

3rd meeting

**PROGRESS REPORT ON INFORMAL CONSULTATIONS
ON THE PROVISION OF INTERNATIONAL PROTECTION
TO ALL WHO NEED IT**

I. BACKGROUND

1. Persons in many parts of the world continue to be forced to flee their countries, or become involuntarily displaced within them, as a result of persecution, serious human rights abuses, armed conflicts, civil strife and generalized situations of violence which threaten their safety or freedom. In some cases, stateless persons are also denied basic human rights and national protection, precipitating their displacement.

2. Millions of people in this plight are protected as refugees, or as internally displaced persons. Some, however, are treated as non-refugee humanitarian cases; or are denied any form of humanitarian status. Some persons whose claims are rejected as not in need of international protection are slated for return to their country, but cannot be returned due to the danger they might face. One ambiguity in this situation is that of persons who are within UNHCR's mandatory competence for international protection but receive protection by States on a discretionary basis. Another is the national and, in particular, regional variation in the scope of protection, notably in response to mass influx and the definition of the term refugee.

3. That there are persons who are not covered by the application of the 1951 Convention and the 1967 Protocol but who are in need of international protection is widely recognized, including by the Executive Committee. The challenge in ensuring that such persons receive international protection lies in obtaining consensus on the measures to be taken; specifically, in identifying the content and nature of such protection, without detracting from the international refugee instruments.

II. OVERVIEW

4. There is broad consensus that the rule of international law is essential for friendly and peaceful relations among States. It may be worthwhile to reflect on the process of international law-making in the area of forced displacement, which has witnessed a proliferation of international as well as regional regulatory initiatives. Regional approaches and harmonization are valuable to the development of the law, but viewed in a global perspective, the progression has been an uneven one, and invites the question of consolidation of the law at the international level.

5. A comprehensive overview of international protection standards and approaches could be a useful exercise for the present discussion. UNHCR has the statutory functions of promoting the conclusion of international refugee conventions, supervising their application and proposing amendments thereto as well as of promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection (para. 8 (a) and (b) of the UNHCR Statute). This undertaking is based on the broader role of the United Nations in encouraging the progressive development of international law and its codification.

6. Beginning in 1994, the Executive Committee considered in more detail the concept of international protection, and in 1995 encouraged UNHCR to engage in consultations and discussions concerning measures to ensure international protection to all who need it. The Executive Committee reiterated its support for UNHCR's role in exploring the development of guiding principles to this end, consistent with fundamental protection principles reflected in international instruments, and called on UNHCR to organize informal consultations on this subject. This was endorsed by the General Assembly in its resolution 50/152.

7. Recent developments and consultations have indicated that the informal consultations on the development of guiding principles should be viewed as a long-term process, one which is both comprehensive and standard-setting. UNHCR organized a first informal meeting in Geneva on 2-3 May 1996, bringing together a limited number of government and academic experts for an initial exchange of views on this broad subject.

8. The objectives of this first informal meeting were, in discussing an extensive and non-exhaustive range of current issues of forced displacement, to identify possible issues for further development in the interest of ensuring international protection to all who need it; to establish the applicable international norms or the absence thereof and to identify areas where further international consensus-building might be required; and to consider the process best suited for addressing these issues. The summary which follows synthesizes for the Executive Committee the presentations and discussions, and does not reflect in detail all views expressed by the participants.

III. SUMMARY

A. Identification of items for consideration

9. The non-exhaustive annotated agenda flagged possible areas in which unresolved issues had a negative impact on persons in need of international protection, and participants were invited to identify any other such areas, with a view to then narrowing down key areas for future consultations. It was noted that the 1951 Convention was being constricted in its application, which resulted in inadequacies in the international protection regime. A more appropriate application of the 1951 Convention would, however, avoid the occurrence of some of these inadequacies. The need to situate refugee protection within broader universal human rights concerns, and not to develop separate and narrower standards for this vulnerable group was mentioned. The dominant theme of the Universal Declaration of Human Rights could be described as freedom from fear: this, it was suggested, should be regarded as the aim of international protection. The regional dimensions of the issue were also referred to, namely, that lacunae in one part of the world may not be problematic in another. The ensuing presentations and discussions focused on the following areas:

B. UNHCR's Mandate

10. The steady evolution and adaptation of UNHCR's mandate since the 1950 Statute illustrate the international consensus in entrusting UNHCR with specific responsibilities in respect of several categories of persons. The presentation disclosed the dichotomy between the institutional responsibilities conferred on UNHCR, and the frequently more limited obligations formally accepted by States. The apparently diffuse responsibilities vested in UNHCR led some participants to comment on the complexity of understanding UNHCR's expanded mandate in full.

Other participants affirmed the need to protect the integrity of obligations under the 1951 Convention, especially vis-à-vis regional developments. There was interest in merging the various documents describing UNHCR's mandate, and in setting out the corresponding obligations of States.

C. Development of temporary protection

11. A significant number of persons who require international protection are not effectively dealt with in the application by some States of the 1951 Convention. The origins of the concept of temporary protection, and its legal basis, were identified. Temporary protection was identified as one element of comprehensive approaches to particular refugee situations, approaches which could be described as being return-oriented or solutions-oriented. It was described as a complementary regime to assist States facing mass influx from conflict. The matter of whether sheer numbers (as in mass influx) do, or should, have any impact on the applicable rights and standards was raised. In the course of the discussion, some participants cautioned that temporary protection which left national protection measures entirely at the administrative discretion of States could weaken international protection. The concept of "benchmarks" for the ending of temporary protection was raised. Some experts encouraged UNHCR to develop further the return-related aspects of temporary protection as being key to the future of the regime. Identifying the areas requiring legal analysis, and the aspects requiring political consensus would, it was suggested, enhance the clarity of further discussions. Areas where additional analysis would be required included the purposes of temporary protection, its beneficiaries, duration, standards of treatment and link with the 1951 Convention, and return-related issues. While concern was raised that a new consensus or guiding principles could weaken obligations under the 1951 Convention, it was agreed that temporary protection required an adequate legal basis.

D. Special protection issues

12. Topics grouped under this cluster included gender-based persecution, the detention of asylum-seekers, the treatment and return of persons not in need of international protection, Article 35 of the 1951 Convention, and the legal basis of voluntary repatriation. Of these topics, detention and the application of Article 35 attracted the greatest discussion and were regarded as appropriate for further examination. There was also some discussion relating to the return of persons not in need of international protection and UNHCR's possible role in this area, linked to satisfactory refugee status determination processes.

13. In the context of discussions on detention, the need for UNHCR Executive Committee conclusions to reflect current human rights standards was highlighted. It was suggested that the conclusion adopted by the Executive Committee at its thirty-seventh session (A/AC.96/688, para.128) on the issue may need to be revisited. With regard to the treatment and return of persons not in need of international protection, the many difficulties attendant on the issue were raised from different perspectives. The issue of state responsibility for the readmission of nationals was the subject of debate, as was the distinct issue of the right of the individual to return to his or her country. Prevention of statelessness was also alluded to in the context of readmission difficulties.

14. The use of Article 35 of the Convention and how best to exercise UNHCR's supervisory authority was discussed at length, with innovative suggestions emerging in respect of reporting systems, and the problems of such structures in view of state reluctance to assume additional international reporting functions. Various treaty monitoring procedures were cited by way of illustration. Article 35 (1) formed a strong legal basis for supervision, and UNHCR was encouraged to consider new initiatives with regard to its implementation.

15. The principal issues to emerge from the recently conducted symposium on gender-based persecution were discussed briefly. The issue was considered best addressed by the elaboration and dissemination of guidelines on the subject to raise awareness and ensure protection. The exchanges on voluntary repatriation acknowledged the Executive Committee's conclusions on the subject and considered that while the 1951 Convention unlike the OAU Convention does not address the issue, further codification at the universal level was less relevant to the enhancement of this solution than working towards reconciliation at the political level. Some participants emphasized the importance of UNHCR's activities in countries of origin as a contribution to creating conditions which could encourage early voluntary repatriation.

E. Preventive action

16. Of the issues assembled under this cluster of items, the protection of internally displaced persons, and that of stateless persons, received the most attention. The issue of state responsibility attracted little discussion, despite heightened interest by the Executive Committee in recent years. Note was taken of the 1996 report of the Representative of the Secretary-General on Internally Displaced Persons, which sets forth a compilation and analysis of applicable legal norms. Few normative gaps in the protection of internally displaced persons were identified, but many significant application and consensus deficits were seen to exist. UNHCR's criteria for involvement with the internally displaced were discussed, animated by the fact that UNHCR looks after only some 6 million of the world's estimated 26 million internally displaced. The danger of applying the concept of internal flight alternatives to deny adequate protection was noted. Overall, there was a high degree of interest in the legal and institutional elements of this issue from the point of view of ensuring international protection to displaced persons who need it.

17. The protection of stateless persons and the reduction and prevention of statelessness was also discussed, the increased prominence of these issues being seen as attributable in part to recent state disintegration and the resulting nationality problems. The potential role for UNHCR in the supervision of the two statelessness instruments was considered, and there was strong support for continued in-depth consideration of statelessness issues by UNHCR and the Executive Committee.

18. In regard to capacity-building, it was recognized that national legal, judicial and administrative capacity-building was frequently necessary to help address the causes of refugee movements and to promote voluntary repatriation which would be sustainable. This was identified as a significant deficiency in various operations. It was recalled that the Executive Committee had referred to this item in its deliberations on international protection for the first time in 1995. Concerns in respect of the capacity of other institutions to deliver in this area were balanced by concerns that UNHCR not become over-extended.

F. International cooperation

19. It was noted that core principles of international cooperation governing international protection are to be found in the United Nations Charter, the 1951 Convention and its regional complements, in particular the OAU Refugee Convention. International law does not specify by whom and in what manner asylum is to be given. However, the principle of *non-refoulement* strengthens the concept of first country of asylum, thus necessitating heightened international cooperation and consensus in this area. Questions were raised as to the compatibility of the safe third country concept with international obligations. The term burden-sharing was queried, and the importance of financial responsibility-sharing was underlined. Attention was drawn to the unrecognized resource contribution of first countries of mass asylum, as well as to the implications of earmarked contributions for UNHCR. Participants reiterated the need to improve the linkage of humanitarian emergency assistance with rehabilitation and development activities. Comprehensive approaches to involuntary displacement, and the impact of refugees on the environment, were noted as issues meriting further examination.

G. Concluding observations

20. UNHCR indicated that it planned another informal meeting in 1996, with a more focused agenda based on the recently concluded discussions. The beneficial format of these discussions would be maintained, and subject to costs, would convene with regional participation and expertise. The consultative process was expected to continue into 1997, with further resource documents and studies to be prepared and reviewed. Information meetings for Executive Committee members would be organized as part of the process, and consultation with interested NGOs would also take place.