

UPDATE ON GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION

I. BACKGROUND

1. In this the 50th year of the 1951 Convention relating to the Status of Refugees, UNHCR's Global Consultations on International Protection seek to promote its full and effective implementation and to develop complementary new approaches, tools and standards to ensure the availability of international protection where Convention coverage needs to be buttressed.

2. At the Organizational Meeting of the Global Consultations which took place on 12 December 2000, delegations agreed to a work programme of issues referred to as the "third track", leading to policy formulation in the context of the Executive Committee framework. Other activities were envisaged in parallel, as follows:

- 1st track: Ministerial meeting of States Parties to the 1951 Convention/1967 Protocol;
- 2nd track: Expert Roundtables;

3. This update provides an overview of developments under the three tracks and other events relevant to the Global Consultations process. The outcomes will be consolidated into an Agenda for Protection through which the overall goals of the process are to be realized.

II. FIRST TRACK: MINISTERIAL MEETING OF STATES PARTIES

4. The "first track" seeks to strengthen the commitment of States to respect the centrality of the 1951 Convention and its 1967 Protocol in the international refugee protection system. This goal will be pursued primarily through the holding of the first formal meeting of States Parties, organized at ministerial level jointly by the Government of Switzerland and UNHCR. The Ministerial Meeting will be held at the *Palais des Nations* in Geneva on Wednesday, 12 December 2001. Invitations have been extended to all 140 States Parties to the 1951 Convention and/or 1967 Protocol. All other United Nations Member States that have not yet acceded have been invited to participate as observers, alongside other United Nations intergovernmental and non-governmental organizations (NGOs) accredited as observers to the Executive Committee and the related consultations.

5. It is expected that the Ministerial meeting will serve to:

- commemorate the 50th anniversary of the 1951 Convention;
- reaffirm the collective commitment of States Parties to full and effective implementation of the 1951 Convention and 1967 Protocol and the values they embody by means of a declaration that could be adopted;
- encourage States Parties to withdraw any reservations that they may have made at the time of their accession and encourage States that *are not yet* Parties to the 1951 Convention/1967 Protocol to accede to these instruments; and

- enable governments to present their vision of how to improve the governance system for international refugee protection and the directions to be pursued for the future. A provisional Agenda for Protection, drawing on the conclusions to this point of the Global Consultations process, will inform the discussion.

6. It is planned that at least one preparatory meeting will be organized in Geneva in autumn 2001. It will focus on the drafting of the Declaration of States Parties that could be adopted at the 12 December 2001 Ministerial Meeting.¹

III. SECOND TRACK: EXPERT ROUNDTABLES

7. The Global Consultations process also provides a forum to take stock of developments in refugee law and to examine a number of emerging issues. This is being done in the "second track" through a series of expert discussions on specific aspects of the interpretation of the 1951 Convention and 1967 Protocol. The second track comprises four Expert Roundtables, with participants drawn from governments of States Parties, NGOs, academia, the judiciary, and the legal profession. Following informal consultations with a wide range of States, NGOs and other interested parties, UNHCR identified issues for consideration by experts, which are listed in Annex I, and on which background papers have been commissioned from scholars.

8. To allow in-depth examination and an active exchange of ideas, participation in the Roundtables is limited to some 30–35 experts. The background papers are posted on the UNHCR public website making it possible for a wider pool of experts to give input. Comments are fed into the Roundtable discussions as appropriate. The background papers and reports of the Roundtables will be published by UNHCR as a contribution to the 50th anniversary of the Convention. UNHCR intends to draw on results of the Roundtables, the background papers and any comments thereon to refine its own guidelines on related questions, including in the area of refugee status determination.

A. First Expert Roundtable in Lisbon (3-4 May 2001)

9. The first of the four Expert Roundtables was co-organized by UNHCR with the Carnegie Endowment for International Peace. Thirty-two participants 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. A report on the proceedings of the Lisbon Roundtable is being made available to the Standing Committee.

B. Exclusion from refugee status (article 1F)

10. The Standing Committee has asked to be updated at its twenty-first meeting on the exclusion clauses of the 1951 Convention. The attention of delegations is therefore drawn to the summary conclusions of the Lisbon Roundtable regarding the exclusion clauses.

11. The discussions in Lisbon revealed that States have taken an evolutionary approach to the interpretation and application of article 1F, drawing on developments in other areas of international law since 1951, in particular international human rights law, extradition law and international

¹ Further information regarding arrangements for the Meeting can be obtained from the Secretariat, Ministerial Meeting 1951 Refugee Convention, c/o Permanent Mission of Switzerland, Rue de Varembé 9-11, 1211 Geneva 20, Switzerland, Phone: + 41 22 749 24 40; Fax + 41 22 749 25 88, E-mail: secretariat.51convention@eda.admin.ch.

criminal law as well as international humanitarian law. As regards Article 1F(a), the meeting was concerned that it be interpreted in the light of various rapidly evolving sources of international criminal law. As for article 1F(b), it became clear that State practice on the interpretation of the term "serious non-political offence" varied. It was recognized that it was difficult to achieve consensus on the precise meaning of "non-political", but international law imposed certain limitations on the scope for interpretation. Article 1F(c), while in no way redundant, was not the basis for most exclusion cases, which were well covered by the other provisions. In relation to all exclusion clauses, the meeting recommended that interpretation and application must remain protection-oriented. The meeting also discussed a number of procedural issues, including standard of proof and issues relating to exclusion in situations of mass influx.

IV. THIRD TRACK: EXECUTIVE COMMITTEE PROCESS

12. 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.

13. The discussions are being held within the framework of UNHCR's Executive Committee at meetings during 2001 and 2002 and centre on four broad themes as agreed at the Organizational Meeting in December 2000.² Responsibility or burden-sharing, as well as aspects of protection of refugee women and refugee children are cross-cutting themes that are being considered both throughout the discussions of the various topics, and as specific agenda items.

14. The first meeting of the third track which took place on 8 and 9 March 2001 examined topics falling under the theme "Protection of Refugees in Mass Influx": (i) Overall protection framework (EC/GC/01/4); (ii) Civilian character of asylum, including separation of armed elements and screening in mass influx situations, as well as status and treatment of ex-combatants (EC/GC/01/5); (iii) Registration (EC/GC/01/6); (iv) Mechanisms of international cooperation to share responsibilities/burdens in mass influx situations (EC/GC/01/7).

15. Participation at this meeting was wide and regionally balanced; the debate was participatory and broad ranging. A large number of issues were discussed and a rich array of opinions and perspectives canvassed, as reflected in the draft report of the meeting.³ The conclusions and recommendations of the Regional Symposium held in Pretoria on 26-27 February 2001, focusing on the theme "Maintaining the Civilian and Humanitarian Character of Asylum, Refugee Status, Camps and Locations" were presented at the March meeting. These were welcomed by delegations and are available in document EC/GC/01/9. Follow-up activities pursuant to the recommendations and conclusions stemming from the first of the "third track" meetings are reflected in Annex II to this paper.

16. The second substantive meeting of the third track of the Global Consultations will take place on 28 and 29 June 2001. Under the theme "Protection of Refugees in the Context of Individual Asylum Systems", it will discuss the interface between migration and asylum, including interception practices and the return of persons not in need of international protection. A joint

² See the revised Work Programme (EC/GC/01/1/Rev.2).

³ See EC/GC/01/8.

UNHCR and IOM Background Note will set out the various issues and clarify the respective roles and responsibilities of both organizations. A second issue will deal with asylum processes, with an emphasis on fair and efficient procedures.

V. REGIONAL MEETINGS

17. To ensure that the Consultations have a truly global reach, it is crucial to bring in the different regional/national perspectives of governments, NGOs and other experts, as well as refugees themselves, particularly on the issues for discussion under the third track. UNHCR is organizing a number of Regional Meetings in order to broaden participation on issues on the agenda of particular interest to one or other of the regions (see Annex III). The discussions at the coming "third track" meeting on 28 and 29 June 2001 will thus benefit from inputs from relevant Regional Meetings that precede it.

VI. REFUGEE PARTICIPATION

18. As key stakeholders in refugee protection, refugees are to be involved in the Global Consultations process. The challenge has been to identify ways to ensure that their voices are heard. Given the diversity of views among refugees, those who contribute to the process will, needless to say, represent only a part of the refugee community. Nonetheless, their involvement provides important perspectives for other stakeholders. At the International Conference on the Reception and Integration of Resettled Refugees (ICRIRR),⁴ which was hosted by the Swedish National Integration Office in Norrköping on 25–27 April 2001, over 50 former refugees from 18 resettlement countries took an active part in the proceedings of the Conference. The consensus of participants was that their voices provided other partners with a "reality check" on "best practices" and principles, and their contribution infused the planning process with greater integrity. Further events being held which will, *inter alia*, give a voice to refugees in the process: "Refugee Parliament" in Paris (16 June 2001); Respect our Rights: Partnership for Equality – A Dialogue with Refugee Women in Geneva (20–22 June 2001); Forum of Refugees in Europe in Rouen, France (14–16 September 2001).

VII. UPDATE ON REFUGEE WOMEN/REFUGEE CHILDREN

19. At the Organizational Meeting on 12 December 2000, delegations observed that a number of meetings were being organized on refugee women and children in the course of the following year, which should generate relevant insights and proposals which could then be integrated into the Global Consultations process. An updated overview of events relating to the protection of refugee women and refugee children is available on UNHCR's public website. The results and recommendations of these meetings will be made available to delegations by UNHCR. In addition, efforts are being made to infuse an age- and gender-sensitive understanding into all discussions in the context of the Global Consultations process.

20. As agreed at the Organizational Meeting, more specific issues relating to the protection of refugee women and refugee children will be discussed as a fourth theme. A key objective will be to review and improve implementation of policies and guidelines.

⁴ The Conference was planned and implemented by 18 resettlement countries, facilitated by UNHCR.

21. The theme should allow examination in particular of the following:

Protection issues for refugee women

- Physical protection;
- Legal protection;
- Protection-oriented solutions for refugee women.

Protection issues for refugee children

- Interpretation of the best interests of the child principle in the context of individual asylum systems and in the context of return;
- Family reunification;
- Military recruitment of refugee children, particularly prevention, early separation of child soldiers from armed elements, demobilization and rehabilitation;

VIII. CONCLUDING OBSERVATIONS

22. A range of issues have emerged in the course of the Global Consultations process. The discussions to date, while not exhaustive, have brought out areas of agreement on key topics. Consensus is still the goal in others. The consultative process is expected to continue into 2002. UNHCR looks forward to the support and advice of the Executive Committee as this process advances and the Agenda for International Protection for the coming period takes concrete shape and direction.

GLOBAL CONSULTATIONS
"SECOND TRACK"
EXPERT ROUNDTABLES

ROUNDTABLES	TOPICS
<p><i>1st Roundtable</i> 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</p>	<ul style="list-style-type: none"> • Cessation (Article 1C) • Exclusion (Article 1F)
<p>Background papers are commissioned as follows:</p> <ul style="list-style-type: none"> • Cessation (Article 1C): Joan Fitzpatrick, Professor of Law, University of Washington • Exclusion (Article 1F): Geoff Gilbert, Head, Department of Law, University of Essex • Study of UNHCR practice with respect to cessation: Rafael Bonoan, researcher at the Massachusetts Institute of Technology 	
<p><i>2nd Roundtable</i> Date: 9-10 July 2001 Venue: Cambridge Co-Organizer: Lauterpacht Research Centre for International Law in Cambridge, UK</p>	<ul style="list-style-type: none"> • Principle of <i>non-refoulement</i> (Article 33) • Supervisory responsibility (Article 35)
<p>Background papers are commissioned as follows:</p> <ul style="list-style-type: none"> • <i>Non-refoulement</i> (Article 33): Professor Sir Elihu Lauterpacht, University of Cambridge • Supervisory responsibility (Article 35): Walter Kälin, Professor of Law, University of Bern 	
<p><i>3rd Roundtable</i> Date: 6-8 September 2001 Venue: San Remo Co-Organizer: International Institute of Humanitarian Law at San Remo, Italy</p>	<ul style="list-style-type: none"> • Membership of a particular social group (Article 1A(2)) • Gender-related persecution (Article 1A(2)) • Internal protection/relocation/flight alternative
<p>Background papers are commissioned as follows:</p> <ul style="list-style-type: none"> • Membership of a particular social group (Article 1A(2)): Alex Aleinikoff, Professor of Law, Georgetown University • Gender-related persecution (Article 1A(2)): Rodger Haines, Deputy Chairperson, New Zealand Refugee Status Appeals Authority • Internal protection/relocation/flight alternative: James Hathaway, Professor of Law, University of Michigan 	
<p><i>4th Roundtable</i> Date: 8-9 November 2001 Venue: Geneva Co-Organizer: Graduate Institute of International Studies in Geneva</p>	<ul style="list-style-type: none"> • Illegal entry (Article 31) • Family unity (Final Act of the 1951 UN Conference)
<p>Background papers are commissioned as follows:</p> <ul style="list-style-type: none"> • Illegal entry (Article 31): Guy Goodwin-Gill, Professor of International Refugee Law, University of Oxford • Family unity (Final Act of the 1951 UN Conference): Kathleen Newland, Carnegie Endowment for International Peace; Jens Vedsted-Hansen, Professor of Law, Aarhus University 	

GLOBAL CONSULTATIONS
FOLLOW-UP TO THE FIRST MEETING OF THE THIRD TRACK:
REFUGEES IN MASS INFLUX SITUATIONS

I. INTRODUCTION

1. The first substantive meeting of the "third track" of the Global Consultations (8-9 March 2001) engendered a number of conclusions and recommendations that lend themselves to follow up action by States, UNHCR NGOs and other organizations. Some issues will, of course, require more discussion before appropriate follow-up action can be determined. This note summarizes potential key follow-up actions under the first theme and should be read in conjunction with the draft report of the meeting (EC/GC/01/8) and the Chairman's Summary, both of which describe all of the main conclusions.

2. To be effective, follow-up will require committed action by all stakeholders – especially States, but also NGOs, UNHCR, the wider UN family and others. UNHCR invites States, NGOs and other stakeholders to indicate areas where they would like to initiate or participate in follow up action in cooperation with UNHCR and to suggest additional follow-up actions.

II. PROTECTION OF REFUGEES IN MASS INFLUX SITUATIONS:
OVERALL PROTECTION FRAMEWORK

Conclusions and Follow-up

3. There were three broad conclusions under this topic, for which the following action has been identified.

(a) Future responses to mass influx, including resort to temporary protection arrangements, should build on the Convention framework and draw on positive lessons from practice.

- UNHCR will prepare a comparative study on protection responses to mass influx, with a view to examining the need for an additional authoritative international statement, binding or otherwise. Options to be considered would include an Executive Committee Conclusion on mass influx and/or an Optional Protocol to the 1951 Convention. UNHCR will present an outline of the study to the Meeting of States Parties to the Convention/Protocol (Track One) on 12 December 2001.

(b) Guidance is needed on how to identify and determine whether to exclude individuals from protection under the 1951 Convention in the context of group determination on a *prima facie* basis.

- To clarify the procedural aspects of exclusion in the context of group determination on a *prima facie* basis, interested States, UNHCR and NGO partners will develop and disseminate procedural guidelines for field testing in pilot locations. Some key principles on exclusion were identified during the Second Track round table on exclusion and cessation in Lisbon (4-5 May 2001).

(c) Resettlement can be a valuable tool of protection in the context of mass influx.

- States should examine how to apply more flexible resettlement criteria in mass influx situations or *prima facie* recognition, taking into account the requirement of many States to conduct individual resettlement screening.
- Review of resettlement criteria is to be placed on the agenda of the next meeting of the Working Group on Resettlement (tentatively September 2001).

- Norway will host, in cooperation with UNHCR, a Global Consultations regional meeting which will be tasked, *inter alia*, to examine resettlement in the context of responsibility and burden sharing.

III. CIVILIAN CHARACTER OF ASYLUM, INCLUDING SEPARATION OF ARMED ELEMENTS AND SCREENING IN MASS INFLUX SITUATIONS, AS WELL AS STATUS AND TREATMENT OF EX-COMBATANTS

Conclusions and Follow-up

4. There were five conclusions under this topic, which lend themselves to follow-up.

(a) States require technical support (standards and procedures) and dedicated resources to ensure security of refugees, refugee camps and refugee-hosting areas and preserve the civilian character of asylum in mass influx situations involving the arrival of armed elements.

- UNHCR will work with interested Governments, NGOs and other relevant organizations to develop standards and procedures (in conformity with international humanitarian law, refugee law and human rights law) for the separation of armed elements from the refugee population. These should be field tested in location(s) to be determined in cooperation with stakeholders. Testing should also focus on how the issue of capacity building can be pursued in concrete situations.
- States should adopt relevant standards and procedures to preserve the civilian character of asylum, one basis for which will be laid through an Executive Committee Conclusion which will set out some guiding considerations, drawing on those offered to the March meeting of the Global Consultations.

(b) The United Nations Secretary-General and the Security Council should be informed of the issue of armed elements in refugee camps and related roles and responsibilities for security in refugee-hosting areas and separation and disarming of armed elements.

- UNHCR contributed to the Secretary-General's report to the Security Council on Protection of civilians in armed conflicts (March 2001). It will continue to regularly inform the UN Secretary-General and, on request, the Security Council on these issues. UNHCR will also play a role in following up on the action suggested by the Security Council pursuant to the Secretary-General's report, following the open debate on 23 April 2001.

(c) States faced with security problems in the context of a refugee crisis need practical tools to strengthen their capacity to maintain security.

- States should follow up with practical suggestions for cooperation with UNHCR, DPKO and other segments of the UN to develop a viable operational framework to ensure security and thereby improve refugee protection.
- States should materially support UNHCR to establish standby capacity for dedicated expertise (Humanitarian Security Officers).
- UNHCR will prepare an assessment of lessons learned with the Tanzania Security Package and other relevant experiences prior to adaptation/replication, as appropriate.

(d) There is a need to address the serious repercussions of security problems on refugee women and children.

- UNHCR, together with States, NGOs and other partners, will undertake further practical development of Guidelines on the Protection of Refugee Women in light of the findings of the UNHCR/donor evaluation, with a focus on their more effective implementation.

- UNHCR, together with States, NGOs and other partners, will undertake further development of Guidelines on the Protection and Care of Refugee Children, in light of developments since 1994 and of an independent evaluation, with a focus on their more effective implementation.
- UNHCR will also revise protection guidelines for UNHCR staff to address sexual and gender-based violence (SGBV) and children's issues with a focus on security.

(e) There is a need to address quite urgently aspects of the problem of military recruitment of refugee children, particularly in terms of prevention, early separation of child soldiers from armed elements, demobilization and rehabilitation.

- States should work actively to prevent military recruitment and address the problem of child soldiers.
- UNHCR, having consulted States, will include concrete recommendations for action in the conference room paper on the protection of refugee children to be prepared as part of the fourth theme under track three of the Global Consultations.
- UNHCR will continue training and capacity building within the framework of the Action on the Rights of Children (ARC) project, with a special focus on the module on child soldiers.
- UNHCR will examine expanding its cooperation with UNICEF and other partners on specific projects aimed at demobilizing and rehabilitating child soldiers, especially through education.

IV. PRACTICAL ASPECTS OF PHYSICAL AND LEGAL PROTECTION WITH REGARDS TO REGISTRATION

Conclusions and Follow-up

5. There were two conclusions under this topic for which follow-up has been identified.

(a) Standards for refugee registration and elaboration of the concept of data management could take the form of an Executive Committee Conclusion.

- States should adopt relevant standards through an Executive Committee Conclusion. The proposed Conclusion could usefully include the following standards: personal safety/security; dignity; measures for persons with special needs (e.g. gender, age, traumatised individuals, etc.); link with documentation; State responsibility; data protection/confidentiality; data registration (consistency of data entry; uniqueness of individual registration/prevention of multiple registration; de-registration, etc).

(b) Broad support was given to UNHCR's initiative to undertake Project PROFILE and for UNHCR to give priority to registration in terms of resources and capacity building.

- States and relevant organizations should offer their expertise and experience to assist UNHCR to continue development of Project PROFILE.
- UNHCR will issue operational standards and guidelines with regard to registration and population data management (2001).
- UNHCR will revise the 1994 Registration Guide (2001/2002).
- UNHCR will develop registration and data management training modules (2002).

V. MECHANISMS OF INTERNATIONAL COOPERATION TO SHARE
RESPONSIBILITIES/BURDENS IN MASS INFLUX SITUATIONS

Conclusions and Follow-up

6. Discussions on this cross-cutting theme recognized the importance of global and comprehensive approaches to responsibility/burden-sharing in mass influx situations. There was also recognition of the importance of preventive strategies, including those which promote respect for human rights. There was interest in the further development of the "tool kit" approach. Several States expressed specific support, as part of a comprehensive approach, for further investigation of the idea of prearranged quotas for the emergency evacuation of refugees.

(a) In the context of promoting comprehensive approaches to responsibility/burden-sharing in mass influx situations, UNHCR proposes 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.

- For resettlement/evacuation issues, see section II of this document (mass influx).
- Further elaboration of concrete action to strengthen the capacity of host States will take place at the September meeting of the Global Consultations.
- Regional meetings, notably those foreseen in Egypt and in Norway, will be tasked to generate practical approaches to guide, respectively, discussion at the September meeting and further elaboration of the comprehensive approaches framework and the tool kit.

GLOBAL CONSULTATIONS
REGIONAL MEETINGS

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
October/November 2001 (tentative)	Norway	Resettlement and burden-sharing arrangements and the relationship to migration issues