

GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION:
REPORT OF THE SECOND MEETING IN THE THIRD TRACK
(28-29 June 2001)

I. INTRODUCTION

1. The meeting was chaired by the Rapporteur of the Executive Committee, Mr. Haiko Alfeld (South Africa). In a brief opening statement, he commended the staff of the Department of International Protection (DIP) for their tireless work on the Global Consultations, which were proving to be both resource-intensive and demanding. The Chairman also commended UNHCR for encouraging participants from developing countries to attend and saluted non-governmental organizations (NGOs) for their continuing valuable contribution to the Global Consultations process. He urged States and other stakeholders to participate in concerted follow-up action, so as to shape the Agenda for International Protection.

2. A brief welcoming address by the Deputy High Commissioner, was followed by a statement from a refugee woman, who described her experiences, including detention, while seeking asylum. She closed her remarks by making a ringing plea of "Action please".

II. ADOPTION OF THE DRAFT REPORT OF THE FIRST MEETING

3. The Chairman presented for approval the draft report of the first meeting of the Global Consultations. Amendments were proposed by two delegations with respect to paragraphs 5, 15 and 17 of the draft report. With these modifications, the report was adopted (EC/GC/01/8/Rev.I).

III. ADOPTION OF THE AGENDA

4. The agenda (EC/GC/01/10/Rev.1) was adopted.

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

A. Refugee Protection and Migration Control

5. The Chairman welcomed the presence for the discussion of this item of Mr. Gervais Appave, Coordinator of the Migration Policy and Research Program (MPRP) at the International Organization for Migration (IOM).

6. The Director of the Department of International Protection introduced document EC/GC/01/11 providing a joint reflection on the topic by UNHCR and IOM. Its aim was to present the perspectives and suggested course of action of two organizations with shared concerns, each with different contributions to make to address them, and with a common interest of coordinating their respective contributions. The displacement environment in which the 1951 Convention must operate and the growth of irregular migration and smuggling of people for profit had led to a crowding of the space in which this Convention had to function. The overall challenge was to identify ways to meet the protection needs of refugees and asylum-seekers in situations where migration and asylum intersected. The Director noted that the paper suggested general lines of

cooperation between UNHCR and IOM (paras. 45-48), including activities that each organization might pursue separately, albeit in tandem, as well as issues requiring a State response.

7. The Coordinator of IOM's MPRP added that the paper was about linkages between migration and asylum. Since in reality refugees move within a broader, mixed flow that include both forced and voluntary movements, the related policies if kept totally separate may lead to guidelines which are incoherent at best - contradictory at worst. The main question at stake was how to ensure the integrity of refugee protection processes in the complex world of migratory realities. IOM hoped to open a broad debate among its member countries on the migratory aspects of the phenomenon at its Council meeting in November 2001.

8. During the ensuing debate, delegations from the countries concerned introduced summaries of the regional meetings held in Budapest, Macau, and Ottawa. There was broad recognition of the useful contribution of these meetings, which had not only provided insights on the challenges and constraints experienced at field level, but also formulated a number of substantive comments and recommendations.¹

1. Relationship between migratory movements and refugee protection
(including the issue of smuggling and trafficking)

9. All delegations recognized the importance and complexity of the asylum-migration nexus, in view of the growth of mixed flows of persons in need of international protection and migrants, and the likelihood that this trend would intensify as one of the consequences of globalization. Many delegations noted the paucity of data available on migratory movements, the types and volume of mixed movements, as well as on their underlying motivation. Several delegations suggested that the causes were likely to be overlapping and included human rights violations or armed conflict, but also economic marginalization and poverty, environmental degradation, population pressures, poor governance and scarcity of decent work. There was consensus that the phenomenon of mixed movements affected developed and developing countries alike, but that developing countries required international support to improve their capacity to respond effectively.

10. To inform more effective responses, delegations agreed on the need for more detailed and coherent data and statistics on migratory movements and a number requested IOM to undertake a detailed study on the root causes underlying migration. One delegation suggested that regional organizations, such as the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the Southern African Development Community (SADC) could also usefully undertake similar studies. Another delegation welcomed the launch of the MPRP programme and discussions at IOM Council meetings encompassing broader migration issues and needs.

11. Delegations unanimously condemned criminal activities of trafficking and smuggling of persons, while recognizing that refugees often had to resort, alongside migrants, to criminal rings to reach first countries of asylum or to move on to other locations. A number of delegations urged that asylum-seekers must be assured of access to asylum procedures and benefit from appropriate standards of treatment. There was wide recognition of the sovereign right of States to guard their borders and to take measures to stem trafficking and smuggling of people in view of the extreme suffering this causes, especially to women and children. A number of delegations made offers of technical support to boost reception capacity at points of entry. Some delegations, however, emphasized the need to view the phenomenon in the human rights context, not simply as a question of border or migration "control". One delegation suggested that the problem should be viewed as an aspect of migration management and take into account economic and labour demands, as well as human rights concerns.

¹ EC/GC/01/13; EC/GC/01/14

12. It was widely acknowledged that legitimate measures to stem trafficking and smuggling should not be allowed to override States' commitments to refugee protection responsibilities – notably the principle of *non-refoulement* – to the respect of human rights in general, as well as migrants' rights. In response to a question from one delegation on the scope of *non-refoulement*, the Director of DIP referred to the background document on Article 33 of the 1951 Convention prepared for the Cambridge expert roundtable.² Several delegations suggested measures that could contribute to preventing resort to smugglers in the first place: providing opportunities for regular migration; operation of a proper, speedy and efficient asylum system in compliance with international norms; and speedy return of those found not to be in need of international protection.

13. Several delegations emphasized the need for more capacity-building in host States as well as closer cooperation in devising comprehensive and multifaceted responses amongst all stakeholders: governmental, intergovernmental and non-governmental. In this context, a number of delegations highlighted the need for closer dialogue between countries of origin, transit and destination, through appropriate policy orientations and follow-up action. These included the suggestion that development aid, trade and investment policies should be more sensitive to refugee and migration concerns and address the root causes of movement. Many delegations also recommended that measures be taken to encourage new accessions to and full implementation of the 1951 Convention and its 1967 Protocol, as well as to the United Nations Convention against Transnational Organized Crime and its Protocols (on trafficking of persons and smuggling of migrants), the 1990 Convention on Protection of All Migrant Workers and their Families, and relevant Conventions (notably nos. 97 and 143 of the International Labour Organization (ILO)).

14. Many delegations suggested that information campaigns both in countries of origin and receiving countries should play an important part in any comprehensive response and there were calls for NGO involvement. Such campaigns could provide a realistic appraisal of opportunities for orderly migratory movement; discourage irregular migration; warn of the dangers of smuggling and trafficking; combat xenophobia; and convey to the public at large in receiving States the positive side of migration and the assets both migrants and refugees represent to their host societies. One delegation suggested that secondary movements were unavoidable and asked for understanding of the difficulties facing most host countries, particularly in protracted refugee situations. This delegation suggested that such movements required further examination, including an assessment as to whether resettlement could be an appropriate response. Another delegation argued that irregular movement of refugees who had already found protection should be discouraged by sending those refugees back to countries of first asylum. A number of delegations expressed concern at such an approach, in view of the heavy burden of hosting large numbers of refugees for protracted periods.

2. Interception and Protection Safeguards

15. Delegations expressed diverging views on interception as a tool to combat irregular migration. Some delegations saw such measures as a legitimate manifestation of States' sovereign right to guard their borders. Others acknowledged that interception was a necessary tool to deter smuggling, but stressed that it must be tempered with refugee protection safeguards. One delegation was opposed to interception measures, viewing them as an arbitrary form of burden-shifting and regretted that interception was increasingly being used to prevent the lodging of asylum applications. One delegation suggested that States must avoid a culture of blaming the "victims" of smuggling and trafficking. Some delegations recalled that, in accordance with the relevant international instruments, States should not penalize asylum-seekers and refugees who resort to smugglers to reach safety.

² See "Opinion on the scope and content of the principle of non-refoulement", Sir Elihu Lauterpacht CBE QC, Daniel Bethlehem, Barrister (June 2001)

16. A number of delegations referred to the positive contribution of the regional meeting held in Ottawa, focusing on ways of incorporating refugee protection safeguards into interception measures. One delegation suggested that the discussions on interception initiated in Ottawa should be pursued with wider participation of countries from other regions. The suggestion that States that practise interception should incorporate safeguards for the protection of intercepted persons in need of international protection was widely supported. In this regard, there was broad support for the suggestion that UNHCR develop Guidelines on Safeguards for Interception Measures, incorporating appropriate protection safeguards and drawing on the conclusions and recommendations of the Ottawa meeting. UNHCR was also requested to initiate related training efforts for States. One delegation expressed concern that protection safeguards in interception could lead to new activities for UNHCR, for which additional resources should be identified. Another delegation suggested that an independent evaluation of existing interception programmes be carried out. On the issue of in-country processing, two delegations described their experiences, one of them noting that such processing might not readily lend itself to the issue of protection. Another delegation did not consider this processing as a complete alternative to interception, but as a means to make protection available. A delegation speaking on behalf of NGOs felt that in-country processing had no basis in the 1951 Convention.

3. Return of Persons not in Need of International Protection

17. There was broad agreement on the desirability of quick and effective return of persons found *not* to be in need of international protection. It was recognized, however, that such return must be orderly, safe, humane, dignified and sustainable. Several delegations recommended assistance to the receiving States or the individual. There was agreement that failure to return persons not in need of international protection could undermine the integrity of the asylum regime (as well as of migration management systems). Some delegations enumerated benefits flowing from speedy return: easier reintegration; discouragement to smugglers and traffickers; and warning potential migrants that the asylum avenue is not open. Delegations from all regions highlighted the difficulties encountered in trying to return persons not in need of international protection, notably lack of cooperation by the individuals concerned or by the country of origin and difficulty in establishing the true country of origin owing to lack of documentation. One delegation suggested that in situations involving large numbers of refugees, a combination of measures was required: return, resettlement in a third country and assistance in the asylum country until large-scale return was possible.

18. Many delegations stressed the obligation of all States to accept back their own citizens and to cooperate with States requesting the readmission. Several delegations pointed out that denial of the right to return not only affected the credibility and efficiency of asylum systems but also amounted to denial of a basic human right and could ultimately contribute to situations of statelessness. Some delegations emphasized that countries of origin in the developing world require international assistance to make returns sustainable. Other delegations felt that return should not be conditioned upon international support. A number of delegations pointed out that the return of persons not in need of international protection should ideally be voluntary, but that States do have the sovereign right to deport them. Some delegations emphasized that such non-voluntary return must be carried out, at minimum, in safe, humane and dignified conditions.

19. Several delegations commended IOM for its programmes for the return of persons not in need of international protection and recommended the continuation of these programmes. One delegation pointed out that developing countries do not have the resources to finance such programmes through IOM. Another delegation requested IOM to develop a set of guidelines for ensuring that each migrant whom it returns does so voluntarily. Several delegations emphasized that UNHCR's involvement in return issues should be consistent with its mandate, should not be

seen as sanctioning the return of persons who may be in need of international protection, and should be combined with an undertaking by States to provide resources to UNHCR for any such involvement. Two delegations questioned the legitimacy of UNHCR's involvement with rejected cases and urged caution.

4. Cooperation between UNHCR and IOM, as well as
with States and other Stakeholders

20. Many delegations welcomed the closer cooperation between UNHCR and IOM and encouraged both organizations to pursue the lines set out in the joint paper. Some delegations, however, called for clearer terms of reference as to what this cooperation could embrace. Others expressed concern about the resource implications for UNHCR. Delegations encouraged UNHCR and IOM to include information activities as an integral part of their cooperation. Regarding IOM's commitment to examine the usefulness of establishing or strengthening regional and international mechanisms for managing migration movements, some delegations suggested that it would be preferable to focus on discussions on best practices at national and regional levels.

21. Delegations expressed strong support for the establishment of the proposed UNHCR/IOM Action Group on Asylum and Migration, provided the specific mandates of each organization were respected. Given the complexity of the migration/asylum nexus, it was suggested that the Action Group should also include governments, other interested organizations (such as the ILO and the Office of the United Nations High Commissioner for Human Rights (UNHCHR) and regional organizations) and NGOs. The Action Group's programme of work might include better data collection and analysis, research, formulation of policy options, promotion or adoption of international standards, training, and practical project initiatives in the field and at Headquarters level in Geneva. Reports on the work of the Action Group could be shared with ExCom and with the Council of IOM.

B. Asylum Processes (Fair and Efficient Procedures)

22. Introducing this item, the Deputy Director of DIP recalled that fair and efficient asylum procedures were an essential component of a comprehensive approach to composite flows; they were also key to full and inclusive application of the 1951 Convention and its 1967 Protocol, not least the principle of *non-refoulement*. The document on this subject (EC/GC/01/12) suggested that, in many cases, a single consolidated procedure to assess whether an asylum-seeker qualified for refugee status or other complementary protection might prove to be the most effective and expeditious means of identifying those in need of international protection. Its concluding section drew on examples of best State practice that built on existing ExCom conclusions on asylum procedures and established commonly agreed standards.

23. In a general discussion of this item, many delegations observed that access to well functioning, fair and efficient procedures was a condition *sine qua non* for respect of the principle of *non-refoulement*, the right to seek and enjoy asylum and full and inclusive application of the 1951 Convention. Such procedures could also contribute to combating their abuse. The adoption of national legislation was an important means to implement the Convention effectively, but such legislation should be in accordance with international standards. Several delegations from developing countries pointed to the need for more capacity-building to offset the very real constraints they faced. Some delegations offered help to set in place asylum procedures and assist them to function effectively.

1. Admissibility Procedures

24. Several delegations referred to the Budapest regional meeting's contribution to elucidating issues surrounding the "safe third country" notion and the impact of readmission agreements on countries consolidating their asylum systems. The meeting had brought to light concerns by such countries of the "burden-shifting" effect. A number of delegations from developing countries referred to the burdens they already bore in hosting refugees, particularly for protracted periods, and maintained that accepting back asylum-seekers and refugees must be accompanied by assistance measures, in a spirit of burden and responsibility sharing. Adequate safeguards were also vital with respect to application of the safe third country notion, notably the accepting State's consent to the transfer and examination of the asylum request. It was recognized that the decision to determine the responsibility of States to review asylum claims was separate and distinct from the substantive examination of such claims. Many delegations also highlighted the value of multilateral or bilateral "Dublin-type" agreements to apportion responsibility for examining asylum claims, over unilateral use of the safe third country notion.

25. A number of delegations expressed concern at the impact of operation of the first country of asylum concept and requested guidance on its scope, particularly in situations where the first country of asylum was confronted with large numbers of refugees in protracted refugee situations. Many delegations emphasized the need for adequate safeguards in situations where refugees were returned to a first country of asylum. Such safeguards would contribute to avoiding situations of refugees "in orbit". It was also suggested that resettlement and local settlement might need to be considered when return to protracted situations was not viable. On the question of time limits for lodging applications, it was recognized that they should not be used to restrict access to procedures, but rather to determine whether non-compliance with the deadline affects the applicant's credibility.

2. Equitable and Expedient Asylum Procedures

26. There was broad agreement on a number of issues. Delegations recognized the value of streamlined, fair and expeditious procedures that identify persons in need of international protection and those who are not. Many delegations reported that undocumented and uncooperative asylum-seekers made it difficult for them to implement procedures effectively. There were diverging views on the "safe country of origin" notion and whether appeals should have suspensive effect. Many delegations felt that the "safe country of origin" notion was useful, provided adequate safeguards could be built into its operation. For other delegations, the very notion amounted to exclusion of entire nationalities from protection under the 1951 Convention or possibly a geographical limitation in violation thereof. While some delegations argued that appeals should not suspend decisions to deport cases in certain circumstances, one delegation representing NGOs argued that suspensive effect should be guaranteed until a final decision on the asylum claim.

27. There was general agreement that all asylum-seekers should have access to procedures to adjudicate their claims. Key features should include access to advice on procedures, personal interviews (by specialized staff when justified by the asylum-seeker's vulnerability and specific circumstances), counselling (notably by NGOs), legal aid, the right to appeal negative decisions and the right to be informed of key decisions and stages in the procedure. A decision on asylum should be reasoned. Accelerated procedures were useful to resolve manifestly *well-founded* cases as well as those where abuse of procedures or an obvious lack of foundation for a claim was manifest. Asylum-seekers had a responsibility to cooperate with the authorities. Lack of documentation, however, did not in itself render a claim abusive. The issue of lack of cooperation and lack of documentation should ideally be handled as separate issues. In addition, a mere application for asylum should not *per se* be considered grounds for detention.

3. Other Issues

28. Many delegations highlighted the importance of training border officials and those at other points of entry on standards and procedures for reception at the border. One delegation believed that the participation of NGOs and intergovernmental organizations at the border could be useful to shoulder national efforts. A number of delegations offered technical and other support, and a representative of the International Association of Refugee Law Judges informed delegations of its training programme for appellate-level judges. Some delegations also described their own procedures for making special provisions for asylum-seekers with special needs, notably female asylum-seekers who needed to be attended by female staff, particularly in the case of trauma or sexual violence. Women should also be allowed to lodge an application in their own right and have it considered on an individual basis, including if accompanied by a man. One delegation suggested that the claims of the growing number of unaccompanied or separated minors seeking asylum need to be examined "outside the box", giving due consideration to whether the best interest of the child could indeed always be preserved through asylum. In terms of special needs, minors may need to be provided upon arrival with a guardian and receive psychosocial support. The single asylum procedure advocated by UNHCR was welcomed as a potentially effective, rapid means for providing international protection expeditiously to all those who need it. This procedure deserved further examination.

4. Conclusions

29. There was broad agreement on a number of issues, notably the need for basic common standards for refugee status determination procedures derived from the framework of international refugee law. Delegations also acknowledged the need for flexibility, so as to take account of national and regional specificities and domestic legal and administrative systems. States that have not yet done so were encouraged to establish fair and efficient asylum procedures. In this context, the compilation of best practice contained in document EC/GC/01/12 (notably paragraph 50) was welcomed as a useful basis for guidance. It was suggested that the Executive Committee could usefully undertake informal consultations to discuss the process of developing basic guiding principles to build on ExCom Conclusions 8 and 20, possibly in the form of a Conclusion on Asylum Procedures, and build on UNHCR's paper in greater detail. NGOs requested an opportunity to participate in such discussions, even if they are taken up within the Executive Committee. The Chairman proposed to undertake informal discussions as to whether or not to take up the question of an ExCom conclusion and, if so, the timing, participation and framework for the related consultations.

V. CHAIRMAN'S SUMMARY

30. 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 following the meeting.