

REGIONAL WORKSHOPS IN
OTTAWA, ONTARIO (CANADA) AND IN MACAU

I. INCORPORATING REFUGEE PROTECTION SAFEGUARDS
INTO INTERCEPTION MEASURES
OTTAWA, ONTARIO (CANADA) (14-15 MAY 2001)

1. Overview of Key Conclusions and Recommendations

1. The workshop was attended by 21 participants, including officials of the Governments of Canada and of the United States, representatives of non-governmental agencies from these two countries, academics, refugee law practitioners and officials of the International Organization for Migration (IOM) and UNHCR.
2. The purpose of the workshop was to examine interception¹ in state practice, and to consider ways of incorporating refugee protection safeguards into interception measures. States consider interception a highly effective means of preventing the entry of undocumented persons as well as a tool for combating human smuggling and trafficking. At the same time, refugee and human rights advocates have expressed serious concern about States' use of interception measures.
3. Immigration control measures do not necessarily distinguish between asylum-seekers and refugees and other intercepted persons. In the absence of adequate safeguards, this may result in persons in need of international protection being turned back, sometimes to situations of danger.
4. The workshop acknowledged that there is little information available about interception measures implemented by States and the impact of these measures. The compatibility of interception measures with international law, the principles and procedures which should apply to interception, practical safeguards to protect refugees and asylum seekers, and durable solutions for intercepted refugees were all identified as areas needing further examination.
5. The Workshop discussions focused on the following issues:
 - Interception in state practice
 - Interception in the framework of international law
 - Safeguards for asylum-seekers and refugees in the context of interception
 - The challenge of finding solutions for intercepted asylum-seekers and refugees.

¹ An internationally accepted definition of interception does not exist. For the purposes of this note, and of the Workshop, the working definition contained in UNHCR's Note entitled "Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach," (EC/50/SC/CRP.17) may be used: "Interception is defined as encompassing all measures applied by a State, outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing borders by land, air or sea, and making their way to the country of prospective destination."

2. Key conclusions/recommendations

A. Interception in state practice and international law

6. The workshop recognized that interception will continue in state practice. States consider it an effective tool to control irregular migration as well as to combat smuggling and trafficking of persons. Interception on the high seas has been incorporated into the U.N. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime.

B. Data and Information on Interception

7. It was noted that more detailed information and data on interception should be made available, including methods, numbers and nationalities of persons intercepted, geographical areas of interception measures and states participating in interception measures.

C. Humane treatment in accordance with refugee and human rights law

8. There was general agreement that intercepted persons, including asylum seekers and refugees, are entitled to be treated in a safe and humane manner. International law standards, in particular the UN Convention against Transnational Organized Crime and its relevant Protocols as well as international refugee and human rights law, provide a useful framework for elaborating applicable standards and procedures of treatment.

D. Women and children

9. The impact of interception measures on women and children, especially separated children, requires special attention, in particular regarding their physical safety.

E. Respect for *non-refoulement* and the right to seek asylum

10. It was stressed that, in the context of interception measures, the principle of *non-refoulement* must be fully respected, and effective safeguards to ensure this should be developed. In view of the right to seek and to enjoy in other countries asylum from persecution, interception activities in countries of origin require particular consideration, including with a view to determine whether any relevant safeguards may be feasible. Alternatives to interception in countries of origin (e.g. in-country processing for organized departures), though limited in scope and situation-specific, could usefully be explored.

F. Procedures to identify those in need of international protection

11. The participants underlined the importance of proper procedures and mechanisms to identify intercepted persons who are in need of international protection. Depending on the actual mode and context of interception, such procedures include (1) screening by the intercepting state or state which has requested interception, (2) referral to the competent authorities in the country where interception took place, or (3) referral to UNHCR or another suitable agency. Although individual interception procedures and mechanisms may differ, they should respond to a commonly agreed standard.

G. Best practice and codes of conduct

12. Standards of "best practice" in designing interception safeguards should be developed. In addition, the elaboration of a "code of conduct" which would extend to personnel of transportation companies (especially airlines) was considered useful, given the limited scope of the 1998 IATA/CAWG Code of Conduct for Immigration Liaison Officers which is not directly applicable to airline personnel.

H. Training of Officials

13. Officials involved in interception activities, including state officials and transportation company personnel, should receive appropriate training on applicable standards of international law and required procedures.

I. Resource implications for UNHCR and IOM

14. The participants noted that larger interception activities and operations in certain regions may have serious resource implications for UNHCR and IOM. These implications should be taken into account by states involved in interception.

J. Protection for witnesses and victims

15. States should consider developing appropriate protective measures for witnesses and victims of smuggling and trafficking operations.

K. Durable solutions

16. The participants acknowledged the difficulty of finding durable solutions for intercepted persons who are determined to be in need of international protection. It was recognized that, in this context, burden-sharing is important, as are initiatives to avoid a situation where only one durable solution is available. Efforts need to be made in the concerned regions to build up effective asylum systems, and it is critically important to reduce "push" factors by making protection in first countries of asylum effective and viable. Durable solutions for intercepted refugees should be pursued in accordance with the principle of family unity.

L. Return of intercepted persons

17. The return of intercepted persons found not to be in need of protection should be undertaken in a humane and orderly manner. Counselling prior to return and monitoring after return can be helpful tools. The criteria to determine voluntariness in the context of returns arranged by IOM should be further developed.

II. REGIONAL WORKSHOP IN MACAU (28-29 MAY 2001)

18. On 28-29 May 2001, the Asia/Pacific regional meeting of the Global Consultations on International Protection took place in Macau SAR, PR of China. Fifteen governments, nine national and international NGOs and four regional experts participated in the meeting which was also attended by the International Organisation for Migration (IOM).

19. The main agenda item was the protection of refugees in the asylum/migration context. Main conclusions are summarized below:

- (i) Upon examination of categories of persons in need of protection, the meeting noted that definitions were broad and sometimes overlapped with each other. While accepting that other groups could require humanitarian attention they decided the meeting should restrict its concern to refugees and asylum-seekers, but also introduced the sub-category of "irregular movers" in the "refugee" category. It also made a distinction between refugees in situations of mass influx and individual refugees as they generate different processes and responses.
- (ii) In situations of mass influx, the meeting highlighted the need to establish clear criteria for admission, duration of protection and exit strategies, and requested further meetings to follow up on these issues.
- (iii) The meeting identified the need for the formulation of procedures permitting the identification of persons in need of protection. Limitations linked to the high number of States in the region not having signed the 1951 Convention were highlighted. Pros and cons were debated, noting that greater responsibility/burden sharing would be an incentive for States hosting large refugee populations to consider accession.
- (iv) The possibility of adopting national refugee status determination procedures was also emphasized, highlighting that these should embody minimum standards as included in Excom Conclusion 8¹ and related documents.
- (v) The meeting particularly highlighted the importance of UNHCR's role in screening asylum-seekers and providing expertise and support to signatory and non-signatory States.
- (vi) The meeting recognized the need for comprehensive protection frameworks, which include access to durable solutions as an integral part of the same process.
- (vii) It also underlined that support to first asylum countries and affected local populations should be considered as an integral part of the refugee protection framework, given their implications on the willingness to grant asylum.
- (viii) It insisted on the role of countries of origin in any solution-oriented framework. Comprehensive approaches should include the swift return of rejected asylum-seekers and responsibility for States for their nationals/habitual residents. It also emphasized the need for a UNHCR presence in countries of origin.
- (ix) The meeting expected UNHCR to follow up on these issues.

¹ Conclusion 8 (XXVII) 1977, On Determination of Refugee Status (A/AC.96/549 para. 53.6).