

GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION:
REPORT OF THE THIRD MEETING IN THE THIRD TRACK
(27-28 September 2001)

I. INTRODUCTION

1. The Rapporteur of the Executive Committee, Mr. Haiko Alfeld (South Africa), chaired the meeting. In brief opening remarks, he regretted that it had not proved possible for a refugee to attend the meeting and noted that bringing in the refugee voice to the Global Consultations remained an enormous challenge. The Chairman recalled that, since the previous "third track" meeting in June, an additional important regional meeting had been held in Cairo (3-5 July 2001), in addition to meetings in the framework of the "second track" of the Global Consultations process in Cambridge (9-10 July 2001) and San Remo (6-8 September 2001). The recently concluded Preparatory Session for the Ministerial Meeting of States Parties (20-21 September 2001) augured well for the December gathering of Ministers. The Chairman expressed his concern that participants had not been able to afford more focused attention to follow-up, but noted that two documents prepared by the Secretariat (EC/51/SC/CRP.12, Annex 2 and EG/GC/01/20) focusing on potential follow-up activities should form the basis for further reflection and consultation in future.

2. The Deputy High Commissioner then delivered a brief welcoming address.

II. ADOPTION OF THE DRAFT REPORT OF THE SECOND MEETING

3. The Chairman presented for approval the draft report of the second meeting in the third track of the Global Consultations (EC/GC/01/15). One delegation proposed an amendment to paragraph 29 of the document, to make clear that further consultations would be needed on the feasibility of an Executive Committee conclusion on asylum procedures. With this modification, the report was adopted.

III. ADOPTION OF THE AGENDA

4. The agenda (EC/GC/01/16) was adopted.

IV. PROTECTION OF REFUGEES IN THE CONTEXT OF INDIVIDUAL ASYLUM SYSTEMS

5. The Director of the Department of International Protection (DIP) provided a brief update on progress in all tracks of the Global Consultations process as well as some preliminary remarks on the agenda items now under consideration.

* Adopted at the Fourth Meeting of the Global Consultations on 22 May 2002.

A. Reception of Asylum-Seekers, including Standards of Treatment

6. The Chief of DIP's Protection Policy and Legal Advice Section (PPLA) section introduced the background note on reception (EC/GC/01/17), intended to draw out elements for a possible common framework for the reception of asylum-seekers, which could be adopted in the form of an Executive Committee conclusion. He hoped that the discussion would also allow UNHCR to finalize a set of general guidelines on core reception standards, which States could then apply or adapt to their particular circumstances. To this end, the background note included in annex a compilation of relevant international standards and best practices.

7. There was broad agreement that the topic was appropriate for consideration within the Global Consultations and that the background note provided a useful basis for discussion. While most of the discussions centred on reception conditions affecting individual asylum-seekers, one delegation recalled that reception in camps also deserved consideration, particularly in view of the negative impact arising, for example, from the treatment of children and education. Virtually all delegations recognized that reception conditions have an important human rights dimension, and that reception standards for asylum-seekers should indeed conform to social, cultural and economic rights.

8. Some delegations considered that the regime proposed in the background note in its entirety was balanced and should have a global application; others felt that, given conditions in many host countries in the developing world, the proposed regime was overly ambitious. Those adopting the latter position felt that reception arrangements were necessarily linked to the socio-economic situation and level of development in host countries and argued in favour of flexibility. One delegation added that, in addition to host country capacity, the size of an influx or the actual refugee population was also a limiting factor, albeit that international commitments need to be respected. A number of delegations suggested that reception arrangements must also take into account the length of asylum procedures. Accordingly, it was recognized that complete harmonization of reception conditions among countries and across regions was not feasible.

9. As specific content of a regime for the reception of asylum-seekers, delegations identified the following essential elements; stay in dignity; freedom of movement, respect for family life; access to education; access to health; information on procedure and rights in a language they can understand; swift and fair processing of cases as an effective means to address some of the more difficult conditions of reception; and appropriate arrangements to meet special vulnerabilities. A number of delegations emphasized that reception conditions should include the creation of a climate receptive to asylum-seekers, free of xenophobia. Some delegations also felt that asylum-seekers should have access to gainful employment, whereas others observed that this would be difficult to provide. On the specific question of detention of asylum-seekers, there was strong support for the position that detention should be an exceptional response, and that conditions of detention must be humane and respect basic values. Several delegations expressed concern over the detention of minors. One delegation insisted that detention should not be used to deter arrivals. Others felt that detention might be justified if a person poses a threat to national security or public order, if there is a need to verify the identity of an individual or if there are obligations to restrict movement stemming from other instruments (such as the 1999 Dublin Convention), but that detention should be subject to a process of judicial or administrative review.

10. More generally, there was a divergence of views between those who felt that reception conditions should also take into account risks of abuse of the system and the need to prevent problems such as secondary movements and forum shopping, recognizing that relatively favourable reception conditions could create a pull factor, and others who felt that the link between reception conditions and abuse is not clear and that ethics and rights must be the prevailing considerations. One delegation recalled that abuse exists in any system and queried whether a State could, in fact, go below legitimate minimum standards of treatment in seeking to prevent it. Another delegation pointed out that migrants have rights that must be taken into account in any discussion of reception standards. One delegation recalled that different standards should apply to asylum-seekers who immediately lodge an application for refugee status upon arrival in the countries of asylum and those who apply only once arrested.

11. The importance of international solidarity and burden-sharing to increase the protection capacity of developing host States to meet international standards for the reception of asylum-seekers was emphasized by a number of delegations. One delegation, seconded by another, suggested the creation of an independent fund managed by UNHCR for the purpose of assisting developing countries, both financially and technically, to bring their reception facilities in line with internationally accepted standards.

12. There was broad agreement that UNHCR guidelines in this area would be useful, as would an Executive Committee conclusion on this topic, but one delegation suggested that the UNHCR guidelines be finalized *following* the adoption of a Conclusion. Several delegations emphasized the need to draft both documents with care. Regarding the possible content of the Conclusion, a number of delegations made specific comments on paragraph 25 of the background note, which contains a range of considerations of relevance to asylum policies. Two delegations suggested that the paragraph be expanded to cover other groups with special needs, such as victims of trauma or torture. A number of delegations suggested that particular emphasis be placed on creating a climate receptive to asylum-seekers, to avoid racism and xenophobia. A number of delegations suggested that regional instruments, such as the 1969 OAU Convention, relevant declarations, as well as the 1965 Convention on the Elimination of all Forms of Racial Discrimination, should be drawn upon in finalizing the guidelines.

B. Complementary Forms of Protection

13. The Deputy Director of DIP introduced the background note (EC/GC/01/18) on this topic, recalling that it supplemented a recent paper on this subject,¹ discussed at the eighteenth meeting of the Standing Committee in July 2000. He observed that complementary protection is broadly accepted as a necessary response to the protection needs of those who would not necessarily fall within the 1951 Convention refugee definition, but are nevertheless commonly regarded as being in need of international protection. There are, however, significant variations in State practice. Reaching clearer, common understandings on the appropriate use of complementary forms of protection would help ensure that their use is not inadvertently applied to restrict the application of the 1951 Convention. In view of the interest expressed by a number of delegations, the background note included a section on procedure, notably the advantages of a single, comprehensive procedure to determine protection needs. The note suggested that harmonization may be encouraged through the development of an Executive Committee conclusion on the issue and included language (see paragraph 11) which could serve as a starting point for such development.

14. A number of delegations welcomed the inclusion of this topic on the Global Consultations agenda. One acknowledged that thinking in this area had progressed substantially since the Standing Committee considered it in 2000. Many delegations expressed support for UNHCR's background note, including the references to best State practice. Delegations broadly agreed that complementary forms of protection are a useful complement to the international protection regime based on the 1951 Convention and its 1967 Protocol, but should not be used to compromise full application of the refugee definition contained in these instruments. In this context, many delegations asserted that complementary forms of protection should not dilute or weaken the refugee definition or derogate from the rights of those entitled to protection under the Convention and Protocol. The continued centrality of both instruments was repeatedly recognized. One delegation cautioned that its support for complementary forms of protection should not be seen as an endorsement for the restrictive interpretation of the 1951 Convention in a number of States.

15. Many delegations expressly recognized that complementary forms of protection often stem from human rights considerations and referred specifically, *inter alia*, to the 1984 United Nations Convention against Torture and the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms. On the question of who should benefit from complementary forms of protection, both instruments were referred to as providing valuable benchmarks. Delegations agreed that it is necessary to distinguish complementary forms of protection from temporary protection applicable in mass influx situations. One delegation observed that, in its domestic practice, temporary protection is applied in individual circumstances and is not linked to mass influx. Regarding conditions for the cessation of

¹ EC/50/SC/CRP.18

complementary protection, one delegation suggested that these should be akin to those in the Convention's cessation clauses, but should be clearly distinguished from those that apply to lifting of temporary protection. Another delegation highlighted the necessity to look at the relevance of the exclusion clauses in determining whether to grant complementary protection.

16. Delegations were in broad agreement on the need for greater coherence and some degree of formalization of the various approaches to complementary forms of protection, as well as on the need for clearer definitions and greater consistency. In this context, a number of delegations referred to a recent initiative in the European Union (EU) to develop minimum standards for complementary (or "subsidiary") forms of protection. Regarding standards of treatment, many delegations referred to *non-refoulement* as a starting point. There was broad recognition that the standards of treatment for beneficiaries of complementary forms of protection should be identical or as close as possible to those offered to recognized refugees. One delegation suggested that legal status with documentation should be provided to those receiving complementary protection. Another delegation noted that persons benefiting from complementary protection often only have short-term permits.

17. On procedural questions, there was widespread support for the background note's recommendation that States endeavour to establish a single asylum procedure in which there is first an examination of the Convention grounds for the recognition of refugee status before proceeding to examine possible grounds for the grant of complementary protection. A number of States already implementing a single procedure reported that it had proved to be humane, speedy, efficient and provided increased legal certainty for the applicant concerned. A number of delegations recalled that the Council of Europe had also recommended adoption of a single procedure and that the EU is looking into this possibility as well.

18. There was broad support for the suggestion to begin consultations on a conclusion of the Executive Committee focusing on complementary forms of protection, on the basis of the concluding observations of UNHCR's background note.

C. Strengthening Protection Capacities in Host Countries

19. The Chief of DIP's PPLA Section introduced the background note (EC/GC/01/19) on strengthening protection capacities in host countries, which sought to define the objectives pursued and activities being carried out. Annex I set out the core components of a strategy to strengthen host-country protection capacities, while Annex II described a number of concrete initiatives and best practices. It was suggested that the guiding principles set out in paragraph 15 of the paper might be reflected in an Executive Committee conclusion in order to constitute a framework for future action. The Ambassador of Egypt and the focal point for non-governmental organisations (NGO) for the Global Consultations presented brief oral reports on the regional meeting held in Cairo on 3-5 July 2001, which had focused on strengthening the protection capacity of countries of asylum in Central Asia, North Africa and the Middle East². The participants again recognized the useful contribution of the regional meetings to the Global Consultations process.

20. All delegations recognized the importance of strengthening the protection capacity of host States as a condition to implement effectively international protection standards. Delegations broadly supported the general thrust of the background paper, particularly the proposed framework to strengthen protection capacities. Some particularly welcomed the fostering of "protection networks" in civil society and the emphasis on promoting self-reliance for refugees as well as the development of capacities of refugee communities. Almost all delegations also recognized the usefulness of the concrete examples and best practices it contained.

21. Many delegations suggested that strengthening protection capacities is conditioned upon the availability of resources and must therefore be framed in the broader context of international cooperation, solidarity and burden-sharing and entail adequate funding, *inter alia*, to UNHCR, to build protection capacity in host countries. A number of delegations recommended that capacity-building initiatives also

² See EC/GC/01/21

focus on countries of origin, to promote respect for human rights, contribute to eradicating the root causes of refugee flows and boost the sustainability of voluntary repatriation. In recognizing the importance of strengthening protection capacities, however, some delegations argued that limited capacity should not reduce the possibility for refugees to seek and be granted asylum.

22. There was clear recognition that partnerships are an important ingredient of any capacity-building efforts. A number of delegations underlined the need for a participatory and inclusive approach. Some suggested that regional dialogues and approaches are an important element of building protection capacities. A number of delegations also recalled the key role played by NGOs in this area, both as agents of capacity-building as well as beneficiaries of these efforts. In this regard, there was a suggestion to accord NGOs legal status, where it does not exist and, if required, fully integrate them in capacity-building activities.

23. Delegations broadly acknowledged that strengthening protection capacities is a complex process that needs to take account of the social, cultural and economic conditions in the country. Delegations suggested that, to be effective, capacity-building also requires sustained support, implementation of activities that are concrete and measurable, as well as evaluation and follow-up. One delegation stressed that the aim should be to support the creation of viable structures. There was broad recognition of the need for efficient and effective coordination among the various partners to devise viable and sustained protection structures. UNHCR was called upon to assume a coordinating role in this area. Furthermore, there was broad recognition that strengthening resettlement capacity is an important element of building protection capacities.

24. Beyond capacity-building *strictu sensu*, some States stressed the need to recognize the positive impact that refugees can have on their host societies and made a call for more resources to be made available for education and vocational training, to encourage productive activities by refugees, particularly those dependent on international assistance, and thereby limit dependency. UNHCR and its partners were encouraged to devise programmes that build upon refugee capacities, to encourage empowerment and self-reliance, while laying the ground for durable solutions. A number of delegations also supported the view that refugee issues should be factored into the development agenda of States, development agencies and donor countries. Delegations also broadly recognized the importance of a receptive host environment, to foster a positive and respectful attitude towards refugees.

25. A number of points of consensus on follow-up emerged from the discussion (see also EC/GC/02/3). Most delegations felt it would be premature to have the guiding principles framed in an Executive Committee conclusion and that more opportunities for dialogue would be needed. It was suggested that UNHCR nevertheless amend and broaden the guiding principles and framework set out in its background note, in light of the discussions. UNHCR could also usefully develop a manual on protection capacity-building and maintain an updated catalogue of initiatives and activities in this area, drawing on Annex II of the background note, to be placed on UNHCR's website. There was broad recognition that NGOs, particularly local NGOs, have a role to play in strengthening protection capacities. It was suggested that funding agreements with NGOs, but also developing countries, stipulate that programmes aimed at strengthening protection capacities should be coordinated with UNHCR. There was also widespread recognition that refugees have capacities that can and should be tapped, and that empowered and self-reliant refugees are better prepared to work towards finding durable solutions.

26. UNHCR should identify where activities to strengthen protection capacities are most needed, establish priorities among the various activities, and identify refugee-hosting countries requiring support. In this context, UNHCR should facilitate the pairing of needs with concrete offers of support by States, intergovernmental organizations, NGOs, the private sector and others. Depending on the level of interest, UNHCR might convene regional/sub-regional workshops, involving States and NGOs, with the purpose of devising and implementing specific country or regional strategies to strengthen capacity. The importance of a receptive host environment to foster a positive and respectful attitude towards refugees was broadly recognized. On the question of resources, UNHCR should explore further opportunities, *inter alia*, with the private sector for resource-mobilization to build protection capacity, as well as possibilities for the donor community to allocate a portion of development funds to programmes benefiting both refugees and the local populations that host them. In addition, States and NGOs could usefully examine the idea of

expanding “twinning” projects, whereby officials from national administrations are made available to assist other States with less developed protection structures to build up expertise in different areas. Finally, strengthening resettlement capacity was recognized as an important element of capacity building.

V. CHAIRMAN'S SUMMARY

27. At the end of the discussions, the Chairman provided a brief oral summary highlighting some of the key issues and conclusions emerging from the discussions. A more complete written summary was made available in November 2001. In concluding the meeting (the last under his chairmanship), the Chairman stressed that the amount of substantive preparation for the discussions had been impressive thanks to the excellent work of DIP supported by the Secretariat. He observed that the third track of the Global Consultations had generated a vigorous dialogue with broad participation, and had provided a platform for frank and constructive interaction and partnership between UNHCR, States and civil society, allowing more meaningful reflection and analysis than was normally possible in the framework of the Executive Committee. The process was resulting in renewed, invigorated recommitment to refugee protection and more collective ownership of refugee protection by States. He also looked forward to seeing its various outcomes translated into an Agenda for Protection, and urged further consultations towards this goal.