Global Consultations on INTERNATIONAL PROTECTION

Update January 2002

For 50 years the 1951 Convention, later amended by its 1967 Protocol, has proved its effectiveness and resilience as the basic framework for the protection of millions of refugees and others of concern to UNHCR. The past five decades, however, have witnessed changes in the environment in which refugee protection must be provided. New and insidious forms of persecution, the proliferation of conflicts generating mass flight, refugee-producing situations without resolution, protracted exile, a plethora of concerns besetting host countries coupled with unequal burden sharing, a marked rise in smuggling of people for profit, misuse of asylum systems and, in a context of mixed flows, the blurring of the line between migration and the quest for asylum, are all part of the newer refugee dynamic.

The *Global Consultations on International Protection* are UNHCR's contribution to spurring reflection and action to revitalize the 1951 Convention framework and retool States effectively to address current humanitarian challenges in a spirit of dialogue and cooperation. The Consultations have been designed along three parallel tracks:

- 1st track: Ministerial Meeting of States Parties;
- 2nd track: Expert Roundtables; and
- 3rd track: Policy formulation in the Executive Committee framework.

- **1st Track – Ministerial Meeting of States Parties**

  The "first track", consisting of the Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (Geneva, 12 and 13 December 2001), aimed to strengthen the commitment of States Parties to implement the Convention and Protocol fully and effectively, elicit recognition of their enduring importance as the primary refugee protection instruments and encourage additional accessions. Co-convened by the Government of Switzerland and UNHCR and chaired by Switzerland, the Ministerial Meeting assembled a total of 162 States (129 States Parties to either or both instruments and 33 States which have not yet ratified them), 48 intergovernmental organizations and 63 non-governmental organizations. A total of 76 States were represented at Ministerial level and one (Latvia) by its head of State. Algeria, Belgium, Canada, the Philippines and Venezuela were elected to serve as Vice-Chairs.

  The landmark Declaration of States Parties adopted at the meeting – the first such declaration in 50 years – breaks new ground in a number of areas, including in its recognition that the principle of *non-refoulement* is embedded in customary international law. The Declaration clearly states that the 1951 Geneva Convention is rooted in the broader framework of human rights, of which it is an integral part. States Parties commit themselves to implement the Convention by strengthening asylum and rendering protection more effective as well as by exploring ways to strengthen UNHCR's supervisory role. The Declaration reiterates the need to develop international cooperation further, within the framework of international solidarity and burden-sharing, in order to achieve durable solutions for refugees particularly in situations of mass influx.

  In three interactive roundtable sessions, the Ministerial Meeting also gave participants an opportunity to share their views on key issues examined in other tracks of the Global Consultations. The roundtables focused on the following themes:

- Roundtable one: "The 1951 Convention and 1967 Protocol Framework: Strengthening Implementation"
- Roundtable two: "International Cooperation to Protect Masses in Flight (*inter alia* mass influx, burden and responsibility sharing, security, additional instruments)
- Roundtable three: "Upholding Refugee Protection in the Face of Contemporary Challenges involving Mixed Flows" (*inter alia* asylum systems)

The Declaration of States Parties, Chairman's Summaries of the roundtables and introductory statements can be found on the Global Consultations page of UNHCR's website at www.unhcr.org.

- **2nd Track – Expert Roundtables**
  The "second track" provided a forum to take stock of developments in refugee law and to examine a number of emerging issues. This was done through four expert discussions on specific aspects of the interpretation of the 1951 Convention and its 1967 Protocol. Following informal consultations with a wide range of States, NGOs and other interested parties, UNHCR identified issues for consideration, which are listed in the table below.

ROUNDTABLES	TOPICS
1st Roundtable Date: 3-4 May 2001 Venue: Lisbon Co-Organizer: Carnegie Endowment for International Peace in Washington DC Hosted by: Fundação Luso-Americana para o Desenvolvimento	• Cessation (Article 1C) • Exclusion (Article 1F)
2nd Roundtable Date: 9-10 July 2001 Venue: Cambridge Co-Organizer: Lauterpacht Research Centre for International Law in Cambridge, UK	• Principle of *Non-refoulement* (Article 33) • Supervisory Responsibility (Article 35)
3rd Roundtable Date: 6-8 September 2001 Venue: San Remo Co-Organizer: International Institute of Humanitarian Law at San Remo, Italy	• Membership of a Particular Social Group (Article 1A(2)) • Gender-related Persecution (Article 1A(2)) • Internal Protection/Relocation/Flight Alternative
4th Roundtable Date: 8-9 November 2001 Venue: Geneva Co-Organizer: Graduate Institute of International Studies, in Geneva, Switzerland	• Illegal Entry (Article 31) • Family Unity (Final Act of the 1951 UN Conference)

In order to help facilitate discussion, background papers were commissioned from scholars. They proved useful to the experts by identifying general themes, providing overviews of State practices and proposing legal arguments. Some offered sets of draft conclusions.

Participants in the roundtable discussions were drawn from governments of States Parties, NGOs, academia, the judiciary and the legal profession. Experts were invited to attend in their personal capacity. To allow in-depth examination of the topics and active exchange of ideas, participation in the roundtables was limited to some 30 experts.

To promote the widest possible consideration of the topics under analysis, the background papers were posted on UNHCR's website (www.unhcr.org) and comments were invited. The conclusions drawn from the Roundtables broadly reflect the understandings emerging from the discussions, but do not represent the individual views of each participant or necessarily of UNHCR. The conclusions and background papers will be published by UNHCR as a contribution to the 50th anniversary of the 1951 Convention during 2002. They will also assist UNHCR in updating and refining its own guidelines on these issues, supplementing the *Handbook on Procedures and Criteria for Determining Refugee Status*.

- Lisbon meeting on exclusion and cessation

The first of the four Expert Roundtables was held in Lisbon on 3 and 4 May 2001. Thirty-two experts from 25 countries met to discuss the exclusion and cessation clauses, two issues relating to the refugee definition that have posed legal and operational challenges to States Parties and to UNHCR. Discussions took place on the basis of two background papers, namely *Current Issues in the Application of the Exclusion Clauses* by Professor Geoff Gilbert and *Current Issues in Cessation of Protection under Article 1C of the 1951 Convention and Article I.4 of the 1969 OAU Convention* by Professor Joan Fitzpatrick.

Among other conclusions, the participants found that the interpretation and application of the exclusion clauses should take an "evolutionary approach", and draw on developments in other areas of international law since 1951, in particular international criminal law and extradition law as well as international human rights law and international humanitarian law. The participants considered the exclusion clauses to be of an exceptional nature given the potentially serious consequences of exclusion for the individual concerned. On the cessation clauses, the participants felt that the criteria for the cessation of refugee status should be applied carefully, not in purely formalistic terms, with full awareness of the situation in the country of origin as well as the country of asylum.

- Cambridge meeting on *non-refoulement* and supervising the Convention

The second Expert Roundtable was held in Cambridge on 9 and 10 July 2001. Twenty-eight experts from 19 countries discussed Article 33, based on a legal opinion on *The Scope and Content of the Principle of Non-refoulement* by Professor Sir Elihu Lauterpacht and Daniel Bethlehem. In addition, the participants explored possibilities for strengthening supervision of the 1951 Convention under Article 35, based on the discussion paper *Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond* by Professor Walter Kälin.

Among key conclusions, *non-refoulement* was recognised as a principle of customary international law, encompassing any measure that could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his/her life or freedom would be threatened, or where s/he is at risk of persecution, including interception, rejection at the frontier or indirect *refoulement.* Article 33 was found to apply to refugees, irrespective of their formal recognition.

While exploring ways to strengthen the implementation of the Convention, the roundtable participants concluded that UNHCR's supervisory responsibility should be affirmed and the pre-eminence of the High Commissioner's voice should be preserved. UNHCR's capacity to collect, analyse and disseminate information is essential and must be strengthened. In this regard, the roundtable discussion should be regarded as only the beginning of the process.

- San Remo meeting on gender-related persecution, membership of a particular social group, and internal protection/relocation/flight alternative

The third Expert Roundtable was held in San Remo from 6-8 September 2001. The topics of discussion were gender-related persecution, based on the discussion paper

Gender-related Persecution by Rodger Haines; membership of a particular social group, based on the discussion paper *Membership in a Particular Social Group: Analysis and Proposed Conclusions* by Professor T. Alexander Aleinikoff; and internal protection/relocation/flight alternative, based on the discussion paper *Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination* by Professor James Hathaway and Michelle Foster.

Following lively debate, the participants offered a definition of "social group" as "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, the roundtable found, that social perceptions can be a valid basis for construing the existence of a group.

The participants recognised that the refugee definition, properly interpreted, can encompass gender-related claims, and that a gender-sensitive interpretation of the Convention is important in determining whether a particular applicant has a well-founded fear of being persecuted on one or more of the Convention grounds. As such, there would be no need to add an additional ground to the Convention definition. In this regard, the participants felt that sex can properly be within the ambit of the social group category, with women being a clear example of a social sub-set defined by innate and immutable characteristics, and who are frequently treated differently to men.

In relation to the third topic of discussion, it was generally agreed that 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, the participants identified several factors to be considered, including, 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. In addition, the participants felt that the mere absence of a risk of persecution would not be sufficient in itself to establish that an internal alternative exists. Rather, 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.

- Geneva meeting on illegal entry (Article 31) and family unity

The final Expert Roundtable was held in Geneva on 8–9 November 2001. The topics were Article 31 (illegal entry; non-penalisation), based on the discussion paper *Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection* by Professor Guy Goodwin-Gill; and family unity, based on the discussion paper *Family Unity and Refugee Protection* by Kathleen Newland and Kate Jastram.

Participants acknowledged that the drafters of the Refugee Convention codified a principle of immunity from penalties for those refugees who come directly from a territory where their life or freedom is threatened and who enter or are present in a country without authorization, as long as they present themselves to the authorities "without delay" and "show good cause" for their illegal entry or presence. The participants discussed in some detail the meaning to be given to particular terms in Article 31. They concluded that refugees are not required to have come directly from territories where their life or freedom was threatened, and that Article 31 (1) was intended to apply, and has been interpreted to apply, to persons who have briefly transited through other countries or who are unable to find effective protection in the first country or countries to which they flee. There was agreement that detention is an exceptional measure to be resorted to only when determined necessary in the individual case.

It was broadly agreed by participants that a right to family unity is entrenched in universal and regional human rights instruments and international humanitarian law, and that it applies to all human beings, regardless of their status. The obligation to respect the right to family unity requires not only that States refrain from actions that would result in family separations, but also that they take measures to maintain the unity of the family and reunite family members who have been separated.

The background papers and conclusions can be found on UNHCR's website. Any queries can be directed to: Ms Alice Edwards (Edwards@unhcr.org).

- **3rd Track – Executive Commitee Process**[1]
  The "third track" of the Consultations is structured around a number of protection policy matters, including issues not adequately covered by the 1951 Convention. This component of the Global Consultations is designed, firstly, to foster a common understanding of the protection challenges and enhance cooperation to address them; secondly, to identify and promote practical responses to protection problems; and thirdly, to lead to the development of new approaches, tools and standards to strengthen protection. The discussions seek to achieve concrete outcomes, which could include, depending on the issue: i) the identification of new and practical cooperative arrangements; ii) tools to implement guidelines; iii) guidance to States or to UNHCR; iv) Executive Committee conclusions; and v) more formal standard-setting.

  The discussions are being held within the framework of UNHCR's Executive Committee at meetings during 2001 and 2002. These centre on four broad themes:

	MEETINGS	THEMES/ISSUES
2001	**1st meeting:** 8-9 March	**1st Theme:** **Protection of Refugees in Mass Influx Situations** a) Overall protection framework 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 c) Registration d) Mechanisms of international cooperation to share responsibilities/burdens in mass influx situations
	MEETINGS	**THEMES/ISSUES**
	2nd meeting: 28-29 June	**2nd Theme:** **Protection of Refugees in the Context of Individual Asylum Systems** a) Refugee protection and migration control, including interception practices and the treatment and return of persons not in need of international protection b) Asylum processes, including access to refugee protection; expedited procedures; undocumented and/or uncooperative asylum-seekers

[1] See Work Programme for "Third Track" Issues in the Context of the Executive Committee Framework (Working Document), EC/GC/01/1/Rev.2, 9 May 2001.

	MEETINGS	THEMES/ISSUES
2001	**3rd meeting:** 27-28 September	**2nd Theme:** **Protection of Refugees in the Context of Individual Asylum Systems (continued)** a) Asylum processes (continued): reception of asylum-seekers, including standards of treatment; complementary forms of protection b) Strengthening protection capacity in host countries
	MEETINGS	**THEMES/ISSUES**
2002	**4th meeting:** 22-24 May	**3rd Theme:** **The Search for Protection-Based Solutions** a) Voluntary repatriation b) Local integration c) Resettlement
		4th Theme: **Protection of Refugee Women and Refugee Children**

International solidarity and responsibility or burden sharing, as well as aspects of protection of refugee women and refugee children, are cross-cutting themes which are being considered throughout the discussions of the various topics.

- 8 and 9 March 2001 meeting

The first substantive meeting dealt with *Protection of Refugees in Mass Influx Situations.* The debate on the various issues of the theme was participatory and wide ranging. Delegations emphasized the need for greater clarity concerning the scope of international protection in mass influx situations and also called for more guidance on how to identity and determine whether to exclude individuals from protection under the 1951 Convention in the context of group determination on a *prima facie* status. When discussing the topic of the civilian character of asylum, delegations underlined the importance of the identification, separation and internment of armed elements, as part of a comprehensive strategy to address the security of refugee camps and settlements. In addition, participants underscored the need to address the serious repercussions of security problems on refugee women and children, including military recruitment of refugee children. The development of standards and procedures for the separation of armed elements from the refugee population and the adoption of an ExCom Conclusion setting out some guiding considerations to preserve the civilian character of asylum are just two of the follow-up activities envisaged. There was recognition that adequate registration, including the issuance of documentation, is a prerequisite for the legal and physical protection of refugees. As a concrete outcome of the consultations, standards for refugee registration were adopted in the form of an ExCom Conclusion.[2] Other follow-up activities concern the updating/development of operational tools for registration and population data management. Mechanisms of international cooperation to share responsibilities and burdens in mass influx situations was recognized as a difficult but vital subject, on which it was necessary to move beyond sympathy and rhetoric to practical measures. In the context of promoting comprehensive approaches to responsibility/burden-sharing in mass influx situations, UNHCR proposed to identify a situation, in cooperation with States, to test the applicability of lessons from past experiences of available tools and of how to promote their use as part of a comprehensive strategy.

[2] See *Conclusion on Registration of Refugees and Asylum-seekers*, no. 91 (LII) – 2001.

- 28 and 29 June 2001 meeting

Under the theme, *Protection of Refugees in the Context of Individual Asylum Systems*, delegations focused on the interface between migration and asylum (including interception practices and the treatment and return of persons not in need of international protection) as well as on asylum processes, with an emphasis on fair and efficient procedures. All delegations recognized the importance and complexity of the asylum-migration nexus. It was widely acknowledged that legitimate measures to stem trafficking and smuggling should not be allowed to override States' commitments to respect refugee protection responsibilities. There was broad support for the suggestion that UNHCR develop Guidelines on Safeguards for Interception Measures, incorporating appropriate protection safeguards and drawing on the conclusions and recommendations of the Ottawa regional workshop (see *Regional Meetings*, below). They also welcomed the first-ever joint UNHCR/IOM background paper, and supported the establishment of a UNHCR/IOM Action Group on Asylum and Migration (AGAMI). Turning to asylum processes, delegations recognized the need for basic common standards for refugee status determination procedures derived from the framework of international refugee law. They agreed to pursue discussions aimed at agreeing on basic common principles for refugee status determination procedures, on the basis of the compilation of best practices contained in UNHCR's background note.

- 27-28 September 2001 meeting

The third substantive meeting resumed discussions on *Protection of Refugees in the Context of Individual Asylum Systems*. The meeting continued to examine asylum processes, focusing on issues relating to the reception of asylum-seekers, including standards of treatment, as well as complementary forms of protection. The meeting also explored how to strengthen protection capacity in refugee-hosting countries. Many converging views on the three topics under discussion emerged. There was widespread support for a human-rights-based approach in defining adequate reception standards for asylum-seekers, which might also draw on social, economic and cultural rights. Delegations agreed that a basic framework for reception policies could usefully be adopted in the form of an ExCom Conclusion, to be followed by the development of UNHCR *Guidelines on the Reception of Asylum-Seekers.* Delegations welcomed the inclusion of complementary (or "subsidiary") forms of protection on the Global Consultations agenda. The need for greater harmonization in the way States deal with complementary protection was acknowledged, and there was widespread support for the institution of a consolidated single procedure which first assesses whether an asylum-seeker qualifies for 1951 Convention refugee status, and, only if not, assesses subsequently the need for other complementary protection. There was broad consensus on the desirability of framing the guidance on complementary forms of protection in the form of an ExCom Conclusion. Strengthening protection capacities in host countries, the third topic under discussion, was recognized as a *sine qua non* condition to implement effectively international protection standards. At the same time, many delegations underlined that such capacity-building must be framed in the broader context of international cooperation, solidarity and burden-sharing, and entail adequate funding, *inter alia* to UNHCR, to build protection capacity in host countries.

- Year 2002 meeting: 22 to 24 May 2002

Two additional themes will be discussed from 22 to 24 May 2002, namely: *The Search for Protection-based Solutions* (local integration, resettlement, voluntary repatriation) and *The Protection of Refugee Women and Children.*

- **Regional Meetings**

To ensure that the Consultations have a truly global reach, Regional Meetings were organized to bring the different national and regional perspectives of governments, regional organizations, NGOs and other experts, as well as refugees themselves,

particularly on the issues under discussion within the third track. UNHCR organized a total of seven Regional Meetings which broadened participation on issues on the agenda of particular interest to one or other of the regions of the world. During discussions within the third track of the Global Consultations, participating delegations recognized the useful contribution of the Regional Meetings, which have not only brought fresh insights on the challenges and constraints experienced at field level, but also formulated a number of substantive comments and recommendations.

DATE	VENUE	SUBJECT
26–27 February 2001	**Pretoria**	Maintaining the civilian and humanitarian character of asylum, refugee status, camps and locations
14–15 May 2001	**Ottawa**	Incorporating refugee protection safeguards in interception measures
28–29 May 2001	**Macau**	Identification of persons in need of protection and development of effective protection frameworks
6–7 June 2001	**Budapest**	Application of the "safe third country notion" and its effect on the management of flows and the protection of refugees; inter-State agreements for the readmission of third country nationals and for the determination of the State responsible for examining the substance of an asylum application; legal and practical aspects of the return of persons not in need of international protection
7–8 June 2001	**San Jose** Co-organizers: Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the Inter-American Institute of Human Rights	UNHCR's supervisory role and the Inter-American human rights bodies: a comparison
3–5 July 2001	**Cairo**	How to strengthen the capacity of first asylum countries in the region to offer adequate protection
6-7 November 2001	**Oslo**	Resettlement as a multi-faceted protection tool and its relationship to migration

- **Refugee participation**

  As key stakeholders in refugee protection, refugees have actively been involved in the Global Consultations. The challenge has been to identify ways to make sure that their voices are heard and their views are taken into account. Given the diversity of views among refugees, those who have contributed to the process, needless to say, have represented only a portion of the refugee community. Nonetheless, their involvement has provided important perspectives for other stakeholders. At the June 2001 third track meeting, a refugee woman spoke of her experiences in seeking asylum, including a period of detention. Her direct testimony ended with a ringing plea of "Action, please," on behalf of all refugees seeking asylum and a safe haven.

The following events have been held, which *inter alia* gave a voice to refugees in the Global Consultations process:[3]

- International Conference on the Reception and Integration of Resettled Refugees in Norrköping (25–27 April 2001);
- "Refugee Parliament" sponsored by the French National Assembly in Paris (16 June 2001), which produced the *Paris Appeal* that was read by a refugee representative during the opening ceremony of Ministerial Meeting of States Parties (Geneva, 12 and 13 December 2001);
- Respect our Rights: Partnership for Equality - Dialogue with Refugee Women in Geneva (20–22 June 2001) and other selected locations;
- Forum of Refugees in Europe in Rouen, France (14–16 September 2001).

- **Next Steps**

The Global Consultations process will conclude in 2002. Deriving from the entire Global Consultations process is a convergence of views on elements which might comprise a joint *Agenda for Protection* activities for States, UNHCR and other protection partners for the coming period. UNHCR plans to pursue consultations within the framework of UNHCR's Executive Committee to finalize the *Agenda for Protection* and launch the follow-up phase. The *Agenda* will set out concrete goals and actions to strengthen protection and serve as a guide for UNHCR and States, NGOs and other protection partners for the years to come.

For further information, please contact:

- **1st Track – Ministerial Meeting of States Parties:** Philippe Leclerc (Leclerc@unhcr.org) and José Riera (Riera@unhcr.org)
- **2nd Track – Expert Roundtables:** Alice Edwards (Edwards@unhcr.org)
- **3rd Track – ExCom Process:** Walpurga Englbrecht (Englbrew@unhcr.org)
- **Regional Meetings:** Stéphane Jaquemet (Jaquemet@unchr.ch)

During the Global Consultations, *prima facie,* the quarterly publication of UNHCR's Department of International Protection, will highlight the main developments and issues of the Global Consultations process (available on UNHCR's public website). Further information on the Global Consultations can be obtained via the Internet at www.unhcr.org.

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United Nations High Commissioner for Refugees
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[3] For further details, please consult the document *Global Consultations: Listening to Refugee Voices*, posted on UNHCR's public website (click on Global Consultations).