

2nd Meeting

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GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION:
REPORT OF THE FIRST MEETING IN THE THIRD TRACK

I. INTRODUCTION

1. The first substantial meeting of the third track of the Global Consultations on International Protection on 8 and 9 March 2001 was chaired by the Rapporteur of the Executive Committee, Mr. Haiko Alfeld (South Africa). Opening the meeting, he noted the enormous interest generated by the Global Consultations, as witnessed by the broad geographical representation and the presence of a large number of NGOs. He called for an interactive and constructive dialogue on the important issues before the meeting. After a short welcoming statement by the Assistant High Commissioner, the Director of International Protection addressed the meeting. She described it as beginning the process to re-consolidate support around the foundation principles of refugee protection and to set the protection agenda for the future. She briefly outlined the four subjects for discussion under the theme of the protection of refugees in situations of mass influx (see below).

2. The ensuing debate under all four topics of the theme was participatory and broad ranging. A large number of issues were discussed and a broad array of opinions and perspectives canvassed. Delegations expressed their appreciation for the timeliness and importance of the Global Consultations.

II. ADOPTION OF THE AGENDA

3. The agenda (EC/GC/01/3) was adopted without amendment.

III. PROTECTION OF REFUGEES IN MASS INFLUX SITUATIONS

A. Overall Protection Framework

4. The Chief of the Standards and Legal Advice Section of the Department of International Protection introduced the background note on "Protection of Refugees in Mass Influx Situations: Overall Protection Framework" (EC/GC/01/4).

5. With 43 interventions, there was unprecedented participation on this complex topic. The overwhelming nature of protection needs in mass influx situations was repeatedly underlined. There was broad recognition of the primacy and centrality of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol in the international refugee protection regime, including in situations of mass influx. Absolute respect for the right to seek asylum and the principle of *non-refoulement* was underlined. Many delegations stressed the importance of the full and inclusive application of the Convention as the basis for discussions in the Global Consultations. The applicability of complementary regional refugee instruments, particularly the 1969 OAU Refugee Convention and 1984 Cartagena Declaration, was recalled. Several delegations also referred to the relevance of Executive Committee conclusions, especially those relating to large-scale influx, in particular Conclusion No. 22 (XXXII). The applicability of human rights instruments and international humanitarian law in ensuring refugee protection in situations of mass influx was noted as other important sources for standards of treatment. In addition, the link between protection and assistance was underlined by several delegations.

6. Many delegations also stressed the importance of addressing the root causes of mass flows. Conflict prevention, early warning, development cooperation, poverty eradication, human rights

promotion, and the economic dimension of displacement were mentioned as the main measures to be considered in this regard. There was also widespread support for more attention to be given to finding durable solutions in protracted situations.

7. Many delegations emphasized the need for a strengthened role for UNHCR in mass influx situations, including rapid operational presence, full and unhindered access, and a strong monitoring and intervention role.

8. Given the complexity and diversity of mass influxes, which were by their very nature mixed in character, some States noted the need for additional measures and more comprehensive approaches to address such situations. Other issues raised included the importance of providing support to host communities to help reduce hostility towards refugees and the question of addressing protection needs within the country of origin. Many delegations drew attention to the need for a more equitable distribution of the responsibility for protecting refugees. Several host countries stressed the need for support in shouldering the burden through the provision of financial and technical support, as well as efforts to build local capacity.

1. Prima facie determination on a group basis

9. Most delegations recognized the value of *prima facie* recognition of refugee status on a group basis in mass influx situations. African delegations drew attention to the abundant experience on their continent and to the lessons that could be drawn, while others mentioned the difficulty of implementing such a response in countries with highly developed systems focusing on individual recognition of refugee status.

10. Several States felt that individual processing to identify and exclude persons not deserving of international protection under the refugee instruments should begin as soon as possible after arrival, noting the operational difficulties, and suggesting that appropriate modalities for exclusion be examined and technical support provided to host countries. One State made an extensive presentation on how to elucidate the definition of criteria for exclusion under Article 1 (F) by reference to a number of international instruments.

11. Many States highlighted the critical importance of enhancing the legal and operational capacity of host States, particularly developing countries confronted with large and protracted refugee situations. It was proposed that the international community, including through UNHCR, should give sustained attention to this issue.

12. There was broad reiteration of voluntary repatriation as the preferred durable solution to mass influx. In order to be effective, planning and provision for voluntary repatriation should begin, according to some delegations, at the start of a refugee crisis. One delegation noted that the nature of the conflict might require diverse approaches to finding appropriate solutions. Delegations pointed to the need for a comprehensive durable solutions strategy, which secured the support of the international community and explored all aspects of potential solutions. A number of delegations hosting large numbers of refugees called upon the international community to make energetic efforts to create an enabling environment for voluntary repatriation and provide adequate resources.

13. Resettlement was acknowledged as playing an important responsibility-sharing role. A number of States pointed to the need for flexible resettlement criteria in *prima facie* situations, given that many of the States hosting mass flows are among the world's least developed countries and local integration for large numbers is therefore difficult. Some States indicated that they had already introduced flexible criteria, including acceptance for humanitarian reasons, but stressed that their application had to be carried out in conjunction with individual screening of candidates. UNHCR was asked to play an intermediary role in the process. It was proposed that UNHCR address the question of criteria further, through regular

resettlement consultations. The Office was also asked to examine its own resettlement submission process for *prima facie* cases.

2. Temporary protection

14. Interventions on temporary protection generally stressed its exceptional and interim nature, and its compatibility with the 1951 Convention. There was widespread acknowledgement that temporary protection must be limited in time. Both the Council of Europe and European Union (EU) Member State interventions offered helpful information on the concept of temporary protection in Europe and the ongoing harmonization process within the EU framework, while a written presentation of the European Commission was also drawn to the attention of delegations. The complementarity of these processes with the Global Consultations was noted.

15. Delegations observed that there were different understandings of the concept of temporary protection. It was suggested that the term “temporary protection” will be defined more precisely through an inclusive dialogue with the stakeholders to ensure a common understanding of the concept. Several delegations stressed that temporary protection was a concept applicable only in mass influx situations. Many speakers highlighted the difficulty of defining a mass influx and the period for which temporary protection should last. It was stressed that mass influx normally included some degree of suddenness and that numbers should be such as to make individual determination impracticable. Many delegations noted the importance of UNHCR’s involvement and advice in this regard. It was noted that standards of treatment available to refugees benefiting from temporary protection will be in conformity with relevant EXCOM conclusions, and anything above that should be voluntarily assumed by States.

16. A number of delegations referred to the criteria and modalities for ending temporary protection. Some States stressed the role of UNHCR in providing guidance on the viability, conditions and timing of return. It was noted by many that even where temporary protection ends, some refugees will continue to have protection needs that must be addressed. Many States emphasized that temporary protection should not prejudice the right of those enjoying it to apply for refugee status under the 1951 Convention and to have their claims examined.

3. Study on protection in mass influx situations

17. There was widespread endorsement for a comparative study of protection responses to mass influx. Delegations suggested that it should be practical, diagnostic and evaluative, and should include “lessons learned” from mass influx situations in Africa (where experience with this phenomenon is particularly rich), Asia and Latin America, as well as analysis of legal developments in the EU and elsewhere. The study should look at the quality of protection provided under these mechanisms, the applicability of the Convention, its flexibility in such situations, and solutions in protracted refugee situations. It was suggested that a preliminary report could usefully be ready for consideration at the meeting of States Parties on 12 December 2001.

B. Civilian character of asylum, including separation of armed elements and screening in mass influx situations, as well as status and treatment of ex-combatants

18. The Deputy Director of the Department of International Protection summarized the background note on "The Civilian Character of Asylum: Separating Armed Elements from Refugees" (EC/GC/01/5). The Director of UNHCR's Emergency and Security Service made a presentation of the operational measures to enhance security. There was a rich and constructive debate, with statements by 23 delegations. The recommendations and conclusions in the background paper were broadly supported, while the important contribution of the regional meeting held in Pretoria, South Africa, on 26–27 February 2001 was also welcomed. A summary of the conclusions of this meeting on Maintaining the Civilian and Humanitarian Character of Asylum, Refugee Status, Camps and Other Locations will be issued by the Secretariat as a separate document.

1. Civilian character of asylum

19. There was broad agreement that maintaining the civilian character of asylum was fundamental to the ability and willingness of States to receive and protect refugees. Most delegations noted the serious repercussions of insecurity on refugee protection, particularly for women and children, as well as its impact on host communities. A number of delegations emphasized that adequate security was also necessary to enable UNHCR staff and other humanitarian workers to provide protection and assistance. They therefore supported measures to improve staff security. There was broad agreement that drawing a clear distinction between refugees, on the one hand, and armed elements and others not deserving of protection under the refugee instruments, on the other, was in the interests of States, refugees and UNHCR.

20. Several delegations emphasized the importance of a comprehensive strategy to address the issue of security of refugee camps and settlements through a range of measures. The identification, separation and disarmament of armed elements were seen as important elements of such a strategy. Preventive measures, including the location of camps a safe distance from borders, advocacy, training and education were underlined by a number of delegations, as was early warning.

2. Roles and responsibilities

21. Many delegations underlined the primary responsibility of host States, under international humanitarian law, for ensuring security in refugee camps and refugee-populated areas, including the identification and separation of armed elements. At the same time, however, they also highlighted the lack of capacity and resources, and the operational and logistical constraints that severely restrict the ability of States to meet their obligations.

22. International solidarity and support to host States in the context of burden or responsibility sharing was acknowledged as essential by many delegations. A number of delegations recognized, however, that the role of humanitarian organizations in supporting host States to identify and separate armed elements is limited and that greater attention should be given to these issues by the peacekeeping and political components of the United Nations system, particularly the UN Security Council. One delegation offered to draw this issue to the attention of the Security Council. The Chairman of the Executive Committee and the High Commissioner were also invited to bring the matter to the attention of the Security Council and the United Nations Secretary-General respectively.

23. Several delegations referred to the need for a designated agency to assist and support States faced with security problems in the context of a refugee crisis. In this respect, other speakers called for further examination of existing structures and agencies, including the United Nations Department of Peacekeeping Operations (DPKO). The importance of inter-agency cooperation, in particular among the International Committee of the Red Cross (ICRC), the International Organization for Migration (IOM) and UNHCR, was stressed. Delegations welcomed the detailed clarification by ICRC of the international

norms and its role in this context, and noted the on-going consultations between ICRC and UNHCR to strengthen cooperation in this area. A number of delegations mentioned the recommendations of the recent Brahimi Report on UN peace operations.

24. Several speakers underlined the importance of cooperation between host States and UNHCR within the context of its mandate for the international protection of refugees. UNHCR's role in registration, training and protection monitoring was mentioned, as were the initiatives taken by UNHCR to strengthen the capacity of host States through "security packages".

3. Operational measures to enhance security

25. Many delegations recognized that the issue of the separation of military elements from refugees clearly brought to the fore important legal and operational issues. There was broad agreement that those deemed to be continuing military activities could not be considered to be refugees and clearly fall outside the ambit of international refugee protection. Nonetheless, the right of former combatants to seek asylum was recognized. In this context, it was emphasized that the exclusion clauses should be applied in an individualized manner with due safeguards and taking into account international criminal law. UNHCR was asked to develop operational guidelines to assess individual claims for refugee status, in the context of the group determination in situations of mass influx where there was a likelihood of exclusion. It was noted that the issue of exclusion would also be examined in the second track of the Global Consultations.

26. A number of delegations asked UNHCR to develop practical tools and standards, in keeping with international humanitarian law, refugee law and human rights law, in order to separate armed elements from the refugee population. Other relevant organizations, non-governmental organizations (NGOs) and governments should also be involved in the process.

27. The need to ensure adequate security and policing measures was also recognized as a key factor to safeguard the civilian character of asylum. Delegations mentioned the possibility of providing police training or more immediate support through stand-by arrangements, so as to address security concerns as early as possible. It was proposed that the experience of civilian police models as used in Kosovo and East Timor could be applied to other refugee situations. It was also suggested that the "security package" pioneered in the United Republic of Tanzania might be standardized and replicated in other situations and that lessons learned from operations involving a security-support component should be examined. More broadly, early warning and preventive measures were stressed as important, while one speaker emphasized the importance of combatting the spread of the sale of small arms and light weapons.

28. Several delegations underlined the responsibility of host States for ensuring that refugee camps were located at a safe distance from the border. UNHCR was invited to define the appropriate "safe distance".

29. Many delegations also made particular reference to the issue of child combatants, underlining the need for both demobilization and rehabilitation, as well as tracing with the aim of family reunion. A number of speakers stressed the importance of education programmes for refugees, including secondary education, noting their value as a tool of rehabilitation and to help prevent subversive and criminal activities by refugee youth. Given the interest of delegations in these issues and the range of proposals made at the Pretoria meeting, it was proposed that they be considered further under the fourth theme of track 3 of the Global Consultations on refugee women and children.

C. Registration

30. The Acting Director of the Division of Operations Support introduced the background note on "Practical Aspects of Physical and Legal Protection with regard to Registration" (EC/GC/01/6)

and described the background, purpose and broad outlines of Project PROFILE. The debate on this topic displayed the synergy between operational realities and protection requirements. Twenty-two speakers took the floor, many sharing their national experience.

31. There was broad recognition of the primary responsibility of States for registration. Where registration is carried out by UNHCR or other partners, the need for host States to be kept properly involved and informed throughout was highlighted. Other delegations drew attention to registration as a multi-faceted function that could benefit from inter-agency and NGO cooperation.

32. All speakers recognized the importance of registration as an essential tool of protection. Many delegations recognized the importance of using registration data in a principled manner, based on agreed standards. The conclusions of the background paper were broadly endorsed and many delegations expressed support for elaborating such standards in an Executive Committee conclusion.

33. Several speakers stressed the importance of confidentiality and of the need to establish appropriate safeguards for information sharing and cooperation. They also highlighted the potential risk to refugees of providing personal data. It was noted that refugees must be informed about the uses to which information will be put, and assured of the confidentiality of their responses. This not only acknowledges the need for sensitivity in dealing with the refugees, but also recognizes that accurate data cannot be obtained in the absence of such assurances. UNHCR was asked to work with States to ensure the compatibility of States' systems, amongst other things, with confidentiality requirements. The importance of striking a balance between sharing data and not putting persons at risk was stressed.

34. A number of delegations emphasized the value of a dynamic approach and keeping registration data up-to-date, in view of shifting populations and circumstances, including refugee births and deaths. There was support for registration in all refugee situations, not just in situations of mass influx or future movements, but also for existing, inadequately registered populations. The importance of easy access by refugees to registration officials and, in this connection, the need for a central location for registration data was stressed. Many delegations underlined the need for a system that works on a global level that can address all aspects of the cycle of displacement, including durable solutions.

35. There was widespread agreement that improved registration will benefit both refugees and States; refugees will have better access to their rights, and States will be better able to respond to and manage refugee protection and assistance. It was also emphasized that improved registration will enhance the activities of humanitarian agencies and NGOs and underpin planning for durable solutions. The fact that improved registration plays a key role in helping refugees maintain their personal and national identity at a time of great personal trauma, particularly when refugees have been stripped of their identity documents, was noted. It also helps address situations of statelessness that might otherwise arise. As one delegation put it, improved registration has so many advantages, there should be no doubt that we really need it and should have it.

36. A number of delegations stressed the value to refugee women and children of improved, individual registration. It assists tracing and family reunification, promotes increased participation by women in camp life, and helps them to make more informed decisions about durable solutions. It was noted that information about the number and age of children in the refugee population is crucial, for example, to target programmes to adolescents at risk of sexual exploitation or military recruitment. It was also noted that survivors of torture and persons with mental health disabilities should be accorded special attention.

37. The acknowledged importance of registration led many delegations to express support for it as a priority in terms of resources. The critical role of material, financial, technical and human resources to assist host countries in registering refugees was emphasized by a number of delegations. Several delegations explained in detail some of the drawbacks of their current reliance on cumbersome, paper-based processes and urged donor governments to support their efforts to update and improve their

systems. A number of delegations expressed appreciation to UNHCR for its assistance in national capacity building.

38. A large number of delegations welcomed UNHCR's initiative in launching Project PROFILE. Several donor States expressed support for Project PROFILE and offered to share both resources and expertise. One delegation cautioned against dependence on overly sophisticated technology. Operationally, the aim should be a fast, efficient, not-too-technologically-sophisticated system that will amongst other things prevent fraud and multiple registration. UNHCR underlined the need for earmarked resources, including human resources, for such a large-scale project intended to design practical solutions to real problems. A number of delegations encouraged UNHCR to work with a wide range of partners, including host States, donor States, NGOs and the private sector, and to draw on the expertise and experience of States already implementing advanced registration procedures.

C. Mechanisms of international cooperation to share responsibilities/burdens in mass influx situations

39. The Deputy Director of the Department of International Protection introduced the background note on "Mechanisms of International Cooperation to Share Responsibilities and Burdens in Mass Influx Situations" (EC/GC/01/7). There was a broad-ranging and constructive discussion of what was recognized by several speakers as a difficult but vital subject. In all, some 28 delegations spoke on this crosscutting theme of the Global Consultations. Burden or responsibility sharing was described as not just a financial question, but a humanitarian concept and a "practical necessity", which should remain a priority issue for the Executive Committee.

40. Further accessions and withdrawals of reservations to the 1951 Convention and its 1967 Protocol were advocated as a responsibility sharing tool. Living up to the Convention was also described as an important contribution to burden and responsibility sharing. The existence of such measures was reiterated as not being a precondition for the obligation to uphold the principle of first asylum.

41. A number of delegations from countries hosting large numbers of refugees described the massive impact these refugees have on their society, infrastructure, economy and environment. Some warned that the international system for refugee protection might collapse unless the international community assumed its responsibility to help States shoulder the burden of hosting refugees, particularly for protracted periods. A number of speakers called for greater acknowledgement of the vital, but less easily quantifiable, contribution towards refugee protection made by hosting States, compared with the cash contributions made by donor States. Several speakers acknowledged the weight of the multi-faceted burden borne by many developing countries, which willingly host large numbers of refugees, often for many years.

1. Global and comprehensive approaches

42. Many speakers stressed the importance of comprehensive and holistic approaches to situations of mass influx. It was acknowledged that such a global approach can be enhanced by regional arrangements. The Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) and the work of the EU's High Level Working Group on Asylum and Migration were cited as positive examples of such approaches. A number of delegations especially emphasized the importance of the inclusion of a broad range of States and actors, including the country of origin, in the search for durable solutions, while it was also noted that coalitions would vary depending on the particular influx. Several delegations spoke of the need for improved cooperation and coordination between the various international agencies.

2. Preventive and preparedness strategies

43. Many speakers cited the importance of measures to prevent the need for flight and to enhance preparedness as another aspect of responsibility sharing. In particular, they mentioned the importance of

strategies to promote respect for human rights, good governance, the eradication of poverty, mediation of potential or ongoing conflicts, means of addressing broader migration pressures and other measures. Others highlighted the need for enhanced preparedness, including measures to strengthen security in refugee camps. It was felt that existing stand-by arrangements could be further enhanced by stronger regional-level involvement.

3. Funding and other measures

44. Several speakers stressed the need for predictable and adequate funding of the UNHCR budget as being essential to the provision of international protection to refugees. Regarding possible projects for a permanent refugee emergency fund drawing upon the experience of the EU's European Refugee Fund, a number of donor country delegations saw merit in a broader-based fund. Among other issues receiving support were the question of debt relief for countries hosting large refugee populations and the importance of systematic, participative programmes. In particular, many delegations spoke of the importance of linking debt relief and broader development projects. Among the many areas where support was deemed crucial were infrastructural development, strengthening local administrative machinery, education programmes to prepare for return and enhance respect for local laws, curbing crime, and the transfer of technology to improve local health systems.

4. Humanitarian evacuation/transfer

45. Several States expressed support for further investigation of the idea of prearranged quotas for the emergency evacuation of refugees within the context of a comprehensive approach. Some noted that such quotas should not be used as a substitute for access to asylum and the question was raised as to how an evacuation pool related to the existing pool of States offering resettlement to refugees. A number of delegations referred to the experience of the humanitarian evacuation and transfer of refugees in the 1999 Kosovo crisis and described it as a rarely available option and a relatively expensive way of minimizing the burden borne by States of first asylum.

46. Other issues requiring clarification were how to achieve family unity and/or reunification, how to ensure the informed consent of refugees and how to define when evacuation is appropriate. Some stressed that when considering such issues, it was important to bear in mind the responsibility of the international community to find solutions to the causes of flight so as to enable safe return. Further examination of how prearranged humanitarian evacuation quotas might operate as part of a comprehensive strategy was suggested, taking into account the experience of the Humanitarian Issues Working Group (HIWG) and the EU in the former Yugoslavia.

5. Planning for a range of durable solutions

47. In seeking solutions, many delegations reiterated the need to address the root causes of flight, and reaffirmed that voluntary repatriation was the preferred solution. Resettlement was described as an important tool of burden or responsibility sharing. It was suggested that its role in this respect be investigated further, including its relationship to other durable solutions and to humanitarian evacuation.

48. Several delegations cited the limited number of States willing to accept significant numbers of refugees for resettlement. The recent diversification of the number of States offering resettlement places was welcomed. There was some concern that development of a resettlement pool, as recently proposed in the EU context, should not prejudice the right to seek asylum there. Some delegations sought a broadening of resettlement criteria, while others expressed caution about using resettlement extensively in mass influx situations, where they felt voluntary repatriation was the more appropriate response.

6. Further analysis of practical measures and mechanisms

49. There was broad agreement on the importance of and the need to investigate further practical measures for responsibility and burden sharing, particularly in mass influx situations. Generally, the focus was on ways to ensure more prompt, coordinated, predictable, comprehensive and multilateral responses to the mass influx of refugees. Delegations broadly supported the conclusions of UNHCR's background note to explore of appropriate sharing measures and mechanisms further.

IV. ANY OTHER BUSINESS

50. The Director of International Protection was asked to brief delegations on the progress made on other tracks of the Global Consultations at the meeting of the Standing Committee on 10 March 2001. An informal briefing for this purpose was convened on 13 March 2001.

V. CHAIRMAN'S SUMMARY

51. At the end of the lively and rich discussions, the Chairman read out a summary that was subsequently distributed on 26 March 2001. The summary identified key issues, theme by theme, as well as a range of specific suggestions for further consideration and follow-up.