

INFORMAL RECORD
OPEN MEETING OF STATES AND INTERESTED PARTIES ON SECONDARY,
IRREGULAR MOVEMENTS OF REFUGEES AND ASYLUM-SEEKERS
(Geneva, 16 December 2003)

I. INTRODUCTION

1. The first open meeting of States and interested parties on irregular secondary movements took place in the Palais des Nations on 16 December 2003, co-chaired by Switzerland and the Republic of South Africa as facilitating States for this strand under Convention Plus, and UNHCR. The following States and organizations participated in this meeting: Algeria, Australia, Austria, Brazil, Canada, China, Denmark, Dominican Republic, Ethiopia, France, Ghana, Greece, Holy See, India, Ireland, Italy, Japan, Latvia, Lithuania, Mexico, Morocco, the Netherlands, Norway, Oman, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, Uganda, the United States of America, ICVA, IOM and OHCHR. The agenda and discussion paper prepared for this meeting are attached as Annex 1 and 2, respectively.

II. OPENING REMARKS

2. On behalf of UNHCR, the Director of the Department for International Protection opened the meeting recalling that Convention Plus is rooted in the Global Consultations, the Agenda for Protection (AFP) and the High Commissioner's UNHCR 2004 process. Moreover, the phenomenon of irregular, secondary movements is not new, but has posed problems for refugees and for States for many years. It has been the subject of two conclusions of the Executive Committee: No. 15 (XXX) of 1979 on "Refugees without an asylum country" and No. 58 (XL) of 1989 on "The problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection". It was part of the Global Consultations process and has been addressed in additional processes over the years.

3. Within the Global Consultations, the issues arising in the context of irregular secondary movements were explored notably within discussions on "refugee protection within broader migration movements", "fair and efficient asylum processes", and "capacity building and responsibility sharing". The outcome of these deliberations is reflected in the AFP (goal 2, action 4) which commits UNHCR, in cooperation with relevant partners, to analyse the reasons for irregular movements, and propose strategies to address them in specific situations, predicated on a more precisely articulated understanding of what constitutes effective protection in countries of first asylum, and taking into account international solidarity and burden-sharing.

4. Irregular, secondary movements are not confined to one region but pose problems worldwide. The related issues, including an absence of burden sharing and a lack of effective protection, are very much a part of protection work today. To address

the phenomenon of irregular, secondary movements, an understanding is needed of the root causes. The complexity and the range of issues involved should not be underestimated, embracing a wide range of legal issues, a multitude of State actors, including host, transit and destination countries, and broadly shared responsibilities among them as well as with other stakeholders.

5. There are a number of multilateral processes which have been in train for some time and which also address the problem of irregular of secondary movements. The discussion within Convention Plus needs to draw upon the lessons and experiences of regional initiatives and move forward with them on a global level with the focus on concrete solutions. This will call for three complementary types of efforts. One is to endeavor to ensure that effective protection is available in countries of asylum where people arrive. There has to be a focus on understanding effective protection and ensuring its availability as part of any strategies that we develop to address the problem. Secondly, there has to be a focus on durable solutions, as the lack of available solutions is one of the causes of secondary movements. Therefore strategies should be predicated on the need to find early, durable solutions for refugee populations through, for example, the strategic use of resettlement and the direction of development related efforts. Finally, strategies must look at how to ensure better control of irregular, secondary movements in a protection sensitive manner. Border control measures and proper readmission procedures must be developed within a clear protection framework.

6. With the support of Switzerland and South Africa, UNHCR has decided to bring this subject within the ambit of the Convention Plus initiative, convinced that a better global management of refugee problems, including the problem of irregular, secondary movements, requires the development of new tools, in the form of multilateral special agreements, to complement the 1951 Convention and its 1967 Protocol. It is foreseen that such agreements will set out shared understandings and commitments to make responsibility sharing and cooperation within the international community more equitable and predictable.

7. Complementary and directly related work is already underway as part of the implementation of the AFP. This includes, for example, a project proposal submitted by UNHCR for funding from the European Commission (EC) to carry out needs-based protection planning as a precursor to building capacities in selected countries and the preparation of a Handbook on Strengthening Protection Capacities in Host Countries for the Protection of Refugees (goal 3, objective 2, action 1).

8. The background comments provided by the Director of the Department of International Protection were followed by remarks from the Swiss Co-Chair who explained Switzerland's role as a facilitating State. The Global Consultations created a new momentum in the protection debate and Switzerland welcomed the High Commissioner's Convention Plus initiative for the development of new tools. Switzerland regards the Convention Plus segment on irregular, secondary movements as a complementary process to the Berne Initiative, both addressing the intertwined nexus between migration and protection matters.

9. The irregular, secondary movements segment of Convention Plus is an opportunity for open and informal dialogue between States, to apply conclusions more concretely on the basis of concrete situations within a burden sharing framework. To facilitate this, and in particular to achieve a better understanding of irregular secondary movements, Switzerland has proposed to conduct caseload specific surveys of Somali refugees and possibly others. The outcome of the surveys would inform the generic work towards a special agreement. In this context, a design workshop is being planned in February 2004. Further input and suggestions on the envisaged surveys are welcomed. Generally, the facilitating States and UNHCR look forward to the inclusion of as many stakeholders as possible in this discussion under Convention Plus.

10. The South African co-Chair followed by outlining the context in which it was volunteering as a co-facilitating State. Ten years ago South Africa was a refugee-producing country that contributed to the instability of the region. Today, it hosts thousands of refugees and is actively facilitating peace processes in the region. Just like many other countries, globalization and the movement of people present economic social and political challenges. It is important to resist directing our inadequacies in living up to these challenges towards individuals who enter our borders, most of whom are in dire need of assistance.

11. South Africa is emerging from a deeply fractured society and this can lead to a focusing on new-found freedom and processes of reconciliation and reconstruction. This, and suspicion of foreigners, may lead to situations where international norms South Africa has acceded to are not applied effectively. While only three percent of refugees in South Africa were unemployed in the countries they fled, a quarter of those in South Africa are without jobs. Although the South African refugee regime allows refugees many opportunities, including having as much right to primary education and emergency medical care as South Africans, the rights refugees have on paper must be turned into real benefits. The mere fact that an asylum-seeker entered a system should not mean he found protection. A lack of adequate protection may give rise to refugees moving on. The right of States to control the movement of people should always be exercised in parallel to a State's obligations to uphold international human rights and refugee law standards, which were voluntarily assumed.

12. Although South Africa will not be able to provide an agreed, authoritative interpretation of what constitutes "effective protection", what motivates the irregular, secondary movement of asylum-seekers or what constitutes primary, secondary or onward movements, South Africa offers a willingness to participate in and co-facilitate a common search for answers to these questions. South Africa will try to ensure that the causes for secondary, irregular movement are examined in a fair and transparent manner taking into account the meaning of effective protection. With respect to surveys, South Africa will attempt to ensure that they take note of the concerns of all States, including where burden-sharing is an important element and that the questions posed to asylum-seekers and refugees and asylum do not lead to abuses of any kind.

III. DISCUSSION OF ISSUES RELATED TO THE IRREGULAR, SECONDARY
MOVEMENTS OF REFUGEES AND ASYLUM-SEEKERS
(Agenda item 2)

13. Opening the discussion, the Head of UNHCR's Convention Plus Unit introduced the discussion paper entitled "Convention Plus Initiative on Irregular Secondary Movements of Refugees and Asylum-Seekers". He noted that it drew on Switzerland's statement during the meeting of the High Commissioner's Forum on 27 June 2003 and was being tabled to provoke discussion and not for adoption or endorsement. The discussion paper highlighted elements of consensus on this complex issue, notably conclusions 15 and 58 of the Executive Committee of the High Commissioner's Programme as well as the deliberations in the Global Consultations, which led to the Ministerial declaration and the adoption of the Agenda for Protection. These, he commented, should provide a basis on which to launch discussions under this strand of Convention Plus.

14. Against this background, the Head of the Convention Plus Unit suggested two premises for further work on this issue within Convention Plus:

- Acknowledgment that the disorderly movement of refugees and asylum-seekers through several territories, in search of protection and/or better opportunities, creates frictions in the international refugee protection regime, as well as undue hardship for refugees; and
- Acknowledgement that this continuing phenomenon is due, at least in part, to ineffective cooperation among States; in other words, to gaps in responsibility- and burden-sharing. While the manifestations of the problem may be domestic, the problem is in essence international.

15. He stressed that Convention Plus provides a new international effort to pursue two parallel objectives:

- To reduce the need or the compulsion for onward movement; i.e. to address the causes of secondary movement to the extent possible; and
- In instances where secondary movement still occur (e.g. because the burden on front line countries is simply too heavy), to make it increasingly regular instead of irregular, lawful and managed instead of unlawful and disorderly.

16. Following this introduction to the discussion, delegations taking the floor expressed appreciation to the co-Chairs for convening the open meeting and for their efforts to advance the discussion on the issue of irregular, secondary movements. Commenting on the motivations for secondary movements, one speaker stressed that onward movements are not always due to difficult conditions in a host country, but instead are often instigated by the search for better opportunities elsewhere, especially concerning employment and education. Another speaker noted that these movements should be seen as part of the process of globalization and are motivated by a wide range of factors, such as inequities in the level of protection offered by States and the basic human desire to search for better assistance and care. It was emphasized that addressing the disparities in the levels of protection provided in different parts of the

world would help to mitigate these movements. Delegations were reminded that refugees are a global concern and States must not forget their international obligations in this regard. Concern was expressed over the skewing of resettlement towards those that are educated or with skills training.

17. The co-Chairs were asked to elaborate on the relation between the Global Commission on Migration and the work on this subject within Convention Plus. In response, it was pointed out that initiatives are complementary and overlap somewhat; the Global Commission will look into international migration generally, while Convention Plus has a particular focus on protection and solutions for refugees. One speaker stressed that the added value of pursuing this issue through Convention Plus was to ensure refugee protection in the context of broader migration movements.

18. Commenting further on the motivations for secondary movements, it was suggested that onward movements are often instigated by the search for better opportunities and the absence of solutions. Host countries, countries of transit and destination have a shared responsibility to address this problem in a spirit of responsibility and burden sharing, including by facilitating the reintegration of refugees. If States do not assume their responsibilities, it was posited that this will fuel criminal practices, including trafficking.

19. Obtaining a better understanding of definitions, causes, the distinction between refugees and migrants and how this initiative is complementary to other initiatives was seen as a necessary next step. Preference was voiced for a practical caseload approach to feed into the generic work.

20. Making a clear distinction between protection from persecution and protection from poverty was considered necessary by one delegation. Emphasis was also given to the need for comprehensive approaches and the building of realistic standard of protection, which should not create a pull factor from other countries or create friction with the local population. The example of the Comprehensive Plan of Action for Indo-Chinese refugees was cited as a successful comprehensive arrangement, largely because it had the support of all parties and included resettlement and repatriation. Further, it was considered a success because it was results oriented; focused on specific caseload; addressed root causes; provided protection for those who needed it in keeping with the principles contained in the 1951 Convention and 1967 Protocol ; and it was a pragmatic, flexible and non-binding arrangement that provided genuine burden-sharing.

21. In response, another delegation stressed that no refugee could possibly be expected to satisfy him/herself with abject misery in a country offering him/her protection against persecution. It was emphasized that refugee protection and poverty alleviation are two sides of the same coin.

22. Preference was expressed for a caseload approach to this strand of Convention Plus. In this regard, the Somali caseload was considered a good initial focus. One delegation also suggested that realistic standards for effective protection need to be set. The Lisbon Conclusions on this matter were cited as a starting point for further consultations. Responding to an enquiry as to whether further considerations on what

constitutes effective protection will be dealt with within Convention Plus, the UNHCR co-Chair noted that work on this issue was already being pursued within UNHCR. She commented that while Convention Plus will provide input into this process, it would not be the forum for defining the legal basis of “effective protection”, as this is a debate much broader than the reduction of irregular, secondary movements. UNHCR has submitted a project proposal to the EC for needs-based protection planning, which will also contribute to a better understanding of effective protection in practice.

23. Emphasis was placed on the need for Convention Plus meetings to be open and the process generally to be transparent. The Head of the Convention Plus Unit, in replying to a query about the scope of the initiative, explained that the existing conclusions of the Executive Committee make it clear that “irregular” and “secondary” are not synonymous. Furthermore, while it is true that Executive Committee conclusion 58 (XL) addressed the phenomenon of refugees moving from a country in which they had found protection, the problem identified by Executive Committee conclusion 15 (XXX) subsists to this day, namely that some refugees find themselves without an asylum country. While noting that the next steps of this initiative would be discussed under the next agenda items for the meeting, he anticipated that a detailed “issues paper”, including tentative definitions, would be made available by UNHCR in the new year, to guide the work of the Core Group to be constituted.

24. Another delegation highlighted the need for a coordinated approach between all three segments within Convention Plus. It was also suggested that there is a link between this work and the concept of protection in the region, including issues of reception, registration and protection against *refoulement*. Further, cooperation between host countries, countries of transit and destination countries were seen as necessary, in particular on issues of readmission and the so-called “safe third country” principle.

25. Travel routes and the reasons for onward movements were mentioned as areas where further information is needed. Effective protection was seen as a key element to mitigating secondary movements and it was stressed that measures to diminish secondary movements should not only focus on readmission agreements, but should be centered on burden-sharing. This is a principle that is at the heart of Convention Plus.

26. A number of delegations expressed their willingness to share their experiences in relation to this issue. One element that was seen as lacking from the discussion paper was the need for secondary movements to be addressed within a human rights framework. It was noted that several studies have been conducted on this topic that indicate that detention, lack of legal status, discrimination and ongoing persecution are recurrent reasons for secondary movements. In these cases, the primary movement can be considered to continue.

IV. IDENTIFICATION OF POSSIBLE CASE STUDIES /
CASELOAD-SPECIFIC SURVEYS
(Agenda item 3)

27. There was broad support for case studies and in particular for one focusing on the Somali caseload. In the context of Somalia, while the extreme weakness of the State of origin made a truly comprehensive approach to solutions problematic, it was noted that voluntary return is currently happening to peaceful parts of the country. The value of more than one caseload specific survey was raised, and in this connection the co-Chair invited all participants to share any existing materials in their possession that might be relevant to an understanding of secondary movements of any caseload. In addition, it was recommended that case studies/caseload specific surveys be informed by related work of States, such as the Alexandria process, and studies previously conducted by NGOs.

28. Switzerland announced that an invitation would soon be sent to all participants, to attend and/or contribute materials to a design workshop in February 2004, in which the parameters and methodology of the survey of the Somali caseload would be defined.

V. CONSTITUTION OF A CORE GROUP
(Agenda item 4)

29. The South African co-Chair indicated that the purpose of the Core Group was to inform and monitor work on caseload-specific surveys and to pursue multilateral understandings on irregular, secondary movements of asylum seekers and refugees. Members of the Core Group would work cooperatively and constructively and not be dominated by self-interest. NGO participation was welcomed, as was participation by government officials from capitals, wherever appropriate. Australia, Brazil, Denmark, Dominican Republic, Ethiopia, Ghana, IOM, Mexico, the Netherlands and Uganda offered to be part of the Core Group. States that were not able to commit to joining the core group immediately were welcome to do so at a later date by contacting UNHCR and/or the Swiss and/or South African Permanent Mission in Geneva.

VI. ANY OTHER BUSINESS
(Agenda item 5)

29. There being no other business, the co-Chairs called the meeting to a close.

Convention Plus Initiative on

“Secondary, Irregular Movements of Refugees and Asylum-Seekers”

Open Meeting of States and Interested Parties

Room XXII, Palais des Nations, Geneva

16 December 2003, 3 – 6 PM

Agenda

1. Welcoming and introductory remarks
by Switzerland, South Africa and UNHCR.
2. Discussion of issues related to the secondary, irregular movements of refugees and asylum-seekers
on the basis of a Discussion Paper attached to the invitation letter.
3. Identification of possible case studies/ caseload-specific surveys
to supplement the survey of the Somali caseload, which Switzerland is initiating. The financial and technical resources required for these studies will also be discussed.
4. Constitution of a “core group”
to work alongside Switzerland and South Africa, and in cooperation with UNHCR, towards the development of multilateral understandings on secondary, irregular movements of refugees and asylum-seekers.
5. Any other business

Discussion Paper

Convention Plus Initiative on**“Secondary, Irregular Movements of Refugees and Asylum-Seekers”**

The 1951 Convention and its 1967 Protocol remain the cornerstone of the international refugee protection regime. Their strengthened implementation is the first step in improving protection of refugees and asylum-seekers. At the same time, the need for comprehensive responses more directly tailored to current protection challenges and gaps is increasingly realised. This is particularly the case where asylum and migration pressures meet, as well as with the many refugee situations that have remained unresolved over years. Refugee law instruments function best within an equitable burden-sharing system between developing countries providing protection to a large number of refugees and developed countries. In fact, the majority of today's refugees are living in protracted situations without the prospect of a long-term solution. One of the consequences hereof is that many countries, both within and outside the regions of origin, are today faced with the problem of irregular secondary movements of asylum-seekers and refugees. It is, therefore, appropriate that this issue be addressed within the framework of UNHCR's "Convention Plus" initiative, which is aimed at achieving durable solutions through a more equitable sharing of responsibilities and burdens among States. Convention Plus is a constructive follow-up to the Global Consultations on International Protection and the Ministerial Meeting of December 2001. It builds upon and complements the 1951 Convention in that it aims at developing new and more effective tools to strengthen the international refugee protection regime.

Switzerland and South Africa have agreed to jointly take on the facilitator role for the segment of the Convention Plus initiative focusing on "secondary, irregular movements". The Executive Committee of UNHCR's Programme addressed, in its Conclusion 58 (XL) of 1989, the phenomenon of refugees and asylum-seekers who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere. The Agenda for Protection calls on UNHCR and States to analyse the reasons for such movements and to propose strategies to address them, predicated on a more precise understanding of what constitutes effective protection in countries of first asylum, and taking into account international solidarity and burden-sharing. There are, indeed, various reasons for the movements of refugees and asylum-seekers across several international borders, including intolerance, a lack of personal security, breakdown of law and order, family separation and a lack of prospects for a durable solution. These reasons need to be better understood in relation with the roles and responsibilities of States along the refugees' and asylum-seekers' movement routes. It is of particular concern that refugees and asylum-seekers may see themselves forced to resort to smuggling and other forms of irregular and clandestine movements in order to gain access to protection in a country of destination further away.

In searching new ways for better management of refugee problems we may have to acknowledge that there is no easy solution to the problem of secondary and irregular movements. However, Switzerland and South Africa agree with UNHCR that a process of multilateral dialogue and co-operation is bound to lead to more satisfactory arrangements than is currently the case. The objective should be to clarify the roles and responsibilities incumbent on all countries involved in a situation of irregular and secondary movement, be they countries of origin, countries of first asylum, transit countries or destination countries further away. Such responsibilities lie in such areas as: identification and registration; admission and re-admission; reception facilities; protection according to recognized international standards; and access to durable solutions.

In order to attain a better, broadly-based understanding of the phenomenon of secondary, irregular movements it has been proposed to carry out caseload-specific surveys targeting selected refugee populations. While new comprehensive surveys need to be undertaken – and Switzerland is taking steps to design one on the movements of Somali refugees and asylum-seekers -, advantage can also be taken of existing materials and previous studies, including in a sub-regional context. In either case, the surveys are expected to provide information on the scope and causes of the refugees' movements, as well as State responses to these movements and the perceived roles and responsibilities of all actors involved. On the basis of the quantitative and qualitative data which will be generated by these surveys, together with proper analysis of the applicable international protection principles, it should be possible – in addition to situation-specific outputs – to derive generic conclusions that could be used in current and future secondary movement situations.

Multilateral agreements in these areas would contribute to a better responsibility-sharing system, based on reinforced protection capacity, especially in those countries that host large refugee populations. Such arrangements would give concrete content to the notions of capacity-building and effective protection. Enhancement of international co-operation, through such multilateral agreements, would also contribute to reducing the phenomenon of secondary, irregular movements and to combating human smuggling and trafficking in persons.
