

PRELIMINARY PLANNING PAPER ON
PROPOSED MULTI-YEAR THEMES (2008-2012) AND
WORKPLAN FOR EXECUTIVE COMMITTEE CONCLUSIONS

INTRODUCTION

1. As part of its inputs into the on-going ExCom Informal Consultative Meetings (ICMs) to establish a multi-year work plan of themes for Executive Committee Conclusions, UNHCR presented two papers at the ICM which took place on 9 June 2008. These were the “Informal Discussion Paper on Possible Ways to Improve the Drafting Process for Executive Committee Conclusions on International Protection” and the accompanying Power Point Presentation. The first paper, which had been distributed ahead of the ICM (albeit late) had not listed or elaborated the themes UNHCR was proposing for the multi-year programme of work. This information was provided as part of the Power Point presentation made by the Office during the ICM. According to this presentation, the multi-year workplan would stretch from 2008 as a transition year to 2012 as a “carry over year”. For the themes themselves, the Office proposed the following: General Conclusion; Persons of Concern with Disabilities; Older Persons of Concern; Protection and Solutions Issues Arising in the Maritime Context; Asylum Procedures; Self-reliance; and Protracted Refugee Situations.

2. The States that took the floor made mainly preliminary comments on the proposed themes, signalling that they would revert with fuller and more substantive comments at a subsequent discussion. For this purpose, UNHCR was called upon to provide further information on the thinking behind its proposals. This paper provides the feedback requested. It is based on the paper which UNHCR presented at the initial planning meeting for the 2008 Conclusions which took place at the end of last year, and which was already drawn upon in preparing the informal discussion paper and slide presentation for the ICM on 9 June 2008. It now further draws upon the pertinent results of that ICM and of the ExCom Standing Committee meeting of 24-26 June 2008. The intention is to provide ExCom Members with sufficient information and pointers to discern the importance of the themes proposed and the issues for which the Office considers ExCom’s guidance and support to be necessary through a Conclusion. A more detailed elaboration of the proposed themes and the issues at stake (including the legal frameworks, problems, gaps and issues identified and ways of tackling them) will be provided further down the line in accordance with the relevant procedures.

3. In the meantime, each theme being proposed for the multi-year work plan is described in annex as follows:

Annex I: The protection of persons with disabilities

Annex II: The protection of older persons

Annex III: Protection, assistance and solutions issues arising in the maritime context

Annex IV: Asylum procedures

Annex V: Self-reliance and livelihoods

Annex VI: Protracted refugee situations

Annex I

The protection of persons with disabilities

1. The adoption of the “Convention on the Rights of Persons with Disabilities” at the end of 2006 was a watershed in the development of human rights. The Convention is the first comprehensive human rights treaty of the 21st Century, and, with 82 States having signed up when it was opened for signature, has the highest number of opening signatories of any human rights instrument. The Convention, which entered into force on 3 May 2008, provides a broad definition of persons with disabilities, clarifies norms and standards specific to their needs, and sets out States’ obligations to ensure their equal enjoyment of rights in all areas of civil, political, economic, social and cultural rights. It signifies a paradigm shift in attitudes and approaches to persons with disabilities, moving away from a medical to social approach to the issue and underlining disability as rooted primarily in the environment and not the person. Thus, the Convention characterizes persons with disabilities not as objects of welfare but as holders of rights.
2. The objective in taking up this issue for purposes of a Conclusion is to draw upon the norms and standards of the Convention in leveraging a consistent framework for activities in favour of refugees and other persons of concern with disabilities. Such a Conclusion would affirm the applicability of the Convention to refugees and other persons of concern to UNHCR and underscore the particular protection risks faced by persons with disabilities and the need to make them a priority concern. It could further elaborate key policy and directional elements; promote the systematic incorporation of specific protection needs into UNHCR’s policy guidance, strategies, reports and training/learning programmes, including the age, gender and diversity mainstreaming (AGDM) strategy, activities in capacity building and awareness building to achieve attitudinal change, the identification, monitoring and development of assessment tools; and partnerships with national authorities, agencies and other actors.
3. With these objectives in mind, UNHCR presented a Conference Room Paper (CRP) to the 39th Standing Committee of June 2007 on the protection situation and needs of older persons and persons with disabilities. The CRP described the main protection challenges faced by older persons and those with disabilities and outlined efforts made by UNHCR and its partners in responding, and suggested the issues to be addressed in the proposed Conclusion as per paragraph 1 above.
4. Drawing on the essentially positive responses which the paper received, UNHCR had hoped that a Conclusion on the issue could be moved as part of the Executive Committee’s schedule of work for 2008. Thus, at the Planning Meeting held in December 2007, the Office included this subject and the one that follows below (older persons), as priorities and indicated that it was in the process of drafting a working text for the Conclusion. As of then, however, the objective of developing a multi-year work plan was now gaining pre-eminence. The issue of disability would thus have to find its place in such a work plan.
5. UNHCR believes that this remains an important issue that merits an ExCom Conclusion on a priority basis. It is noted that, at the recent 42nd Standing Committee meeting in June 2008, a number of delegations voiced strong support for the issue. The NGOs, in a statement read on their behalf by Handicap International, made an even stronger and highly elaborated plea for the issue to be addressed by the Executive Committee in a Conclusion.

Annex II

The protection of older persons

1. There is limited awareness of the rights, needs, and contributions of older people affected by displacement. As a result, they are routinely neglected in humanitarian planning and programming. The challenges facing them are considerable. They regularly encounter serious barriers in accessing essential protection services. They may be unable to access transport, understand written or verbal information, register with institutions for documentation and support, access health services or recall and recount with accuracy relevant details during refugee status interviews. Identification and registration procedures may not be designed to identify at an early stage those persons who are least visible, and who do not have family or community support available, in order to ensure appropriate interventions. Older persons may be unable to fulfill requirements for naturalization, such as stringent language tests or examinations on the history and culture of the host country. They may have become separated from family members upon whom they were dependent. In addition, they often have to take on responsibilities for children and other dependent family members as a result of conflict, disaster, disease (particularly HIV/AIDS), migration, and displacement.

2. The case for an ExCom Conclusion on older persons was also made at the 39th meeting of the Standing Committee in June 2007, along with the disability issue, in the Conference Room Paper summarized in Annex I. It was argued that a Conclusion was necessary to, among others, enhance awareness among humanitarian actors on the specific protection risks faced by older persons and to encourage the attitudinal shift required to support inclusion and participation of older persons focusing on their capacities, skills and contributions rather than vulnerability and dependence. As there is no binding international Convention specifically addressing the rights of older people, a Conclusion would also help reinforce a rights-based approach to the protection of such individuals. It would further highlight the importance of partnership between the different actors in addressing the specific needs of older persons and build on UNHCR's policy on older persons endorsed by the Standing Committee in 2000.

3. As indicated already, States and other speakers broadly welcomed the attention that UNHCR was drawing to older persons and those living with disability. It was however also highlighted that, while, in many instances, the experiences and protection risks of older persons and those with disabilities were similar, there were critical differences in those experiences themselves and the legal and other responses to them. Thus, it was decided to separate the two issues, to be covered in "sister", but nevertheless separate, Conclusions. UNHCR urges the same importance to the issue as for disability, and that the two issues should travel together in terms of the Conclusions process.

Annex III

Protection, assistance and solutions issues arising in the maritime context

1. In regard to the issue that has previously been referred to as “rescue at sea”, UNHCR acknowledges that, from when it proposed the need for the Executive Committee to address this issue in a Conclusion, some States have expressed a number of concerns and reservations. UNHCR has listened to and given careful consideration to these concerns. Among others, the Office has sought to frame the questions it is putting forward as precisely as possible, among others underlining that it is not the broad subject of rescue at sea as such that it is calling upon the Executive Committee to consider, but, rather, only those aspects which are relevant to the protection, assistance and solutions problems which the Office must address as part of its mandate in maritime situations. The issue has thus been re-titled to make this approach clear.¹
2. A central question has been whether another Conclusion is called for. The Office has explained that, against the background of the dramatic tragedies in the Mediterranean, the Gulf of Aden and elsewhere which, evidently, involved persons in need of protection as refugees, the existing Executive Committee Conclusions on the issue are not adequate in dealing with those problems. Adopted over the period 1980 to 1985,² the underlying focus of these Conclusions was the situation of refugees and asylum-seekers in the South China Seas, notably the problems of acts of piracy and violence at sea. The most substantive of the Conclusions, No. 23 (XXXIII - 1981), includes provisions on the fundamental obligation of shipmasters to rescue persons in distress at sea; the facilitation of rescue at sea through the agreement of flag and other States to contribute to a pool of resettlement guarantees; admission at least on a temporary basis if there is large scale influx; and disembarkation and the search for solutions based on the principles of international solidarity and burden sharing. These are of course all apt general protection principles even today; however, within the scheme of those Conclusions, they are region-specific and refer to clear refugee outflows in relation to which resettlement was a more readily available solution. Today’s situations are far more complex, and, while there have been significant developments in the search and rescue regime, there are clear protection gaps which could benefit from ExCom discussions and guidance in the form of a Conclusion.
3. Notwithstanding what has just been said, it is clear from the ICMs and other dialogues thus far that much further reflection remains necessary on the concerns and issues that both sides are putting forward, before the conditions to move forward on a Conclusion can be attained. It may thus be more beneficial that, while this item would be retained on the list of themes, the focus at this stage would be on a detailed examination of the issues at stake without establishing a Conclusion as an immediate outcome. These discussions could, among others, seek to formulate and scope the issues more precisely, and, in that context, visualize the need for and value of a Conclusion, its scope and the issues it would address.

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¹ The similarly more precise title of “Rescue at Sea: Specific Aspects Relating to the Protection of Asylum-Seekers and Refugees”, used before, is also available to be taken advantage of.

² ExCom Conclusions No. 20 (XXXI – 1980), No. 23 (XXXII – 1981), No. 26 (XXXIII – 1982), No. 31 (XXXIV – 1983), No. 34 (XXXV – 1984) and No. 38 (XXXVI – 1985).

Annex IV

Asylum procedures

1. This is an issue that is “left over” from those which the Agenda for Protection identified to be addressed through ExCom Conclusions. Issues relating to asylum procedures were examined in the third track of the Global Consultations on International Protection³ which reviewed state practice in a number of areas and put forward recommendations on fair and efficient asylum procedures to safeguard the integrity of asylum systems. The Agenda for Protection, under Goal 1, called for States “through UNHCR’s Executive Committee” to “consider updating past ExCom guidance on the recommended framework for asylum procedures, with a view to promoting greater harmonization in the practice of States.”⁴

2. The concern behind this question as dealt with in the Global Consultations drew from the fact that the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and regional refugee protection instruments do not provide procedural standards for processing asylum claims. The Executive Committee has filled the gap by providing basic procedural standards through Conclusion No. 8 (1977) which remains the basic reference for standards in asylum systems. Some elements were further elaborated upon in the UNHCR Handbook on Procedures and Criteria, while later ExCom Conclusions have provided guidance on specific legal and procedural issues.⁵

3. State practice has evolved considerably since then. Many States have put in place asylum systems to implement their obligations under the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol. While some systems are highly complex and legalistic, in keeping with the applicable legislative and judicial systems, others are relatively rudimentary. In yet other States which are party to the 1951 Convention/1967 Protocol or a regional refugee instrument, no asylum or refugee protection systems have been put in place at all. In the European Union States, the EU Council Directive⁶ on “minimum standards on procedures in Member States for granting and withdrawing refugee status” provides binding minimum standards as part of efforts to achieve a common European asylum system.

4. Developments which have taken place over the last few years, including global concerns over terrorism and large-scale migratory flows, have led to a growth of mechanisms which could compromise international refugee protection standards, for instance through legal or procedural restrictions which make it difficult for asylum-seekers to access asylum procedures or to have their claims determined substantively. Against a background of increasingly restrictive practices, and with States continuing to develop their asylum systems or put them in place where none have existed, it is timely that ExCom should frame its guidance on a number of critical procedural issues and provide best practice models which would supplement Conclusion No. 8 and other relevant Conclusions on the subject, with a view to achieving greater global consistency in standards for asylum procedures. Issues such as admissibility of claims, use of accelerated procedures, individuals with special protection needs, undocumented or uncooperative asylum-seekers, and appeals could be addressed. Others of relevance include case management tools and methodologies, resources, quality initiatives and the role of UNHCR.

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³ See EC/GC/01/12, 31 May 200; “Asylum Process: Fair and Efficient Asylum Procedures”

⁴ UNHCR Agenda for Protection, October 2003, Goal 1 Objective 2

⁵ ExCom conclusion No. 30 (XXXIV) on the problem of manifestly unfounded or abusive applications for refugee status or asylum

⁶ Council Directive 2005/85/EC of 1 December 2005

Annex V

Self-reliance and livelihoods

1. Safeguarding refugees' self-reliance and livelihoods remains a daunting challenge, whether in camps, settlements or urban settings. The lack of self-reliance and livelihood opportunities manifests the inability to exercise basic rights, abject poverty and continuing dependence on international relief assistance. States hosting large numbers of refugees can become reluctant to grant opportunities for self-reliance to refugees, fearing that this could lead to local integration to the detriment of other durable solutions and the interests of the local populations.

2. An ExCom Conclusion could elaborate a better understanding of the concept of self-reliance in which the individual rights and the social and economic empowerment of refugees are considered properly together with legitimate national concerns and interests. While a number of UNHCR⁷ and ExCom⁸ documents already exist on the issue, there is no ExCom Conclusion devoted as such to the topic. The Executive Committee last debated the issue in the context of drafting Conclusion No. 104 (LVI) on local integration in 2005.⁹ However, the debate addressed self-reliance as an economic dimension of local integration, and did not fully explore it as a tool of protection, regardless of the applicable durable solution. ExCom has therefore not had the opportunity to review self-reliance as a concept in its own right, or aspects which are critical to protection.

3. In Conclusion No.104 on local integration, the Executive Committee took a positive stand on the issue, recognizing that "promoting the self-reliance of refugees from the outset will contribute towards enhancing their protection and dignity, help refugees manage their time spent in exile effectively and constructively, decrease dependency and enhance the sustainability of any future durable solution." This guidance could now form the basis for framing normative and operational guidance for the implementation of self-reliance and livelihood activities in protracted refugee situations in both urban and rural settings, covering in a targeted manner issues pertaining to the civil, economic and social rights of refugees.

4. The NGO community has rallied strongly in support of this theme and has proposed a number of elements for a possible Conclusion. UNHCR greatly appreciates the quality of the contributions provided by NGOs during the ExCom Conclusions drafting process. This has been a valuable source of information for ExCom Member States in negotiating Conclusions in recent years, notably those on women and girls at risk¹⁰ and on children at risk.¹¹

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⁷ Handbook for Self-Reliance; Global Consultations paper "Local Integration"; Agenda for Protection Goal 5, Objective 7; "Framework for Durable Solutions for Refugees and Persons of Concern"; Development Assistance for Refugees (DAR); "Convention Plus: Targeting Development Assistance for Durable Solutions to Forced Displacement: Statement of Good Practice.

⁸ "Protracted Refugee Situations", Conference Room Paper for the 30th meeting of the Standing Committee, EC/54/SC/CRP.14, 10 June 2004, para. 17 "...Refugee self-reliance is the key element in any strategy dealing with the effects of prolonged and stagnant exile..."

⁹ ExCom Conclusion No. 104 (LVI) - 2005

¹⁰ ExCom Conclusion No. 105(LVII) -2006

¹¹ ExCom Conclusion No. 107 (LVIII) -2007

Annex VI

Protracted refugee situations

1. One of the core components of international protection is finding durable solutions for refugees. Concerns linked to protracted refugee situations were discussed extensively during the Global Consultations, and the Agenda for Protection touches on the issue from both a burden-sharing and durable solutions angle.¹² It encourages States to consider the usefulness of specific burden-sharing agreements, negotiated bilaterally or multilaterally, to contribute to consistency and sustainability in the international response to protracted refugee situations. The Agenda further calls for a comprehensive approach to finding durable solutions which integrates voluntary repatriation, local integration and resettlement.

2. In June 2004, UNHCR presented a conference room paper on protracted refugee situations to the Standing Committee.¹³ The paper defined protracted refugee situations, emphasized the protection implications of protracted displacement for refugees and highlighted the importance of partnership by all stakeholders for an effective response. A paper issued in September 2004 as part of the High Commissioner's Forum initiative examined what is meant by a comprehensive approach to durable solutions, when such an approach should be pursued, and what roles UNHCR, States and other actors can play in implementing it.¹⁴

3. At the ICM at the end of January 2008 which considered the themes UNHCR was at that stage proposing for the elaboration of Conclusions for 2008, a number of States drew attention to the issue of Protracted Situations, not included initially in UNHCR's proposals. At the close of that dialogue, this issue emerged with strong unanimity as a possible Conclusion theme. Since then, the momentum around the issue has grown. The High Commissioner's special initiative on the problem is moving apace. In the ICM following the March Standing Committee at which the Office presented the philosophy and approaches of this initiative, it drew strong support from States. At the ICM on 9 June, the States that spoke to the issue reiterated their interest and support. At the recent 42nd meeting of the Standing Committee, some 27 States reiterated their interest in and support for the issue. The next High Commissioner's Global Dialogue on International Protection Challenges will address this topic.

4. Obviously, the consideration of the issue which will follow over the next months and in the High Commissioner's Dialogue will delve into and elaborate in detail the issues meriting to be dealt with in a Conclusion. The considerations thus far as summarized above have however illuminated a number. They include the urgency of reinvigorating efforts and possibilities for unlocking protracted refugee situations; improving the quality of life for affected refugee populations;¹⁵ the seriously prejudicial consequences protracted displacement can have on individual refugees, particularly when confined to remote and insecure areas with limited access to livelihood activities and educational opportunities; and the need to promote mutually beneficial interactions with host communities. Ways to address the concerns of asylum countries on the depletion of natural resources, deforestation, or serious strains on local education and health facilities are other concerns. The Conclusion could also call for enhanced partnership by all stakeholders; reaffirm the need for a comprehensive approach to durable solutions; and clarify the circumstances under which remaining abroad with the status of legal migrant may offer an interim or alternative solution, distinct from the three traditional solutions of voluntary repatriation, local integration and resettlement.

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¹² See Agenda for Protection Goal 3, Objective 1 as well as Goal 5, Objective 1.

¹³ See EC/54/SC/CRP.14, 10 June 2004.

¹⁴ See FORUM/2004/7, 16 September 2004.

¹⁵ See EC/59/SC/CRP.13, 2 June 2008.