
prima facie

The Newsletter of UNHCR's Department of International Protection

November 2001



Global Consultations
ON INTERNATIONAL PROTECTION

First Track

Plans for the first-ever Ministerial Meeting of States Parties to the 1951 Refugee Convention and/or its Protocol were finalized at the Preparatory Session held in Geneva on 20 and 21 September. Representatives of 96 States Parties and observers from other States, inter-governmental agencies, UN agencies and NGOs agreed on the form and content of the December gathering, which will be convened to reaffirm States' commitment to the full and effective implementation of the Convention and/or its Protocol.

Initially envisaged as a one-day event, the Ministerial Meeting will now be held over two days, 12 and 13 December. The first day will be devoted to statements made by States Parties. During the morning of the second day, roundtables will explore three themes: strengthening implementation of the Convention and Protocol, fostering international cooperation to protect masses in flight, and upholding refugee protection in the face of contemporary challenges involving mixed flows. The plenary will be adjourned while the roundtables meet.

Most of the Preparatory Session was devoted to negotiating the draft declaration to be adopted at the Ministerial Meeting on the

afternoon of the second day. By the end of the session, participants had approved the draft declaration and recommended it for adoption.

For more information on First Track events, contact either the Secretariat of the Ministerial Meeting, located at the Permanent Mission of Switzerland (secretariat.51convention@eda.admin.ch), or Philippe Leclerc (leclerc@unhcr.org) and José Riera (riera@unhcr.org) at HCR.

Second Track

The San Remo Expert Roundtable, the third in a series of four Second Track discussions held this year, focused on three issues: membership of a particular social group, gender-related persecution and internal protection/relocation/flight alternative. Participants at the Roundtable, which was co-organized by HCR and the International Institute of Humanitarian Law, included 33 experts, representing 23 countries, drawn from governments, NGOs, academia, the judiciary and the legal profession.

Discussion on the meaning of "membership of a particular social group", contained in the refugee definition of the 1951 Refugee Convention, was based on a background paper prepared by T. Alexander Aleinikoff of the Migration Policy Institute and the University of Georgetown. Acknowledging that "membership of a particular social group" is the least clear of the five Convention grounds, Roundtable participants concluded that, among other points:

- A particular social group is a group of persons who share a common characteristic, other than their risk of being persecuted, which sets them apart. The characteristic will ordinarily be innate, unchangeable, or otherwise fundamental to human dignity.
- Under certain circumstances, social perceptions can be a valid basis for construing the existence of a group.
- There is no requirement that a group be cohesive, that all members of a group know each other or associate together.
- An applicant need not establish that every member is at risk of persecution to establish a well-founded fear of persecution.

A background paper by Rodger Haines QC, of the Refugee Status Appeals Authority of New Zealand, formed the basis of the discussion on the question of gender-related persecution. Participants generally agreed that the text, object and purpose of the 1951 Convention require a gender-inclusive and gender-sensitive interpretation. Even though gender is not specifically referred to



UNHCR

The UN Refugee Agency

prima facie

in the refugee definition, participants agreed that gender can influence, or dictate, the type of persecution or harm suffered and the reasons for that treatment, and so there would be no need to add a sixth ground to the Convention. Participants also concluded that, among other points:

- Ensuring that a gender-sensitive interpretation is applied to each of the Convention grounds can be important in determining whether a particular applicant has a well-founded fear of persecution according to one of the Convention grounds.

- Sex can properly be within the ambit of the social-group category of the refugee definition, with women a social sub-set defined by innate and immutable characteristics who are frequently treated differently to men.

James C. Hathaway and Michelle Foster of the University of Michigan provided the background paper on internal protection/relocation/flight alternative. As there has been no consistent approach by States Parties to the Refugee Convention in applying this notion, the Roundtable provided a timely examination of different national practices with the aim of offering decision-makers a more structured analysis on this aspect of refugee status determination. It was generally agreed that:

- The internal protection/relocation/flight alternative can sometimes be relevant in considering whether an asylum-seeker's claim to refugee status is valid, and that its relevance will depend on the particular circumstances of each case.

- In making this assessment, factors to be considered include the agent of persecution, the risk to the asylum-seeker of being forced back to and persecuted in another part of the country, and the practical, legal

and safe accessibility of the internal alternative.

- The mere absence of a risk of persecution is not sufficient in itself to establish that an internal alternative exists. The level of respect for human rights in the proposed location, the asylum-seeker's personal circumstances, and/or conditions in the country at large, including risks to life, limb or freedom, may also be relevant.

For more information on Second Track events, contact Alice Edwards at HCR (edwards@unhcr.org).

Third Track

Continuing their discussions, begun in June, on protecting refugees in the context of individual asylum systems, Third Track participants examined three specific topics when they met again on 27 and 28 September: reception of asylum-seekers; complementary forms of protection; and strengthening protection capacities in host countries. As in the two previous Third Track meetings, participants reached broad consensus on each topic and identified specific ways of turning their conclusions into action.

Participants agreed that a set of guidelines on core reception standards would be useful and that international cooperation, burden-sharing and capacity-building are essential in the reception of asylum-seekers.

Actions:

- HCR to draft a basic framework for reception policies to be adopted as an ExCom Conclusion.

- HCR to develop Guidelines on the Reception of Asylum-Seekers.

The Process, The Result: A New ExCom Conclusion

During its most recent meeting in October, ExCom adopted a Conclusion on Registration of Refugees and Asylum-seekers. The Conclusion is the direct result of the Global Consultations process: last March, participants in Third Track discussions reached consensus on the need to draft and adopt standards for registration in the form of a Conclusion.

The Conclusion acknowledges the importance of registration as a tool of protection and as a means of assessing needs and, ultimately, of finding appropriate durable solutions. In that light, it recommends that registration should be a continuing process that reflects births, deaths, new arrivals and departures as well as basic information on every individual. Registration should be undertaken according to fundamental principles of confidentiality in safe and secure locations. Trained personnel, including a sufficient number of women, should conduct registration activities in a non-threatening, impartial manner, maintaining respect for the dignity of refugees and asylum-seekers.

In its Conclusion, ExCom also encouraged States and HCR to develop and implement registration guidelines to ensure the quality and comparability of registered data, and to introduce new techniques to improve the documentation of refugees and asylum-seekers. ExCom also recognized the need to protect the confidentiality of data gathered through registration, while acknowledging the importance of sharing statistical data, particularly to combat fraud, better monitor irregular movements of refugees and asylum-seekers, and identify those not entitled to international protection under the 1951 Convention and/or its Protocol.

■ HCR to explore the possibility of setting up a fund to assist developing countries, financially and technically, to ensure that their reception standards conform to international standards.

Given the increasing use of complementary forms of protection (according to an HCR survey, some 44 per cent of asylum-seekers in 38 European countries received a complementary protection status in 2000), participants felt the time was right to formulate an ExCom Conclusion on the subject. They broadly supported the establishment of a single procedure which first assesses whether an asylum-seeker qualifies for Convention refugee status and, if not, then assesses the need for complementary protection.

Action:

■ HCR to draft a Conclusion on complementary forms of protection, including the single procedure, for adoption by ExCom.

HCR's background paper on strengthening protection capacities in host countries received broad support from participants, as did the recommendation to donor States to explore ways to allocate a percentage of development funds to benefit both refugees and the local populations that host them. Some delegates endorsed the idea of creating "twinning projects", in which civil servants from national administrations assist other States with less-developed protection structures. There was broad recognition that refugees have abilities and potential that can and should be tapped, and that NGOs have an important role to play in building protection capacities.

Actions:

■ HCR to broaden the guiding principles and framework set out in its background note in light of the discussions and to maintain a running catalogue of capacity-building activities that will be accessible on HCR's public web site.

■ Donor States to consider allocating a percentage of development funds to programmes benefiting both refugees and the local population in host countries.

■ HCR and States to explore funding possibilities with the private sector, including through the Global Compact Initiative launched by the UN Secretary-General.

■ States and NGOs to consider expanding "twinning projects".

■ EU States to continue efforts within the EU framework and/or bilaterally to assist other States in strengthening their protection capacities.

■ HCR to identify and prioritize where capacity-building activities are most needed and to pair those

...asylum-seekers increasingly have a difficult time in a number of States, either accessing procedures or overcoming presumptions about the validity of their claim, which stem from their ethnicity or their mode of arrival. Because they arrived illegally does not vitiate the basis of their claim. Because they have a certain ethnic or religious background, which may be shared by those who have committed grave crimes, does not mean they, themselves, are also to be excluded. Clearly, we endorse multilateral efforts directed at rooting out and combating international terrorism. Resolute leadership, though, is called for at this particularly difficult time to de-dramatize and de-politicize the essentially humanitarian challenge of protecting refugees and to promote better understanding of refugees and their right to seek asylum.

-from DIP Director Erika Feller's Statement to the 52nd Session of ExCom, Geneva, 27 September 2001

needs with support and expertise offered by States, inter-governmental organizations, NGOs, the private sector and other actors.

■ States and NGOs to disseminate HCR's public awareness campaigns and educational material.

■ HCR, States and NGOs to encourage self-reliance of refugees through education, vocational training, income-generating projects, etc.

■ HCR and NGOs to reinforce their partnerships in strengthening protection capacities.

■ HCR, States and NGOs to strengthen resettlement capacities through the Working Group on Resettlement.

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

The View from the Other Side: Refugees on Refugee Protection

“In my country, we say the brave man and smoke will always find a way out. The hapless and persecuted people who are forced to take the painful decision of leaving their homeland will find an entry. What needs to be done is to improve the laws and processes so that injustice is not committed against them again.” This participant in the Global Consultations speaks with authority: he is a refugee from Ethiopia now living in France.

In mid-September, 65 refugees, representing 25 different nationalities and coming from 16 countries of asylum within Europe, gathered at the Institut du Développement Social in Rouen, France, to give their views on refugee protection. “The Refugee Perspective”, as the joint HCR-Institut-organized meeting was called, gave an immediacy to the Global Consultations process through the personal experiences and observations of refugees.

Focusing on the asylum process, integration and voluntary repatriation, the refugees emerged from the three-day series of workshops with a set of recommendations addressing key problems in each area. Their recommendations will be fed into Third Track discussions.

Jean-Francois Durieux, deputy director of the Europe Bureau at HCR and key organizer of the event, said that participants showed an impressive level of understanding of the problems European governments and societies are facing in trying to manage their asylum systems in the face of uncontrolled migration. However, the refugees also noted that trust between individual asylum-seekers and receiving authorities has been broken. “They felt that there must be fundamental changes of perception: that asylum-seekers are not cheaters, but are people who are trying to save their lives and have a

dignified life,” says Durieux. “Some of the refugees expressed a real, personal bitterness over the fact that they believe they have received no acknowledgment of what they had endured, of the resourcefulness it took, to get all the way to Europe. Others feel they are regarded with suspicion by the communities in which they have settled, as if they shouldn’t be there, as if they are ‘jumping the queue’ to make it to the land of plenty. But these refugees are saying: ‘escaping persecution doesn’t mean we have to rot in camps.’” Indeed, says Durieux, these refugees clearly want to contribute to the international debate on refugee protection; and their perspective is invaluable to the Global Consultations process.

The recommendations that emerged from The Refugee Perspective meeting will be posted on the Global Consultations page of UNHCR’s web site (www.unhcr.org).

GC Calendar

- 6-7 Nov** **Regional Meeting**, in Oslo, Norway. The meeting will focus on resettlement as a multifaceted protection tool and its relationship to migration.
- 8-9 Nov** **Second Track: Roundtable on Illegal Entry and Family Unity**, in Geneva. This fourth Roundtable is co-organized by the Graduate Institute of International Studies.
- 12-13 Dec** **Ministerial Meeting of States Parties**, in Geneva. This First Track event, jointly convened by HCR and the Government of Switzerland, will reaffirm the commitment of States Parties to full and effective implementation of the Refugee Convention and Protocol. Those States that have not yet acceded to the Convention or Protocol have been invited as observers along with inter-governmental and non-governmental organizations. The morning of the second day will be devoted to roundtable discussions on selected themes.
- 2002**
- Jun** **Third Track: Discussions on the Search for Protection-based Solutions and on Protection of Refugee Women and Children**, in Geneva (*date tentative*).

QuoteUnquote

“We do not want to live from alms; we want to reorganize our lives in a strange country from the bottom up. To reach this aim, we want to invest our own strength... Even an applicant for asylum must have rights, must be able to learn the language, must be allowed to have an apartment and to work.”

-an Afghan refugee living in Germany, from his/her paper on the Asylum Process submitted to “The Refugee Perspective” meeting in Rouen, France, 14-16 September 2001.