

**Global Consultations:
Protection of Refugees in the Context of Individual Asylum Systems
(28-29 June 2001)**

Chairman's Summary

The second meeting under the third track of the Global Consultations on International Protection again gave rise to active participation and confirmed the manifest will to find converging views. The spirit of cooperation and dialogue established in the first meeting had continued to prevail. The second meeting introduced a refugee voice through the testimony of a refugee woman whose plea for "Action please" found great resonance amongst participants. This laid the ground for improving the Global Consultations' reach out to the beneficiaries of international protection. NGOs continued to participate actively and contribute constructively to the debate. The participants recognized the useful contribution of the regional workshops in Ottawa, Macau and Budapest, which not only brought insights on the challenges and constraints experienced at field level, but also formulated a number of substantive conclusions and recommendations.

1. Refugee protection and migration control

Delegations addressed a number of general issues, including:

- Recognition of the importance and complexity of the asylum-migration nexus, in view of mixed flows of persons in need of protection and migrants, and the likelihood that this trend will intensify as one of the consequences of globalization;
- Acknowledgement that available data on migratory movements is insufficient and of the need to analyze and better understand the types and volume of mixed movements, as well as the underlying motives, so as to inform more effective responses;
- Recognition of the need to view the problem in a human rights context (not simply border or migration "control") and as an aspect of "migration management" which takes account of economic and labour demands, as well as human rights concerns;
- Recognition that such movements affect all countries – developed and developing alike – and present a number of common challenges, but that developing countries require international support to improve capacity to respond effectively;
- Recognition of the imperative for closer cooperation in devising comprehensive and multifaceted responses amongst all stakeholders: governmental, intergovernmental and non-governmental. In this context, dialogue between countries of origin, transit and destination is key;
- Recognition of the sovereign right of States to guard their borders, and to take measures to stem trafficking and smuggling of people in view of extreme suffering this causes, particularly to women and children;
- Asylum-seekers must be assured of access to procedures and benefit from appropriate standards of treatment;
- Need for greater support to developing countries on socio-economic factors that lead to migratory flows;
- Need for greater support to States to host refugees or receive them back to their country of first asylum. Such aid could also contribute to stemming secondary movements from developing host countries facing protracted refugee situations.

Relationship between migratory movements and refugee protection (document EC/GC/01/11)

- Broad endorsement of the joint IOM/UNHCR paper (EC/GC/01/11);
- Recognition that the causes of movement are most likely overlapping and include human rights violations or armed conflict, but also economic marginalization and poverty, environmental degradation, population pressures, poor governance and scarcity of decent work;
- Recognition that, due to increasingly restrictive approaches, more and more asylum-seekers are resorting to smugglers either in departing from their countries of origin or moving onwards from countries of first asylum;
- Undertaking that measures to stem trafficking and smuggling not be allowed to override States' commitments to respect refugee protection responsibilities – particularly respect for the principle of *non-refoulement* – and human rights in general, as well as migrant rights.

Conclusions

- Need to provide more detailed and coherent data and statistics on migratory movements;
- The need for clearer commitment by States to introducing adequate protection safeguards, complying with relevant international instruments;
- On the question of people smuggling, suggestion that a number of elements could contribute to preventing resort to smugglers in the first place: providing opportunities for regular migration; operation of a proper and efficient asylum system in compliance with international norms; and speedy return of those found not to be in need of international protection;
- Need for efforts to encourage new accessions to and full and effective implementation of refugee instruments, as well as the United Nations Convention against Transnational Organized Crime and its Protocols (on trafficking of persons and smuggling of migrants), the 1990 Convention on the Protection of All Migrant Workers and their Families, and relevant ILO Conventions (notably nos. 97 and 143);
- There were a number of positive suggestions on policy orientations, of which information campaigns (both in countries of origin and receiving countries) should be an important part: to provide a realistic appraisal of opportunities for orderly movement; discourage irregular migration; warn of the dangers of smuggling and trafficking; combat xenophobia; convey to the public at large in receiving States the positive side of migration and the assets both migrants and refugees represent to their host societies;
- The issue of secondary movements from countries of first asylum requires further examination, including an assessment of whether resettlement is appropriate;
- IOM was requested to undertake a detailed study on the root causes underlying irregular migration and it was suggested that regional organizations (Council of Europe, OSCE and SADC) should also undertake similar studies;
- Recommendation that development aid, trade and investment policies should be more sensitive to refugee and migration concerns and address the root causes of movement.

Interception and protection safeguards

- There were diverging views on interception. Some saw this being legitimate as part of States' sovereign right to guard their borders. Others acknowledged that interception could be a necessary tool to deter smuggling, but must be tempered with protection safeguards.

Still others – notably the NGOs – were opposed to interception measures, viewing them as arbitrary and dangerous;

- States must avoid a culture of blaming the victims and, in accordance with the relevant international instruments, should not penalize asylum-seekers and refugees who use smugglers;
- Recognition of the need to devote special attention to the plight of victims of trafficking and smuggling, in particular women and children;
- Concern that protection safeguards could lead to additional activities for UNHCR, for which additional resources should be identified.

Conclusions

- Broad support for UNHCR's proposal to develop Guidelines on Safeguards for Interception Measures incorporating appropriate protection safeguards, which could usefully draw on the results of the Regional Workshop in Ottawa;
- Support for the suggestion that States which practice interception should incorporate safeguards for the protection of intercepted persons in need of international protection;
- UNHCR was requested to initiate training efforts focusing on safeguards in interception;
- Suggestion that an independent evaluation of existing interception programmes be undertaken;
- Proposal to follow-up on the discussions in Ottawa on interception, with a view to widening participation of countries from other regions.

Return of persons not in need of international protection

- Broad agreement on the desirability of quick and effective return of persons found not to be in need of international protection, but recognition that this return must be safe, dignified and sustainable, and ideally entail assistance to the receiving State or the individual;
- Agreement that the failure to return persons not in need of international protection undermines the integrity of asylum and migration management regimes. Benefits of speedy return: eases reintegration; discourages smugglers and traffickers; signals to other potential migrants that the asylum avenue is not open;
- The obligation of States to accept back their own citizens and cooperate to readmit their nationals was repeatedly stressed, also as a human rights issue (the right of persons to return);
- Although countries of origin in the developing world require international support to make returns sustainable, return should not be conditioned upon international support.

Conclusions

- While the return of persons not in need of international protection should ideally be voluntary, States have the right to deport them and non-voluntary return should be conducted in safe, humane and dignified conditions;
- UNHCR's involvement in return issues should be consistent with its mandate and combined with an obligation of States to provide resources to UNHCR for this purpose;
- IOM was encouraged to continue programmes for the return of persons not in need of protection (some developing-country delegations expressed concern about lack of funds to finance such programmes);
- IOM was requested to develop a set of guidelines for ensuring that migrants whom IOM returns, do so voluntarily.

Cooperation between UNHCR and IOM, as well as with States and other stakeholders

- Encouragement for continued partnership between UNHCR and IOM;
- Calls for clearer terms of reference as to what this cooperation would embrace and concerns about the resource implications for UNHCR;
- Given the complexity of the asylum/migration nexus, this partnership could also embrace many other partners – governments, other interested organizations (including regional organizations) and NGOs;
- Caution was urged concerning the formulation of an *international* migration-management regime, and a suggestion made to focus instead on national and regional best practices;
- Encouragement to include information activities as an integral part of IOM/UNHCR cooperation.

Conclusions

- Strong support for the proposed UNHCR/IOM Action Group on Asylum and Migration, on the understanding that it would have due regard for the specific mandates of each organization;
- Recommendation that governments and relevant intergovernmental organizations (ILO and Office of High Commissioner for Human Rights were specifically mentioned) as well as NGOs could usefully participate in its work;
- Suggestion that the Action Group's programme of work might include better data collection; research; formulation of policy options; promotion or adoption of international standards; training; and practical project initiatives in the field and in Geneva;
- Request that a report on the work of the Action Group be shared with the Executive Committee/IOM's governing body.

2. Asylum processes (fair and efficient procedures) (EC/GC/01/12)

Under this theme, delegations raised a number of general points, notably:

- Access to well functioning, fair and efficient procedures is a condition *sine qua non* for respect of the principle of *non-refoulement*, the right to seek and enjoy asylum and the full and inclusive application of the 1951 Convention;
- While the adoption of national legislation is important, its content and the capacity to implement it are also essential;
- Expeditious and fair procedures are a means to combat abuse;
- More capacity-building is needed to help offset the severe constraints that continue to exist in some regions; some offers of help were made to help set in place asylum procedures and assist them to function effectively;
- A mere application for asylum should not be grounds for detention;
- A decision on asylum should be reasoned and include the possibility of an appeal, combined with free legal aid.

Various sub-items were also examined under this theme. What follows is a summary of essential points raised and the conclusions reached.

Admissibility procedures

- Mechanisms to determine the responsibility of States for examining asylum claims must be distinct from the substantive examination of such claims;
- Time limits imposed for lodging an application should not be used to restrict access to procedures, but non-compliance could impact on the applicant's credibility;
- The Budapest meeting had helped elucidate issues surrounding the "safe third country" notion and the impact of readmission agreements on countries consolidating their asylum systems, highlighting concerns by some countries of the "burden-shifting" effect;
- Developing host countries face considerable burdens – that are not adequately recognized – and accepting back persons having sought "greener pastures" elsewhere must be accompanied by measures of assistance, in a spirit of burden-sharing.

Conclusions

- Adequate safeguards are essential in the case of the return of refugees to a first country of asylum;
- Adequate safeguards are also vital with respect to the safe third country notion, notably the accepting State's consent to the transfer and prompt consideration of the asylum request;
- Resettlement and local settlement may need to be considered when return to certain protracted refugee situations is not viable.

Equitable and expeditious asylum procedures

There was general agreement on the following issues:

- Value of streamlined and expeditious procedures that identify persons in need of international protection as well as those who are not;
- Preference for multilateral or bilateral “Dublin-type” agreements on apportioning responsibility for examining claims, rather than unilateral use of the safe third country notion;
- Undocumented asylum-seekers and uncooperative asylum-seekers are major problems confronting States

Diverging views were expressed, however, on:

- The suspensive effect of appeal procedures. Some delegations felt there should be no suspensive effect in some instances, while NGOs argued that a suspensive effect should be guaranteed.

Conclusions

- All asylum-seekers should have access to procedures to adjudicate their claims;
- Safeguards should also ensure access to advice on procedures, legal counsel, personal interviews, counselling (notably by NGOs), right to appeal against negative decisions and right to be informed at key moments of the procedure;
- Accelerated procedures are useful to resolve manifestly well-founded cases, as well as those where abuse of procedures or unfoundedness is manifest, provided they are accompanied by adequate protection safeguards;
- Asylum-seekers have a responsibility to cooperate with the authorities; the authorities have a complementary responsibility to recognize the vulnerability of asylum-seekers;
- Lack of documentation does not, in itself, render a claim abusive; the lack of documentation and the lack of cooperation should be handled as separate and distinct issues.

Other issues

Delegations also shared views and suggestions on several other issues. They included:

- the importance of training to ensure that officials at borders and other points of entry are aware of standards and procedures for **reception at the border**. Offers of technical and other support were made by some delegations;
- special procedures are important to assist **asylum-seekers with special needs**, notably female asylum-seekers who need to be attended by female staff, particularly in the case of trauma or sexual violence. Women should be allowed to lodge applications in their own right, even if accompanied by a man. Unaccompanied or separated children asylum-seekers, need to be examined “outside the box”, giving due consideration to whether the best interest of the child could indeed be preserved via asylum. Such children may need to be provided on arrival with a guardian and receive psycho-social support.
- The proposed **single asylum procedure** could be the most effective, clearest and swiftest means for providing protection expeditiously to all those who need it, and deserves further examination.

General conclusions

While some diverging views were expressed under this theme, there was broad agreement on the following general issues:

- The need to uphold basic common standards derived from the framework of international refugee law, while acknowledging the need for flexibility so as to take account of national and regional specificities and domestic legal and administrative systems;
- States that have not yet done so should establish fair and efficient asylum procedures; in this context, the compilation of best practice undertaken by UNHCR was welcomed;
- UNHCR should provide further guidance to States on how to handle multiple applications;
- The Executive Committee could usefully reach an agreement on some basic guiding principles, possibly in the form of a Conclusion on Asylum Procedures, looking in greater detail at the conclusions and recommendations of document EC/GC/01/12. NGOs requested the opportunity to participate in these discussions;
- The Chair proposed to undertake consultations on the feasibility, modalities, timing, participation and framework of such consultations.

In closing the meeting, the Chairman acknowledged with gratitude the background papers that had been prepared by UNHCR including the one prepared jointly with IOM. He also thanked delegations, including NGOs, for the great interest they had demonstrated in issues relating both to the migration/asylum nexus and to the asylum processes, noting their commitment to protection principles. He also recalled the positive contribution made by the refugee voice heard at the opening of the meeting, reminding delegations of the need to continue the effort to increasingly involve beneficiaries in these important consultations.