



UNHCR

The UN Refugee Agency

*United Nations High Commissioner for Refugees
Regional Office for Australia, New Zealand, Papua New Guinea and the South Pacific*

NEWSLETTER



Photo: The Age / Andrew Taylor

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Farewell message from Michel Gabaudan

ON 2 JULY, Michel Gabaudan finished up as Regional Representative in Canberra to take up the post of Regional Representative for UNHCR in Beijing. Here, he reflects on his (almost) three years in Canberra through a very interesting time.

I arrived in Canberra in mid September 2001 just after the 'Tampa crisis'. It was a time when a myriad of legislation was being introduced in the Australian parliament and the beginning of the Pacific Solution.

As I depart almost three years later, the last of the Tampa caseload on Nauru have recently been recognised as needing international protection, and talks are well underway with resettlement countries to see these remaining 22 people finally find a place to call home. The other remaining caseloads on Nauru are also dwindling in number, and I am hopeful that the authorities are on the verge of resolving that situation soon.

The last few years has been a time when, internationally, the protection system has been challenged. Challenged by large numbers of people on the move (including economic migrants as well as refugees) and the unilateral moves of states to tighten their borders, accompanied by some tough rhetoric on 'border protection'.

Australia has proved no exception and, indeed, in many ways has been at the vanguard of these changes. It has introduced vigorous legislation which, at times, does not sit comfortably with international protection principles.

We do recognise that states have legitimate concerns with secondary movers. But, as previously raised in Senate submissions, we are concerned with some of the unilateral measures introduced including: aspects of the Temporary Protection Visa (TPV) regime and the 'Pacific Solution', the mandatory, prolonged and non-reviewable nature of detention, restrictive interpretations of the Convention and of the principle of effective protection.

UNHCR has tried to respond to state concerns with proposals and ideas that take into account the needs of first asylum, transit and destination countries. It is difficult to find a simple mechanism that will satisfy such divergent interests, but this is precisely what the High Commissioner is seeking to promote in his Convention Plus initiative. (See *Convention Plus at a glance* in this issue.)



Despite our differences on policy, we have been pleased with the response of the Australian Government when approached on individual cases and recognise the

pragmatic efforts made on behalf of many individuals.

I also believe the Bali process has been a very useful forum to develop a regional awareness of trafficking and smuggling issues, and the place of refugee protection within that.

I am very appreciative that funding from both Australia and New Zealand for UNHCR operations worldwide has increased in 2004 from the previous year and that Australia has increased its refugee resettlement quota from 4,000 to 6,000.

I also value our relationship with the New Zealand authorities and in particular their humanitarian, practical and cooperative approach to finding solutions in the region.

Elsewhere in the region, over the past few years we have seen progress in the adoption of draft refugee legislation in Papua New Guinea, Fiji and the Solomon Islands. In this area, we have greatly appreciated the assistance of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), the Refugee Review Tribunal, the New Zealand Immigration Service and the Refugee Status Appeals Authority.

UNHCR values the very good relationships we've established with civil society, including NGOs and legal practitioners throughout the region.

Finally, as we see the asylum statistics for industrialised countries continue their downward trend (that began in 2002), we can reflect that we have moved through a time of crisis in refugee protection. One good byproduct of crises is that they generate reflection. In time, I hope there can be a less stringent and more negotiated approach to asylum and refugee issues as people realise the threats they perceived were, on reflection, perhaps not all that great after all.

Thanks to all my friends and partners for the valued partnerships and good working relationships we have developed over the past few years. I will always value them.

High Commissioner visits Australia and New Zealand

UN High Commissioner for Refugees Mr Ruud Lubbers made a short visit to Australia and New Zealand in late March meeting with key ministers, officials and NGOs on both sides of the Tasman.

In Australia, Mr. Lubbers met with the Minister for Immigration, Multicultural and Indigenous Affairs Senator Amanda Vanstone and Minister for Citizenship and Multicultural Affairs Mr Gary Hardgrave, as well as Foreign Minister Downer and the Prime Minister, John Howard. He also visited the Blacktown Migrant Resource Centre to view the range of services provided by Australia to resettled refugees, spoke at a lunch of business leaders and met with representatives from key NGOs.

Mr Lubbers was accompanied on his visit by Erika Feller, UNHCR's Director of International Protection and Jean-Marie Fakhouri, Director of the Asia Pacific Bureau.

In New Zealand, Mr Lubbers met with the Foreign Minister Phil Goff, Immigration Minister Paul Swain, Prime Minister Helen Clark, and The Honourable Dame Silvia Cartwright, Governor General of New Zealand. He also visited the refugee status determination branch at the New Zealand Immigration Service, officially opened the new offices of the Refugee Status and Appeals Authority and toured the Mangere Refugee Resettlement Centre.

It was at Mangere, where Mr Lubbers' visit coincided with the arrival from Afghanistan of the families of the 'Tampa boys'.



Photo: DIMIA / A. Braithwaite

High Commissioner visits childcare facilities at Blacktown Migrant Resource Centre.



The High Commissioner presenting awards to law students Bonnie Allan and Carmen Miragaya, winners of the UNHCR Prize for International Law of Human Rights 2003.

Photo: ANU

High Commissioner meeting Minister for Citizenship and Multicultural Affairs Mr Gary Hardgrave.

Photo: DIMIA / A. Braithwaite





The High Commissioner reflects while enjoying traditional dancing by children from the Hazara Community.

Photo: The Age/Jason South

HC meets up with ‘Tampa boys’ at Mangere Resettlement Centre, Auckland New Zealand

UN High Commissioner for Refugees Mr Ruud Lubbers’ visit to Mangere Refugee Resettlement Centre in Auckland on 18 July coincided with the arrival of 129 refugees from Afghanistan and Pakistan.

Most of the arrivals were relatives of the ‘Tampa boys’, rescued at sea by the Norwegian container ship in August 2001 and among the 131 people accepted by New Zealand immediately following the incident. The families have been progressively reunited through New Zealand’s resettlement program.

A number of the young Hazaras made speeches at a special ceremony, while their newly arrived relatives watched on. They spoke of their joy at

being at school in New Zealand, and of learning not only English but also maths, science and physics, thanking their friends, mentors and government agencies for support and the chance of a new life. Hazara children also performed traditional dances for the gathering.

Addressing the ‘Tampa boys’ and their relatives, Mr Lubbers said he had first seen the Hazara faces in Kandahar and Kabul in the year 2000, when the Taliban was still in power. He said he saw the faces again in camps in Peshawar, Pakistan, and in Iran, and knew these were the faces of a persecuted people.

Mr Lubbers told the families that UNHCR had awarded the 2002

Nansen Award to the captain, crew and owner of the Tampa for the rescue of hundreds of shipwrecked asylum seekers in August 2001, including the unaccompanied minors known as the ‘Tampa boys’.

Mr Lubbers said the reunification of the families at Mangere was a very special moment, and thanked the people and Government of New Zealand for their generosity in making it happen. “It’s a miracle that you survived and then were welcomed here, in New Zealand. It’s even more of a miracle that the people of New Zealand make it possible now that you come here to see your sons, to see your family and to live together with them here.”

Minister boosts Australia's resettlement intake

IN LATE March, Senator Amanda Vanstone, Minister for Immigration, Multicultural and Indigenous Affairs, announced that Australia's refugee intake would increase from 4,000 to 6,000 places.

In the past seven years, 12,000 places per year were offered by the Department of Immigration's Humanitarian Program. 4,000 of these places were allocated to refugees. The remaining 8,000 are Special Humanitarian Places (SHP), which go to people who may not officially be defined as a refugee but have been

sponsored or have established links within Australia.

This change in policy will increase the total intake of refugees by 2,000 places per year. 1,000 of these places have been shifted from the SHP quota and 1,000 places have been added to the total intake bringing it up to 13,000 places.

In line with the UNHCR's resettlement priorities, refugees from Africa, followed by the Middle East and South Asia will continue to fill these places.

Friendship forged through writing project

FOURTEEN-YEAR-OLD Sophie Weldon from Sydney's northern beaches says that her experience in writing Adut Dau Atem's story has changed her life.

Sophie was the winner of the first UNHCR writing competition *Refugees: telling their stories*, in which high school students from around Australia were invited to write an article on a refugee in their local community.

"The opportunity to enter the UNHCR writing competition changed my life in ways that are difficult to describe," Sophie said.

Sophie told the story of Adut's terrifying journey fleeing civil war in the deserts of Sudan, Northern Africa, to a new life in Australia.

For Sophie the competition was a way to find out more about refugees for herself.

"I had heard stuff in the radio and read stuff in the paper and seen it on television, and I guess I wanted a true life experience from a real refugee. I wanted to hear for myself and be able to relate it to my own life so I could really understand. Hearing Adut's story and writing about it changed my life. I am now part of her story and she is now a part of mine."

Sophie said that Adut's story was so different from her experiences growing up in Australia that the problems she encountered in her life seemed trivial in comparison. During the interview Adut explained that Sophie could not change what had happened to her.

"Instead of getting caught up in the things I couldn't change, like the sadness and struggle of Adut's journey, and the turmoil in the Sudan, I could share my good life with Adut and look to the future."

Adut's struggle did not end when she was repatriated to Australia. She worried for the safety of her mother and cousin who remained in Sudan. Sophie felt compelled to help make a difference in Adut's life by organising a fundraiser at her school, raising \$800 towards the important medical examinations needed to move them to Australia.

Adut was able to experience the family reunion she always hoped for, her mother and cousin arriving two days before her father passed away in an Australian hospital.

Adut is currently studying medical science at the University of Canberra. She and Sophie remain close friends.



Sophie Weldon, Adut Dau Atem and Cecille Weldon (Sophie's mother).

Funding

UNHCR is funded almost entirely from voluntary contributions, principally from governments but also from intergovernmental organisations, corporations and individuals. UNHCR greatly appreciates the contributions from the Australian and New Zealand governments for 2004, which represent a significant increase from the previous year.

Australian Government

The Australian Government has contributed over AUD 18.2 million (\$18,277,527) to UNHCR in 2004, including:

AUD \$7.3 million in core funding

AUD \$5.3 million from AusAID's International Refugee Fund for assistance to urban refugees and asylum seekers in the Asia-Pacific region.

AUD \$4.66 million from the Department of Immigration for repatriation assistance to returning refugees in Afghanistan.

AUD \$600,000 for UNHCR work in the eastern regions of Myanmar.

AUD \$19,950 (approx) for a bridge in Myanmar.

AUD \$70,000 (approx.) towards enhancing oversight and accountability in UNHCR.

AUD \$327,577 (approx) to cover extra staff for resettlement processing in Africa.

New Zealand

The New Zealand Government contributed NZ \$4.3 million, including:

NZ \$ 1 million to UNHCR operations in Sudan and neighbouring countries.

NZ \$1.5 million for rehabilitation programmes in Southern Iraq.

NZ \$1.8 million in unearmarked funding.

Birth certificates help secure a better future for East Awin refugees

OVER 1,200 birth certificates have been issued to refugees born in East Awin, PNG, giving them a legal identity and helping to secure a better future.

This is the first time birth certificates have been issued to refugees born in PNG, and is a significant step in a country where only 3% of the general population have their births registered.

Mr Johann Sifointe, UNHCR Representative in PNG, said that “by establishing the legal identity of a person, birth certificates can help refugees open a bank account, get a travel document, and even apply for citizenship.” Other benefits include enabling government departments to plan education and health services for refugees in the region.

The newly registered refugees are the children of people who fled Irian Jaya almost 20 years ago, and make up about half of the 2,500 refugees currently living in 16 settlements in remote East Awin. Their registration follows a marathon registration campaign by PNG authorities and UNHCR last November.

Ms Betty Billy, Registrar General of the Civil Registry, said the PNG Government’s commitment to register the refugees born in PNG is a fulfilment to comply with articles 2,7 and 22 of the Convention of the Rights of the Child.

“The registration of refugees born in PNG highlights the Government’s



East Awin refugees fill out registration forms during the campaign.

Photo: UNHCR/J. Sifointe

responsibility for non-discrimination by vesting the legal status to the refugees,” she said.

Mr Gei Ilagi, Secretary of the Department of Provincial and Local Government Affairs, said the exercise was the first of its kind and the Government would continue to encourage it.

“With the completion of this exercise, the Government is now satisfied that Papua New Guinea has met one of the requirements of the Refugee Convention that obligated the Government to issue documentation to refugees (birth certificates, travel documents, permissive residency permits.)”

Getting streetwise about refugees

“THERE ARE heaps of places they can go. There’s no need for them to come here.” It is statements like this made by an Australian school student which compelled the authors of a new comic, “The Other Side,” to design an easy to understand resource aimed at students.

The original concept for the comic was to provide a simple and explanatory guide for young refugees repatriated to Australia. However,

after the Tampa incident the authors decided that they needed to address the many myths influencing young people’s attitudes towards refugees.

Liz Skelton, General Manager of Streetwise Communications, said that these myths “included that being a refugee is illegal, refugees are dangerous, asylum seekers are ‘queue jumpers’ and that the number of refugees accepted in Australia far

exceeded the factual amount.”

Streetwise consulted with key organizations in the field and over 200 young people, including refugees, to develop this comic. They hope to dispel these common misconceptions and develop a greater understanding of refugee issues and a more sympathetic Australian community.

For more information visit www.streetwise.com.au



Australia for UNHCR launches Sudan Emergency Appeal

“The worst humanitarian and human rights catastrophe in the world today” – Mukesh Kapila, UN Humanitarian Coordinator in Darfur, 2004.

The crisis in the Darfur region of Sudan continues to grow, with more than 160,000 refugees having fled into Chad to escape extreme violence in Sudan, and more than 1 million people displaced within the region itself. The UN Refugee Agency is urgently seeking funds to continue to move refugees to safer camps away from the border, to set up more camps for the tens of thousands yet to move and to provide vital emergency supplies to meet their needs.

Australia for UNHCR has launched a Sudan Emergency Appeal to provide urgent humanitarian assistance. To make a donation or find out more, please visit www.australiaforunhcr.org.au or call 1300 361 288.



An old woman, who just arrived in Farachana camp from the border site of Wandalou, is assisted by aid workers to a UNHCR tent assigned to her and her family.

Photo: UNHCR/H. Caux

Reconciling border control with refugee protection: Asia Pacific states meet to workshop a way forward

OVER 40 government officials from 23 countries in the Asia Pacific met in Fiji last April, as part of a workshop on reconciling immigration control with refugee protection.

The workshop, hosted by UNHCR and the Fijian Government, was a follow-up to the 2nd Bali Conference * held in April 2003 and provided a forum for discussion on refugee issues within the context of broader migration issues. The International Organisation for Migration (IOM), the Asia Pacific Conference, and the Pacific Immigration Directors Conference also took part.

The workshop explored the following themes:

- reconciling two key underpinning principles: the right to limit access to territory and the right to enjoy asylum; their point of intersection and the implications for immigration and asylum management;
- establishing fair, quick and effective mechanisms to identify those in need of international protection and screen them from economic migrants;
- excluding from refugee protection those who have committed serious crimes;

- the issue of refugees who move in an irregular manner from a country in which they had already found protection;
- developing coordination strategies among states regarding the return of those who have been rejected after a fair refugee status determination procedure; and
- working on finding a permanent home for refugees.

In general, participants found that effective mechanisms to protect refugees can be established without jeopardising the efforts of states to control their borders and combat people smuggling. These mechanisms involve: establishing fair and efficient systems with help from the international community; cooperation among transit and destination countries to share information and expertise; and the speedy resolution of cases through durable solutions facilitated by UNHCR and the return of people who are found not to be in need of international protection.

**The 2nd Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transitional Crimes held in Bali, Indonesia from 28-30 April 2003.*



Onisivoro Vuniyaro Acting Chief Assistant Secretary of Foreign Affairs and External Trade, Fiji, with RO Canberra UNHCR Representatives Jose Alvin Gonzaga, Richard Towle (UNHCR Geneva) and Roberto Mignone.



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The UN Refugee Agency

DISCUSSION PAPER

The principle of effective protection elsewhere

For this discussion paper, UNHCR asked the government, an academic, a legal practitioner and our own protection team to provide comment on the

principle of 'effective protection elsewhere'. Together, these papers offer a discussion of the principle in general and its current application in Australia.



Photo: UNHCR

Dimensions of Effective Protection: Some Reflections

William Maley*

CONSIDERATIONS of 'effective protection' tend to arise when a state in which a protection claim is made wishes to transfer to another state the burden of protecting the applicant, by claiming that he or she enjoys 'effective protection' in that state. It is also implicit in the idea of a 'safe third country' in which an asylum claim could allegedly have been made before

an applicant reached the country in which the claim was in fact lodged. Since the outcome in either situation could be denial of protection, it is important to address the question of what effective protection might be, and should be.

Effective protection of refugees has attracted serious attention in recent years. In his magisterial work *The Refugee in International*

Law, Guy Goodwin-Gill argued that effective protection 'would appear to entail the right of residence and re-entry, the right to work, guarantees of personal security, and some form of guarantee against return to a country of persecution'.¹ The substance of effective protection has also been canvassed on a number of occasions by the Federal

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Court of Australia, which has emphasised the need to consider whether an individual would have a well founded fear of being persecuted for a Convention-related reason in a country in which effective protection is allegedly available, whether the individual has a right to enter and live there, and whether protection would exist against refoulement as prohibited by Article 33.1 of the 1951 Convention Relating to the Status of Refugees.²

The purpose of the following remarks is to highlight some considerations that need to be borne in mind in marginal cases, for while in some situations the argument for effective protection elsewhere may be clear-cut, this is by no means invariably so.

First, there are good reasons why one should require that states be parties to the 1951 Convention and the 1967 Protocol before concluding that they offer effective protection. While one can argue that the norm of non-refoulement has achieved the status of customary international law, a treaty foundation for such an obligation is preferable. This draws states into the wider webs of reciprocity, embodied in the maxim *pacta sunt servanda*, that underpin international obligations more generally. When a state is not a party to the Convention, the danger exists that considerations of 'national interest' may incline it to act in ways that would violate the spirit and the letter of the Convention. This can happen even in states which are parties to the Convention, but is easier when states are not.

Second, one should look to the structure of authority in the state in question. A question of particular importance is whether the state embodies the core elements of constitutionalism, namely the rule of law and the separation of powers.³ The rule of law as a political principle requires that laws be prospective, general, and enforced by an independent judiciary. It is the last of these, implicit also in the doctrine of the separation of powers, that is of fundamental importance. Law must be more than an instrument used by the executive to maintain its dominance, yet this is what it becomes if adjudication is taken out of independent hands. Even Australia has witnessed the corrosive effects of such a mind-set,

which was embodied in the so-called 'privative clause' inserted in the Migration Act in 2001 which provided *inter alia* that decisions of the Refugee Review Tribunal were not to be 'challenged, appealed against, reviewed, quashed, or called in question in any court'. This dangerous provision was emasculated by the High Court of Australia in the case of *S157/2002 v. Commonwealth of Australia* (2003) 195 ALR 24, but the fact that it was enacted in the first place highlights how fragile commitment to the rule of law can be even in established polities.

Third, one should look at the character of politics in a given state. In a number of states, political structures are not consolidated, but going through various phases of transitional development, from infancy to adolescence to maturity. The regimes in such states may voice strong commitments to constitutionalism, but it is necessary to be cautious in appraising their capacity to deliver on their promises. Goodwill may significantly outstrip key elements of capacity, not least survivability. Fiji stands as a clear example of the way in which, with the best will in the world, and carefully-crafted institutions designed to balance diverse interests, opportunities may nonetheless arise for extremists to de-rail processes of change, as happened with the Speight coup in May 2000.⁴

Fourth, one should bear in mind that persecution can come from non-state actors as well as agents of the state. Thus, even where

states are parties to the Convention, committed to constitutional rule, and securely on the path to democratic consolidation, their territorial control may be insecure or contested, providing space for other, less appetising forces to operate. Thus, in appraising whether effective protection is available, it is important that the range of potential threats be very carefully assessed. All in all, it pays to err on the side of caution when drawing conclusions about effective protection, for the human costs of a mistake could be very high indeed.

* *Professor Maley is Director of the Asia-Pacific College of Diplomacy at the Australian National University, and editor of Shelters from the Storm: Developments in International Humanitarian Law.*

1 Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1998) p.89.

2 Roz Germov and Francesco Motta, *Refugee Law in Australia* (Melbourne: Oxford University Press, 2003) p.466.

3 See Chandran Kukathas, David W. Lovell and William Maley, *The Theory of Politics: An Australian Perspective* (Melbourne: Longman Cheshire, 1990) pp.44-53.

4 Benjamin Reilly, *Democracy in Divided Societies: Electoral Engineering for Conflict Management* (Cambridge: Cambridge University Press, 2001) p.107.



Photo: UNHCR/A. Aarhus

Australia's protection obligations: only a last resort?

UNHCR, Regional Office Canberra

AUSTRALIA has traditionally had a well-developed and sophisticated asylum system with safeguards built into the refugee status determination procedure.

From UNHCR's perspective, the Australian system is also important for its export value in the region and beyond — particularly for countries which may not have an equivalent level of safeguards in their systems, the same tradition of respect for human rights, or a comparable level of support for refugees among civil society.

In accordance with Article 35 of the Refugee Convention (regarding the cooperation of national authorities with the United Nations), UNHCR has the duty of supervising the application of Convention provisions with regards to all the State Parties.

Within this framework, the UNHCR Regional Office could observe that most asylum claims in Australia are assessed on their merits and normally benefit from the safeguards built in the system.

Other cases however are decided on the basis of Section 36(3) of the 1958 Migration Act. This section, introduced in 1999 and developed by the Australian jurisprudence, stipulates that “*Australia is not taken to have protection obligations to a non citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside, whether temporarily or permanently... in any country other than Australia.*” In practice, this means that asylum seekers who are deemed not to have taken steps to avail themselves ‘of a right to enter or reside’ shall not have their claims fully and properly assessed on merits.

In other words, it appears that Australia currently interprets its protection obligations towards refugees under the Refugee Convention, as applying only when it is the last resort.

In some cases the application of this principle of ‘effective protection elsewhere’ may lead to a perfectly acceptable protection outcome, in UNHCR's view. The Full Federal Court in *MIMA v Thiyagarajah* (1998) found that a non citizen who had been recognized as a refugee in a third country (France in this case) had effective protection there and Australia had no protection obligations.

However, this initial interpretation was expanded by subsequent court decisions to the point where it is currently applied to asylum seekers who have not been recognized as refugees by a third country, and who have no link at all with the country assumed to provide

effective protection. As such, it could prevent asylum-seekers from having fair and proper determination of their asylum claims and place them at risk of being returned to places of danger.

Most of the cases who came to UNHCR's attention in recent years (Colombians vis a vis Argentina; Nepalese vis a vis India; Sri Lankans vis a vis the UK; Russian Jews vis a vis Israel; Colombians vis a vis the USA), didn't even transit those countries or have any substantial links beyond a tourist visa (sometimes expired) or anything stronger than their physical presence in Australia when they claim asylum.

In such cases, however, the Australian authorities assume that the asylum seekers may find effective protection in those other countries due to the absence of visa requirements, a tourist visa, a Treaty of Friendship between two nations (country of origin and the third country), or rights under the Law of Return (for Jews vis a vis Israel). UNHCR's view is that effective protection cannot be assumed but should be confirmed for each specific case.

UNHCR's concern is to avoid and prevent the risk of chain refoulement or orbit situations, where people travel endlessly between states without being granted entry or residence in any of them.

In an orbit situation, the third country may return the person to Australia (ironically on the same assumption that Australia can provide effective protection.)

In a potential chain refoulement, the third country may return the asylum seeker to the country of origin on the erroneous assumption that his/her case had been rejected on the merits in Australia.

While there is an ongoing debate in the international community on what constitutes effective protection,¹ there are also well established principles enshrined in UNHCR Executive Committee (EXCOM) Conclusions.²

EXCOM Conclusions 15 (XXX) and 58 (XL) require some conditions and certain safeguards to be in place: “Regard should be had to the concept that **asylum should not be refused solely on the grounds that it could be sought from another State.** Where, however, it appears that a person, before requesting asylum, **already has a connection or close link with another State**, he may, if it appears fair and reasonable, be called upon first to request asylum from that State.”³

In most of the cases reviewed⁴ that had been rejected on ‘effective protection

elsewhere’ grounds, UNHCR could not identify the required connection or close link and these people had not even transited the potential asylum country.

Furthermore, these EXCOM Conclusions require that in such cases, the authorities of the sending country should ensure that the applicant will be (re)admitted to the third State and to the asylum procedure where a full and fair assessment of the case will be made, will be treated in accordance with accepted international standards, and will receive effective protection from refoulement.

Currently no such safeguards are in place as a precondition for sending the applicant to the third country, as required by EXCOM Conclusions and further recommended by UNHCR Canberra.

When an asylum case in Australia is not assessed on its merits but rejected on the basis of Section 36(3) of the Migration Act without specific checks that safeguards are in place, UNHCR considers that there is a risk of an orbit situation or even of forced return to the country of origin by the third country (ie. effectively, an unintentional instance of chain refoulement).

UNHCR, therefore, recommends taking EXCOM Conclusions into account when interpreting and applying the principle of ‘effective protection elsewhere’.

1 Please refer to Summary Conclusions on the Concept of “Effective Protection: in the Context of Secondary Movements of Refugees and Asylum-Seekers, from the Lisbon Expert Roundtable, Dec 2002 at www.unhcr.ch

2 EXCOM is the Executive Committee of the High Commissioner's Program made up of states, including Australia. EXCOM Conclusions are adopted by consensus.

3 EXCOM Conclusion 15 (xxx). Our emphasis.

4 In light of its supervisory responsibility relating to the application of the provisions of the 1951 Convention, UNHCR in Australia reviews asylum cases brought to its attention.



The Principle of Effective Protection in the Australian Domestic Legal and Policy Context

By the Department of Immigration, Multicultural and Indigenous Affairs

THE REFUGEES Convention is founded on the principle that the protection it offers is protection of last resort. States should generally protect their own citizens. However, where that protection fails and a person with a well-founded fear of Convention persecution flees their home country, then there is an obligation on other States not to return (refouler) that person to the country they have fled. States did not include in the Refugees Convention an obligation to admit all asylum seekers who arrive at their border. Whilst States wanted to ensure that those who are forced to flee were not returned into the arms of their persecutors, they were not prepared to go so far as to agree that asylum seekers should be permitted to enter and reside in a country of their choice. A corollary of this is that the Refugees Convention does not preclude States from sending asylum seekers to countries where they do not have a well-founded fear of persecution.

It is widely accepted among States party to the Refugees Convention and by the UNHCR, that denying a person access to asylum if he or she has found protection in another country is not problematic, provided the protection is both genuinely available and effective.¹ This is the international environment in which Australia's law and policy on effective protection has developed.

Australia's migration policy generally, is underpinned by the principle that permanent and temporary international movement of people should occur, in so far as possible, in an orderly way, in accordance with the national laws of destination and origin countries and consistent with relevant international conventions. In the context of refugee movements, this means our preference is for a managed delivery of resettlement places to those identified in consultation with UNHCR as being in need of resettlement as a durable solution.

As a signatory to the Refugees Convention, Australia takes its protection obligations seriously. It does not return people to countries in which they have a well-founded fear of refugee persecution. In some cases, however, a person in Australia may have effective protection elsewhere because of a right to enter and reside

in a safe third country. In many such cases the individual has by-passed, or abandoned effective protection in a country of first asylum. This is known internationally, as 'secondary movement'. As has been noted above, an asylum seeker who has reached a country where they can access effective protection does not have a "right", under international law, to move on to a third country of choice.

The issue of how to address the irregular, secondary movement of refugees and asylum seekers, particularly in an environment of people smuggling and trafficking, has been on the international agenda for a number of years. It is of concern to States that vast amounts of money and resources are expended on processing claims of asylum seekers who already had protection elsewhere. This has, in the past, led to a reduction in the resources expended on orderly resettlement programs and on resources made available to assist countries of first asylum in their refugee hosting responsibilities.²

Against this background, Australia has developed the principle of effective protection as one way of addressing secondary movements, while at the same time ensuring that Australia meets its international obligations, principally the key obligation of non-refoulement in Article 33 of the Convention. This approach has also allowed Australia to focus resources on those refugees in greatest need.

Effective Protection in Australian statutory and common law

UNDER Australian statutory and common law, Australia does not owe protection obligations to an asylum seeker who can access protection in a safe third country. A safe third country is one, other than Australia, in which the applicant would not be persecuted and from which the applicant would not be returned to the country of threatened persecution (ie not refouled). In some circumstances, therefore, a protection visa in Australia may be refused on the basis that the applicant has effective protection in a safe third country.

Common law effective protection

COMMON law effective protection has been developed through the Courts' interpretation of the Refugees Convention in conjunction with Australia's domestic legislation. Common law effective protection was first discussed in the 1997 decision of the Full Federal Court, *MIMA v Thiyagarajah*, in which it was held that a person who can be removed from Australia to another country, without putting Australia in breach of the non-refoulement obligation contained in the Refugees Convention, is not owed "protection obligations" for the purpose of the Migration Act (1958) and would, therefore, not be granted a protection visa.

The 'test' for common law effective protection is whether "as a matter of practical reality and fact, the applicant is likely to be given effective protection by being permitted to enter and live in a third country where he will not be at any risk of being refouled to his original country..."³ This test requires the decision-maker to consider the circumstances of each applicant and the practical result of sending them to a third country. The right of entry, re-entry or residence does not have to be formal or legally enforceable, but rather there must be evidence that the person is able to access effective protection in the third country in a practical and factual sense.

The Courts' interpretation of effective protection is still evolving. An example of this is a recent Full Federal Court case, where the Court considered whether Jewish applicants from Russia had effective protection in Israel because of the 'right of aliya'.⁴ The Court held that effective protection could apply even though the applicants had never been to Israel and did not wish to go there. The Full Federal Court decision was appealed to the High Court which will not only consider effective protection in relation to aliya, but the broader issue of the effective protection doctrine, as developed by the Courts so far.

Continued Page 5

Statutory effective protection

STATUTORY effective protection is embodied in sections 36(3)-(7)⁵ of the Migration Act, and was inserted in 1999.

Subsection 36(3) of the Act requires a decision-maker to be satisfied that the applicant has taken all possible steps to avail him or herself of a right to enter and reside in a safe third country, whether permanently or temporarily. The reference in section 36(3) to a “right to enter and reside...” has been interpreted as requiring a legally enforceable right.⁶ Accordingly, this provision requires satisfaction that the applicant has a legally enforceable right to enter and reside in the third country and has taken all possible steps to access this right.

Only where the applicant would be safe from persecution and refoulement, can an application be refused by reference to section 36(3). This qualification of approach is required by sections 36(4) & 36(5) of the Act. These sections provide that if a non-citizen has a well-founded fear of being persecuted in a country for a Convention reason, or, if the non-citizen has a well-founded fear that a country will return the non-citizen to another country; where they will be persecuted for a Convention reason, subsection (3) does not apply in relation to that country.

The effect of section 36(4) is to ensure that, for the purposes of section 36(3), ‘any country’ cannot include a country in relation to which the applicant would have a well-founded fear of persecution for a Convention reason. Such a country could not be a safe third country for the purposes of sections 36(3) -(7).

Similarly, as a consequence of section 36(5), a country which would refoule a refugee to a place of persecution cannot be a safe third country for the purposes of sections 36(3)-(7). The combined effect of the principle of effective protection, as defined by common law and sections 36(3) – (5) of the Act, is that Australia does not owe protection obligations under the Convention to:

- a) a person who can, as a practical matter, obtain effective protection in a third country; or
- b) a person who has not taken all possible steps to avail himself or herself of a legally enforceable right to enter and reside in such a safe third country.

As noted above, Australia is not alone in applying the principle of effective protection. It is a widely accepted concept that States may send a person to a country where they do not have a well-founded fear of persecution.

Australia’s Humanitarian Priorities

AUSTRALIA operates a well-targeted resettlement program that supports the global operation of the international protection framework in its response to those refugees most in need. Due to Australia’s success in dramatically reducing the number of illegal arrivals over recent years, Australia is increasing the size of the Humanitarian Program to 13,000 places and within it, the size of the Refugee category from 4000 to 6000 places in 2004-05.⁷

As well as focussing on providing resettlement opportunities for those refugees most in need, Australia also funds various projects both in the region and in refugee hosting countries further afield to strengthen migration management capacity and improve refugee hosting capacity. Australia has an extensive aid program centred on the Asia-Pacific.⁸ This includes Australia’s funding of capacity building initiatives in source and transit countries such as Thailand, Cambodia, Vietnam and Indonesia, as well as Pacific countries such as Papua New Guinea and Fiji.

Australia is also playing a leading role in funding international efforts to assist Iraqi refugees and internally displaced people in Iraq to return home, by providing funding to the International Organisation for Migration (IOM) and the United Nations Development Group’s Trust Fund for the Reconstruction of Iraq. In 2003-04 Australia also provided funding to assist returning Afghan refugees and internally displaced people in Afghanistan.

The principle of effective protection, as it has evolved through common law and as it is currently articulated through statutory law, is consistent with Australia’s obligations under the Refugees Convention and ensures that Australia’s capacity to participate in international responsibility sharing arrangements remains undiminished and focussed on assisting those refugees most in need.

1 UNHCR, EC/GC/01/12 31 May 2001, ‘Asylum processes – fair and efficient asylum procedures’, para 49. See also *ExCom*, Conclusion No 58 (XL) of 1989 which states (e) *Refugees and asylum-seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country through action taken by governments and UNHCR ...*

(f) *Where refugees and asylum-seekers nevertheless move in an irregular manner from a country where they have*

already found protection, they may be returned to that country if

(i) they are protected there against refoulement and

(ii) they are permitted to remain there and be treated in accordance with recognised basic human standards until a durable solution is found for them.

2 Australia is one of only ten countries in the world that has an annual dedicated program under which thousands of refugees most in need are resettled from overseas.

3 *Al-Zafiry v MIMA* [1999] FCA 1472

4 *Israel’s law of return which confers on every Jew a right to enter and remain in Israel*, *NAEN v MIMIA* [2004] FCAFC 6

5 s36. (3) *Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.*

(4) *However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.*

(5) *Also, if the non-citizen has a well-founded fear that:*

(a) a country will return the non-citizen to another country; and

(b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion;

subsection (3) does not apply in relation to the first-mentioned country.

Determining nationality

(6) *For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.*

(7) *Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.*

6 *MIMIA v Applicant C* [2001] FCA 1332 note, *this is a different test to the common law one ‘entry as a matter of practical reality and fact’.*

7 *The 2000 extra refugee places include a 1000 place increase in the total Humanitarian Program (a shift from 12 000 to 13 000) and a re-balancing of the Special Humanitarian Program (SHP) of 1000 places towards the refugee program. The total program for 2004-05 will comprise 6000 Refugee and 7000 Special Humanitarian places.]*

8 *Totalling \$2.133 billion as Official Development Assistance in 2004-05*

“Effective Protection” in Australian Law

David Bitel*

IN THE lead-up to the October 2001 election in Australia, Prime Minister Howard loudly proclaimed the slogan “we will control who enters Australia”.

Some weeks before, several hundred largely Afghan men, women and children were rescued from a sinking Indonesian vessel by the Norwegian ship, the “Tampa”. The captain then sought and was denied by the Australian government permission to bring his human cargo of people who claimed to be refugees to Australia. This set off a chain of incidents with international implications and resulted promptly in significant legislative changes to Australia’s already tight and complex immigration laws all designed to give greater effect to the principles underlying the election slogan. In particular, a policy known as the “Pacific Solution” was created whereby asylum seekers arriving in Australia without valid visa documentation were denied entry and removed to nearby Nauru and Manus Island, in Papua New Guinea, to await the outcome of their status determination.

The re-elected Australian government in its next Budget set aside billions of dollars to fund “border protection”, controversially employing the Australian navy in coastguard activities along the northern and western waters. In a climax to these policies, following the arrival of a small group of Turkish

men of Kurdish background, through the cordon of security which had been created, on Melville Island, a part of the Northern Territory of Australia, an Executive Order with arguably retrospective effects excised Melville Island from Australia’s migration zone. The men were then forcibly put back on the small Indonesian fishing vessel on which they had entered Australian waters and escorted by the Royal Australian Navy out of Australia and back to Indonesia from whence they were deported back to Turkey. Whilst on Melville Island, the Australian government admitted the men sought protection of Australia under its obligations as a signatory of the Refugee Convention. Indonesia, it should be noted, is not a signatory and so is not bound by its obligations, in particular the obligation imposed under Article 33(1) that: “No contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Many believed Australia had been complicit in a direct breach of the Convention and had misapplied the Effective Protection principles.

The obligation under Article 33 is subject to the important rider that applications for a protection visa (as the refugee application is technically called) may not need to be dealt with by a decision maker where there is effective protection in a third country which does not infringe the right of non-refoulement, or where pursuant to Article 1E the Convention does not apply to a person recognized as having the rights and obligations attached to the possession of nationality of a third country.

Australian courts have grappled for some years with the meaning and significance of these rules and developed jurisprudence in relation to the Effective Protection rule. Justice von Doussa provided the leading judgment of the Full Court of the Federal Court of Australia in *Thiyagarajah v Minister* (1998) 80 FCR 543, a case concerning a Sri Lankan national who prior to his entry to Australia was a resident in France where he had been granted refugee status, and confirmed that Australia does not have protection obligations to a person who has been accorded effective protection in a

third country. This is protection which will effectively ensure that there is no breach of Article 33, where the person has a right of residence in that country and is not subject to Convention harms. If the country is a Convention country and can be expected to honour its obligations thereunder, return is permissible whether or not the person has a right of residence there, or even where the country is not a Convention country, but it can be expected that country will afford the person effective protection. (Per French J in *Patto v MIMA* (2000) FCA 1554 para 37.)

The Courts have noted that there is no obligation to find a guarantee of protection will exist in the third country, and that in assessing the likelihood of protection available, the real chance test applies but no other rigid test. Features considered relevant include whether there is an availability of a system for the protection of the citizen and a reasonable willingness by the State to operate it, whether as a matter of practical reality there is a real chance the third country will not accept the refugee and will refole him or her, and whether the refugee has a right to reside in, enter and reenter the third country. The decision requires findings of fact by the decision maker on matters objectively relevant to the decision at the date of decision. It is thus a matter of practical reality and fact that is determined.

In a 1999 legislative amendment, Sections 36(3) to (7) were inserted into the Migration Act 1958, which the Government intended as a codification of the doctrine of Effective Protection. In fact, the Courts determined that because of its different terminology, the new law provides for a complementary legal regime for the Effective Protection rule. Section 36(3) provides:

“Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose and is expressed, any country apart from Australia, including countries of which the non-citizen is a national.”

Subsections 4 and 5 ensure that applicant’s fears of persecution in the third country must be tested against the Refugee Convention and



Photo: UNHCR/P. Coat

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that an assessment must be made that that country will not refole the refugee. In a neat summary of the contemporary position in Australia, Justice Stone in the Full Court of the Federal Court decision of *MIMA v Applicant C* (2001) 116 FCR 154 noted:

“The combination of the amendments to Section 36 and the doctrine of effective protection leads to this position. Australia does not owe protection obligations under the Convention to:

(a) a person who can as a practical matter, obtain effective protection in a third country; or

(b) a person who has not taken all possible steps to avail himself or herself of a legally enforceable right to enter and reside in a third country.”

The onus is on the applicant to prove the lack of effective protection or the inability to return to or lack of right to enter the third country, and where an applicant refuses to cooperate one judge expressed the view that there was a constructive waiver of his claim to Convention protection. Nevertheless, if there is a real doubt about what the third country will do, Australia’s protection obligations continue. As noted by Justice Hill in *V586/00A v MIMA* (2002) 122 FCR 57, the decision maker must be comfortably satisfied that the applicant with no legal right to enter a safe third country will be granted admission there.

These principles nevertheless contain complexity and still need further clarification in some important respects. Thus, what is precisely meant by the terms “legally enforceable right”? What is the situation where a government has the power which may or not be exercised to revoke this right; and what occurs when for whatever reason the right has expired post determination of application that Australia has no Convention

obligation, and prior to actual removal from the jurisdiction of Australia.

Of course, Section 36(3) does not impose on every applicant an obligation to approach every Convention country, as there must be an existing right to enter a third country, which involves some connection, which is usually, though not always, the case where a person has spent some time there.

The laws and jurisprudence have developed as a consequence of and response to different waves of refugee movements. In the late 1980s and early 1990s, an earlier wave of Indochinese refugees who had temporary residence rights in China were excluded by the legislative creation of “Safe Third Country” sections in the Act and bilateral agreements. The ultimate political hypocrisy was applied to the East Timorese refugees who entered Australia in the 1990s with the Australian Government arguing in the Courts that these people could claim effective protection in Portugal, even though Australia no longer recognized Portuguese sovereignty over East Timor.

Most recently, and in what some consider the ultimate irony given the historical circumstances which led to the Refugee Convention, Jewish refugees from Russia with no connection in fact to Israel have been found by the Courts to have no right to claim protection obligations in Australia because under Israel’s Law of Return they can safely enter and reside there. The exact extent of Australia’s effective protection obligations may in the near future be clarified by the High Court of Australia as a consequence of litigation currently there brought by these aggrieved applicants from Russia.

But the issue remains very significant for other refugees seeking entry to Australia as the complex web of the rules has been used to deny

Australian obligations to, amongst others, Nepalese refugees who can obtain protection in India under a 1950 Treaty between the two countries, Iraqis who have been found can live safely in Syria, a Colombian student with a valid student visa to the USA, and recently in the Refugee Review Tribunal, a North Korean with the right to enter and reside in South Korea, although he had never been there – N03/47934 dated 19 February 2004.

Prime Minister Howard’s election slogan contains some truth. A sovereign State has the power to permit and deny entry to non-nationals. This right though is subject to the overriding obligation contained in Article 33 of the Refugee Convention, which itself is subject to the law relating to Effective Protection. From a practical viewpoint, refugees all too infrequently are unaware of this important exception and fail to appreciate that whilst international law will give them protection, they have no right to choose which country will be the protector.

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CORRIGENDUM to Department of Immigration and Multicultural and Indigenous Affairs contribution to UNHCR’s Discussion Paper: When is a refugee no longer a refugee?

Protecting Refugees: Cessation under Article 1C.

The above version of DIMIA’s paper omitted two words from the two

sentences preceding the heading “Concluding comments”. The text should read:

“Provided a decision to refuse or cancel a protection visa does not result in refolement, it may not be necessary to consider views of cessation of refugee status.

Australia’s case by case approach where formal cessation is to be contemplated allows for a very careful assessment as it applies to an individual’s circumstances, and ensures that refugee status is not ceased where the individuals continue to have a well-founded fear of persecution.”

UNHCR completes review of final Tampa cases

THE COMPLETION of UNHCR's review of the 22 Afghan cases on Nauru, brings to a close the cases of those people rescued at sea by the Norwegian freighter, the Tampa, who were taken to Nauru by the HMAS Manoora in 2001.

All 22 Afghans were found to be in need of international protection, due to the deteriorating security conditions in certain regions of Afghanistan and following a review of their cases which began in September 2003. Negotiations with resettlement countries are well underway and it is hoped that those people will depart for a new home soon.

As UNHCR is often asked what happened to all the Tampa cases, we provide the following summary.

433 asylum seekers were rescued by the Tampa

131 Afghans from the Tampa went straight to New Zealand

302 went to Nauru on the Manoora, of these there were:

Afghans: 293 (see outcome below)

Pakistani: 3 (who all returned to Pakistan voluntarily)

Sri Lankan: 6 (4 vol returns to Sri Lanka, 2 resettled to Sweden)

Of the 293 Afghans:

14 went straight to New Zealand (for family reunion reasons) without a UNHCR determination.

1 Afghan from the Tampa was processed by DIMIA due to family links.

76 were resettled to third countries following successful refugee determinations (including 42 to NZ, 5 to Sweden, 27 to Australia, 2 to Norway)

1 died on Nauru at the appeal stage of his review on 26 August 2002.

179 voluntarily returned to Afghanistan, mostly in September and October 2002 after receiving their decisions.

22 Afghans rejected in first round of RSD remain on Nauru. All 22 have since been found to be in need of international protection, following the UNHCR review of cases in light of changing circumstances in their regions of origin in Afghanistan. UNHCR is currently pursuing resettlement options.

Australia for UNHCR Update

AUSTRALIA for UNHCR continues to build support in the Australian community through its regular individual giving program and through corporate partnerships. This year, the association has raised funds to provide shelter for 2,000 returned Afghan refugees, education facilities and support for girl students in Somalia, much needed water infrastructure in Malawi, and school and sports facilities in Baucau in East Timor. These projects would not have been fully implemented without this support.

In addition to these projects, Australia for UNHCR expects to provide more than AUD 1.5 million this year, in unearmarked funding, to UNHCR's international humanitarian programs round the world.

In addition to its fundraising role, Australia for UNHCR has continued to undertake its public awareness and education activities. Staff regularly speak to community and school groups. This year the association launched its Twilight Seminar series aimed at raising the profile of UNHCR in the corporate sector.

There was considerable activity this year in the lead up to the 2004 World Refugee Day. Australia for UNHCR organized an art exhibition in primary schools and Sydney Girls High School held a fundraising event around the theme of One Day As A Refugee.

The Australia for UNHCR 2004 WRD Breakfast was attended by more than 350 guests. Special Guest Speakers included the NSW Governor, Her Excellency Professor Marie Bashir



Adut dau Atem, Les Murray, Ian Chappell, Geraldine Doogue and Sophie Weldon at the WRD fundraising breakfast on 18 June.

AC, former refugee and SBS head of Sports, Les Murray, Australia for UNHCR Special Representative Ian Chappell and ABC journalist and broadcaster Geraldine Doogue. Young Guest speakers, Adut Dau Atem and her friend Sophie Weldon (who wrote the Award winning essay about Adut in

the UNHCR Writing competition, reported on separately in this newsletter) highlighted to all those attending the Breakfast, the many challenges that refugees face and the courage and hope they must maintain to rebuild their lives.

Russian NGO wins 50th Nansen Award



Nansen Award winner Svetlana Gannunshkina with the High Commissioner. Photo: UNHCR

RUSSIA'S Memorial Human Rights Centre has won the Nansen Refugee award for excellence in providing services to refugees on the international award's 50th anniversary.

Created in 1954, the Nansen Refugee Award is named after Fridtjof Nansen – Norwegian polar explorer and the world's first international refugee official. It is given annually to individuals or organisations that have distinguished themselves in work on behalf of refugees. The award includes \$100,000 for a refugee project of the recipient's choice.

This year's Nansen award winner helped tens of thousands of refugees and internally displaced people across the Russian Federation.

The Nansen Award Committee was particularly impressed with the wide range of services carried out by the Centre on behalf of forced migrants and internally displaced people as well as refugees from as far afield as Africa, the Middle East and Asia.

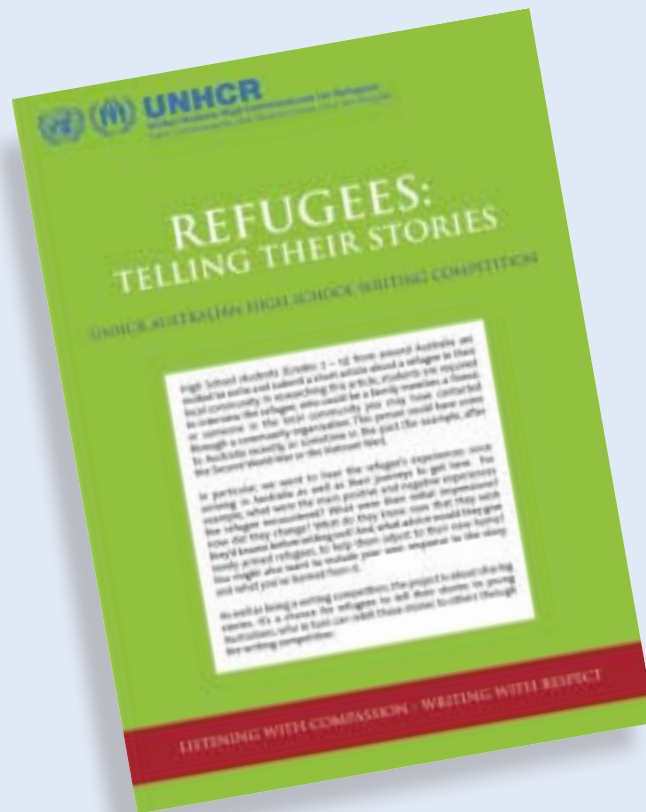
Memorial representative Svetlana Gannunshkina said she was happy to receive the UNHCR award, because it is "UNHCR that has helped Russian NGOs to establish constructive cooperation with government agencies."

Memorial plans to use the prize to organise a conference in October on the migration situation in Russia, and help fund some social projects such as publishing storybooks and textbooks for refugee children in their own language.

The award was presented at a special ceremony in Barcelona on World Refugee Day on 20 June.

Barcelona proved the perfect location to celebrate the awards 50th anniversary, as this year's World Refugee Day activities were closely tied to the city's Universal Forum of Cultures.

The forum helped celebrate the courage and spirit of refugees by organising events such as the "Sky of Aspirations" installation at which Goodwill Ambassador Angelina Jolie helped children from Mozambique and Cataluña to hang up lucky charms for refugees.



UNHCR launches 2004 writing competition for World Refugee Day

UNHCR Regional Representative Mr Michel Gabaudan and Minister for Citizenship and Multicultural Affairs Mr Gary Hardgrave launched the 2004 high school writing competition *Refugees: telling their stories*, as part of World Refugee Day festivities at Parliament House in Canberra on 17 June.

For the competition, Australian high school students are asked to interview a refugee in their local community and write a short article on their experiences. "Our writing project aims to encourage dialogue between young Australians and refugees who have come here, through the telling of personal stories," Mr Gabaudan said.

Mr Gabaudan said the competition draws attention to the "challenges and hope that accompany refugees in their search for a new home," and also helps students develop skills in research, interviewing, listening, writing and cross-cultural communication.

Reflecting on the theme of World Refugee Day *A Place to call home: Rebuilding lives in safety and Dignity* Mr Hardgrave said that the

stories of those who had come to Australia were stories of hope and courage.

He said Australia makes a considerable effort to help migrants integrate into the Australian community. "We want to ensure that their journey does not end upon arrival in Australia, but continues beyond to find fulfillment in their new homes, with all the opportunities they had hoped for."

Winner of last year's competition Sophie Weldon encouraged all young people to enter the competition. "They will almost certainly develop an understanding and a wider knowledge of this important issue in our society."

This year's entries will be judged by Time magazine journalist, Tom Dusevic, former Australian cricket captain, Ian Chapell, and a UNHCR representative. Winners and finalists will be published in a magazine by UNHCR.

Entries are due on the 27th of August 2004, for guidelines or more information email: aulcain5@unhcr.ch or whyte@unhcr.ch

Sydney Girls High School 'Live like a refugee day'



Michel Gabaudan, UNHCR Regional Representative, with Sydney Girls High School students, ex-student Fran Aroney and Phillipa Adams, Australia for UNHCR.

REFUGEES Are Humans. They Need Homes, shouted the multicolour banners, hung on the grounds of Sydney Girls' High School. The actions of the students were even louder.

Our celebration of World Refugee Day 2004 involved encouraging the student body to get to know about the worldwide refugee situation, and get involved in events in support of the cause. The main event was Live Like A Refugee For A Day, designed to help students learn about the hardships refugees endure, and appreciate the courage and strength needed just to survive and receive an education. Hundreds of students in the school strived to understand even a fraction of the refugee experience, by living on the basic refugee ration, experiencing the confines of a UN refugee shelter erected in the school grounds, and listening to the stories of refugees. We were even privileged to hear UNHCR's Regional Director, Michel Gabaudan, address the issue in a special assembly.

In our shielded communities, the greatest challenge is understanding the suffering of refugees. For many of us, it is unimaginable. Most of us have a community, family and home that we

have grown up in, and feel we belong to. Most refugees, in their plight to escape some injustice, have been torn from these familiar aspects of their lives and forced into an unfamiliar outside world. In limbo between fleeing their old home and finding a new one, they suffer from 'not belonging'. They are unable to form connections, with the people they live with, or with the land they live on, because of this constant fear of being torn away at any moment. Sitting in the shelter, we reflected on the trauma of displacement, and the frustration in their being no certainty in the future.

World Refugee Day is not just about recognising the refugee problem. It is about understanding and empathising, in order to reach for a solution.

We hope the money raised for UNHCR's Afghan Shelter Program will assist in building at least six "places to call home" for displaced families in Afghanistan. We also hope that more school communities can get involved in events such as Live Like A Refugee For A Day, so that more students understand and empathise with the reality of being a refugee.

**Sadhana Abayasekara, Vice Captain
Sydney Girls High School**



Setting up a tent at Farachana camp in Chad 55 kms from the Sudan border.

Photo: UNHCR/H.Caux

New Zealand marks 60 years of giving a place to call home

THE THEME, *A Place to Call Home*, had particular resonance for New Zealanders celebrating World Refugee Day this year, as 2004 marks 60 years since the arrival of over 700 Polish children from war torn Europe. This was New Zealand's first official involvement in refugee resettlement.

Dancers from the Polish community, some of whom were the children of those first arrivals, entertained 150 guests at the World Refugee Day function at the Grand Hall, Parliament, in Wellington on 21 June, jointly hosted by the Immigration Minister Paul Swain and Refugee and Migrant Service (RMS). A Cambodian Master of Ceremonies and presentations from Sudanese and Bosnian former refugees reflected the more recent experience of arrivals over the past six decades.

In Auckland, festivities included a multicultural concert organised by RMS, the New Zealand Immigration Service and the Ministry of Information, in conjunction with King's College. A large number of refugees attended to watch dance and music performed by Afghan, Eritrean, Burundi, Somali and Ethiopian communities. Performers ranged from small children through to school children and adults. The Minister of Ethnic Affairs, Chris Carter, attended the concert, followed by a shared meal prepared by refugee groups.

Many church groups also marked 20 June with the inclusion of refugee-related materials in their services and the taking up of special collections to aid the work of RMS.



Polish dancers at the World Refugee Day festivities at Parliament, Wellington.



"Field of Hearts" planted on lawns of Parliament House for World Refugee Day, 20 June.

Photo: Launa Sims

Australia shows its heart on World Refugee Day 2004

A FIELD of hearts, each containing a personal message in support of refugees, was planted in front of Parliament House in Canberra on World Refugee Day.

The *Field of Hearts* installation was planted in 20 locations across Australia, symbolically promoting an open-hearted approach to refugees. More than 20,000 beautifully crafted hearts were featured as part of a nation wide demonstration. The hearts were decorated by community groups, schools, church groups and individuals in the lead up to World Refugee Day.

Canberra hosted the largest installation with more than 11,000 hearts planted in the grounds of Parliament House. The multi-coloured hearts bared slogans and images which showed Australian support for refugees and asylum seekers locally and internationally.

The organisers of the project, the Refugee Action Committee, said the installation offered ordinary Australians a chance to "show their hearts for refugees" as an expression of their support for the plight of refugees in a world of war, poverty, tyranny and hunger.

Parliamentarians also joined the spirit of World Refugee Day, with the Australian Senate passing a resolution on 17 June commending the "UNHCR for the tireless work it undertakes worldwide". The resolution also acknowledged UNHCR's work to promote awareness for refugees, through activities such as the Australian High-School Writing Competition.

The "Field of Hearts" was accompanied by rallies in most Australian capitals including well-attended marches through the cities of Sydney, Melbourne, Adelaide and Perth.

More WRD events around Australia

ON WORLD Refugee Day the UNHCR asked those of us who have a home to remember the 20 million people worldwide who need a place to call home.

Australians showed their support for refugees by celebrating in their own distinct ways in events across the country.

Across Australia some of the activities included:

Jeff Brune and friends in Brisbane created a comprehensive web page dedicated to collating a network of Australian World Refugee Day events, including helpful background information about refugees. It can be found at www.worldrefugeeday.org.au.

In Brisbane, community groups organised several forums dedicated to discussing refugee issues both locally and internationally, with UNHCR's Sue Harris Rimmer as a guest speaker. Events included a public meeting at Riverside Centre Auditorium, a forum and reading of the Joint Statement on Refugees at the Multi-faith Centre at Griffith University and a meeting of

community groups and NGOs at Milpera High School.

In Sydney, Australia for UNHCR held a fundraising breakfast. Also popular was the Winter Solstice Mass, Ball and Lunch organised by the Jesuit Refugee Service to help raise funds for refugee services. The Australian Chamber Orchestra dedicated its concert at the Sydney Opera House to the spirit and courage of refugees.

Victorians celebrated with the Refugee and Asylum Seekers festival 2004. Various musical and dramatic performances including a play by prominent Australian actors involved in Actors for Refugees took place at Fitzroy Town Hall.

Across regional Victoria refugee advocate group Rural Australians For Refugees held 'Trees for Refugees', symbolically offering safe havens for refugees to put down their roots.

Amnesty International's 'Daybreak in Detention' demonstration was performed in more than 50 locations including Adelaide, Perth and Hobart, with hundreds of ordinary Australians detained in mock detention centres in



opposition to the mandatory detention of asylum seekers.

Amnesty said the event highlighted the human rights of refugees and asylum seekers in Australian detention centers. The events included music and film festivals, screenings of the documentary 'The Deported', family picnics and public rallies.

The Northern Territory celebrated the day by holding a candle light vigil on the Darwin foreshore. Protestors showed their solidarity with refugee advocacy groups by remembering refugees both locally and internationally at Mindil Beach markets.

Refugee and asylum numbers fall

THE TOTAL number of refugees and people of concern to the UNHCR has fallen 18 percent in 2003 to reach 17.1 million, its lowest level since recording began in 1991.

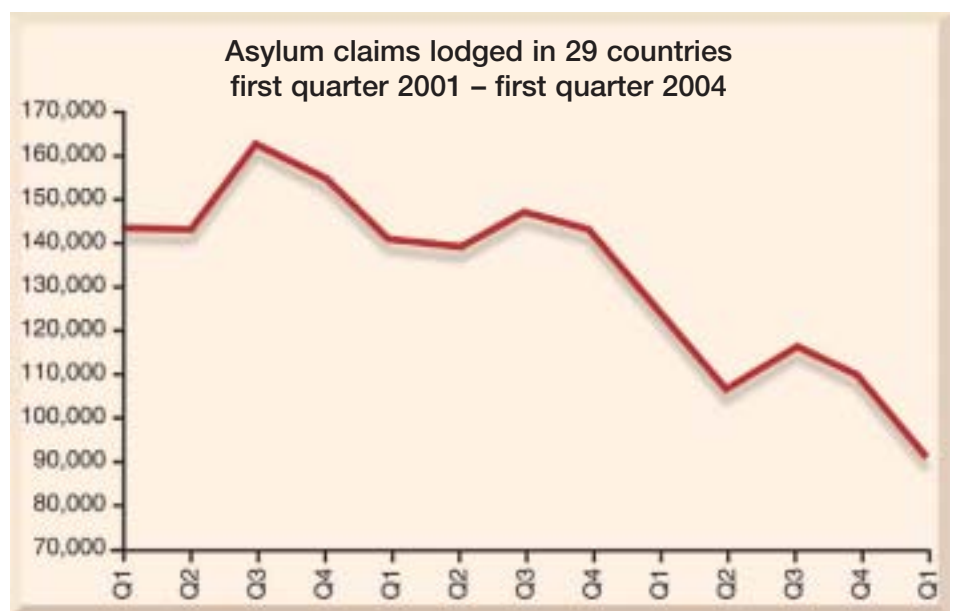
The figures, released on the eve of World Refugee Day by High Commissioner, Rudd Lubbers, showed a 22 percent decline in the total number of global people of concern from 21.8 million in 2001, to 17.1 million at the beginning of 2004.

"The statistics are very encouraging, especially for the nearly 5 million people who over the past few years have been unable to either go home or to find a new place to rebuild their lives," Mr Lubbers said. "For them, these dry statistics reflect a special reality; the end of long years in exile and the start of a new life with renewed hope for the future."

Of these 17.1 million, 9.7 million are refugees, 1.1 million are returned refugees, 4.2 million are internally displaced people, 995,000 are asylum seekers and 912,000 fall into the 'others' category which includes stateless people.

In 2003 the top five asylum countries in order of largest intake were Pakistan, Iran, Germany, Tanzania and the United States with all regions seeing a significant decrease in numbers.

In the first quarter of 2004, the industrialised world saw a dramatic decrease in asylum claims with Europe as a whole down by 18 percent, the US



down by 8 percent and Australia down by 12 percent compared to the previous quarter.

For the first time in the last decade the number of people making asylum claims to industrialised nations has fallen below 100,000 with a total of 92,700 claims made across the 29 nations.

UNHCR noted a spectacular decline in the number of Iraqi and Afghan asylum seekers, and a sharp drop in Russian claims – mainly from Chechens. Although Russians – most of whom are

Chechens – remained the top group of asylum seekers (with 7,508 claims), their numbers were 26 percent down on the previous quarter. Afghans and Iraqis – the two top groups in 2001 and 2002 – continued their spectacular decline and now lie in 11th and 12th place respectively. The number of Iraqis fell by 31 percent compared to the previous quarter, and Afghans by 29 percent. Comparing the first quarter of this year to the same period a year ago, Iraqi asylum seekers fell by 81 percent.



Representatives of the different faiths (front, left to right) Gita Beyzaee, Dr Robyn Lui, Multi-Faith Centre Director Professor Toh Swee-Hin, UNHCR official Susan Harris-Rimmer, Rev Chueh Shan, (back, left to right) David Beyzaee, Garth Read, Rabi Uri Thernal and Margaret Naylor.

Brisbane's religious leaders rally in support of refugees

BRISBANE'S religious leaders gathered together at a forum to celebrate World Refugee Day on 18 June at the Multi-Faith Centre at Griffith University. This is an excerpt from their joint statement.

We stand together to confirm our common humanity.

The world is troubled by conflicts, which are often caused by individuals or groups purporting to act in the name of religion.

These conflicts often produce victims, who are persecuted because of their different religious beliefs, political ideology, ethnic, national or cultural origin. To escape such persecution they

may attempt to flee to another country seeking safety, shelter and the opportunity to start a new life. International Law describes such people as asylum seekers and gives them the right to seek formal recognition as refugees.

We acknowledge that the traditional sources of our various religions teach us to resolve conflict, seek peace and provide care to those who need it.

We therefore call on all members of faith communities to turn to their traditional sources for guidance and support refugees in their pursuit of a new life in their new country.

In particular we call on our elected leaders to follow these teachings of compassion and care for the persecuted by applying these teachings to the plight of refugees and asylum seekers.

The statement was approved by the following representatives: Anglican-Archbishop, Catholic-Archbishop, Uniting Church-Moderator, Churches Together, Salvation Army, Islamic Community-Imams, Jewish Community-Rabbi, Buddhist Community-Amithaba and Buddha Light, Hindu Community, Baha'l Community, Brahma Kumaris, Sikh Community, Taoist Church, Caodaist International.

Convention Plus at a glance

What is Convention Plus?

Convention Plus is an international effort initiated and coordinated by the Office of the United Nations High Commissioner for Refugees (UNHCR). Its aim is to improve refugee protection worldwide and to facilitate the resolution of refugee problems through multilateral special agreements. This will be achieved through a process of discussion and negotiation with States and other partners of UNHCR to mobilize support and bring about firmer commitments.

Why new tools for refugee protection and durable solutions?

THE 1951 Convention and its 1967 Protocol define the responsibilities of states toward refugees. These instruments remain the cornerstone of the international refugee protection regime.

Despite their continued relevance, however, the Convention and the Protocol cannot address all the pressing issues pertaining to refugee protection in today's changing world. These include how the responsibility for admitting and protecting refugees can best be shared and how durable solutions for refugees should be pursued.

For this reason, the United Nations High Commissioner for Refugees has launched the "Convention Plus" process. He has explained that the "Plus" will be "a number of special agreements aimed at managing the refugee challenges of today and tomorrow in a spirit of international cooperation."

What are the tools being developed through Convention Plus?

IN THE PAST, UNHCR has frequently been a party to special agreements with States. Such agreements have generally focused on operational arrangements with Governments, often in relation to a particular group of refugees or a specific situation. Most of these agreements have concerned voluntary repatriation operations. Using this experience, the Convention Plus process will broaden the application of special agreements and increase the level of State and other stakeholder involvement.

On what areas will these agreements focus?

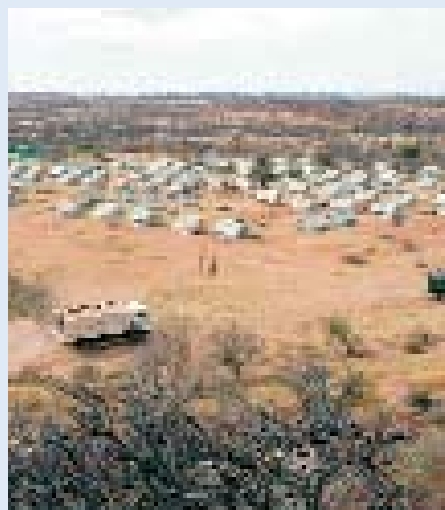
UNHCR will pursue **generic** multilateral agreements to tackle three priority challenges:

- the strategic use of **resettlement** as a tool of protection, a durable solution and a tangible form of burden-sharing;
- more effective **targeting of development assistance** to support durable solutions for refugees, whether in countries of asylum or upon return home; and
- clarification of the responsibilities of States in the event of **secondary movements** of refugees and asylum-seekers, that is, when refugees and asylum-seekers move, in an irregular manner, from an initial country of refuge to another country.

These generic agreements will set out shared understandings and commitments which can be relied upon and incorporated into **situation-specific** multilateral agreements designed to resolve a particular refugee situation. The Convention Plus effort will also promote and support the development of these agreements.

How will multilateral special agreements be developed?

THE CONVENTION PLUS process is chaired by the High Commissioner and co-chaired by Director of UNHCR's Department of International Protection. They guide the work of the Convention Plus Unit (CPU), which is based at UNHCR's Headquarters in Geneva. The CPU is responsible for working with States to develop the generic agreements. It will also provide



Farachana refugee camp, eastern Chad.

Photo: UNHCR/H.Caux

advice and assistance within UNHCR for the formulation of situation-specific special agreements.

The work on generic agreements is currently led by five "**facilitating**" States: Canada on resettlement, Denmark and Japan on the targeting of development assistance, and South Africa and Switzerland on secondary movements. Their role, in collaboration with UNHCR, is to lead the process of crafting special agreements. Each facilitating State coordinates discussions and deliberations with a group of other interested States, and ensures that NGOs have ample opportunity to provide their views.

The development of situation-specific special agreements is led by UNHCR's Regional Bureaux, with support from the CPU.

Who else will be involved?

TWICE a year the High Commissioner will convene a **Forum**, open to member States of UNHCR's Executive Committee (ExCom) and observers of its Standing Committee. The High Commissioner may also invite others who can make a positive contribution to the Forum.

The meetings of the Forum will focus on the progress made in the different Convention Plus strands. ExCom will receive regular updates on the progress of the Convention Plus process and the work of the Forum.

What is the role of UNHCR's country offices?

CONVENTION PLUS is an organization-wide effort. While many of the discussions will by necessity take place in Geneva, input and support from UNHCR staff in field locations is essential to encourage active State participation. It is at the field level that the majority of advocacy and liaison work will need to be pursued.

Need more information?

FOR FURTHER information on Convention Plus, including updates on the latest developments, see the Convention Plus website, which can be found under "Protecting Refugees" on UNHCR's public website (www.unhcr.ch). Additional information can be provided by contacting the CPU directly either by e-mailing durieux@unhcr.ch or fellahi@unhcr.ch.

Convention Plus – the new Multilateral Framework on Strategic Uses of Resettlement

AFTER THE Global Consultations process, States and UNHCR decided to reaffirm the Convention, but also to work on challenging new areas of refugee protection where the 1951 Convention is silent. This is called “Convention Plus”. (See *Convention Plus at a glance* on previous page)

It was decided that UNHCR will pursue generic multilateral agreements to tackle priority challenges, including the strategic use of resettlement as a tool of protection, a durable solution and a tangible form of burden-sharing.

These generic agreements will set out shared understandings and commitments which can be relied upon and incorporated into situation-specific multilateral agreements designed to resolve a particular refugee situation. The Convention Plus effort will also promote and support the development of these agreements.

Canada has convened a Core Group of States (Australia, Brazil, Denmark, Ecuador, Egypt, Iran, Kenya, Nepal, Netherlands, Nigeria, South Africa, Sweden, Tanzania, Thailand, UK, US and the EC), UNHCR (co-Chair) and IOM, which met in Geneva on four occasions – on 24 November 2003, on 29 – 30 January 2004, on 5 March 2004, and on 18 May 2004. The Core Group has drafted a “multilateral framework of understandings and undertakings” outlining those commitments that would need to be built into any plans of action containing a resettlement component which was finalised on 17 June 2004 and presented to the ATC. It will now go to ExCom for final approval.

The Framework sets out a series of mutual understandings about how the resettlement process will work when applied to a group in a protracted camp situation. Key principles in the

Framework include: the importance of flexible resettlement criteria and using group methodology to secure more places; respect and support for family unity; transparency of multilateral operations and the need to inform and consult with refugees; the need to pool resources and expertise; and the need for integration support and sustained commitment.

The next stage is to identify the particular group to be assisted by the Working Group, which will involve a careful process of political negotiations.

This is an innovative and important new process for UNHCR and States – watch the Convention Plus section of the UNHCR website for updates.



UNHCR and Resettlement

REFUGEES are not always able to return safely home or to remain in the country where they received asylum. There are situations in which resettlement to a third country is the only safe and viable durable solution for refugees. Thanks to the generosity of resettlement countries and the help of local non-governmental organisations, resettlement has become a fundamental element of the system for the international protection of refugees.

Annual Tripartite Consultations (ATC) June 2004

Background

IN 1995, UNHCR recognised that there was a need to improve the dialogue and co-operation between UNHCR and all partners involved in resettlement (Governments, NGOs, IOM).

A Working Group on Resettlement was established in June 1995, involving the participation of the ten traditional resettlement countries (USA, Canada, Australia, New Zealand, Finland, Sweden, Norway, Denmark, Switzerland and the Netherlands) to discuss their annual refugee resettlement quota. At

the same time, a series of informal consultations with NGOs was organised in Canada, Europe, the Nordic countries and the USA to incorporate NGOs views in the overall resettlement consultation process.

The first formal Consultations with Governments and NGOs were convened by UNHCR in October 1995, in Geneva. The Consultations were subsequently convened on a yearly basis and have become a traditional event known as the Annual Tripartite Consultations on Resettlement (ATC).

In 2000, the ten traditional resettlement countries agreed to the full participation of the eight emerging resettlement countries (Benin, Burkina Faso, Chile, Argentina, Brazil, Ireland, Spain and Iceland).

The Consultations offer a forum to review progress on resettlement issues during the year and to re-focus and shape a joint strategy on resettlement. In particular, the Consultations provide the appropriate environment to:

- raise awareness with a view toward building consensus in the EXCOM for the support of key resettlement issues, including the establishment of new programmes;
- share information on a regular basis about resettlement needs, provide

opportunities for planning purposes and allow for analysis of important policy issues;

- focus attention on UNHCR's resettlement activities, relevant operational issues, and key responsibilities for case identification and referral.

June 2004 meeting

IN JUNE this year, government officials and NGOs from Australia and NZ heard the High Commissioner open the ATC stressing the importance of resettlement to the 2004 theme for World Refugee Day *A Place to Call Home*. The important issues discussed this year included:

- the new Multilateral Framework under Convention Plus
- group resettlement methodology
- the roll-out of Project Profile UNHCR's new specially designed registration software
- developments in newly emerging resettlement countries and,
- a new process to plan quotas better each year called the 'Indications Conference'.

The full papers will soon be on the UNHCR website www.unhcr.ch under "Resettlement".

In the largest single resettlement program ever attempted from Africa, some 12,000 so called Somali Bantu are beginning new lives in the United States.

Photo: UNHCR/B.Press, 2002



New Resources Available

The following resources are available from UNHCR's Regional Office in Canberra, Australia

Global Report 2003



THIS REPORT is the UNHCR's annual review of achievements and impact of its programmes worldwide during the previous year. The electronic version of the report in English is available from on UNHCR's website (<http://www.unhcr.ch>).

Global Appeal 2004 Strategies and Programmes



THE PUBLICATION provides an overview of UNHCR's operations and challenges and describes UNHCR funding requirements for the coming year.

Some of the new features include a fold-out poster illustrating UNHCR's and the UN Consolidated Inter-Agency Humanitarian Assistance budget requirements for 2004. Maps reflecting the protracted refugee situations in Africa are also featured as annexes. A revised version of UNHCR's Global Objectives and Indicators of Progress is included in the introductory chapters. Throughout the Global Programmes chapter, there are cross references to the objectives and the Agenda for Protection that emanated from the Global Consultations on International Protection.

New Brochures

THE DEPARTMENT of International Protection recently announced the publication of a new A5 color brochure on The World's Stateless People: questions & answers.

This brochure answers some of the most commonly asked questions about statelessness and how UNHCR assists.

The brochure is now available on UNHCR's website or you may request copies from UNHCR in Canberra.

New Videos Global View 2004

THE VIDEO and CD-Rom examines current global refugee situations.

Duration: 22 minutes. Copies are available from UNHCR in Canberra.

CD-ROM Refworld 2004



AN UPDATED new edition of UNHCR's Refworld CD is out now. The new edition brings together nearly 90,000 refugee-related documents and sources of information with an improved section on refugee law and jurisprudence.

Also new to Refworld 2004 is a section on special initiatives by the UN refugee agency such as the Global Consultations on Refugee Protection, the Convention Plus initiative, and the UNHCR 2004 process.

Maps, statistics and information on refugees' countries of origin are also available on the CD-ROMs.

Refworld can be ordered by downloading the subscription form from the Refworld page on UNHCR's website and emailing the completed form to aulca@unhcr.ch



Some of the UNHCR's guidelines available on our website
<http://www.unhcr.ch>

- Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees
- "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees
- Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)
- "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees
- Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees and related Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees
- Guideline on International Protection "Religion-Based Refugee Claims under Article A1(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees" dated 28 April 2004.

The latest documents are also included on the new Refworld 2004 CD-Rom.



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