
APPENDIXES



REFUGEE AND HUMANITARIAN DIVISION
DEPARTMENT OF IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS
CANBERRA, AUSTRALIA

APPENDIX ONE

AUSTRALIAN STATEMENT TO PARTIES TO THE CONVENTION RELATED TO THE STATUS OF REFUGEES

UNHCR MINISTERIAL COUNCIL, GENEVA, 12 DECEMBER 2001

Mr Chairman, I am honoured to be part of this Ministerial meeting to celebrate the 50th anniversary of the Refugees Convention, the international instrument that gives protection and hope to the world's refugees.

On behalf of the Government of Australia, I pay tribute to the 50 years of dedication by the staff of the UNHCR who work—and at times most unfortunately give up their lives—to assist states in implementing the Convention.

Australia was there at the beginning. We were the 6th state to accede to the Convention. We strongly believed in its principles when we signed—we still believe in them—and we are committed to honouring them.

There are some that question the relevance of the instrument itself in this new century. I am not one of them.

The Convention, firmly grounded in fundamental human rights, is the cornerstone of the international protection system—such an instrument would probably be impossible to achieve today.

But is today's international protection system failing refugees? Are the mechanisms set up by states being subverted in ways never intended, putting at risk our best intentions? Are we paying such attention to the legal rights of asylum-seekers that we are neglecting the basic needs of refugees?

Let us ask ourselves some challenging questions.

First, not all refugees have equitable access to status determination and to durable solutions in a reasonable time. How can we make the system fairer?

Secondly and a related point, some countries of first asylum have borne a disproportionate load in hosting large populations of refugees for many years. How can responsibility-sharing be made to work?

Thirdly, people are forsaking opportunities for protection in neighbouring countries and are using people smugglers and the asylum system to seek access to western countries—and some are tragically dying in the attempt.

Fourthly, failure to return rejected asylum-seekers, whether through lack of will or lack of cooperation by countries of origin and transit, perpetuates incentives for abuse of the asylum system. How can we remove those incentives?

Fifthly, just to find the relatively few refugees among those who seek asylum, western countries are spending over ten times UNHCR's budget. When are we going to address an overly legalistic system that uses up our capacity to help prevent refugee situations at source? Are we going to wait until the already too few resettlement countries no longer have any capacity or willingness to resettle the most vulnerable refugees?

Sixthly, asylum systems are beset with identity, nationality and claims fraud of such dimensions that the community's willingness to support refugees is being eroded. That community support is essential if states are to be able to continue humanitarian action and resettlement. How can we safeguard that support?

These matters are not the fault of the Refugees Convention, but of the evolved international protection system.

We look to the High Commissioner for Refugees, with strong guidance from his Executive Committee, to provide the personal leadership necessary to meet the fundamental challenge to the system.

This challenge is the nexus between regular migration, irregular migration and people smuggling, return and readmission, asylum and integration. UNHCR's Global Consultations this year have made a valuable beginning in developing understanding of the nexus. That understanding must now lead to practical and cooperative action that acknowledges that refugee flows are but one part of global people movement.

In the Asia-Pacific region, we have forged a practical partnership between neighbouring governments and Australia, working in cooperation with UNHCR and IOM. These arrangements provide access to effective asylum procedures, arrange for the provision of protection for those who need it and for the return home of those who do not, while vigorously combating the crime of people smuggling.

The second example concerns displaced Afghans.

The September 11 terrorist attacks placed even greater pressure on the international protection system, not only in terms of increased outflows, but also on the willingness of states to provide asylum and resettlement.

But at a time of promise in discussions on the political future of Afghanistan, we are presented with an opportunity for which Afghans have waited 20 years. We can show how the international community can weld together peace-keeping; humanitarian and development aid; and return of Afghans to participate in the rebuilding of their nation, whether they be skilled nationals, refugees, economic migrants or failed asylum-seekers. The returns can be planned and organised in ways that ensure that Afghans return in safety and dignity but that do not provide further incentives for illegal movement.

The Refugees Convention proffers a deceptively simple response to persecution. When a refugee flees directly across a border to secure their safety from persecution, provision of international protection is moral and straightforward.

But the world's political and legal systems and uneven generosity, overlaid with the actions of those who seek to misuse and exploit the institution of asylum, create more complex problems that require more sophisticated responses.

We must be open to innovative and possibly radical approaches; we need to build new coalitions; and we must create comprehensive and integrated solutions.

We urge states and the High Commissioner to work together to create a viable international protection system, robust and effective enough to last the next 50 years.

Australia has benefited greatly from the 600,000 refugees we have resettled and we celebrate their contribution to our community. We pay tribute to the courage of the world's refugees—we must not fail them in these endeavours.

APPENDIX TWO

Ministerial Meeting of States Parties
To the 1951 Convention
And/or its 1967 Protocol
Relating to the status of refugees

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DECLARATION OF STATES PARTIES TO THE 1951 CONVENTION AND OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES¹

PREAMBLE

We, representatives of States Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol, assembled in the first meeting of States Parties in Geneva on 12 and 13 December 2001 at the invitation of the Government of Switzerland and the United Nations High Commissioner for Refugees (UNHCR),

1. Cognizant of the fact that the year 2001 marks the 50th anniversary of the 1951 Geneva Convention relating to the Status of Refugees,
2. Recognizing the enduring importance of the 1951 Convention, as the primary refugee protection instrument which, as amended by its 1967 Protocol, sets out rights, including human rights, and minimum standards of treatment that apply to persons falling within its scope,
3. Recognizing the importance of other human rights and regional refugee protection instruments, including the 1969 Organisation of African Unity (OAU) Convention governing the Specific Aspects of the Refugee Problem in Africa and the 1984 Cartagena Declaration, and recognizing also the importance of the common European asylum system developed since the 1999 Tampere European Council Conclusions, as well as the Programme of Action of the 1996 Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States,
4. Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of *non-refoulement*, whose applicability is embedded in customary international law,
5. Commending the positive and constructive role played by refugee-hosting countries and recognizing at the same time the heavy burden borne by some, particularly developing countries and countries with economies in transition, as well as the

¹ As adopted on 13 December 2001 in Geneva at the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.

protracted nature of many refugee situations and the absence of timely and safe solutions,

6. Taking note of complex features of the evolving environment in which refugee protection has to be provided, including the nature of armed conflict, ongoing violations of human rights and international humanitarian law, current patterns of displacement, mixed population flows, the high costs of hosting large numbers of refugees and asylum-seekers and of maintaining asylum systems, the growth of associated trafficking and smuggling of persons, the problems of safeguarding asylum systems against abuse and of excluding and returning those not entitled to or in need of international protection, as well as the lack of resolution of long-standing refugee situations,
7. Reaffirming that the 1951 Convention, as amended by the 1967 Protocol, has a central place in the international refugee protection regime, and believing also that this regime should be developed further, as appropriate, in a way that complements and strengthens the 1951 Convention and its Protocol,
8. Stressing that respect by States for their protection responsibilities towards refugees is strengthened by international solidarity involving all members of the international community and that the refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and effective responsibility and burden-sharing among all States,

OPERATIVE PARAGRAPHS

1. Solemnly reaffirm our commitment to implement our obligations under the 1951 Convention and/or its 1967 Protocol fully and effectively in accordance with the object and purpose of these instruments;
 2. Reaffirm our continued commitment, in recognition of the social and humanitarian nature of the problem of refugees, to upholding the values and principles embodied in these instruments, which are consistent with Article 14 of the Universal Declaration of Human Rights, and which require respect for the rights and freedoms of refugees, international cooperation to resolve their plight, and action to address the causes of refugee movements, as well as to prevent them, *inter alia*, through the promotion of peace, stability and dialogue, from becoming a source of tension between States;
 3. Recognize the importance of promoting universal adherence to the 1951 Convention and/or its 1967 Protocol, while acknowledging that there are countries of asylum which have not yet acceded to these instruments and which do continue generously to host large numbers of refugees;
 4. Encourage all States that have not yet done so to accede to the 1951 Convention and/or its 1967 Protocol, as far as possible without reservation;
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5. Also encourage States Parties maintaining the geographical limitation or other reservations to consider withdrawing them;
 6. Call upon all States, consistent with applicable international standards, to take or continue to take measures to strengthen asylum and render protection more effective including through the adoption and implementation of national refugee legislation and procedures for the determination of refugee status and for the treatment of asylum-seekers and refugees, giving special attention to vulnerable groups and individuals with special needs, including women, children and the elderly;
 7. Call upon States to continue their efforts aimed at ensuring the integrity of the asylum institution, *inter alia*, by means of carefully applying Articles 1F and 33 (2) of the 1951 Convention, in particular in light of new threats and challenges;
 8. Reaffirm the fundamental importance of UNHCR as the multilateral institution with the mandate to provide international protection to refugees and to promote durable solutions, and recall our obligations as State Parties to cooperate with UNHCR in the exercise of its functions;
 9. Urge all States to consider ways that may be required to strengthen the implementation of the 1951 Convention and/or 1967 Protocol and to ensure closer cooperation between States parties and UNHCR to facilitate UNHCR's duty of supervising the application of the provisions of these instruments;
 10. Urge all States to respond promptly, predictably and adequately to funding appeals issued by UNHCR so as to ensure that the needs of persons under the mandate of the Office of the High Commissioner are fully met;
 11. Recognize the valuable contributions made by many non-governmental organizations to the well-being of asylum-seekers and refugees in their reception, counselling and care, in finding durable solutions based on full respect of refugees, and in assisting States and UNHCR to maintain the integrity of the international refugee protection regime, notably through advocacy, as well as public awareness and information activities aimed at combating racism, racial discrimination, xenophobia and related intolerance, and gaining public support for refugees;
 12. Commit ourselves to providing, within the framework of international solidarity and burden-sharing, better refugee protection through comprehensive strategies, notably regionally and internationally, in order to build capacity, in particular in developing countries and countries with economies in transition, especially those which are hosting large-scale influxes or protracted refugee situations, and to strengthening response mechanisms, so as to ensure that refugees have access to safer and better conditions of stay and timely solutions to their problems;
 13. Recognize that prevention is the best way to avoid refugee situations and emphasize that the ultimate goal of international protection is to achieve a durable solution for refugees, consistent with the principle of *non-refoulement*, and commend States that continue to facilitate these solutions, notably voluntary
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repatriation and, where appropriate and feasible, local integration and resettlement, while recognizing that voluntary repatriation in conditions of safety and dignity remains the preferred solution for refugees;

14. Extend our gratitude to the Government and people of Switzerland for generously hosting the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.

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ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ACHR69	American Convention on Human Rights of 22 November 1969 and Protocol
Act	<i>Migration Act 1958</i> (unless otherwise stated)
AGD	Attorney-General's Department
AGS	Australian Government Solicitor
CAT	1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CERD	1965 International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	1979 Convention on the Elimination of All Forms of Discrimination against Women
CROC	1989 Convention on the Rights of the Child
DFAT	Department of Foreign Affairs and Trade
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECHR	European Court of Human Rights
EU	European Union
ExCom	Executive Committee of the High Commissioner's Programme
FFC	Full Federal Court
HREOC	Human Rights and Equal Opportunity Commission
IAAAS	Immigration Advice and Application Assistance Scheme
ICC	Islands Co-ordinating Council
ICCPR	1966 International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Court of Former Yugoslavia
ICESCR	1966 International Covenant on Economic, Social and Cultural Rights
IDS	Immigration Detention Standards
ILO	International Labour Organisation
IOM	International Organisation for Migration

JSCM	Joint Standing Committee on Migration
Minister	Minister for Immigration and Multicultural and Indigenous Affairs (unless otherwise stated)
MSI	Migration Series Instruction
PM&C	Department of the Prime Minister and Cabinet
Refugees Convention	1951 Convention relating to the status of refugees (as amended by the 1967 Protocol)
RRT	Refugee Review Tribunal
UDHR	1948 Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHCR Handbook	UNHCR Handbook on Procedures and Criteria for Determining Refugee Status

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