

I. INTRODUCTION

1. The Executive Committee, in its 1994 Conclusion on International Protection adopted at its Forty-fifth Session (A/AC.96/839, para. 19), encouraged the High Commissioner to continue to provide international protection to persons unable to return in safety to their countries of origin as a result of situations of conflict, and who may or may not be refugees under the 1951 Convention. The Committee, recognizing the desirability of exploring further measures to ensure international protection to all who need it, asked the High Commissioner to engage in further consultations and discussions concerning measures to achieve this objective, which might include the elaboration of guiding principles, including for concerted action. This Note aims to seek some consensus on how best to approach such measures.

II. LEGAL PROTECTION

2. In UNHCR's view, the Convention and the Protocol continue to provide the necessary legal basis for the protection of refugees fleeing oppression, including those who fear persecution at the hands of non-State actors (but for whom no effective national protection is available), as well as refugees from civil wars who fear persecution because of their religion, ethnic origin, clan or imputed political opinion. Nonetheless, as the 1994 Note on International Protection observed, limitations to the existing legal tools have arisen "in part from the way in which the definition of 'refugee' in the Convention has been interpreted by some States, in part from the way the Convention together with the Protocol has been applied, and in part from limitations inherent in the instruments themselves" as well as in the fact of non-accession to this or other instruments of refugee protection (A/AC.96/830, para.21).

3. Limitations in legal protection due to States' non-accession to the Convention or Protocol, or maintenance of a geographical reservation, will continue to be addressed as part of UNHCR's ongoing promotional activities. UNHCR will also continue to promote the liberal application by States of the Convention and Protocol, consistent with the letter and spirit of those instruments, as part of its overall responsibility for international protection, and, in particular, its supervisory responsibilities under Article 35 of the Convention. This Note focuses, in particular, on the desirability of addressing certain limitations inherent in the instruments themselves.

4. One key area of refugee protection which would benefit from more detailed elaboration, in UNHCR's view, concerns the application of the Convention and the Protocol to situations of large-scale influx, particularly in situations of conflict, and where the most suitable long-term solution is considered to be voluntary repatriation. Consideration also needs to be given to the protection of individuals fleeing conflict, generalized violence or upheaval; stateless persons not covered by the application of existing international instruments; and internally displaced persons.

III. CONCERTED ACTION

5. The 1994 General Conclusion on International Protection (A/AC.96/839, para.19), noting the scale and complexity of current refugee problems, stressed the importance of international burden-sharing in reinforcing the protection of refugees. It called upon all States to take an active part, in collaboration with UNHCR, in efforts to assist countries, in particular those with limited resources, that receive and care for large numbers of refugees and asylum-seekers.

6. More concerted action is called for regarding international solidarity and burden-sharing. In some regions, such as Africa and Latin America, regional instruments explicitly provide for the protection of refugees from armed conflict and civil strife, as well as those fearing persecution. Safe refuge, at least on a temporary basis, has normally been granted in these regions in mass influx situations, despite the enormous burdens this has often imposed on impoverished countries. If protection is to continue to be extended to asylum-seekers in such situations, it is essential that the principles of international solidarity and burden-sharing are both acknowledged and acted upon in support of these receiving States.

7. In this connection, it is clear that the dimensions of refugee-related issues include a complex mixture of political, developmental, environmental, security, human rights and conflict resolution aspects, which must be addressed. Various United Nations, regional and other international organizations have important roles to play in this respect, including bodies such as the OAU, Organization for Security and Cooperation in Europe (OSCE), and International Committee of the Red Cross (ICRC), as well as non-governmental organizations (NGOs). Concerted action therefore requires not only the mobilization of international support for refugee-receiving States, but also the active engagement of all other concerned organizations in addressing this multi-dimensional issue.

IV. PROTECTION IN MASS INFLUX

8. In practice, most States that are not party to international instruments providing for the protection of refugees from armed conflict and civil strife have generally accepted the need to provide international protection to such persons, whether or not they are deemed to fall within the terms of the Convention. This general practice is reflected in the adoption of the 1994 Conclusions on International Protection (A/AC.96/839, para. 19 (n)), and has often been undertaken as a humanitarian responsibility, without specific reference to international legal obligations. It would, however, be desirable for the provision of international protection in such situations to be undertaken on a more predictable and secure legal basis.

9. Situations of conflict frequently generate mass movements, often of a mixed character in the sense that persons fleeing conflict may also be refugees within the Convention, and thus entitled to the full enjoyment of its provisions. It is important that any review of the limitations in the current international protection regime not overlook this element, thereby inadvertently diminishing the protection to which such persons are entitled.

10. In UNHCR's view, the assessment of refugee status, and the question of the long-term solutions envisaged, are central to the further examination of protection in situations of mass influx. In recent instances, refugees who fled en masse to different countries, while generally being admitted, benefited from wide variations in treatment, both initially and over time. In this connection, the basic elements of temporary protection, as identified in past Executive Committee Conclusions and subsequently in the protection of refugees from the former Yugoslavia, may assist in providing international protection in situations where the application of the Convention and the Protocol do not fully respond to the need. Taking steps towards consistent State practice regarding protection in mass influx and, in particular, appropriate standards when refuge must be prolonged, would be a further step towards achieving the universality of international protection standards.

V. ELIGIBILITY IN MASS INFLUX

11. In the General Conclusion on International Protection No. 25 (XXXIII) of 1982, the Executive Committee recognized the concern of Governments resulting from large-scale flows of persons, and expressed the hope that it would not lead to restrictive practices in the granting of asylum or in the application of the refugee concept, nor to an undermining of the essential principles of international protection. In such large-scale flows, there are normally refugees within the meaning of the 1951 Convention, including those who fear serious human rights violations -- amounting to persecution on ethnic, religious, social or political grounds -- at the hands of one or more of the parties to a conflict; and other persons whose area of residence is stricken by the indiscriminate and violent effects of armed conflict and who also require international protection. Such flows may also include persons who wish to remain outside their country of origin for other reasons.

12. UNHCR places considerable importance on the availability to asylum-seekers of fair status determination procedures. The Convention does not, however, preclude positive group determination of refugee status, which given the expense and impracticality of individual eligibility procedures, and in recognition of objective protection needs, has, in fact, been used regularly in mass influx situations. UNHCR would, therefore, encourage the use of positive group determination or an analogous mechanism in situations of mass influx.

VI. DURABLE SOLUTIONS IN MASS INFLUX

13. The international legal instruments governing refugee protection do not, in fact, presuppose permanent exile, although this has historically been the practice in some countries. In other countries, however, it has never been taken for granted that large groups of refugees, generously received and granted asylum, would integrate, except insofar as this was necessary to achieve a degree of self-sufficiency.

14. Neither the Convention and its Protocol, nor UNHCR's Statute, give special emphasis to the solution of integration. The Statute cites voluntary repatriation first among durable solutions, while the Convention identifies the circumstances under which refugee status is no longer necessary before dealing with "naturalization and assimilation" which, under the terms of Article 34, should be facilitated by Contracting States "as far as possible". In comparison, the OAU Convention, which deals prominently with the issue of voluntary repatriation, does not contain an equivalent of the Convention's Article 34 on naturalization and assimilation. While the OAU Convention refers to "settlement", it does not indicate that permanence is envisaged. In this respect, it is entirely consistent that the duration of stay should be linked to the continued need for international protection. Nevertheless, it must be recalled that an underlying function of international protection is, in the words of the OAU Convention, to provide refugees with a better life and future. It is essential that the treatment of refugees -- whether individually or in groups -- responds to this fundamental need by affording a certain stability.

15. A feature of protection in situations of mass influx has been the understanding that there may not be, in all cases, an undertaking to provide permanent settlement. The Executive Committee, in Conclusions relating to protection in situations of mass influx, has, however, emphasized the need to seek durable solutions. As early as 1979, the Executive Committee considered that states should be guided by the following considerations:

In cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge. States which because of their geographical situation, or otherwise, are faced with a large-scale influx should as necessary and at the request of the State concerned receive immediate assistance from other States in accordance with the principle of burden-sharing. Such States should consult with the Office of the United Nations High Commissioner for Refugees as soon as possible to ensure that the persons involved are fully protected, are given emergency assistance, and that durable solutions are sought. (Conclusion No. 15, (XXX) Refugees Without An Asylum Country)

In 1981, the Executive Committee concluded that

Large-scale influxes frequently create serious problems for States, with the result that certain States, although committed to obtaining durable solutions, have only found it possible to admit asylum-seekers without undertaking at the time of admission to provide permanent settlement of such persons within their borders. (Conclusion No.22, (XXXII) Protection of Asylum-Seekers in Situations of Large-Scale Influx)

16. The 1981 Conclusion further enjoins States to seek to ensure that the causes leading to large-scale influxes of asylum-seekers are as far as possible removed and, where such influxes have occurred, that conditions favourable to voluntary repatriation are established.

17. International protection in mass influx, as with any form of refugee protection, may cease when it is no longer required: when the circumstances in connection with which it was granted have been reversed or are substantially altered, removing the fear of persecution, human rights abuses, violence and conflict. Situations in which such a determination can be made are often preceded by extensive spontaneous repatriation; the next step will normally be organized voluntary repatriation, in consultation with UNHCR. Hitherto, however, the Executive Committee has not explicitly addressed the issue of situations of mass influx in which neither repatriation nor resettlement are available as durable solutions within a reasonable time-frame. The issue which the Executive Committee may wish to examine, therefore, are the conditions which attach to a more extended stay in situations of mass influx.

VII. GUIDING PRINCIPLES/BASIC STANDARDS IN MASS INFLUX

18. The need for international protection in situations of mass influx is normally manifest and, as in the case of the former Yugoslavia, most of the asylum-seekers may also be refugees within the meaning of the Convention and Protocol. Such a group should not, in accordance with the principle of non-discrimination, be subjected to any substantial difference in the standards of treatment given to other refugees. Improved standards are also warranted for reasons of practical considerations relating to the stability of the group. While durable need not, therefore, be synonymous with permanent, it is nonetheless essential that measures be taken to meet the refugee's profound need for an enhanced level of stability and certainty, particularly the ability to re-establish his or her life within a community with a reasonable degree of dignity and self-sufficiency.

19. Temporary protection was proposed by the High Commissioner as part of a comprehensive response to the crisis in the former Yugoslavia, which included the efforts of the international community and the parties directly concerned to achieve a resolution of the conflict and an end to human rights abuses. There was general agreement on the need for progressive improvements in standards beyond the minimum, when the period of temporary protection was prolonged. Even when eventual voluntary repatriation is anticipated, family reunification, employment, educational opportunities and a certain degree of integration in the country of asylum are vital to the refugees' well-being and stability.

20. The standards applicable in situations of mass influx may be regarded as complementary, interim measures of protection, and not as a substitute for the provisions of the Convention and Protocol. The minimum standards identified by Executive Committee Conclusion No. 22 were foreseen "pending arrangements for a durable solution." After a limited period, and in the absence of other developments, these standards should evolve into, or be replaced by, refugee status or a legal status and protection standards commensurate with refugee status.

21. Conclusion No. 22 (XXXII) continues to provide a solid basis for most of the essential aspects of protection in mass influx, in particular, the prohibition of refoulement (including non-admission at the frontier), and admission; non-discrimination; the non-penalization of arrivals; fundamental civil rights and the provision of basic necessities; family unity; refugees' access to courts and recognition as persons before the law; the safe location of settlements; and UNHCR's role in exercising its international protection function. It should be recalled, nonetheless, that at the time of the adoption of Conclusion No. 22 (XXXII), the concern of the international community was overwhelmingly focused on the precarious situation of asylum-seekers in a region in which few States were party to international protection instruments. Particular aspects of protection in mass influx would benefit from strengthening when applied in a more prolonged context.

22. UNHCR would propose further elaboration of the following protection aspects (in addition to reiterating the imperative principle of non-refoulement, including non-rejection at the border): the status of the protected persons and the provision of documentation; non-penalization of unauthorized entry; family reunification; freedom of movement; special provisions for unaccompanied minors; education; access to employment; and social assistance. Other issues meriting further examination include the duration of temporary protection and the conversion to another status where protection is still required, access to asylum procedures, and voluntary repatriation.

VIII. PROTECTION FOR INDIVIDUALS FLEEING ARMED CONFLICT

23. While an elaboration of the standards of protection in the context of mass influx from conflict is proposed, and bearing in mind the fact that the protections afforded by the Convention may also be applicable to many persons fleeing conflict situations, States may nonetheless receive individual asylum-seekers who have fled conflict or other internal upheaval not amounting to persecution, and who also require international protection.

24. As indicated, the legal bases for protecting individuals in such circumstances already exist in certain regions. Article 1(2) of the 1969 OAU Convention also defines as a refugee a person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. The third Conclusion of the 1984 Cartagena Declaration similarly provides an expanded definition of refugees which covers individuals fleeing their country because "their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order." Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms may also be applicable in some cases of this kind.

25. It would appear desirable to ensure the extension to such persons, in the event that they do not come within the terms of the 1951 Convention or 1967 Protocol, at least the equivalent protection to that proposed for groups fleeing similar circumstances. UNHCR proposes, therefore, that individuals fleeing conflict whose claims apparently do not encompass an element of persecution also be granted a formally protected status which could, if appropriate, commence with temporary protection, but which would then, in the absence of a material change in circumstances, be continued on humanitarian grounds, with standards equivalent to those of refugee status.

IX. STATELESS PERSONS

26. As part of the strengthening of its efforts on behalf of stateless persons sought by the Executive Committee in 1994, UNHCR has undertaken, and continues to pursue, analysis and actions which may contribute to prevention or reduction of the problem of statelessness. Statelessness is not only a human rights problem, but is also directly related to the need for prevention, as persons who are unable to obtain national protection may be compelled to move further afield, and to seek international protection. A preliminary examination of the protection of stateless persons, including the historical context, is contained in a document available to the June 1995 Sub-Committee on International Protection meeting (EC/1995/SCP/CRP.2). There is a need to clarify further the international means appropriate to extend protection to this category of persons when it is required.

X. INTERNALLY DISPLACED PERSONS

27. The protection of internally displaced persons was considered at both Sub-Committees on International Protection in 1994, and, pursuant to the detailed paper and discussions, a broad Executive Committee Conclusion was adopted (A/AC.96/839, para.20). This Conclusion recalled the frequent similarity in the underlying causes of refugee movements and internal displacement, as well as in the responses which are called for, and underlined the fact that the primary responsibility for the welfare and protection of the internally displaced lies with the State concerned.

28. As well as calling on States concerned to ensure safe and timely humanitarian access to persons in need of protection and assistance, the Conclusion also encouraged the High Commissioner to continue the efforts of her Office to put into action its internal criteria and guidelines for UNHCR involvement in situations of internal displacement, as an important contribution towards a more concerted response by the international community to the needs of the internally displaced.

29. A number of initiatives remain ongoing at the international level with respect to internally displaced persons. UNHCR continues to cooperate closely with the Representative of the Secretary General for Internally Displaced Persons, notably with regard to his efforts to compile existing international standards concerning the treatment of the internally displaced, and to develop a code of conduct comprising guiding principles in this regard. Recent events in Africa, in particular, have again demonstrated the need for a clear expression of standards, which may contribute to an improvement in the protection of internally displaced persons. In addition, they have illustrated the need to clarify further the institutional and related arrangements for cooperation to ensure the protection of the internally displaced. This aspect remains closely linked to the broad issue of extending effective protection to all victims of conflict and upheaval.

XI. CONCLUSION

30. This Note is intended to provide an outline of some of the basic considerations as well as the broad direction which UNHCR would initially propose in giving effect to the General Conclusion on International Protection adopted by the forty-fifth session of the Executive Committee in 1994 (A/AC.96/839, para 19). The views of members of the Executive Committee would enable more concrete proposals to be considered as to the nature and content of this response, giving effect, through the support of States, to the broadened protection competence entrusted to UNHCR. Subject to this, UNHCR remains willing to propose further guiding principles which might be considered in more detail as a step towards providing international protection to all who need it.

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