

Ministerial Meeting of States Parties
to the 1951 Convention
and/or its 1967 Protocol
relating to the Status of Refugees

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BACKGROUND NOTES FOR THE
ROUNDTABLES OF THE MINISTERIAL MEETING

I. INTRODUCTION

1. These notes have been prepared to assist discussants in the roundtables of the Ministerial Meeting to structure their interventions around some main questions which have emerged to date from UNHCR's *Global Consultations on International Protection*. A broad introduction to each roundtable theme is followed by a listing of suggested questions for discussion. A selected bibliography of *Global Consultations* and other background documents appears as an annex at the end of this note.

II. ROUNDTABLE 1
1951 CONVENTION AND 1967 PROTOCOL FRAMEWORK:
STRENGTHENING IMPLEMENTATION

2. The 1951 Convention and its 1967 Protocol are the most comprehensive instruments which have been adopted to this point at the global level to safeguard the fundamental rights of refugees and to provide standards of treatment. Although respect for the Convention remains strong, implementation, across the spectrum of its provisions, is variable and encounters obstacles of various forms and origins. The fiftieth anniversary of the 1951 Convention has provided a unique opportunity to give the Convention new impetus. The Ministerial Meeting of States Parties is being approached by all concerned as the occasion to reaffirm the ongoing importance of the Convention and to explore ways that may be required to strengthen its implementation, *inter alia*, by ensuring closer cooperation between States Parties and UNHCR, to facilitate UNHCR's duty of supervising the application of these instruments. It is indeed indispensable that these instruments are properly and universally applied and that the international refugee regime, based on international solidarity, can become a truly burden and responsibility sharing system.

3. In their interventions, discussants may wish to comment on the portions of the *Elements of an Agenda for Protection Activities* (HCR/MMSP/2001/06) which are relevant to the roundtable theme. In order to have focused and productive discussions, the following issues are suggested as guidelines for participants:

- i. What are the most significant difficulties that States experience in implementing the provisions of the 1951 Convention and the 1967 Protocol?

- ii. The supervisory role of UNHCR pursuant to Article 8 of its Statute and Article 35 of the Convention is unique within the UN system. How can States Parties better cooperate with or strengthen UNHCR's supervisory role?
- iii. In order to strengthen implementation, how can States Parties better cooperate amongst themselves?
- iv. Do States believe that one or other of the following would contribute to improving implementation of the Convention?
 - Encouraging wider accession to make these instruments truly universal;
 - Systematic review of reservations after a certain period of time following accession, with a view to lifting them;
 - Periodic intergovernmental and expert examination of aspects of the Convention in need of clarification or meriting more harmonized approaches;
 - Peer review or ad hoc review mechanisms;
 - More specific targeting or usage of UNHCR's Executive Committee mechanism to review particular problems with implementation;
 - Periodic meetings of States Parties to review problems and progress with implementation;
 - A system of more regularized reporting;
 - Strengthening protection capacities at national and regional level;
 - Adjudication mechanisms; and
 - Other mechanisms?
- v. NGOs make important contributions to the implementation of the Convention and its Protocol. What could be the role of NGOs in ensuring better implementation?
- vi. How should the issue of strengthening implementation of the Convention be taken further forward following the Ministerial Meeting?

III. ROUNDTABLE 2

INTERNATIONAL COOPERATION TO PROTECT MASSES IN FLIGHT (*INTER ALIA* MASS INFLUX, BURDEN AND RESPONSIBILITY SHARING, SECURITY AND ADDITIONAL INSTRUMENTS)

4. Large-scale displacement of refugees confronts the international community, and particularly host states which are developing countries or countries with economies in transition, with many challenges. The sheer size of many refugee outflows makes individualized identification of refugee status and the grant of rights envisaged in the 1951 Convention purely impracticable. The task of creating a measure of physical security for the refugees, as well as the humanitarian staff there to protect and assist them, can become the objective overriding all others in the short term. Militarized

camps are of particular concern in mass influx situations provoked by ongoing conflict. The physical and social vulnerability of women, children and elderly refugees is a central preoccupation here.

5. While there is a general understanding that more equitable burden and responsibility sharing would quantitatively improve the political climate and asylum possibility for refugees, in practice responsibilities are not well shared, and there is no system in place which effectively operates to ensure this, so that incentives for burden shifting rather than burden sharing are felt, by some, to be more commonplace. The overriding concern, and indeed an important question for discussion at the roundtable, is how achieve better protection for refugees in mass influx situations within a well calibrated framework of international solidarity and burden sharing, tailored to meet also the genuine concern of those States called upon to uphold refugee protection requirements?

6. In their interventions, discussants may wish to comment on the portions of the *Elements of an Agenda for Protection Activities* (HCR/MMSP/2001/06) which are relevant to the roundtable theme. Participants in roundtable 2 may furthermore wish to address the following questions:

- i. There is nothing inherent in the framework of the 1951 Convention and 1967 Protocol to preclude it being applied in mass influx situations. The problem is less the Convention itself and more the individualized processes which have come to be part of its implementation. Would the *prima facie* status approach and temporary protection device, variously developed to assist States and UNHCR to work with refugees in mass influx situations, benefit from greater harmonization one with another, and, indeed, also with the 1951 Convention itself? Is an additional optional Protocol to the 1951 Convention called for?
- ii. Countries that bear the brunt of receiving large numbers of refugees clearly shoulder a heavy burden. In such cases, effective approaches are needed for sharing the burden and finding solutions to refugee situations. What are the preferable mechanisms to ensure more effective, equitable and predictable responsibility and burden sharing? What are the views on humanitarian evacuation, on increased and/or pooled resettlement plans, or new financial arrangements like trust funds?
- iii. Resettlement has in the past proved to be one mechanism to ensure protection to larger numbers, where it has been used strategically both to open doors and to resolve problems (e.g. in the Comprehensive Plan of Action for Indo-Chinese Refugees). Could resettlement play a more substantial responsibility-sharing role in the context of mass influx? How can one achieve greater flexibility in the use of criteria in *prima facie* situations?
- iv. The presence of armed elements in an influx of refugees, or in camps or refugee-populated areas, threatens the civilian nature of asylum, creating serious refugee protection problems as well as security concerns for receiving States and host communities. Drawing a clear distinction between refugees on the one hand, and armed elements on the other, is a major challenge. How can these security-related concerns be addressed? How concretely to maintain the civilian character of refugee

camps and to separate and disarm former combatants? What examples can be built upon to devise security schemes for refugee-hosting areas? What material support can States provide to an appropriate international standby capacity to aid affected host States?

- v. The separating and disarming of armed elements and the prevention of military recruitment, often resolves down to an issue both of resources and of political will. What can be done to bring the issue of security in refugee areas higher up on the political agenda of UN organs and States?
- vi. In situations of mass influx, women and children have special protection needs, including the need for protection of the family unit, protection against sexual and gender-based violence and exploitation, protection of unaccompanied minors or separated children and protection against forced recruitment. How can protection responses on behalf of refugee women and children, particularly in situations of mass influx, most effectively be strengthened?

IV. ROUNDTABLE 3
UPHOLDING REFUGEE PROTECTION IN THE FACE OF
CONTEMPORARY CHALLENGES INVOLVING MIXED FLOWS
(*INTER ALIA* ASYLUM SYSTEMS)

8. Refugees are not migrants in the lay sense of the word. They move through compulsion - not on the basis of meaningful choice - and their immediate objective is to seek protection, not a migration outcome. Refugees may though move within a broader mixed flow, that includes both forced and voluntary movements of all kinds. Persons who are not refugees are also seeking to enter countries through the asylum channel, sometimes despite the existence of viable legal migration options.

9. The complex relationship between asylum and migration issues is increasingly at the forefront of international concerns. There is a need to achieve a better understanding of the nexus between migration and asylum, and to develop more effective policy and operational responses. From a refugee protection perspective, the challenge is for the international community to find ways of ensuring that the needs of refugees and asylum-seekers, including access to protection, are properly met within the broader context of migration management.

10. In their intervention on this issue, discussants may wish to refer to the portions of the *Elements of an Agenda for Protection Activities* (HCR/MMSP/2201/06) which are relevant to the roundtable theme. Participants in roundtable three may furthermore wish to consider the following questions:

- i. A credible asylum system that protects refugees and discourages people who do not have a legitimate asylum claim is one key to managing better the broader migratory phenomenon of mixed movements. The question is how best to ensure quality decision-making, done promptly, with implementable results, including the return of those *not* in need of international protection. What are the core elements of fair and efficient decision-making, in keeping with international refugee protection principles? Would the following activities be recommended for inclusion among ways to maintain the credibility of asylum systems?

- Providing opportunities for legal migration;
 - Making refugee status determination procedures more effective through increased harmonization of procedures, criteria and reception standards across regions and internationally;
 - Making more resolute use of Article 1F and 33(2) of the 1951 Convention to address new challenges linked to terrorism;
 - Strengthening protection capacities in first asylum countries;
 - Promoting greater harmonization of approaches among States to the grant of complementary forms of protection;
 - Readmission agreements; and
 - Information campaigns in countries of origin to provide information to prospective migrants of the channels open for legal migration and warn of the dangers of trafficking and smuggling.
- ii. How can States cooperate more effectively to provide both technical and financial assistance to countries with limited resources to set in place asylum procedures and build capacity to implement them?
- iii. What new initiatives can political leaders take to uphold public support for refugee protection and to emphasize the human dimension of the plight of asylum-seekers, in the face of widespread irregular migration?
- iv. On occasion, refugees may have to resort, alongside migrants and others, to smuggling rings to reach countries of first asylum, or to move on to safer locations. Combating trafficking and smuggling as well as addressing misuse of asylum procedures is fundamental and necessary. What measures are to be promoted which combat trafficking and smuggling while ensuring that protection needs are fully met? How can it be ensured that asylum-seekers *do* have access to asylum procedures, while benefiting from appropriate standards of treatment, in the context of interception measures?
- v. Refugees who have found protection in one country occasionally move on - in so-called *secondary movements*, often through irregular channels - to a second asylum country, for instance to be reunited with family members, or in hopes of bettering their situation, or their prospects for local integration. What should be the appropriate policy response to such secondary movements? How and in which fora could the necessary dialogue between countries of first asylum, transit and final destination be improved?
- vi. Failure to return rejected cases undermines the integrity and credibility of asylum systems. Many States have encountered difficulties when attempting to return those who have been found *not* to require international protection through a full and fair hearing. What additional mechanisms or arrangements can be set in place to foster more effective cooperation and promote more speedy return of rejected cases?

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