

Roundtable on the Future of Refugee Convention Supervision

Convened at Downing College, University of Cambridge
Hosted by the University of Cambridge and the University of Michigan

September 28-29, 2012

Summary Conclusions

Recognizing that the 1951 Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees (“Refugee Convention”) is the basis upon which critical protection decisions are made on a daily basis throughout the world;

Noting the critical importance of independent and authoritative international oversight of its standards and their application in practice;

Wishing to reinforce the importance of universal standards of refugee protection, and to advance a transnational common understanding of protection principles; and

Committed, in particular, to providing judicial and administrative decision-makers with authoritative guidance of a kind that best enables them accurately to apply international refugee law norms to the facts of increasingly complex cases;

The Roundtable on the Future of Refugee Convention Supervision was convened on Sept. 28-29, 2012, by Prof. James Hathaway of the University of Michigan Law School and Justice A.M. North of the Federal Court of Australia to consider a series of three research papers commissioned by them from the Cambridge Pro Bono Project, under the direction of Mr. Jason Pobjoy and supervision of Professor David Feldman, University of Cambridge.

The following summary conclusions do not represent the individual views of each participant, but reflect broadly the understandings emerging from the discussion.

1. The United Nations High Commissioner for Refugees (UNHCR) is a unique institution entrusted *inter alia* with a “duty of supervising the application of the provisions of [the Refugee] Convention” (Convention, Art. 35). This institutional responsibility is complemented by the responsibility of state parties to implement treaty obligations in good faith (Vienna Convention, Art. 31), and their right to refer any dispute “relating to [the Convention’s] interpretation or application” to the International Court of Justice (Convention, Art. 38). The UNHCR and state parties thus have a shared responsibility to ensure compliance with obligations under the Refugee Convention.

2. The UNHCR plays a key role in advancing respect for a global understanding of the Refugee Convention. This significant function is entitled to the respect of state parties in line with their undertaking “to co-operate with the Office of the United Nations High Commissioner for Refugees” (Convention, Art. 35). Any mechanism adopted to enhance respect for the Refugee Convention must therefore reinforce the mandate and

responsibility of the UNHCR to ensure the principled implementation of protection obligations.

3. National authorities, including in particular specialist tribunals and courts of general jurisdiction with refugee protection jurisdiction, have become increasingly engaged in the process of ensuring the alignment of state practice with obligations under the Refugee Convention. The jurisprudence generated by these tribunals and courts has engaged in detail with pivotal and difficult issues of refugee law, refining and applying normative principles in relation to the facts of real cases. National courts and tribunals increasingly take account not only of national standards and advice from the UNHCR, but also of decisions rendered by tribunals and courts in other state parties. Under the auspices of the International Association of Refugee Law Judges and otherwise, these national decision-makers have engaged in a transnational judicial dialogue on refugee law, which has proved a critical mechanism for promoting a contextually grounded, global, and evolving understanding of the Refugee Convention.

4. Recognizing the expertise of national courts and specialist tribunals, the UNHCR has shown a clear commitment to a process of ongoing engagement with such authorities in the formulation of authoritative guidance on refugee law. That experience provides the foundation for a process of enhanced engagement with the specific goal of providing guidance on refugee law to national decision-makers in a shape and form that will have particular resonance with such authorities. A more structured means of marrying the insights and experience of national refugee law decision-makers and other authorities on comparative refugee law jurisprudence with the expertise of the UNHCR holds the potential to advance the goal of providing authoritative guidance that is firmly anchored in standards of international law, transparently reasoned, and experientially informed.

5. There is therefore real value in considering the establishment within the UNHCR of a Special Committee of Experts tasked with issuing Advisory Opinions on the interpretation and application of the Refugee Convention. Specifically:

(a) The members of the Special Committee of Experts should be judges and other persons with recognized expertise in international refugee law, appointed in their personal capacity for a fixed term, and selected on the basis of their independence and knowledge;

(b) The members of the Special Committee of Experts should be appointed by the High Commissioner through a process that will be recognized as legitimate, inclusive, and transparent;

(c) A request for an Advisory Opinion by the Special Committee of Experts should be made by the High Commissioner, though a mechanism for ongoing consultation between the Special Committee of Experts and the High Commissioner should be established to enable the Special Committee of Experts to suggest questions or issues that in its view warrant the issuance of an Advisory Opinion;

(d) A procedure should be established to enable a national specialist tribunal or court with refugee law jurisdiction to request the High Commissioner to refer a question or issue to the Special Committee of Experts;

(e) In preparing an Advisory Opinion, the Special Committee of Experts should take account of any relevant guidance produced by UNHCR, whether in the *Handbook*, Guidelines on International Protection, or otherwise. Where the Special Committee of Experts renders an

Advisory Opinion that departs from such guidance, it should justify that departure with clear and cogent legal reasoning;

(f) The Advisory Opinions rendered by the Special of Committee of Experts should ordinarily be made public, though the High Commissioner should be entitled to determine otherwise in a given case; and

(g) Where the Special Committee of Experts has issued an Advisory Opinion on a given question or issue, the UNHCR should take account of that guidance in framing any future guidance or intervention on the same or a related question or issue, and in determining the need for revision of any relevant extant standards or other guidance.

6. The participants in the Roundtable on the Future of Refugee Convention Supervision were:

Mr. Justice Nicholas Blake, President of the Upper Tribunal Immigration and Asylum Chamber and Judge, English Court of Queen's Bench

Professor Rosemary Byrne, Trinity College, Ireland

Judge Sebastiaan de Groot, First Instance Court of Haarlem, Netherlands, and President of the International Association of Refugee Law Judges

Professor David Feldman, University of Cambridge

Lady Brenda Hale, Supreme Court of the United Kingdom

Professor James C. Hathaway, University of Michigan

Judge Joseph Krulic, Président de section, Cour nationale du droit d'asile, France

Justice A.M. North, Federal Court of Australia, and Immediate Past-President of the International Association of Refugee Law Judges

Mr. Jason Pobjoy, Ph.D. Candidate and Chair, Cambridge Pro Bono Project

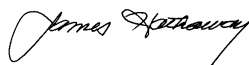
Dr. Volker Türk, Director of International Protection, UNHCR

Chief Justice Kashim Zannah, High Court of Justice of Maiduguri, Nigeria, and Vice-President of the International Association of Refugee Law Judges.

Reported by:



Justice A.M. North
Chair and Co-Convener



Professor James C. Hathaway
Co-Convener



Professor Rosemary Byrne
Rapporteur