

ENSURING INTERNATIONAL PROTECTION
AND ENHANCING INTERNATIONAL COOPERATION
IN MASS INFLUX SITUATIONS

ADVANCE SUMMARY FINDINGS OF THE STUDY COMMISSIONED BY UNHCR

1. The Agenda for Protection¹, approved in 2002 at the end of the Global Consultations on International Protection, commissions UNHCR to “prepare a comparative study on protection responses to mass influxes ... and ... explore the need for another authoritative text” in addition to the 1951 Convention relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. A substantial study is in the process of finalization. What follows is an executive summary of main conclusions emerging to date. The completed study should be ready for presentation to Executive Committee members later in the year. In the meantime, UNHCR would be interested in any preliminary reactions.

2. The aims of the study are to:

- present reflections on past practices in responding to mass influx situations;
- offer guidance on legal and operational issues that arise in this context;
- identify areas where the law may require further development; and
- make proposals for improving international cooperation and burden and responsibility sharing in mass influx situations.

A. Definition of mass influx

3. The study finds that mass influxes tend to share some or all of the following four recurring features:

- considerable numbers of people arriving over an international border;
- a rapid rate of arrival;
- inadequate absorption or response capacity in host States, particularly during the emergency phase;
- individual asylum procedures, where they exist, which are unable to deal with assessment of such large numbers.

¹ A/AC.96/973, paragraph 21. See in particular Goal 1, objective 10.

4. For the purpose of its analysis, the study therefore concentrates on situations involving the arrival across an international border of persons in need of international protection in such numbers and at such a rate as to make individual determination of their asylum claims under national procedures impracticable (bearing in mind available resources). The study takes this as its working definition of “mass influx”.

B. The legal and operational framework

5. Based on an examination of situations of mass influx over the last five decades, the study concludes that the central tenets of the 1951 Convention have been applicable in many mass influx situations. Given the impracticality of an individualized asylum procedure in such situations, the study supports the continuing adoption of group-based protection mechanisms. It advocates that they be grounded in national asylum legislation.

6. *Prima facie* recognition of the group is one such mechanism, which is recognized or appropriate in situations where it is objectively apparent that the influx is provoked by a refugee-producing situation of a type covered by the 1951 Convention and/or its 1967 Protocol or regional refugee instruments. In countries where individual refugee status would normally trigger an integrationist response, mass influx might be managed through the device of temporary protection, when, based on certain indicators, the need for international protection is expected to be of a reasonably short duration. The study notes that such granting of temporary protection neither pronounces on nor compromises eligibility under the Convention, but, in the interim term, ensures that immediate international protection needs are met. Temporary protection is also appropriate for dealing with influxes where the cause of flight is still unclear; where it is objectively apparent that the group largely consists of persons who, under an individualized system, would qualify for complementary protection; or in the context of a harmonized regional approach.

7. To ground *prima facie* recognition and temporary protection in practice which is well understood and more predictable, the study promotes several courses of action:

- To avoid *prima facie* recognition and temporary protection being operationalized in widely varying ways with differing consequences for essentially the same groups in question, the study recommends a clearer articulation of the criteria for both mechanisms be put forward for multilateral consideration and endorsement.
- In addition, there would be merit in harmonizing internationally the standards of treatment for those benefiting from *prima facie* recognition or temporary protection, taking directly into account the 1951 Convention standards, as well as more generally the relevant human rights standards. Socio-economic possibilities need to be built in, learning from practical experiences with self-reliance strategies in host countries. How to respond to specific protection needs, for example, of children vulnerable to forced recruitment into military activity, would also merit more precise formulation.
- A particular challenge in group recognition situations is how to identify and deal with excludable individuals and, more broadly, how to ensure the civilian character and physical safety of refugee groups. Both needs would, the study suggests, have to be the subject of specific and agreed procedures.

- Turning to more specific standards of treatment, the study finds no reason to depart from 1951 Convention standards as regards physical safety, non-discrimination, economic and social security and cessation. Regional refugee instruments and applicable human rights instruments, where relevant, are also a source of treatment standards. The three durable solutions, also, individually and (more likely) in combination are as directly applicable in mass influx as in individual arrival situations. The study recognizes, though, that voluntary repatriation is likely to be the most important of these, which is not, the study recognizes, in any way inconsistent with self-reliance for refugees being fostered into the response strategy at an early stage. Similarly, resettlement possibilities need to be expanded in mass influx situations, and the process made more flexible, consistent with understandings now crystallizing in the Convention Plus process.
- The study examines various particular approaches which have been employed to avert mass flows, including efforts to provide physical “in-country protection”. Based on past experience, such efforts must be approached with caution. The study reinforces the position that proposals for in-country protection in specific situations should not be allowed to undermine the right of individuals to seek asylum or the responsibilities of States not to *refouler* at frontiers.

C. Improving international cooperation

8. The study acknowledges that a combination of interests (those of politically and economically powerful States as well as of strategic and/or proximate States) are among the most critical factors which will influence the extent and speed of international responses to mass influx situations. More predictable and equitable sharing of the resulting burdens and responsibilities depends upon the extent to which the varied interests of all countries concerned are taken into account. International cooperation and how to realize it are examined in the study. In this regard it is recognized that humanitarian aid is not enough. Given that the bulk of the burden mostly falls on low-income States, the study lends its strong support to shaping the international response so that it contributes not just to relieving the refugee situation but also to realizing the development aspirations of local host communities. The efforts to tackle root causes of displacement and thereby to create conditions conducive to return have also to be integrated at the earliest stages of international action.

9. It is suggested that burden and responsibility sharing be constructed on the basis of the following, each of which is explored further in the study:

- diplomatic and political intervention regarding the country of origin;
- financial assistance, including emergency financial assistance, funds for self-reliance and development in the country of asylum, funds for durable solutions, in-kind assistance, poverty reduction and debt relief measures;
- humanitarian transfer or evacuation programmes; and
- resettlement.

10. The study goes on to explore the resourcing dilemmas which beset efforts to respond adequately and coherently to mass influxes. It lends its support to a number of approaches, including the following:

- That financial assistance be better coordinated and targeted as far as possible at avoiding aid dependence and at promoting refugees' self-reliance. Where the host State is a developing country, financial assistance should also be envisaged as a contribution to national development goals. The High Commissioner's Development Assistance for Refugees (DAR), Development through Local Integration (DLI) and initiative on 4Rs (Repatriation, Reintegration, Rehabilitation and Reconstruction) need to be effectively operationalized.
- That the usefulness of an Emergency Refugee Fund be considered, although if it relies on voluntary contributions only, its value is diminished. It might be just as effective in this context to take further forward the High Commissioner's thinking on how to meet UNHCR's Annual Budget needs pursuant to the UNHCR 2004 process.²
- That standby arrangements be conducted between potential donor States and NGOs/UNHCR, to improve the speed and quality of in-kind assistance.
- As part of burden-sharing strategies, that basic parameters be established for when and how transfer and evacuation schemes can help and should be resorted to. The lessons of the Kosovo crisis need to be drawn upon.
- In parallel, that all efforts be made to ensure resettlement is also a viable solution in mass influx situations, and that in this regard criteria and processes, such as group processing, be further developed and applied to ensure compatibility with the demands of bigger displacement situations.

11. The study also examines mechanisms which have been utilized in the past to operationalize and oversee the implementation of multilateral plans of action. The Central American CIREFCA process, the Comprehensive Plan of Action (CPA) in South-east Asia and the Humanitarian Issues Working Group (HIWG) initiative for the former Yugoslavia together make a strong argument for the setting up of flexible mechanisms to bring key States and humanitarian actors together swiftly and catalyze international cooperation. UNHCR's close involvement is promoted, with other international actors also recognized as having critical roles, not least at the point where development issues in the host State and/or country of origin come to the fore. For any mechanism to be effective, it needs to be led by an actor – whether an international organization (such as UNHCR) or an interested State – able to galvanize state cooperation and to steer the process of building a humanitarian coalition.

D. The way ahead?

12. To encourage consistent approaches and address various issues that have emerged in mass influx situations, the study suggests that it may be worth considering an instrument on this issue, for instance, in the form of a Second Protocol to the 1951 Convention. As with the 1967 Protocol, such a Protocol could be open to accession by non-Convention States, a number of which already host large numbers of refugees and would arguably stand to benefit from better

² A/AC.96/980, paragraphs 53-61.

governance of mass influxes across the globe. The focus of a new instrument would be on putting in place practical guidelines for better management of asylum demands and problems in mass influx situations within a burden-sharing framework.

13. The study suggests some guiding parameters in this regard:

- respect for cardinal refugee and human rights protection, in particular the prohibition on *refoulement*;
- specific recognition of the differing capacities of States to contribute to assistance and solutions, and the need for an equitable distribution of burdens and responsibilities;
- taking into account the significant contributions made by countries of first asylum;
- awareness of the political context in which the humanitarian crisis takes place;
- appreciation that involvement in burden and responsibility sharing requires more than short-term emergency assistance, but that the nature of involvement by States may change with time;
- a focus on responsibility sharing which secures a viable durable solution for the refugee population as soon as possible, and in the meantime ensures they receive treatment in line with international standards in the country of asylum.

14. Consideration of a new Protocol merits a thorough discussion on both the advantages and possible concerns. In order to facilitate such discussion, the following is a list of potential Protocol issues deserving of further reflection:

- arrangements to ensure international protection in mass influx situations consisting of persons falling within the ambit of the 1951 Convention refugee definition and/or otherwise in need of international protection;
- exclusion from, or revocation of, international protection with respect to individuals, within larger groups, who are not deserving of international protection;
- principles of and perhaps even modalities for the sharing of burdens and responsibilities;
- physical security of affected refugee populations, especially women and children;
- maintaining the civilian and humanitarian character of asylum, including through the separation of combatants;
- duties of persons benefiting from international protection in mass influx situations;
- minimum standards of treatment for those under international protection in a mass influx situation;
- circumstances under which international protection would end;
- durable solutions, including specifically the conditions for promoting voluntary repatriation and the linkages with other solutions.

15. On the topic of possible mechanisms for international cooperation, outside any Protocol framework, the study draws lessons from arrangements put in place to bring together key governments and other actors, which were common features of the CIREFCA, CPA and HIWG models. Recommendations flowing from this include that:

- a) At the outset of a crisis, discussions be convened by the United Nations High Commissioner for Refugees.
- b) Participants may include countries of first asylum, other regional States, donor States, regional organizations, plus relevant governmental and non-governmental bodies. It would be particularly valuable also to have the involvement of the United Nations Emergency Relief Coordinator when large internal displacement is taking place. Such a forum could serve as the humanitarian arm of an international (for example, United Nations) diplomatic/political initiative.
- c) More active use be made of early warning possibilities, including information from relevant bodies/networks, particularly the Office for the Coordination of Humanitarian Affairs (OCHA), in deciding when a situation warrants the activation of such a multilateral process of consultation and coordination. The process might begin within a set time frame thereafter.
- d) Ideally as an early outcome of the consultative process, a response framework be agreed between participants, in the form of a plan of action or memorandum even, which would carry with it firm commitments as regards implementation. A review mechanism (Steering Committee) should be part of the framework.
- e) A model framework be considered, to be used as the basis of discussions. The model could perhaps be developed through the High Commissioner's Convention Plus initiative.