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0521825741 - Refugee Protection in International Law: UNHCR's Global Consultations on International Protection

Edited by Erika Feller, Volker Turk and Frances Nicholson

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## Refugee Protection in International Law

UNHCR's Global Consultations on International Protection

Millions of people are today forced to flee their homes as a result of conflict, systematic discrimination, or other forms of persecution. The core instruments on which they must rely to secure international protection are the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. This book examines key challenges the Convention faces, including the scope of the principle of *non-refoulement* and the proper application of the elements of the refugee definition. The Office of the United Nations High Commissioner for Refugees (UNHCR) commissioned papers on these issues from some of the world's pre-eminent international refugee experts, and these were discussed at a series of expert roundtable meetings during 2001 as part of UNHCR's Global Consultations on International Protection. The papers and roundtable conclusions are published here, together with an overview and the landmark declaration of the 2001 Ministerial Meeting of States Parties to the Convention and/or Protocol.

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# Refugee Protection in International Law

UNHCR's Global Consultations on International  
Protection

edited by

ERIKA FELLER

VOLKER TÜRK

and

FRANCES NICHOLSON



**CAMBRIDGE**  
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PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE  
The Pitt Building, Trumpington Street, Cambridge CB2 1RP, United Kingdom

CAMBRIDGE UNIVERSITY PRESS  
The Edinburgh Building, Cambridge, CB2 2RU, UK  
40 West 20th Street, New York, NY 10011-4211, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
Ruiz de Alarcón 13, 28014 Madrid, Spain  
Dock House, The Waterfront, Cape Town 8001, South Africa  
<http://www.cambridge.org>

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First published 2003

Printed in the United Kingdom at the University Press, Cambridge

*Typeface* Lexicon 1 A 9/12.5 pt. *System* L<sup>A</sup>T<sub>E</sub>X 2<sub>ε</sub> [TB]

*A catalogue record for this book is available from the British Library*

*Library of Congress Cataloguing in Publication data*

ISBN 0 521 82574 1 hardback  
ISBN 0 521 53281 7 paperback

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## Foreword

At the start of the twenty-first century, fifty years after the drafting of the 1951 Convention Relating to the Status of Refugees, international refugee protection is at a crossroads. In a globalizing world and a rapidly changing political environment, the Convention faces many challenges. These include new forms of persecution and conflict, complex mixed migration movements, the reluctance of many states to accept refugees, and restrictive interpretation of the Convention.

The papers and the conclusions contained in this volume are one outcome of the Global Consultations on International Protection, organized by UNHCR in 2000–2 to reinvigorate the international refugee protection regime. They address key questions relating to the 1951 Convention, where it was considered that greater clarity and coherence of interpretation was needed. They are the result of a series of expert roundtables which were held in 2001 as part of the Global Consultations.

This book examines some of the legal issues that are part of the system of governance for refugees. The cornerstone of this system remains the 1951 Convention and its 1967 Protocol. The aim is to ensure that this system can function more effectively, equitably, and efficiently, enabling refugees to obtain the protection to which they are entitled.

Refugee protection problems cannot be addressed in isolation. All stakeholders, whether they be international organizations, governments, judiciaries, civil society, non-governmental organizations, or academia, need to strengthen their partnerships and clarify their roles. Clearer understanding and more consistent implementation are an integral part of ensuring that refugee protection burdens and responsibilities are shared more equally, and that some of the world's most vulnerable individuals are able to find durable solutions to their plight and to enjoy the respect that they deserve.

The Declaration agreed by delegates at the Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol in December 2001 called on States to 'strengthen asylum and render protection more effective'. I hope this volume will serve as a tool to assist those involved in refugee protection in this endeavour.

Ruud Lubbers

*United Nations High Commissioner for Refugees*

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## Preface

The world has changed radically since the establishment of UNHCR and the coming into force of the Convention Relating to the Status of Refugees some fifty years ago. The modern regime of international refugee protection has been built on these beginnings in the aftermath of the Second World War and is now a complex structure affording vital protection to millions of forcibly displaced people. Within this structure, the Convention and its 1967 Protocol are widely acknowledged as enduring instruments with a 'central place in the international refugee protection regime', as States Parties to the Convention and/or Protocol declared in December 2001.

Conclusions have, however, sometimes been drawn which put in question the ongoing relevance of the Convention or which seem to call for its complete overhaul, or even abandonment. Such conclusions are misguided, even dangerous. They contribute to the waning quality of asylum, as State commitment to protection using the available instruments starts to falter. UNHCR does of course recognize that the challenges today are many and various and that there are gaps in the protection framework, even while, at the core, the Convention regime's fundamental principles are as sound and necessary as ever.

The Global Consultations on International Protection have been UNHCR's effort to rise to modern challenges confronting refugee protection, to shore up support for the international framework of protection principles, and to explore the scope for enhancing protection through new approaches, which nevertheless respect the concerns and constraints of States and other actors. The process was designed to promote better understanding of today's protection dilemmas, from the perspective both of the providers and of the beneficiaries of international protection. State interests and refugee needs have not been always easy to reconcile, but certainly the first step in this direction can only be taken when the possibilities and limitations are properly appreciated.

The Consultations were also conceptualized so as to realize better cooperation among all concerned. Best practices, or at least baselines, for making asylum systems work more justly and efficiently, coupled with a firming up of political will to improve the 'doing' of protection, not on an ad hoc and discretionary basis, but more predictably and consistently within the internationally agreed parameters, were likewise an objective. So too was a more reasoned approach to responsibility

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sharing, in order to rationalize the assumption of responsibilities and balance the burdens in a more equitable manner. Finally, the Consultations had the goal of contributing to improved implementation of important framework principles, including by clarifying their meaning in a modern context.

The various issues raised in the course of the Global Consultations were organized along three 'tracks'. The first culminated in an unprecedented Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol in Geneva in December 2001. The Declaration from that meeting – the first ever adopted by all States Parties – is reproduced in Part 1.3 of this book. That Declaration stands as an important measure of political commitment to better refugee protection within a strengthened Convention framework. The 'second track' of the Consultations involved a series of expert roundtables held during 2001 on specific issues in the interpretation of the 1951 Convention on which greater clarity is required, as set out in the table on p. xxi. A more harmonized understanding of how the Convention is to be applied in today's world will, it is hoped, be one enduring outcome. The 'third track' brought together States and other actors, within the framework of the Executive Committee of the High Commissioner's Programme, to examine various specific or thematic refugee protection concerns not directly, or not adequately, covered by the Convention and Protocol.

Overall the Global Consultations process has encouraged a cooperative spirit in tackling refugee issues. It has aroused an interest in multilateral dialogue to find solutions to an increasingly internationalized set of problems. The process has confirmed a willingness to pool concerns and jointly point the way forward to the durable resolution of problems whose solution is within our collective reach. Together, UNHCR and States have drafted an Agenda for Protection, which should help both to inform and to shape debate and policy formation. The Agenda comprises a comprehensive programme of action to tackle the various issues besetting refugee protection in today's complex environment.

This book represents a key outcome very particularly of the second track roundtable meetings and the Summary Conclusions resulting from them. It focuses in a detailed manner on discrete legal issues of interpretation of the 1951 Convention, bringing together the expert papers presented to the participants at the roundtable meetings and their conclusions. The authors were asked to make proposals to establish common understandings on key issues of Convention interpretation in order to promote greater consistency in the application of the Convention in the different jurisdictions of the world. They were also asked to factor into their analysis subsequent developments in international law of relevance to forced displacement.

The book is introduced by an overview of refugee protection in international law, followed by a paper on the age- and gender-sensitive interpretation of the 1951 Convention and the text of the 2001 Declaration of the Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol. The book then comprises nine



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parts, each containing a paper by different leading international refugee experts on key issues of interpretation of the 1951 Convention. These concern *non-refoulement*, illegal entry, membership of a particular social group, gender-related persecution, internal flight, relocation or protection alternatives, exclusion, cessation, family unity and reunification, and UNHCR's supervisory responsibility under its Statute. Each of these issues was debated at an expert roundtable meeting in 2001 and the Summary Conclusions of those meetings follow the relevant paper.

I trust this book will offer a valuable resource for judges, adjudicators, legal practitioners, government officers, humanitarian workers, non-governmental refugee advocates, and academics alike in their various efforts towards the common goal of strengthening refugee protection worldwide. For its part, UNHCR will be drawing on these various contributions to refine its own guidelines, which it makes available pursuant to its responsibility under paragraph 8 of its Statute and Article 35 of the 1951 Convention itself.

Erika Feller

*Director of International Protection*

*Office of the United Nations High Commissioner for Refugees*

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## Acknowledgments

UNHCR would like to thank the co-organizers of the expert roundtables held as part of the 'second track' of the Global Consultations on International Protection for their important substantive and financial contribution in making these events possible. The co-organizers involved were the International Migration Policy Institute of the Carnegie Endowment for International Peace, New York, United States; the Luso-American Foundation for Development, Lisbon, Portugal; the Lauterpacht Research Centre for International Law, University of Cambridge, United Kingdom; the International Institute of Humanitarian Law, San Remo, Italy; and the Graduate Institute of International Studies, Geneva, Switzerland. Other significant financial contributors to the overall Global Consultations process, who also therefore helped to make these roundtables happen, were Australia, Canada, the European Commission, Japan, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom, and the United States. In addition, the governments of Canada, China, Costa Rica, Egypt, France, Hungary, Norway, and South Africa each hosted regional meetings in the context of the 'third track' of the Consultations which likewise made an important contribution to the process.

The editors would especially like to thank Kate Jastram and Alice Edwards, who provided valuable substantive and organizational input as consecutive focal points for the second track of the Global Consultations, as well as Eve Lester, the non-governmental organization (NGO) liaison officer for the Consultations.

In addition, the editors are most grateful for the input and comments of colleagues Nicholas Arons, Alexander Beck, Walter Brill, Walpurga Englbrecht, Diane Goodman, Nathalie Karsenty, Irene Khan, Janice Marshall, Hugh Massey, Sophie Muller, Shahrzad Tadjbakhsh, Mignon van der Liet, and Wilbert van Hövell. Thanks also go to Finola O'Sullivan, Treena Hall, Jennie Rubio, Caro Drake, and Martin Gleeson at Cambridge University Press, as well as Lesley Dingle at the Squire Law Library in Cambridge, for their kind support in seeing this project through to publication.

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## Expert roundtables and topics under the 'second track' of the Global Consultations

Roundtables	Topics
<p><b>1st Roundtable</b>            Date: 3–4 May 2001            Venue: Lisbon            Co-organizer: Carnegie Endowment for International Peace, Washington DC            Hosted by: Fundação Luso-Americana para o Desenvolvimento</p>	<ul style="list-style-type: none"> <li>• Cessation (Article 1C)</li> <li>• Exclusion (Article 1F)</li> </ul>
<p><b>2nd Roundtable</b>            Date: 9–10 July 2001            Venue: Cambridge            Co-organizer: Lauterpacht Research Centre for International Law, Cambridge, UK</p>	<ul style="list-style-type: none"> <li>• Principle of <i>non-refoulement</i> (Article 33)</li> <li>• Supervisory responsibility (Article 35)</li> </ul>
<p><b>3rd Roundtable</b>            Date: 6–8 September 2001            Venue: San Remo            Co-organizer: International Institute of Humanitarian Law, San Remo, Italy</p>	<ul style="list-style-type: none"> <li>• Membership of a particular social group (Article 1A(2))</li> <li>• Gender-related persecution (Article 1A(2))</li> <li>• Internal protection/relocation/flight alternative</li> </ul>
<p><b>4th Roundtable</b>            Date: 8–9 November 2001            Venue: Geneva            Co-organizer: Graduate Institute of International Studies, Geneva, Switzerland</p>	<ul style="list-style-type: none"> <li>• Illegal entry (Article 31)</li> <li>• Family unity (Final Act of the 1951 UN Conference)</li> </ul>

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*Mavrommatis Palestine Concessions*, Series A, No. 2, 30 Aug. 1924 376n

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*Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 1984, p. 329; and Merits, Judgment, ICJ Reports 1986, p. 14 141, 142, 147, 460n, 473n

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Cambridge University Press

0521825741 - Refugee Protection in International Law: UNHCR's Global Consultations on International Protection

Edited by Erika Feller, Volker Turk and Frances Nicholson

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