

Note on International Protection (submitted by the High Commissioner)

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Introduction

1. The present Note seeks to provide an assessment of current problems in the field of international protection. International solidarity and co-operation are the basic components of international protection insofar as all States forming part of the world community have an interest in ensuring that refugees, wherever they may find themselves, are treated in accordance with accepted humanitarian standards. They are also an expression of the willingness of the international community to come to the assistance of States which are most directly affected by refugee problems. The availability of such assistance is essential to enable the High Commissioner to carry out his function and in particular to extend international protection to refugees.

2. The shared interest among States in ensuring that refugees are treated according to accepted humanitarian standards is the mainspring of the High Commissioner's action in the field of international protection. In protecting refugees, the High Commissioner may indeed be required to call into question measures taken or contemplated by governmental authorities with regard to refugees. In the final analysis, however, the High Commissioner's fundamental role in extending international protection is to promote the implementation of the legal and humanitarian standards established by the world community for the benefit of refugees. In so doing the High Commissioner can only act through Governments, whose goodwill and co-operation are of paramount importance.

3. Many issues arising with regard to international protection cannot be treated in isolation and without reference to the problems confronting States in dealing with refugee situations, either in their own territory or on the global plane. These problems need to be clearly borne in mind not only in view of their magnitude and complexity but also because of their impact on international protection. In the following paragraphs an endeavour is made to place the problems experienced by States and the difficulties confronting refugees and asylum-seekers in relation to one another. The result gives rise to concern insofar as it shows a marked deterioration, in the situation of refugees and asylum seekers in many areas of the world accompanied by a decreasing awareness of the special situation of the refugee and of the need to ensure that the standards which have been developed for their benefit should not be diminished in any way. Although this aspect of the wider picture is a disquieting one, it should not be overlooked that large numbers of refugees in different areas of the world continue to receive asylum and to be treated according to internationally accepted standards.

Problems confronting States which are of special relevance to the international protection of refugees

4. Before describing the various difficulties currently being faced by refugees and asylum-seekers with regard to the protection of their basic rights, it is proposed to outline a series of problems which, as perceived by the Office, are presently confronting States in the refugee field.

5. In the note on International Protection submitted to the Executive Committee at its thirty-third session, mention was made of a number of trends and their implications for the international protection of refugees and asylum-seekers.¹ These trends are the continuing large-scale influx of asylum-seekers experienced both by developed and by developing countries, the mass movement from less-developed areas of the world of persons who

voluntarily leave their country of origin drawn by the prospect of economic betterment, the reduced capacity of countries to absorb large numbers of new arrivals, a perceptible resentment against aliens generally and a tendency to confuse refugees with ordinary aliens which has led in large measure to a decreased awareness of the special situation of refugees.

6. These trends, which have persisted since the Executive Committee's thirty-third session, have made more difficult the task of identifying durable solutions for refugee problems. In earlier years the world refugee problem was of more manageable proportions, due to the fact that durable solutions were more readily available. In many areas of the world refugees could be integrated in first asylum countries and where such integration was for various reasons not possible, resettlement in third countries was often a viable alternative. Moreover, in the post colonial period voluntary repatriation was often a realistic and important solution. A balance, albeit a delicate one, was thus achieved between the emergence of refugee problems and the finding of durable solutions, which facilitated the implementation of principles of international protection.

7. In a number of more recent refugee situations, local settlement has become a less feasible solution due to the excessively large burden placed on countries receiving refugees and the availability of resettlement as an alternative solution has become more limited. Moreover, due to the nature and political background of many current refugee problems, the solution of voluntary repatriation, if attainable, may only be a longer-term prospect.

8. The fact that durable solutions are no longer as readily available as in the past heightens tensions resulting from refugee problems and thus renders more difficult the accomplishment of the Office's international protection task. In this situation, it is of critical importance for the States most affected to be able to rely unreservedly on the co-operation of the international community in finding solutions to refugee problems. Such co-operation should ensure that material and financial assistance are provided whenever necessary in order to facilitate integration in asylum countries. It should also be directed towards creating the requisite political climate to enable the solution of voluntary repatriation to be realized so that refugees may return home in safety and with dignity. At the present critical juncture, however, it is also essential for the international community to address the more fundamental aspects of refugee situations, i.e. the root causes of refugee problems and the need for Governments to avoid measures likely to give rise to refugee flows, which are today characterized by violations of human rights and, increasingly, by military or armed activities. Such action needs to be taken at the initiative of States or through the competent political organs of the United Nations and in furtherance of friendly and peaceful relations between States. It must form an indispensable parallel to humanitarian action to resolve refugee problems once they have occurred.

9. Effective international co-operation along the lines indicated above will help to ensure that accepted principles of international protection are not undermined, that countries of first asylum continue to observe the principle of *non-refoulement*, that they follow liberal practices with regard to the admission of asylum-seekers and treat refugees and asylum seekers in accordance with recognized humanitarian standards. Insofar as asylum-seekers in large-scale situations are concerned, basic minimum standards for their treatment have already been identified by the Executive Committee in the conclusions adopted at its thirty-second session.²

Difficulties currently confronting refugees and asylum-seekers in the context of international protection

10 As indicated in the introduction, a marked deterioration in the situation of refugees and asylum-seekers is apparent in different areas of the world. This deterioration relates in particular to the admission and treatment of asylum-seekers and refugees and continuing threats to or violations of their physical safety.

11. In a number of countries refugees have been refused even temporary admission and have been forced to remain in border areas where their physical safety and even their lives have been in the gravest danger. When temporary asylum has been granted, refugees are frequently confined in camps for long periods without durable solution in sight, with the resulting hardship which this situation obviously entails.

12. There has also been a growing tendency on the part of Governments to consider asylum as purely temporary without sufficient regard to the urgent need for refugees to find a durable solution.

13. In a number of instances refugees have been exploited for political and military purposes and have been denied the possibility of a humanitarian solution which their situation urgently demands.

14. In the Note on International Protection submitted to the Executive Committee at its thirty-third session³ and in the High Commissioner's Report to the thirty-eighth session of the General Assembly,⁴ mention is made of the practice of a number of countries confronted with large numbers of asylum-seekers to resort to measures involving various forms of "deterrence". These measures include the detention of asylum-seekers and the reduction to a bare minimum of living standards in temporary camps in order to discourage further arrivals. Elsewhere, asylum-seekers are not permitted to earn their livelihood or no longer receive the assistance previously available to them.

15. The detention of refugees and asylum-seekers merely because they are regarded as illegal immigrants continues to present a serious problem. In some countries, an asylum-seeker may be released once the bona fide character of his or her claim is established. Elsewhere, asylum-seekers are automatically detained for indeterminate periods of time without any distinction as to whether their claim to refugee status may or may not be well-founded.

16. There are indications that in many countries it is becoming increasingly difficult for refugees to obtain recognition of their refugee status. In a number of States recourse is had to a very strict interpretation of the relevant criteria for refugee status and/or to an unduly high standard of proof. In certain countries where this possibility is provided for in national legislation there has also been a tendency to grant a lesser status with a consequently narrower range of entitlements – to persons who on a fair interpretation of the relevant criteria should be accorded full refugee status.

17. Continuing threats to or violations of the personal safety of refugees call for urgent action by States. The underlying causes of this phenomenon are multiple and complex. There is, however, no doubt that it is at least partly the result of the specially vulnerable situation in which refugees and asylum-seekers find themselves in different areas of the world. This vulnerable situation results in particular from their being obliged to spend unduly long periods in camps, in a general climate of hostility, without their refugee character being fully understood. In circumstances of this kind refugees may well become victims of brutality, degrading treatment and abduction.

18. Refugees and asylum-seekers, whether accommodated in camps or settlements or integrated in the local community, have been the object of indiscriminate bombardment and

incursions by armed forces of their countries of origin which appear to consider that such attacks can be carried out with impunity. In one instance, an asylum country finding itself in a particularly vulnerable position has been subjected to demands that refugees be either forcibly returned or removed from its territory.

19. With regard to pirate attacks on asylum-seekers in boats in the South China Sea, while there may have been a modest improvement since the inception of the UNHCR/Royal Thai Government anti-piracy programme, a large proportion of boats carrying asylum seekers continue to be attacked – many of them repeatedly – and multiple rape, murder and abduction are constant occurrences. The overall picture therefore continues to give rise to the most serious concern.

Respective responsibilities of the international community and the High Commissioner in meeting current problems of international protection

20 The critical nature of the difficulties confronting refugees and asylum-seekers as described above suggests that the principles which have been developed by States for the protection of refugees and asylum-seekers are in real danger of being eroded. Efforts to secure a reversal of this trend are a priority task of the office in the field of international protection. It should be borne in mind, however, that many current refugee problems are very different, both in scope and nature, from those which existed when the Office was established some thirty years ago and it is therefore no longer possible to rely exclusively on traditional solutions. Recourse must therefore be had to new and imaginative approaches which will also be conducive to the exercise of the High Commissioner's international protection function.

21. It must be recognized that the High Commissioner can only act effectively with the goodwill and co-operation of Governments, which have the fundamental responsibility for resolving refugee problems. It is therefore important that Governments take the necessary initiatives on the political plane, e.g. by making efforts to remove the root causes of a particular refugee problem or by creating conditions favourable to voluntary repatriation or, in the context of assistance, by enabling asylum countries to bear the burden of refugee problems and by ensuring the availability of durable solutions.

22. In this context of international co-operation the High Commissioner has an important role which is limited only by the humanitarian and non-political character of his Office. His efforts must be directed towards stimulating the creation of an international climate in which action to resolve refugee problems can be effectively initiated and co-ordinated. In carrying out this catalytic function the High Commissioner must use every means at his disposal to promote a greater awareness of the nature and dimensions of refugee problems and the development of constructive ideas for their solution, not only at the governmental but also at the non-governmental and academic levels.

23. The dual questions of the root causes of refugee problems and the action which could appropriately be taken to alleviate them also need to be addressed. In view of their political nature, these tasks are not the direct responsibilities of the High Commissioner but must form an integral part of an overall approach to the refugee problem.

24. Within this framework of constructive international co-operation, the High Commissioner must continue to pursue his international protection goals by promoting the reaffirmation and effective implementation of the principles of international protection. He must also seek to ensure that these principles are further developed to cover those aspects of refugee problems which are not presently covered by appropriate legal principles.

25. The principles and standards set out in the basic international refugee instruments contain a lacuna insofar as they do not directly deal with the admission of asylum-seekers and only to a limited extent with the standards of treatment to be afforded to them pending a determination of their status. These questions have been addressed by the Executive Committee in the context of large-scale influx and the conclusions adopted at its thirty-second session provide a valuable point of departure for further legal developments in this area.⁵

26. The various problems encountered by refugees and asylum-seekers with regard to their physical safety also suggest that this matter is not sufficiently covered by existing principles of international law and points to the possible need to define more clearly the responsibilities of the various parties involved. In this context it is necessary to pay particular attention to preventive measures for ensuring that refugees and asylum-seekers are not exposed to the risk of violations of their personal safety. Also required is a more explicit definition of the obligations of the international community towards refugees and asylum-seekers who are victims of such violations.

Conclusions

27. An analysis of current trends in the field of international protection clearly demonstrates that the exercise of this basic function of the Office has entered a critical phase. This calls for an urgent and renewed effort not only by the High Commissioner but also by the international community. The point of departure must always be the responsibility of Governments to establish a comprehensive framework of international co-operation so as to enable the High Commissioner to carry out his protection tasks in the most effective manner. The High Commissioner for his part must seek to ensure that the principles of international protection are strongly reaffirmed, effectively implemented and, where necessary, further developed. Beyond this, the High Commissioner has an important role to play in stimulating endeavours to strengthen international co-operation and in promoting an overall humanitarian approach which to the refugee problem favourable to the exercise of his international protection function.

1 A/AC.96/609, paragraph 10.

2 A/36/12/Add.1, paragraph 57(2)

3 A/AC.96/609, paragraph 11.

4 A/38/12.

5 A/36/12/Add.1, paragraph 57 (2)