



Refugee Protection New Challenges

UNHCR World Refugee Day Seminar
India International Centre (Annexe), New Delhi

19 June 2006

On the occasion of World Refugee Day, UNHCR New Delhi organized a one-day seminar on “Refugee Protection: New Challenges”. This seminar was designed to raise awareness and to generate discussion on forward-looking approaches to refugee protection. Some 50 people, including diplomats, academics, policy makers, students and media, attended the seminar. (Agenda enclosed).

Inaugural Addresses

Noting the theme of “HOPE” underlying the celebration of World Refugee day 2006, the **Chief of Mission a.i, Carol Batchelor**, drew attention to the spirit of hopefulness with which refugees conduct their lives, continuing to strive for a better future despite being amongst the most vulnerable of all people. She noted that the number of refugees has progressively declined in recent years to 8.4 million at the end of 2005, with more than 6 million refugees having returned home since 2002. She said hope can be drawn from this fact, stating progress is possible and solutions advocated under international legal frameworks can work. Ms. Batchelor indicated that progress has also been made with resettlement, and local integration, and

renewed emphasis has been placed on cooperation between states, UNHCR and other concerned agencies to identify and implement comprehensive approaches. She advocated that there are several areas in which the message of “hope” is particularly relevant today.

Nonetheless, despite these important developments, there are new challenges emerging. Ms. Batchelor highlighted that statistically, half of all countries emerging from conflict slip back into violence within five years. She outlined the importance of addressing the relief-to-development gap, noting that the return of over 6 million refugees since 2002 would not be sustainable otherwise. She also mentioned that of the 8.4 million current refugees, more than half had been in exile for more than 5 years. Such protracted refugee populations face multiple complications in securing durable solutions and require urgent attention. Of increasing concern, is the situation of internally displaced persons (IDPs). While the

number of refugees has gone down, the number of internally displaced has actually risen. There are currently 6.6 million conflict-generated IDPs. She suggested this raises the question of whether access to international protection is still available for



(L-R): Ms. Carol Batchelor, Chief of Mission, UNHCR and Mr. Talmiz Ahmad, Director General, ICWA



those who are in need, or if crossing borders to seek asylum has become so difficult that persons who would formerly have been refugees are now faced with situations of internal displacement instead. If access to international protection is not available, then the reduction in the number of refugees is a cosmetic improvement only, as the root causes of displacement and need for protection remain high. She advised that there are 20.8 million uprooted people of concern to UNHCR overall, and outlined the various categories they fall into.

Ms. Batchelor stated that protection of the most vulnerable in society is upheld as a fundamental human value and, therefore, our treatment of refugees is a measure of our respect for and evolution toward enlightened civilization. Advocating that holistic approaches to protection are necessary, she opened the session raising three questions for deliberation:

- What are the best approaches to protection for refugees?
- What are the best approaches to protection for displaced persons overall?
- How can approaches to protection be incorporated into unfolding frameworks addressing broader migration movements and global security concerns?

Mr. Talmiz Ahmed, Director General, Indian Council of World Affairs, highlighted India's overall positive track record on migration and treatment of migrants. He said that India was born amidst large-scale migration and displacement. However, despite having a good track record in dealing with refugees, not being a signatory to the 1951 Refugee Convention has resulted in "arbitrariness" and "ad hocism" in decisions and treatment of refugees. He suggested that India faces problems of terrorism and in such a situation "a large influx of people results in a lot of tension". Approaches are needed to enable distinguishing between refugees fearing persecution and those migrating for other reasons. He emphasized the need for national legislation on refugees. Mr. Ahmed suggested that "UNHCR has defined

itself very narrowly and this has narrowed the issues they can address. Discourse on migration must be broad to include all legitimate people".

Session I: "Approaches to Protection"

The Chair of the session on Approaches to Protection, **Justice Bhaskar Rao, Member of National Human Rights Commission (NHRC)**, opened by stating that gaps in protection need to be bridged by "contemporary approaches". He said that the plight of refugees is a "human rights issue". There is a strong relation between refugee law and international humanitarian law, he advised, which is most evident in cases of refugees caught in armed conflict. He also explored the social underpinnings of the refugee problem in terms of "race" and "gender". He emphasized the need for a regional approach, ideally under SAARC, to address refugee protection including through appropriate frameworks.

Senior Advocate of the Supreme Court of India, Dr. Rajeev Dhavan, made the lead presentation on approaches to protection. Reviewing the issue of access to asylum as well as of recognition of refugees, he proposed that the "script" for refugee protection is unfortunately being rewritten in a movement away from "entitlements" to one of "relief". He advocated that international protection for refugees has been part of the system of "global entitlements", but is being undermined by various developments such as regional approaches like the Pacific or Mediterranean Solutions which redefine the "system of global security". Refugee problems are matters of global concern and global responsibility, and he emphasized the need for "global responsibility sharing". Regional solutions which redirect or limit access to protection constitute a "denial of responsibility".

Dr. Dhavan talked about the Indian peculiarities with respect to refugees. India has not signed the Refugee Convention for historical reasons and does not have a finite stance on refugee policy, he recalled, and he advocated the need for national legislation and policy. He said that "protection is

a process” with the two distinct phases of first recognizing a refugee and then providing for the refugee. He said that as part of this process there must be an opportunity to be recognized as a refugee, with provision made for a durable solution thereafter. He highlighted the need for a framework, whatever shape it might take, which would clearly establish policy and principles concerning protection.

He also criticized the substance of the Supreme Court ruling which repealed the Illegal Migrants Determination Tribunal (IMDT) Act. The IMDT Act of 1983 set up tribunals ‘for determination of the question whether a person is or is not an illegal migrant’. The Act was applicable only in the state of Assam, with other states using the Foreigners Act, 1946. Under the IMDT Act, the onus of proving one’s nationality or otherwise lies on the complainant whereas under the Foreigners Act, the onus is on the accused. He said there is an increased tendency to implement deporta-



(L-R): Dr. Sanjoy Hazarika, C-NES, Dr. Rajeev Dhavan, Senior Advocate, Supreme Court, Justice Rao, NHRC and Dr. Hegde, JNU

tion powers against foreigners and that there is a risk of these powers being abused. Dr. Dhavan highlighted that refugees have a right to be recognized formally as refugees and to the entitlements which flow from this recognition, and he stated that they must be humanely treated. He ended his presentation by advocating the need for a framework, for a system based on entitlements, and for clarity concerning law and policy.

Comments from the discussants, **Dr V. G. Hegde, Centre for International Legal Studies, Jawaharlal Nehru University** and **Dr. Sanjoy Hazarika, Centre for North East Studies**, followed. **Dr. Hegde** said that operationalizing the Refugee Convention for non-members like India raised several critical international legal concepts such as ‘sovereignty’, ‘consent’ and ‘recognition of certain parts of the Convention as part of general principles accepted by all

nations’. He indicated states are sensitive to their international obligations which flow from an international convention to which they become a party. In order to implement an international convention effectively, domestic implementation is essential, such as through domestic legislation. The Indian approach to refugee protection, has been on a ‘case-to-case basis’ and it depends on the application of several existing laws such as the Citizenship Act, the Foreigners Act and so on. Multiplicity of mechanisms applying to refugees and others, he noted, could create peculiar difficulties which could trigger certain international legal problems.

One such example would be the recent amendment of the Indian Citizenship Act. This amendment, for example, created gaps and possible statelessness for the children of persons considered to be illegal migrants. He referred to one such example in the Kashmir context brought subsequently before the Jammu and Kashmir High Court in 2004. Although the High Court dealt with the limited question of human rights plight of the Pakistani lady who unintentionally crossed over to the Indian Territory, the primary international legal question related to the ‘statelessness’ of the child born to her while she was in India. The lack of appropriate and adequate domestic legal mechanisms for refugees and migrants created several legal problems, he pointed out. He concluded by stating that such legal hurdles faced by refugees and migrants, resulting in several years of unwarranted legal and administrative scrutiny, could be overcome with clear identification of these problems. He felt that there was a lack of political will and uniform policy approach when it involved the effective protection of refugees and migrants.

Dr. Hazarika advocated the need for an “immigration commission” to address the problem and challenges posed. He described the large inflows of Chins from Burma into Mizoram and remarked that Members of Parliament did not know of this situation. He pointed out that the State Government of Mizoram had no idea how to tackle this inflow of migrants and it is mostly the student groups like the Young Mizo Association (YMA), therefore, that are taking actions which determine policy. He touched upon the Chakmas in Tripura and Arunachal Pradesh and emphasized that only political will and interest in the migration issue can bring about solutions.



Touching upon the IMDT Act and the new Foreign Tribunal order (amended January 2006) as examples of bad practices of the Central Government on migration issues, he gave the following analysis: a) it was discriminatory that the Act should be applied only to the State of Assam when migration problems are faced in other parts of India as well; b) there is no merit in two laws existing on the issue of foreigners, one for one location and a different law for the other location. Dr. Hazarika emphasized the need for an appropriate legal framework to protect refugees. In India he emphasized, there is mixed migration and hence the need for a refugee script applicable for all situations.

Dr. Dhavan's presentation and comments by discussants were followed by lively debate from the floor. Professor Lama highlighted that the IMDT Act had also been repealed because the cost involved in implementing it was too high. In fact, the whole deportation process is very expensive and for this reason alone is impractical as a "policy" for state responses to migration. The 1950 Treaty of "Peace and Friendship" between the Government of India and the Government of Nepal, on the other hand, was a success story, as it facilitated migration for work purposes and allowed return, with the side benefit of protection as needed in the process. Others pointed out the need for more comprehensive responses to internal displacement. Some supported the need for issuance of identification cards and work permits to develop a mechanism to monitor population movements while furthering a rights-based approach.

Session II: "International Migration and Global Security"

The former **Foreign Secretary of India, Mr. Muchkund Dubey**, chaired the second session on International Migration and Global Security. In his introductory remarks, Mr. Dubey suggested that migration affects global security both negatively and positively: negatively, by causing strains and stresses at the local and regional level; and positively, by contributing to the development of the

host countries. Migration as a factor in threats to security is exaggerated; it is rather the threat to security which causes migration. The present nature and dimension of the refugee problem and that of migration are "a reflection of the process of globalization". He said that though WTO rules do not permit free movement of labour, such movement mainly "driven by market forces" is taking place on a fairly large scale. Another feature of globalization is the trend of international governance being based less on international law and more on discretionary approaches.

He picked up on Dr. Dhavan's comment concerning "rewriting of the script" and the movement from entitlement to relief, advocating that greater use of and accession to the 1951 Refugee Convention is needed to promote advances in refugee protection. The former Foreign Secretary advised that the Refugee Convention remains the best tool available, and added a re-look is needed at unfolding legal frameworks overall. He expressed his concern about the "increasing tendency of the developed countries to go back on the principle of non-refoulement" due to discretionary rather than prescriptive approaches to international protection, largely as a result of globalization. Adherence to the 1951 Convention principles is increasingly at the discretion of the country. The new principles like "safe asylum" and "first country of asylum" had the effect of weakening the very fabric of international humanitarian law. He emphasized the need for "burden-sharing" in order to deal with the challenge of migration, advising that this entails not only financial burden-sharing but also sharing the burden of providing physical space for the presence of the refugees, thereby alleviating the stress placed upon structures and frameworks for protection.

Mr. Dubey lauded the establishment of the Peace Building Commission but doubted its efficacy in the context of the recent trend of the increased voluntary nature of contributions to UN agencies, with bilateral and even some of the multilateral assistance going only to those areas where major

contributors are politically interested. Mr. Dubey pointed out that if laws for protecting refugees are adopted internationally but implemented voluntarily, there is a “disconnect”. Thus the need for provision of resources on a recurring and predictable basis constitutes the crux of the problem of implementing durable solutions.

Professor Mahendra P Lama, Chairman, Centre for South, Central, South East Asia and South West Pacific Studies, School of International Studies, Jawaharlal Nehru University, made the lead presentation based broadly on three questions: a) Why is migration being increasingly securitized; b) who are the securitization actors and how is it being implemented and; c) are migrants a threat to security and if so, what is the impact of securitization on migration?



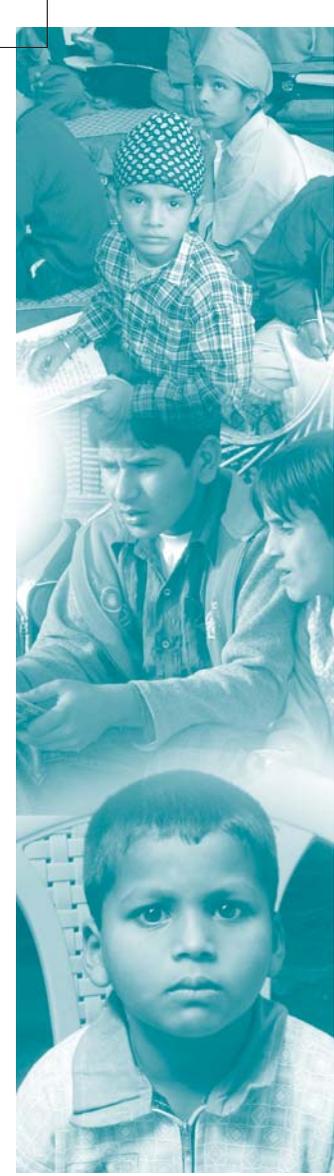
(L-R)Mr. Siddharth Varadarjan, The Hindu, Prof. Lama, JNU and Mr. Muchkund Dubey, Former Foreign Secretary

Prof. Lama suggested “forced migration touches upon security and that is why there is an increased tendency to securitize.” The causes for most conflicts and human exodus include war, economic alienation, and environmental dislocation. Most of the recorded conflicts have been the offshoots of a complex chain of factors, are varied, and each triggers its own security dynamics. Those fleeing carry these diverse security dynamics across the border. He assessed that refugees are perceived as a threat: i) when considered a political or security risk to the host country; ii) in respect of cultural identity; iii) if considered a social or economic burden; iv) when the host country uses immigrants as an instrument of threat against the country of origin. Thus, strategic security is considered threatened when refugees are armed and when the gov-

ernment loses control of the refugees. Structural dimensions are threatened by increasing demands on and the conflict over scarce resources. Regime security is threatened when refugees enter the domestic political process and create pressures on the government. Migrants and refugees are therefore perceived as a political threat, cultural invaders, social and economic burdens and as potential tools of aggression used by the country of origin or even the host country.

He also cited how refugee or migrant related xenophobia is fast emerging across boundaries. In his opinion, the difference between the treatment of refugees by developed versus developing countries has resulted in “global apartheid”. The overall system is closing with a “rights-free zone” being developed through offshore processing mechanisms and protection deferral concepts such as internal flight alternatives or safe-third country approaches. In his view, developed countries are creating an anti-refugee regime at a policy level. Moreover, migration today is seen as a threat because of the way migrants are popularly projected, as criminals for example. He stated that these discriminatory portrayals of migrants are, to a large extent, deliberate. This is becoming rampant particularly in the aftermath of 9/11 incidents. Here securitization is a deliberate action. These trends are fast catching up across Asia. This is not only restricting migration but also creating a tough anti-migration regime.

Lastly, Prof. Lama highlighted the implications of globalization in the South Asian context. All the aspects of globalization including reforms, liberalization and privatization emphasize dissolution of borders and barriers, but national security considerations and other issues such as terrorism, migration, trafficking and environmental degradation point to increasing border regulations or closing borders altogether. Thus under the pretext of national security borders are being closed or being more heavily regulated. He anticipated an emerging clash between the advocates of globalization and those of countervailing forces of security. In this process of increased regulation “cultural practices and geographical realities are being disregarded”. This has seriously impinged upon the traditional patterns of migration and natural cross-border flow of people in South Asia. He concluded by saying that migration related challenges cannot be addressed through



securitization. This securitization of migration does not ensure increased level of state security. Rather, securitization brings new threats to human security.

Mr. P.R. Chari, Research Professor, Institute for Peace and Conflict Studies, and Mr. Siddharth Varadarajan, Deputy Editor of the newspaper *The Hindu* initiated the discussion after Prof. Lama's presentation. **Mr. Chari** said that the need to address issues of migration is universal, as all countries deal with this emerging matter. In his view, the threat perceived by migration has resulted in a regime of "rigorous border patrolling", "issuance of identity cards and guest worker permits" and a "selective citizenship for people having special skills". He suggested that policies pertaining to migration have perpetuated conflict amongst the migrant groups as well as between migrants and the people of the country where they go. He spoke of a third kind of conflict, between interest groups in the recipient country who have a clash of approaches concerning migration, with some overly focused on the "security" aspect while others are concerned with the actual inflow and how to manage numbers. He listed the causes for migration related violence as xenophobia, cultural prejudice and perceptions of economic invasion, pointing out that levels of violence, some of it racist against refugees and internally displaced, seem to be increasing. A kind of "il-liberalism" has gained legitimacy, he suggested, and has led to tighter immigration and visa regulations in the post-September 11th world.

Mr. Siddharth Varadarajan observed that in a "post-September 11th, post-SARS and post-avian-flu world", the historical and normal phenomenon of migration is today being seen through a security prism. He outlined, however, that the assumed link between international migration and security is not clear, and that there is an insufficient analysis of the facts. Mr. Varadarajan said that for economists globalization made sense in theoretical terms only if there was free mobility of both capital and labour. "But in today's world,

developing countries are supposed to open their borders to capital even as the developed countries keep their borders firmly shut for labour". He emphasized that migration is a healthy part of the economic life of any country and that governments around the world, but particularly in Europe and North America, have historically turned a blind eye to the entry of undocumented migrants because of the cheap labour they provide.

Mr. Varadarajan carried forward Professor Lama's hypothesis that securitization alone will not deal with migration saying that "host country economies thrive on an intentionally cultivated insecurity of migrants". Through the insecurity of the illegal and undocumented migrants, countries



Participants at the Seminar

and economies "make more money off of their backs". He advocated that if governments do not allow migration to be mediated by natural and economic forces within legal frameworks, they inevitably engender parallel networks for everything including, sometimes, openly criminal networks which seek to fill the government's void in documentation and related matters as well as money transfers. It is, therefore, better to regulate migration through legal frameworks such as through issuance of work permits and cross-border work options. Economies cannot survive without the services of migrants. He ended his presentation with the recommendation that governments need to respond to the challenge of migration in a rational manner, documenting and regulating it. In

the Indian context, investment in border areas and investment in neighbouring countries might be an effective long-term strategy to stem illegal migration. This kind of thinking would be possible, when and if the authorities move away from the “securitization” of the migration debate.

A lively debate unfolded from the floor. Dr. Hazarika observed that unless migrants are given a stake in the host country security problems arise. He suggested that identity cards and work permits should be utilized to “legalize the illegal”. This approach also makes it possible for migrants to go back at a later stage, notably relevant for refugees as well. Others commented that due to the lack of laws and systematic frameworks to address migration, the government creates a need for migrants to be involved in the political system, because the absence of documents compels illegal migrants to get ration cards so as to remain in the country. Soon they are compelled to get voter cards to authenticate their identity and stay, which automatically opens the door for them to play a pro-active role in the political system. Not everyone agreed with the issuance of identity cards as a solution to the migration issue, however, noting this could hamper migrants from finding work because locals may not want to hire foreigners. The “hypocrisy” in this situation was noted, as foreigners are not welcome while nationals are seeking to migrate or seek asylum elsewhere. Summarizing the afternoon’s discussion, Mr. Dubey said that in South Asia, the increasing con-

cern for security has affected policy towards migration and refugee protection. He said that it was important to look at the positive aspects of migration.

Ms. Batchelor concluded the seminar. She recalled that refugees and displaced persons are amongst the most vulnerable persons globally and, unlike others migrating, they do not have recourse to national protection. She proposed that the global response to refugee and forced displacement flows is an indicator of the extent of society’s commitment to the concept of protection and to the underlying message of security and stability this entails for all. She emphasized the “forward looking component” of the problem as asylum, migration and security issues increasingly intersect. Ms. Batchelor highlighted the similarities in root causes of forced displacement whether for refugees, internally displaced or others, and noted the consensus amongst speakers on the need for appropriate frameworks to ensure access to protection and to solutions for all situations of forced migration. Ms. Batchelor thanked those present for participating and sharing their thoughts, indicating that the seminar had served to highlight present and future challenges and to outline “a way forward”. She expressed her hope that the proposals and recommendations made with regard to furthering protection for refugees, internally displaced, and other persons of concern would be actively followed up on, offering UNHCR’s continued support toward this end. ■

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Monday, 19 June 2006
Lecture Room, India International Centre Annexe, New Delhi.

Seminar Refugee Protection: New Challenges

9:45-10:00	Registration
	Inaugural Session
10:00-10:15	Carol Batchelor , Chief of Mission a.i, UNHCR, New Delhi
10:15-10:30	Opening Remarks: Talmiz Ahmad , Director General, Indian Council of World Affairs.
	Session 1
10:30-10:40	Approaches to Protection Chairperson: Justice Bhaskar Rao, NHRC Opening Remarks and Introduction of the Panel
10:40-11: 10	Lead Presentation: Dr. Rajeev Dhavan, Senior Advocate, Supreme Court
	Discussants
11:10-11:20	Dr. V.G. Hegde, Centre for International Legal Studies, JNU
11:20-11:30	Dr. Sanjoy Hazarika, Centre for North East Studies
	TEA
11:30-11:45	Comments from the Floor
11:45-12:30	Final comments from the Panel, Wrap up by the Chair
12: 30-12:40	
12:40-1:10	Screening of the Film: <i>"a place called...home"</i> , produced by UNHCR New Delhi. January 2006.
	LUNCH
1:10-2:15	
	Session II
2:15-2:25	International Migration and Global Security Chairperson: Mr. Muchkund Dubey, Former Foreign Secretary Opening Remarks and introduction of the Panel
2:25-2:55	Lead Presentation: Dr. Mahendra Lama, School of International Studies, JNU
	Discussants
2:55-3:10	Mr. P.R.Chari, Institute for Peace and Conflict Studies
3:10-3:25	Mr. Siddharth Varadarajan, Deputy Editor, <i>The Hindu</i>
	Comments from the Floor
3:25-4:10	Final comments from the Panel, Wrap up by the Chair
4:10-4:20	
4:20-4:30	Conclusion and Thanks: Carol Batchelor, UNHCR
	TEA
4:30	