

Promoting Protection: Multilateral Efforts to Enhance Refugee Protection and the Search for Durable Solutions

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Abstract

Many commentators have expressed concern about the state of the international refugee regime, including perceived deficiencies in how States have addressed issues related to access to asylum and the differentiated quality of protection offered among countries. Importantly, however, the last three years have seen a concerted effort by the international community to reinvigorate debate over practical approaches to refugee protection and the need to identify solutions for refugees in protracted refugee situations. This process has resulted in a frank exchange of views among a broad range of States, NGOs, and academics about the challenges and opportunities presented by refugee and other population flows. It has led to a reaffirmation of the centrality of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and a recognition that the development of new tools, strategies, and mechanisms is warranted if the international community is going to respond effectively to contemporary population movements. Canada has been at the forefront in these international discussions, promoting an agenda aimed at securing more holistic responses to refugee protection and using creative approaches to resolve outstanding refugee caseloads. A key challenge will be to sustain the momentum and focus on practical efforts geared towards securing the ultimate goal of refugee protection – finding durable solutions.

Résumé

Bon nombre d'observateurs ont exprimé des préoccupations sur l'état actuel du régime internationale de protection des réfugiés, y compris les manquements perçus dans la manière dont des états ont abordé les questions relatives à l'accès au droit d'asile et les différences qui existent de pays en pays dans la protection offerte. Ce qui importe, cependant, c'est qu'au cours des trois dernières années, la communauté internationale a fait un effort concerté pour relancer des débats dans le but de trouver des approches concrètes visant à assurer la protection des réfugiés et des solutions pour des situations de réfugiés de longue durée. Cette procédure a permis des échanges de vue très francs entre un grand nombre de gouvernements, d'ONG et d'universitaires sur les défis et les occasions que présentent les mouvements de réfugiés et d'autres personnes. Cela a amené une réaffirmation du rôle central que doivent jouer la Convention de 1951 sur le statut des réfugiés ainsi que son protocole de 1967, et la reconnaissance du fait qu'il est impératif de développer des outils, des stratégies et des mécanismes nouveaux si la communauté internationale veut répondre efficacement aux flots de populations contemporains. Le Canada a joué un rôle de premier plan dans ces discussions internationales, promouvant un agenda visant l'adoption de stratégies plus holistiques pour la protection de réfugiés et faisant usage d'approches imaginatives pour résoudre les problèmes de réfugiés. Le grand défi reste de pouvoir conserver cette grande impulsion et de se concentrer sur des efforts pratiques pour atteindre le but ultime de la protection des réfugiés, c.-à-d. trouver des solutions durables.

Introduction

Of the some 20.6 million or so “persons of concern” identified in 2003 by the United Nations High Commissioner for Refugees (UNHCR), just over 11 million were considered to be refugees while just under one million were “asylum seekers.”¹ The vast majority of the world’s refugees are found in Asia and Africa, while most asylum seekers are in western Europe and North America. What makes these figures important is the often striking inequity in the distribution of resources made available among asylum seekers and refugees. To take only one example, in 2002, Canada contributed some \$29 million, in Canadian dollars, to UNHCR while in fiscal year 2001–02 it spent \$104 million for the work of the Immigration and Refugee Board (itself only a part of the complex refugee status determination system in Canada).²

Countries like Canada spend a significant amount of resources allocated to refugee protection on legal proceedings to determine whether or not a person requires international protection. Indeed, while most persons found to be refugees in developed countries are provided a secure legal status, and thus a “durable solution,” it is too often the case that despite many host countries’ efforts to provide needed sanctuary, refugees in developing countries can languish for years in camps or on the margins of cities, without a secure status or any prospect of a permanent solution. In addition, the quality of protection and assistance available to most refugees in the world differs dramatically among countries.

In this context, it seems fair to ask how States can best balance the needs of the relatively few individuals able to reach Europe or North America with their response to the needs of the vast majority of refugees who remain in Asia or Africa. In one form or another, this is a question that both States and UNHCR have been grappling with for the past several years. Over the past three years in particular, we have seen important efforts at the multilateral level by Governments and other actors to identify new approaches to many pressing refugee protection issues. Begun as part of the UN High Commissioner for Refugees’ Global Consultations on International Protection, this process has led to the development of new tools and an important space for candid multilateral discussion on how to provide effective protection, assistance, and solutions for refugees.

This paper will outline several recent developments at the multilateral level, highlighting the work States are collectively pursuing with UNHCR and others, including a description of Canada’s particular objectives and contributions to these discussions. Our aim is to provide some insight and direction to a debate in the field of international protection that is perhaps not often well publicized or

understood, but which will undeniably have important ramifications for refugee protection in the years ahead.

Overview of recent developments

An important revitalization of debate in the field of international refugee protection has emerged at the multilateral level. Not only has this enhanced dialogue included a large number of States, it has also included international organizations, NGOs, experts, and refugees themselves. This discourse has stemmed from a growing concern and awareness of the challenges being faced by the international refugee regime.

As articulated most explicitly by the UNHCR, the challenges most often noted are: the application, in some quarters, of a stricter interpretation of the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol; the development of complementary forms of protection; the impact on asylum systems of so-called “mixed flows” of refugees and asylum seekers with economic migrants; the challenge presented by human trafficking and smuggling; and the failure to resolve protracted refugee situations and the impact on host governments.³ Of course, many of these challenges are not new, and the antecedents for what has become the basis for international co-operation to address these concerns goes back a decade or more.⁴ Nevertheless, in 2000–01, a process was initiated by the UNHCR that provided a useful framework for concerted action. This process, encompassing the Global Consultations on Refugee Protection (and its main outcome, the Agenda for Protection), Convention Plus, and the International Forum for International Refugee Protection, has been particularly important in enabling States to engage in a systematic review of contemporary refugee protection issues. Ultimately, the full process seeks to promote a better understanding of the strengths and limitations of the 1951 Convention; the role of other international instruments and mechanisms; and the identification of gaps which may then lead to the development of new and innovative approaches to address them.

The Global Consultations and the Agenda for Protection

The Global Consultations on International Protection (carried out over a period of eighteen months) were composed of three tracks: Ministerial Meeting of States Parties; Expert Roundtables; and policy formulation in the context of the Executive Committee Framework. Although complex and challenging,⁵ this initiative by the UNHCR was both timely and comprehensive.

Track one, the first-ever meeting of States Parties, was held in Geneva, in December 2001. The meeting offered an

important opportunity for States to reaffirm their commitment to the fundamental tenets of international protection and the refugee regime. Governments adopted a Declaration that, *inter alia*, confirmed that the principle of *non-refoulement* was embedded in customary international law. The Ministerial meeting further confirmed that while the 1951 Convention and its 1967 Protocol had a central place in the international refugee protection regime, the regime was not static and should be developed further in ways which would complement and strengthen the Convention – including pursuing comprehensive strategies so that refugees would have “access to safer and better conditions of stay and timely solutions to their problems.”⁶

Track three involved all member states of the UN with an interest in refugee issues, although not necessarily party to the 1951 Convention. Four meetings were held, focusing on the protection of refugees in mass influx situations; the interface between asylum and migration; asylum processes in the context of individual systems; the search for durable solutions; and protection of refugee women and children. Many of these discussions were buttressed or informed by regional seminars and meetings on maintaining the civilian and humanitarian character of asylum (South Africa), incorporating protection safeguards into interception measures (Canada), strengthening the capacity of countries of first asylum (Egypt); and resettlement (Norway).

The Global Consultations Process culminated in the negotiation and agreement of an “Agenda for Protection.” The development of the Agenda was an important accomplishment, balancing the interests of a variety of actors, including northern and southern governments, while seeking to ensure the central objective was to improve approaches to refugee protection. Jointly adopted by UNHCR and Governments in October 2002, elements of the Agenda were seen as equally applicable to NGOs and other partners. Although not a legally binding document, the Agenda for Protection provided an ambitious framework of action to be pursued over the next five years (including agreed areas for follow-up to address the specific concerns identified during the Global Consultations process). In essence, the Agenda will be pursued through several parallel activities, with some elements strictly intended for the UNHCR to address, while others will require negotiated agreements among Governments. With respect to the latter, the Executive Committee has agreed and started on a multi-year work program to implement aspects of the Agenda. Indeed, within the past eighteen months, several Executive Committee conclusions identified within the Agenda have been adopted, including those related to the civilian and humanitarian character of asylum, registration, the return of persons not in need of international protection, sexual

exploitation of refugees, and protection safeguards in interception measures.

Convention Plus and the Forum for International Protection

In the fall of 2002, building upon the ideas which emerged in the Global Consultations, the UN High Commissioner for Refugees, Ruud Lubbers, articulated more clearly a proposal to create a Forum to discuss specific refugee protection issues related to the Convention Plus initiative. In outlining his vision (which has been modified on several occasions), the High Commissioner has stressed that the Convention Plus initiative is intended to complement and buttress the implementation of the 1951 Convention, *inter alia* through the development of “special” multilateral arrangements on thematic issues and specific protracted refugee situations where appropriate and consistent with Article 8 of the UNHCR Statute.

In March 2003, the first meeting of the Forum was held, focusing on the potential strategic use of resettlement as one element in the broader context of the Convention Plus initiative. This discussion, guided by Canada (and with the input of NGOs), led to work on the development of draft elements of what constitutes the strategic use of resettlement. A next Forum meeting is scheduled for March 2004, at which work on how to target development assistance to support durable solutions and clarifying the responsibilities of States with respect to secondary movements will be discussed. As yet, no country situations have been identified as a potential case to which a multilateral “comprehensive approach” can be applied. It is important to note that the Convention Plus initiative has been controversial. Many States question the nature of any “comprehensive approach” and are concerned about the potential impact on the 1951 Convention. At the same time, UNHCR has stressed the need to continue the process in order to develop creative responses to address ongoing and emerging protection problems.

Canada’s Contribution

Recognizing its potential for norm setting and the valuable forum for examining complex, new, and emerging refugee protection issues, Canada was extremely active throughout the Global Consultations process and has been engaged in discussions related to Convention Plus. Canada supported the UNHCR and other partners in the call for creative approaches to the challenges presented by contemporary refugee flows and other movements, including via efforts behind the scenes that contributed constructively to public discussions. Canada had likewise supported round tables and initiatives on specific issues such as the civilian and

humanitarian character of asylum; incorporating refugee protection safeguards into interception measures; the strategic use of resettlement; strengthening the protection of refugee women and children; and addressing sexual and gender-based violence. In all of these discussions, Canada has repeatedly emphasized the need to ensure a shared agenda – one which has implications and responsibilities for both northern and southern States. As such, the Government of Canada helped to shape the Agenda for Protection by ensuring issues of interest to both developed and developing countries were identified for follow-up action and consideration.

Canada has also sought to maximize the opportunities presented in recent multilateral contexts in order to promote a more holistic approach to refugee protection and to propose the development of more creative approaches to resolve outstanding refugee caseloads. To be truly effective, Canada has argued, protection must be more than a legal concept, encompassing also concerns for physical and material well-being. In this vein, efforts have been focused, *inter alia*, on reinforcing the civilian and humanitarian character of asylum and on encouraging the UNHCR to focus institutional reforms on rebuilding its protection capacity and ensuring that protection resources are deployed where needs are greatest.

The Civilian and Humanitarian Character of Asylum

From the outset of the Global Consultations Process, Canada strongly supported the idea of developing proposals to enhance protection in the context of mass flows, an issue it has been concerned about for many years.⁷ Certainly, while concerns about protection of refugees in mass influx situation is not new, it received renewed and more urgent international attention in the mid-1990s with events in the Great Lakes Region of Africa and the Balkans. Such circumstances bring to the fore a number of important issues for host states and the international community, not least with respect to the presence of combatants or criminal elements among large movements of refugees. The situation showed that any failure to ensure the civilian and humanitarian character of camps can have serious implications for individual refugee protection and well-being. Furthermore, it can increase tensions within host states and among regional actors and, in some instances, can internationalize an initially internal conflict.

While the primary responsibility for ensuring the physical security and legal protection of refugees lies with host governments, they often do not have the capacity or capability to do so. As such, Canada has been at the forefront of the debate around insecurity in refugee camps, and has

directed its efforts at both norm building and the elaboration of operational requirements. For instance, the Canadian-led Security Council resolution on the Protection of Civilians in Armed Conflict (S/1296/2000) included a specific provision aimed at addressing the presence of armed elements in refugee camps. Canada has also hosted two international workshops on this issue, focusing on the potential role which can be played by international police and military forces in support of host Governments.⁸

The decision by the UNHCR to have one element of track three of the Global Consultations focus on the civilian character of asylum provided Canada with an important opportunity to move this agenda forward and engage a broad number of States on the development of practical responses in addition to standard setting. Along with several African States, Canada argued that this issue should be given prominence in the Agenda for Protection, and helped to craft what ultimately became Goal Four of the Agenda, “Addressing Security-Related Concerns More Effectively.” Able to seize upon the language of Goal Four, Canada collaborated with UNHCR in the development of what became Executive Committee Conclusion number 94 on the civilian character of asylum in the summer of 2002.⁹ The Conclusion was an important advancement in that States agreed to identify general principles on the sensitive issue of camp security. It was followed in 2003 with a conclusion focused on Sexual and Gender-Based Violence – another critical aspect of Goal Four.

In parallel with these normative efforts, Canada sought to operationalize policy initiatives. In January 2002, Canada deployed two Royal Canadian Mounted Police to Guinea (on a pilot project basis) to work with UNHCR and Guinea officials in their efforts to improve security within the refugee camps. Currently, one officer is acting as a liaison between UNHCR and Guinean authorities, while a second is developing a training package for a mixed brigade of specially selected police officers and gendarmes responsible for maintaining the safety and security of the refugee camps. As a concrete demonstration of international solidarity, it is hoped the pilot project will help to determine whether such deployments are a viable approach and response to calls for greater international “burden sharing,” particularly in the context of mass influxes.

Strategic Use of Resettlement

Although the search for durable solutions is central to UNHCR’s mandate, it has often been overshadowed by the immediate needs of assistance and protection. As such, the renewed attention given to the ultimate goal of refugee protection – a permanent solution – either in the refugee’s country of origin or in another country is seen as a positive

development within the Global Consultations Process. The 2001 Declaration of States Parties reaffirmed the importance of the search for solutions, recognizing that while voluntary repatriation remains the first choice for most refugees, local integration in a country of first asylum or resettlement to a third country should remain viable responses. Third-country resettlement was addressed in the Global Consultations as a durable solution in its own right, and referenced as a potential tool for international burden sharing, always based on a firm foundation of protection need. This multi-dimensional understanding of resettlement was also reflected in the Agenda for Protection.¹⁰ In launching the Convention Plus initiative in 2003, UN High Commissioner Lubbers also specifically called for new multilateral resettlement arrangements to potentially respond to contemporary refugee protection challenges.

The challenge of using resettlement more strategically was taken up initially by a working group of a number of traditional resettlement countries. With Canada as its chair, the working group developed a discussion paper that was presented to UNHCR's Standing Committee on June 3, 2003. Of particular note, the working group sought to set out a clear conceptual basis for "strategic resettlement," defining it as "the planned use of resettlement that maximizes the benefits other than those received by the refugee being resettled."¹¹ The working group's paper posited that benefits could accrue to other refugees, hosting states or the international protection regime in general. Building on the discussion generated by this paper at Standing Committee, Canada led discussions on strategic resettlement at the first meeting of the High Commissioner's Forum on International Protection, which was convened in Geneva in June 2003. At that meeting Canada sought to prompt a discussion of modalities for applying the concepts developed in the working group paper through the mechanism of a Convention Plus special agreement. As a result of the debate at the Forum, Canada and the UNHCR jointly convened a small "core group" of countries from both North and South, with the aim of developing a "tool kit" of elements related to resettlement that could be drawn on by States and the UNHCR in the creation of a Convention Plus special agreement. It is expected that once the core group completes its work, the elements will be presented to a future meeting of the Forum. Canada's ultimate goal in this exercise is to contribute through the Convention Plus initiative to new and hopefully comprehensive approaches to providing durable solutions to entire refugee populations.

Future Directions

Given recent developments at the multilateral level and the reinvigorated debates in the field of international protec-

tion, the question can rightly be asked, "what has this process ultimately contributed to?" Are refugees better protected now than they were in 2001? Is there a shared commitment to refugee protection and the search for durable solutions among States? What can be said with confidence is that, while the entire multilateral process of debate over the last three years has not been a panacea, it has been remarkable for its candour and pragmatic tone. It has also been significant in that it has drawn in not only those States that would normally be expected to engage in policy discussions related to refugee protection, but also a broad variety of others, in particular from the developing world. The outcomes to date have included the negotiation of new Conclusions of the UNHCR Executive Committee, elements of General Assembly resolutions, new guidelines and field manuals, and expert meetings and recommendations for future action. Certainly if one were to prepare a report card at this stage, however, the results would be mixed, as much of what has been initiated will take some time to be integrated into policies and programming and will require monitoring. Nonetheless, an important set of benchmarks has been set and a fundamentally important dialogue begun.

It is clear that Governments, UNHCR, and others will need to continue to focus on making protection effective and practical, and solutions more accessible, so that refugees are not left to languish for protracted periods of time unable to contribute to their countries of asylum or to sustainable peace in their countries of origin. Multilateral processes offer an invaluable forum for States and other partners to engage collaboratively instead of adopting *ad hoc* and unilateral approaches which are not ultimately aimed at meeting broader needs of refugees. All those who participated in discussions over the last several years have acknowledged that the foundations of the refugee regime are sound but need to be revitalized. In essence, the status quo is not sufficient enough to help us address the current international context and the panoply of challenges presented by contemporary population movements.

In pursuing these ideas, it is essential that the international community not accept a lowest-common-denominator approach to protection but, rather, seek to promote a high but practical standard which is available to a larger proportion of the world's refugees. To accomplish this, it will be important over the next several years for States, UNHCR, NGOs, and other experts to further develop, amongst other things, the concept of "effective protection," including agreement on standards and indicators in refugee contexts. As the High Commissioner continues to promote Convention Plus and the idea of identifying lasting solutions for specific protracted refugee situations, emphasis should be placed on pragmatic approaches rather than

necessarily going down the road of rigid or formalistic agreements on generic themes. In addition, in a climate where new resources may not be easily accessible, Governments will likewise need to be creative in examining not only how they can create greater synergies amongst the policy levers and program tools that exist in various Ministries, but also to re-examine the efficiency of existing tools and whether resources can be reallocated to better achieve the ultimate goal of refugee protection.

Certainly, the questions posed above are clearly complex. To avoid responses which will not ultimately meet the individual needs of refugees or States' interests, nor truly help to ensure a more equitable international response, caution will be needed to avoid the pull towards overly simplistic approaches in an increasingly complex international environment.

Notes

1. <[Http://www.unhcr.ch/cgi-bin/texis/vtx/basics](http://www.unhcr.ch/cgi-bin/texis/vtx/basics)>.
2. Stephen Gallagher, "Canada's Dysfunctional Refugee Determination System," Fraser Institute Public Policy Sources No. 78, (Vancouver: Fraser Institute, December 2003).
3. Erica Feller, "The 1951 Convention: Five Decades of Refugee Protection," *Refugee Survey Quarterly* 20 (2001): 2.
4. See, for instance, the Report of the Working Group on Solutions and Protection to the 42nd Session of the Executive Committee of the High Commissioner's Programme, EC/SCP/64, 12 August 1991.
5. This is particularly true of the emphasis of track three, which focused attention not only on issues either inadequately or not at all covered by the 1951 Convention, but also sought to develop possible approaches or standards for addressing them.
6. Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, Geneva 13, December 2001, paragraph 13; Report of the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, HCR/MMSP/2001/10, 18 January 2002, page 11. Track two of the Consultations process consisted of a series of expert roundtables held during 2001 on specific issues in the interpretation of the 1951 Convention, on which greater clarity was considered necessary.
7. Among other things, Canada has developed and led resolutions on refugees and mass exoduses at the UN General Assembly and Commission on Human Rights since the 1980s.
8. See <http://www.dfait-maeci.gc.ca/foreign_policy/human_rights/ha6-forced-en.asp>.
9. <[Http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.htm?tbl=EXCOM&id=3dafdd7c4&page=ex ec](http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.htm?tbl=EXCOM&id=3dafdd7c4&page=ex ec)>.
10. For example, under Goal Three, "Sharing of Burdens and Responsibilities," the Agenda includes objectives related to the use of resettlement as a response to situations of mass displacement. Under Goal Five, "Redoubling the Search for Durable Solutions," several objectives relate to new approaches to

settlement, including "a more strategic" use of resettlement to maximize its benefits.

11. "The Strategic Use of Resettlement" (A discussion paper prepared by the Working Group on Resettlement), EC/53/SC/CRP.10/ADD.1 03 June 2003.

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