
prima facie

The Newsletter of UNHCR's Department of International Protection

May 2001

Global Consultations **Update**

First Track

Ministers from the 141 nations that have acceded to the 1951 Convention relating to the Status of Refugees and/or its Protocol have been invited to attend the first-ever meeting of States Parties to the Convention and its Protocol. At the gathering, which is scheduled for Wednesday, 12 December in Geneva, participants will commemorate the Convention's 50th anniversary and adopt a declaration renewing their collective commitment to its full and effective implementation. All other UN member states that have not yet acceded to the Convention will be invited as observers, along with other UN, intergovernmental and non-governmental organizations that are accredited as observers to HCR's Executive Committee and related consultations.

The meeting, convened jointly by the Government of Switzerland and HCR, will also provide an opportunity to encourage States that have not yet acceded to the Convention and its Protocol to do so. Those in attendance will also explore ways of building upon the Convention's foundation to ensure the world's refugees are adequately protected.

On 30 April, the Swiss Ambassador to the UN, François Nordmann, and DIP Director Erika Feller hosted an information meeting for Geneva-based Permanent Missions at the Palais des Nations to answer specific

questions about the December gathering. They announced that an ambassadorial-level Advisory Group, drawn from States Parties, would guide the drafting of the proposed declaration and offer suggestions for topics to be discussed by ministers during the day-long meeting. "The ministerial meeting will provide a high-level forum for States to offer some reflections on protection, in general, and on their protection responsibilities, in particular," said Feller. One PrepCom will also be held, probably in early autumn, to finalize organizational details.

For further information, contact either the Secretariat of the Ministerial Meeting, located at the Permanent Mission of Switzerland (e-mail: secretariat.51convention@eda.admin.ch), or Philippe Leclerc (leclerc@unhcr.org) and José Riera (riera@unhcr.org) at HCR.

Second Track

The refugee definition-related issues of cessation and exclusion underwent an intensive examination in the first expert Roundtable, or Second Track, of the Global Consultations in early May.

Thirty-two experts from 25 countries, selected from governments, NGOs, academia, the judiciary and the legal profession, offered their personal perspectives during the two-day meeting in Lisbon, which was co-organized by the Carnegie Endowment for International Peace and supported by the Luso-American Foundation for Development. Georges Abi-Saab, a former Justice at the International Criminal Tribunal for Yugoslavia and professor emeritus at the Graduate Institute of International Studies in Geneva, and Walter Kaelin, renowned refugee law professor at the University of Bern, moderated the discussions.

Based on papers drafted by Geoff Gilbert, professor of law at the University of Essex (exclusion) and Joan Fitzpatrick, professor of law at the University of Washington (cessation), the discussions were "rich, complex, detailed and revealed a tremendous breadth of experience and scholarship," says Kate Jastram, Senior Legal Officer, who helped organize the roundtable. The exchange gave HCR an opportunity to take a close look at both the theoretical development and the practical application of these Refugee Convention clauses over the past 50 years. Benefiting from the expert observations and interpretations culled from the gathering, HCR plans to revisit its own guidelines in the coming months with the aim of possibly revising or expanding them. "That," says (*continued on page 2*)

In Defense of the Convention

An EU seminar on International Protection within One Single Asylum Procedure, held in Norrköping, Sweden in late April, provided an appropriate venue for a spirited defense of the Refugee Convention. DIP Director Erika Feller gave HCR's interpretation of the phrase "full and inclusive application of the Convention" in a keynote speech. Some excerpts:

"There has been a tendency over recent times for decision-makers to focus more on the letter of the Convention than on its objects and its spirit. It has become...an instrument to restrict responsibility to the minimum, rather than to ensure protection to legitimate beneficiaries...This restrictive approach to applying the definition is of concern to HCR, even where States provide an alternative form of protection, in recognition of a demonstrated need..."

"We have often made the point that the Convention cannot be held accountable for what it has not achieved in relation to problems for which it was never intended as a response...It was never conceived as an instrument for permanent migration settlement, much less for migration control..."

"While the Convention remains, and has to remain, the foundation of refugee protection, it is nevertheless being chipped away at from all sides at the moment...The Convention is the one truly universal instrument setting out the baseline principles on which the international protection of refugees has to be built...If we lose this instrument as our framework, the likelihood is that something of much lesser value will replace it..."

"It is important to recognize that the scope of the 1951 Convention refugee definition is a matter of international law and its interpretation should not be subject to variations deriving from the idiosyncratic, legal, cultural or political necessities of each State Party...Employing a restrictive interpretation of the refugee definition will not help reduce the numbers of non-refugee migrants claiming asylum..."

Second Track, *continued*

Jastram, "is when the Roundtable will find its practical applications."

Participants for the four scheduled Roundtables are chosen with the aim of providing as wide a range of viewpoints and regional perspectives as possible; and topics for discussion have been selected in consultations with governments, NGOs and HCR field offices. Following each Roundtable, HCR will draw up a set of conclusions based on the discussions. After sharing the conclusions with the respective Roundtable participants, HCR will make them available to the public on the agency's web site.

Preparations are underway for the second Roundtable, to be held in Cambridge, England on 9-10 July. *Non-refoulement* and strengthening implementation of the Refugee Convention will be discussed by the 35 experts invited to participate. The papers on which the talks will be based will be posted on HCR's web site by 1 June (*click on Global Consultations at www.unhcr.org*). Comments are welcome and will be conveyed to participants at the Cambridge Roundtable.

The third Roundtable will take place in San Remo, Italy from 6 to 8 September. Membership of a particular social group, gender-related persecution, and internal protection/relocation/flight alternative will be discussed. The final Roundtable, which will examine illegal entry and family unity, is scheduled for 8-9 November in Geneva.

For further information, contact Kate Jastram (jastram@unhcr.org) at HCR or see the Global Consultations page at HCR's web site (www.unhcr.org).

Third Track

In what has been characterized as a “rich and constructive debate”, ExCom members and observers worked their way through the ambitious agenda of the first Third Track meeting and came up with a series of conclusions that will become part of the follow-up Agenda for Protection to emerge out of the Global Consultations process. Participants at the 8-9 March meeting in Geneva explored the general theme of Protection of Refugees in Situations of Mass Influx and focused more specifically on such topics as the civilian character of asylum, registration, and burden- and responsibility-sharing. Third Track discussions are intended both to promote understanding and cooperation on all sides and to provoke action.

Participants expressed broad support for a number of points on the overall protection framework, including the primacy of the 1951 Convention and its 1967 Protocol, the value of *prima facie* recognition in mass influx situations and the applicability of regional refugee instruments. They also called for clarification of exclusion procedures in the context of group determination and for flexibility in the application of resettlement criteria during mass influxes.

Actions:

- HCR to submit a draft conclusion on mass influxes to ExCom for adoption in October 2002
- Procedural guidelines on exclusion in the context of group determination will be produced by HCR and, upon agreement, the Lawyers' Committee for Human Rights
- Resettlement criteria to be reviewed by HCR and States
- HCR to launch a comparative study, with input from States, on protection responses during mass influxes

In discussing the civilian character of asylum, participants affirmed that the primary responsibility for ensuring security of refugees and refugee camps rests with the host State, that those conducting military activities are not within the international refugee protection framework, and that exclusion clauses should be applied on an individual basis in group situations. However, participants also noted the lack of standards and procedures in place to guide the separation of armed elements from refugee populations, the need to support States confronted with security problems during a refugee crisis, and the absence

of effective means to protect women and children from armed elements.

Actions:

- HCR to submit a draft conclusion on the civilian character of asylum to ExCom for adoption in October 2002
- HCR contributed to the Secretary-General's report on the Protection of Civilians in Armed Conflicts, which was released in March 2001
- HCR to work with governments, NGOs and ICRC to develop standards and procedures for the separation of armed elements from refugee populations
- States to ensure that camps are located at safe distances from borders
- HCR and governments to develop standby arrangements, including “security packages”, to help States secure operational areas during refugee crises
- HCR to revise its Guidelines on the Protection of Refugee Women and its Guidelines on the Protection and Care of Refugee Children, including protection guidelines for UNHCR staff
- States to work actively to prevent military recruitment of children
- States are encouraged to expand education opportunities for refugee children and adolescents and to fund HCR's core budget which, in turn, could finance more education programs for refugee children and adolescents

Participants supported the notion of an ExCom Conclusion on registration and recognized that States have the primary responsibility to register and document refugees. There was strong support for UNHCR's initiative Project PROFILE, which covers the full “refugee cycle” from initial displacement to durable solutions.

Actions:

- HCR to submit a draft conclusion on registration to ExCom for adoption this October
- HCR and States to work together on Project PROFILE, HCR's long-term strategy to strengthen registration and population data management, and to coordinate standards and guidelines to ensure that systems are compatible worldwide so States and HCR field staff can maintain up-to-date records on refugee populations

Participants discussed a number of measures to enhance burden- and responsibility-sharing, including the need to develop strategies to prevent refugee outflows by promoting respect for human rights. Resettlement was recognized as an important vehicle for sharing responsibility for refugee protection. *(continued on page 4)*

Third Track, *continued*

Actions:

- HCR to continue its campaign to promote accession to the Refugee Convention and its Protocol and to the Statelessness Conventions, including during the 12 December Ministerial Meeting (First Track)
- States to consider providing support for human rights training for police and security forces
- HCR and the Government of Norway to convene a regional meeting this autumn to examine resettlement in the context of burden- and responsibility-sharing
- HCR and States to work to expand resettlement opportunities, including by applying resettlement criteria flexibly during mass influx situations

The next Third Track meeting, scheduled for 28-29 June, will focus on the theme Protection of Refugees in the Context of Individual Asylum Systems (*see* Calendar).

For more information on Third Track events, contact Walpurga Englbrecht at HCR (englbrew@unhcr.org).

A First for Resettlement

Traditional and emerging resettlement countries met for the first time in an international forum in late April to exchange best practices in the reception and integration of resettled refugees. The International Conference on the Reception and Integration of Resettled Refugees, held in Norrköping, Sweden and hosted by the Swedish government and HCR, attracted 265 participants from the 18 resettlement countries and from two ad-hoc resettlement countries (Great Britain and Germany). More than 50 former refugees who had been resettled in those countries were among the participants.

After focusing on three main themes—Preparing Refugees and the Receiving Communities, Common Needs of Resettled Refugees and Special Needs of Resettled Refugees—participants emerged from the conference with a set of principles to guide countries towards successful reception and integration of resettled refugees. Recognizing that resettlement is “an important tool of refugee protection and a durable solution for many refugees,” participants concluded that resettlement “is not a substitute for asylum, but rather a complementary way of providing protection to people in need.”

Principles adopted include:

- A refugee need not lose his/her own cultural identity to integrate in a new society. Host communities should be welcoming and responsive to refugees and their needs.
- Family reunification is crucial to refugee integration. Relatives and ethnic community networks can play key roles in successful refugee integration.
- Refugee participation and leadership are essential in the development, implementation and evaluation of both refugees’ own individual settlement and integration programs.
- Public and private sectors must work with

refugees to create an environment in which people can be empowered.

- The media have an important role to play in providing accurate and timely information about refugee situations.
- Relationships between those working to identify refugees in need of resettlement and the communities where they will be resettled must be strong.

Conference organizers plan to produce an Integration Handbook by the end of this year and to disseminate the conclusions and principles adopted at the gathering in other relevant forums beyond the scheduled mid-June Annual Tripartite Consultations on Resettlement, notably at HCR’s Executive Committee and through the Global Consultations. Says Deborah DeWinter, a consultant working with HCR on the integration initiative, “The conference is only one piece of a much broader strategy to support resettlement countries and facilitate exchanges of best practices and resources, including personnel.”

For more information on the integration initiative, and to view the complete set of principles adopted at the Conference, click on Resettlement at HCR’s web site (www.unhcr.org) or go directly to the integration web site (www.integrationsverket.se.html).

To Our Readers

For the remainder of 2001, *prima facie* will be devoted exclusively to the Global Consultations. The newsletter will be distributed not only among HCR staff, but also among governments, inter-governmental and non-governmental organizations.

Regional Meetings

Participants at the regional symposium on Maintaining the Civilian and Humanitarian Character of Asylum, Refugee Status, Camps and other Locations took a strong position that the fundamental responsibility for ensuring the civilian character of asylum rests with States. The representatives of nine governments, NGOs, HCR and academics and researchers who participated in the late-February meeting in Pretoria, South Africa, agreed that the forcible restraint of armed elements, separation from civilians, disarmament and establishment of humanitarian corridors should precede any legal measures, such as screening. Responsibility for stabilizing and securing the operational areas and populations involved in a refugee emergency must rest with police and military personnel who are better trained and equipped to handle those situations than are humanitarian actors. In such an emergency, security personnel and equipment should be made available to host countries either directly or under regional or international frameworks, such as, in this case, the Southern African Development Community's Inter-State Defense and Security Committee and the Southern African Police Organization.

Participants also endorsed: identifying, screening and separating persons who are determined to be not deserving of international protection; prohibiting subversive activities among refugees; locating refugee camps a significant distance from borders; involving refugees in designing and managing camps and other refugee locations; expanding refugee education programs to include secondary and tertiary education; designing special mechanisms to ensure the safety of refugee women and children; and bolstering a regional early-warning system. The conclusions and recommendations that emerged from this meeting fed directly into the 8-9 March Third Track discussions on the protection of refugees in mass influx situations.

Reports on regional meetings held this month in Ottawa (to discuss incorporating refugee protection safeguards in interception measures) and Macau (to discuss the link between asylum and migration), and in San José, Costa Rica in early June (to focus on a comparison between HCR's supervisory role and the Inter-American Human Rights bodies) will appear in the next issue of *prima facie*.

**Visit the Global Consultations page
at the HCR web site
(www.unhcr.org)**

Refugee Forum

HCR and the Institut du Développement Social will host a gathering of some 80 refugees, entitled *The Refugee Perspective*, in Rouen, France from 14 to 16 September. Refugees with legal residence in Europe are invited to submit summary papers on one of three topics—*asylum processes, integration of refugees or voluntary repatriation*—by 1 July. Participants will include those whose papers present a clear and articulate understanding of the refugee perspective on these issues. Recommendations adopted at the Forum will be fed into Third Track ExCom discussions scheduled for the end of September and February 2002.

For information on the Forum and for application forms, contact the conference Secretariat at telephone: 33 (0) 2-32-83-25-51 or via e-mail (cecile.bolloch@ids.fr).

Consultations with Refugee Women

It promises to be a learning experience for all. Fifty refugee women from around the world will gather in Geneva from 20 to 22 June to begin a dialogue with HCR on how to attain the highest possible standards for women's protection and participation in HCR activities. Organized by HCR's Senior Coordinator for Refugee Women and Gender Equality and the New York-based Women's Commission for Refugee Women and Children, the consultations, entitled *Respect our Rights: Partnership for Equality*, will draw on both the experiences of refugee women and the expertise of HCR staff to formulate practical ways to strengthen the gender-specific content of HCR's policies, processes and programs. Says Joyce Mends-Cole, HCR's Senior Coordinator for Refugee Women and Gender Equality, "We hope the consultations will contribute to a culture of dialogue and strengthen HCR in its efforts to be a learning organization."

Regional and local consultations are being held in 14 locations around the world prior to the June meeting. These consultations will bring together refugees and other women of concern to HCR who will identify their main areas of concern and discuss how those concerns are now being addressed and how they can be better addressed by HCR. Ideas and material exchanged during these preparatory meetings will form the basis of the Geneva discussions. In turn, the Women's Consultation will feed into the Global Consultations process, with issues such as gender-based persecution, the civilian nature of asylum and the link between asylum and migration core topics for discussion in both forums.

GC Calendar

- 6-7 Jun** **Regional Meeting**, in Budapest, Hungary. Participants will discuss application of the 'safe third country' concept and its effect on the management of migration flows and protection of refugees; inter-State agreements for readmitting third-country nationals and determining the State responsible for examining asylum applications; and the legal and practical aspects of returning persons not in need of international protection.
- 7-8 Jun** **Regional Meeting**, in San José, Costa Rica. Co-organized by the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the Inter-American Institute of Human Rights, the meeting will focus on a comparison between HCR's supervisory role and the role of Inter-American Human Rights bodies.
- 20-21 Jun** **Annual Tripartite Consultations on Resettlement**, in Geneva.
- 20-22 Jun** **Respect our Rights: Partnership for Equality – A Dialogue with Refugee Women**, in Geneva. HCR and the Women's Commission for Refugee Women and Children will bring together some 50 refugee women for a direct dialogue with HCR on a number of issues, some of them specifically linked to the Global Consultations, such as access to status determination procedures, physical security, and repatriation/reintegration.
- 28-29 Jun** **Third Track: Discussion on Protection of Refugees in the Context of Individual Asylum Systems**, in Geneva. Discussions within the ExCom framework will cover refugee protection and migration control, including interception practices, treatment and return of rejected cases, and asylum processes, including access to refugee protection, expedited procedures, undocumented and/or uncooperative asylum-seekers.
- 3-5 Jul** **Regional Meeting**, in Cairo, Egypt. Participants will discuss how to strengthen the capacity of first asylum countries in the region to offer adequate protection.
- 9-10 Jul** **Second Track: Roundtable on *Non-refoulement* and HCR's Supervisory Responsibility**, in Cambridge, England. This second Roundtable is co-organized by the Lauterpacht Research Centre for International Law.
- 6-8 Sep** **Second Track: Roundtable on Membership of a Particular Social Group, Gender-related Persecution and Internal Protection/Relocation/Flight Alternative**, in San Remo, Italy. This third Roundtable is co-organized by the International Institute of Humanitarian Law.
- 14-16 Sep** **The Refugee Perspective**, in Rouen, France. Some 80 refugees will be invited to offer their views on asylum procedures, local integration of refugees and voluntary repatriation in a forum jointly organized by HCR and the Institut du Développement Social.
- 27-28 Sep** **Third Track: Continuation of Discussion on Protection of Refugees in the Context of Individual Asylum Systems**, in Geneva. Topics to be explored include reception of asylum-seekers, complementary forms of protection and strengthening the protection capacity of host countries.

GC Forum

Since the Global Consultations are all about exchanging ideas, we would like to devote a page of our bi-monthly Update to readers' comments on the issues and the process. Brevity would be appreciated; and all contributions will be subject to editing.

Please send your comments to Stéphane Jaquemet (jaquemet@unhcr.org)
or Kate Jastram (jastram@unhcr.org)