum are largely based on the standards set out in these Conclusions.

Detention

15. Article 31 of the 1951 Convention prohibits the punishment of refugees for illegal entry under certain circumstances, which would be justified for others. In its Conclusion No. 44 (XXXVII – 1986), the Executive Committee sets out the limited accepted grounds on which the detention of refugees or asylum-seekers may be justified, namely: to verify identity; to determine the elements of the claim; to deal with cases where refugees have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. The Executive Committee has, in numerous subsequent ExCom Conclusions including No. 85 (XLIX – 1998), noted with concern, and deplored, *inter alia* the arbitrary detention of refugees and reiterated its Conclusion No. 44.
16. Both UNHCR's 1995 Guidelines on Detention of Asylum-Seekers, as well as the 1999 Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, build on the standards set by ExCom Conclusion No. 44. The Conference Room Paper for the Standing Committee,⁹ which was issued shortly after the publication of the revised Guidelines, also confirms that asylum-seekers may only be detained in the exceptional situations outlined in ExCom Conclusion No. 44.

Family unity and family reunification

17. Although there is not a specific provision in the 1951 Convention regarding family unity, the strongly worded Recommendation B in the Final Act of the Conference of

⁸ UNHCR's Guidelines on International Protection on the Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), HCR/GIP/03/03, 10 February 2003.

⁹ Detention of Asylum-Seekers and Refugees: the Framework, the Problem and Recommended Practice, 15th Meeting of the Standing Committee, EC/49/SC/CRP.13, 4 June 1999.

Plenipotentiaries, reaffirms the “essential right” of family unity for refugees.¹⁰ While it is also guaranteed, within the framework of the right to family life under international and regional human rights law as well as international humanitarian law, the following ExCom Conclusions, reaffirming States’ obligations to take measures which respect family unity and family reunion, have been key in setting international standards in this area: Executive Committee Conclusions No. 1 (XXVI – 1975), No. 9 (XXVII – 1977), No. 24 (XXXII – 1981), No. 84 (XLVIII – 1997), No. 85 (XLIX – 1998) and No. 88 (L – 1999). ExCom Conclusions No. 15 (XXX – 1979), No. 22 (XXXII – 1981), No. 47 (XXXVIII – 1987), No. 74 (XLV – 1994), No. 91 (LII – 2001), No. 93 (LIII – 2002), No. 100 (LV – 2004), No. 101 (LV – 2004), No. 103 (LVI – 2005), No. 104 (LVI - 2005) and No. 105 (LVI – 2006) also contain important provisions regarding *inter alia* the maintenance of family unity, tracing and facilitation of family reunification.

18. The 1993 UNHCR Guidelines on Reunification of Refugee Families, which are currently undergoing revision, as well as other UNHCR guidelines and policy statements including the Conference Room Paper for the Standing Committee on Family Protection Issues¹¹ and the Summary Conclusions on Family Unity from the Global Consultations¹² all draw to a large extent on the ExCom Conclusions that have contributed to setting international standards in the area of protection of the refugee’s family.

VI. Durable Solutions

19. The Executive Committee has on several occasions noted the inter-relationship between protection and solutions, that the ultimate goal of international protection is to achieve durable solutions for refugees and that voluntary repatriation, local integration and resettlement are the traditional solutions for refugees.

Voluntary repatriation

20. Even though repatriation of refugees is foreseen under Article 1C in 1951 and the Statute of UNHCR, neither deals with the conditions and criteria for voluntary repatriation. ExCom Conclusions No. 18 (XXXI – 1980), No. 40 (XXXVI – 1985) and No. 101 (LV – 2004), together with numerous other Conclusions that refer to voluntary repatriation in safety and dignity as one of the three durable solutions therefore constitute the international standards in this area.
21. The UNHCR Handbook on Voluntary Repatriation from 1996, which is currently undergoing revision, translates the standards set out in the ExCom Conclusions on voluntary repatriation into operational guidelines.

¹⁰ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979, reedited 1992), Annex I.

¹¹ Family Protection Issues, Standing Committee, 15th meeting, EC/49/SC/CRP.14, 4 June 1999.

¹² Summary Conclusions on Family Unity, Global Consultations Geneva Expert Roundtable, 8-9 November, 2001.

Resettlement

22. The Executive Committee has also played a key role in developing standards and criteria for the resettlement of refugees. Apart from confirming that it is one of the three durable solutions for refugees, the Executive Committee has also reaffirmed the link between international protection and resettlement as an instrument of protection, as a durable solution in specific circumstances, and encouraged States and UNHCR to put into practice the strategic use of resettlement in the spirit of international burden and responsibility sharing. The ExCom Conclusions specifically devoted to the theme of resettlement, as well as those which contain key provisions on resettlement, are No. 2 (XXVII – 1976), No. 67 (XLII – 1991), No. 79 (XLVII – 1996), No. 85 (XLIX – 1998), No. 90 (LII – 2001), No. 99 (LV – 2004 and No. 100 (LV – 2004).
23. UNHCR's Resettlement Handbook is the most comprehensive document translating the standards developed in these ExCom Conclusions into practical guidelines.

Local Integration

24. While local integration as a durable solution for refugees is foreseen both under Article 34 of the 1951 Convention and UNHCR's Statute, the Convention itself does not establish any standards or criteria for the implementation of this solution. The standards set out by the Executive Committee in its Conclusion No. 104 (LVI – 2005) on Local Integration therefore constitute the key point of reference in this area. In the absence of specific guidelines translating these standards into operational guidance, UNHCR uses the Conclusion itself as the tool on the basis of which operational strategies and plans for specific situations or countries are currently being developed.

C. CONCLUSION

25. UNHCR has been guided by ExCom Conclusions over the years. ExCom Conclusions may not necessarily be used in the field directly but many translate into guidelines and handbooks at the operational level. The Executive Committee is an advisory body of the High Commissioner created under the Statute and should continue to advise the High Commissioner on key protection issues through the adoption of Conclusions.