

EXPERT ROUNDTABLE

INTERNATIONAL PROTECTION FOR PERSONS FLEEING ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE

*Cape Town, South Africa
13 & 14 September 2012*

*hosted by
the Refugee Rights Project, University of Cape Town*

CONCEPT NOTE

1. Background

The second half of the 20th century saw an unparalleled number of armed conflicts and other forms of violent situations leading to mass displacement across borders.¹ While the number of ‘traditional’ armed conflicts may have decreased since the mid-1990s, there have been changes in the causes, character and effects of these conflicts and the emergence of a range of other situations of violence. Armed conflicts are increasingly characterized by widespread violence leaving, at times, little distinction between combatants and civilians. They are pursued for a multiplicity of motivations – ethnic/nationalist, social, economic and political. In many countries, a perpetual cycle of violence and conflict has been part of daily reality. In situations such as in Central Iraq, Central and Southern Somalia, parts of Afghanistan, Colombia and Mexico, violence is also often protracted and intractable, both as part of armed conflicts as well as separate from them, and exacerbated by fragile governance systems.

As a matter of morality, no one can contest that people should not be returned to dangers to their lives or freedoms, yet the international refugee protection regime is not open-ended and some gaps in the application of the 1951 Convention relating to the Status of Refugees (“1951 Convention”) and its 1967 Protocol have emerged to exclude from protection persons fleeing some of the major threats to human security in the 21st century.

UNHCR’s *Handbook on Procedures and Criteria for Determining Refugee Status* contains a specific section on “war refugees” and notes that “[p]ersons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol.”² It further provides that:

In such cases, refugee status will depend upon whether the applicant is able to show that he has a ‘well-founded fear of being persecuted’ in the occupied territory and, in addition, upon whether or not he is able to avail himself of the protection of his government, or of a protecting power whose duty it is to safeguard the interests of his

¹ Conflict and violence also cause internal displacement. However, the protection of internally displaced persons is not part of this project.

² UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/IP/4/ENG/REV. 3, para. 164, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>.

country during the armed conflict, and whether such protection can be considered to be effective.³

In other words, the 1951 Convention definition of a refugee, as someone at risk of persecution on account of their race, religion, nationality, membership of a particular social group, or political opinion, is not perceived to easily map onto the size, scale and character of many modern conflicts and refugee movements. However, according to UNHCR's *Note on Interpreting the 1951 Convention*, this perception of the 1951 Convention definition tends to "obscure the facts" in at least two ways: first, even in war or conflict situations, persons may be forced to flee on account of a well-founded fear of persecution for Convention reasons; second, war and violence are themselves often used as instruments of persecution.⁴ Nonetheless, there remains wide variation in State practice on this issue.

Meanwhile, a number of refugee and complementary/subsidiary protection instruments have been developed at regional and national levels to more explicitly cover persons fleeing internal conflicts, massive human rights violations, or situations of generalized violence or public disorder.⁵ These instruments have the added value of explicitly expanding the groups of persons protected, and taking into account the specificities of the various regions. In Africa, this has occurred also because of the tradition of granting refugee status on a *prima facie* basis under the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa ("1969 OAU Convention"). However, these instruments also have complex criteria – not least the subsidiary protection grounds in the EU Qualifications Directive⁶ – and call for a better understanding of the applicability of the 1951 Convention to persons seeking international protection from such situations, but also the relationship between the global and regional instruments.

2. Objectives and expected outcomes

The expert meeting is part of a broader project which aims to develop Guidelines on International Protection⁷ and to clarify the interpretation and application of international and regional refugee instruments to people fleeing armed conflict and other situations of violence across international borders, including foremost the application of the 1951 Convention and/1967 Protocol.

The Roundtable aims to come up with a set of summary conclusions to guide the future development of the aforementioned guidelines, and to address in particular the following questions:

- How can/should armed conflicts and other situations of violence be described and analyzed to determine the eligibility for protection as a refugee under the 1951 Convention/1967 Protocol, the 1969 OAU Convention and the 1984 Cartagena Declaration?

³ *Ibid.*, para. 165.

⁴ UN High Commissioner for Refugees, *Note on Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees*, April 2001, para. 20, available at: <http://www.unhcr.org/refworld/pdfid/3b20a3914.pdf>.

⁵ See, 1969 OAU Refugee Convention governing Specific Aspects of Refugee Problems in Africa, Article I(2); 1984 Cartagena Declaration on Refugees, Article III(3); Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ("EU Qualifications Directive"), Article 15.

⁶ According to Article 15 of the EU Qualifications Directive the grounds for subsidiary protection include: (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

⁷ The Guidelines on International Protection complement the Handbook on Criteria and Procedures for Determining Refugee Status, re-issued together in 2011, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>.

- How individualized does a threat, compulsion or risk of persecution, serious public disorder or generalized violence etc. have to be in order to be granted protection as a refugee under the 1951 Convention/1967 Protocol or under relevant regional refugee instruments?
- What threshold is required for the harm in question to fall within the 1951 Convention/1967 Protocol or under relevant regional refugee instruments? What indicators could be developed or are relevant to assist in the determination of eligibility for refugee or other forms of protection?
- To what extent are the various notions of harm informed or influenced by international humanitarian law?
- How should the notion of internal flight/relocation alternative be understood, and should it even apply, in respect of persons escaping armed conflicts and/or other situations of violence?
- How should the causal connection required under the 1951 Convention definition between the well-founded fear of persecution and one or more Convention grounds be construed in relation to persons fleeing situations of armed conflict and/or other situations of violence?
- What grounds, mentioned in the 1951 Convention definition, are applicable to people fleeing armed conflict or other situations of violence?
- What are today's understandings of the relevant terms in the regional refugee instruments (in particular generalized violence, massive human rights violations, other circumstances or events which seriously disturb public order)?
- What is the relation between the 1951 Convention/1967 Protocol, the regional refugee law instruments in Africa and Latin America, and complementary forms of protection, in particular developed under international and regional human rights law, and subsidiary protection in the context of the European Union's Qualifications Directive?
- In what situations is group recognition of refugee status (e.g., on a *prima facie* basis) more appropriate than individual status determination, and what is the difference?

3. Convener

The expert roundtable will be convened by UNHCR and hosted by the Refugee Rights Project, University of Cape Town, Cape Town, South Africa.

4. Participants

Maximum 30 persons from around the globe, drawn from States, policy-makers, the academy, practitioners/judges, non-governmental organizations, international organizations, and senior UNHCR staff.

5. Timing and location

Thursday 13 and Friday 14 September 2012 at the University of Cape Town, South Africa. Participants are expected to attend the entire meeting.

6. Documentation

The meeting will be informed by a number of commissioned papers, which will be shared in due course.

**Division of International Protection
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