

**FOLLOW-UP TO THE 2<sup>ND</sup> BALI REGIONAL MINISTERIAL CONFERENCE  
ON PEOPLE SMUGGLING, TRAFFICKING IN PERSONS AND RELATED  
TRANSNATIONAL CRIME**

**WORKSHOP ON  
RECONCILING LEGITIMATE STATE INTEREST TO CONTROL  
IMMIGRATION WITH REFUGEE PROTECTION**

**CO-ORGANIZED BY THE FIJI GOVERNMENT AND THE UNITED NATIONS  
HIGH COMMISSIONER FOR REFUGEES (UNHCR)**

**Nadi (Fiji), 27 - 29 April 2004**

**1. Background**

As a follow-up to the First Regional Ministerial Conference on People Smuggling, Trafficking and Related Transnational Crime held in Bali on 26 - 28 February 2002, UNHCR organized a Workshop on Best Practices in Asylum Management. The Workshop took place in Bangkok on 10 - 12 March 2003 and aimed at facilitating an exchange of views and experience between officials involved in asylum and migration management, especially on the issue of managing mixed population flows and secondary movement. The Workshop was attended by thirty-two participants from twenty-five States. At the conclusion of the Workshop a checklist of best practices in relation to asylum management was identified and agreed upon by all participants.

In the Co-Chair's Statements of the Second Regional Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime held in Bali on 28 - 30 April 2003, the Ministers recommended that States "welcome cooperation able to be provided by IOM and UNHCR, consistent with their respective mandates, to assist in the follow-up work arising from the Bali process". The Ministers also reached the following conclusion:

"35. Ministers, while acknowledging that this Conference had not been convened to deal directly with the issue of refugees, affirmed that nothing in this statement was intended to prejudice the legitimate rights of genuine refugees to seek and enjoy asylum in accordance with relevant UN Conventions and Protocols. Ministers noted that all countries, including origin, transit and destination, according to their national laws, could play a part in ensuring protection and in finding solutions for refugees, while providing for return in a dignified and humane manner for those found not to be refugees. Ministers recognized that improving the availability of solutions for refugees may reduce the pressure for onward secondary movement and thereby complement the international community's efforts comprehensively to combat people smuggling, trafficking in persons and related transnational crime."

At the 2<sup>nd</sup> Bali Conference, the High Commissioner for Refugees, Mr Ruud Lubbers, stated that he shared one commitment with States, i.e. to see crime successfully fought, but he added that, to be effective in fighting crime, it was not sufficient to increase border control and attack criminal networks. "You have been engaged in this for many years",

he emphasized, “but the problem is still with us. One needs to limit “the oxygen” of this crime, to reduce the number of victims available to be exploited by criminal networks. You must not only live up to the spirit of the 1951 Convention, but also engage in comprehensive solutions...Solutions for refugees and burden sharing is not only a humanitarian and political challenge. It is also about fighting crime”. Finally, the High Commissioner highlighted that in Indonesia, the host of the Bali Conference, UNHCR had been a successful partner of Indonesia and Australia, together with IOM, to address mixed flows of which only a limited number were really refugees.

## **2. Goals and objectives**

It is often stated that there is an uneasy symbiosis between two deeply rooted principles of international law. The first one is the sovereign right of States to determine who may or may not enter their territory. This includes the right to cooperate with other States to control borders and fight against all forms of illegal immigration. The second principle is the right for victims of persecution or violence to seek and enjoy protection in other countries. One of the corollaries to the latter is the principle of non-penalization of refugees for illegal entry or stay in the territory of another State. Refugee protection can therefore be considered as an exception or a limitation to the sovereign right of controlling borders. A number of immigration officials feel uneasy about what they may perceive as an infringement upon their duty and authority to “keep at bay uninvited guests”. They also often have the impression that leaving the door ajar for refugees and asylum seekers might have the detrimental effect of encouraging economic migrants, but also criminal networks, to take advantage of the opening and sneak into the country. Another frequently expressed fear is the difficulty to make a distinction between a refugee and an economic migrant. States are also legitimately concerned about the many obstacles they usually encounter when they want to return those who have been rejected after a fair and effective asylum procedure. Finally, immigration officials have difficulty to understand that people may travel thousands of miles and transit several countries to seek protection instead of knocking at the most immediate door. UNHCR has a considerable experience in providing support to governments in the context of mixed migratory flows and secondary movement of people and in designing tools and mechanisms to fairly and quickly identify persons genuinely in need of international protection. This workshop will focus on concrete ways and means to reconcile strict border control with refugee protection.

## **3. Draft agenda**

### **27 April 2004**

- 09.00 – 09.15 Welcoming remarks
- 09.15 – 12.30 The underpinning principles (right to limit access to the territory and right to seek and enjoy asylum): how to reconcile both principles, their points of intersection and their implication on immigration/asylum management
- 12.30 – 14.00 Lunch
- 14.00 – 17.30 Establishing fair, quick and effective mechanisms to identify those in

need of international protection and screen them from economic migrants

19.00 – 21.00 Cocktail offered by H.E. the Fiji Foreign Minister

#### **28 April 2004**

09.00 – 12.30 Excluding from refugee protection those who have committed serious crimes

12.30 – 14.00 Lunch

14.00 – 17.30 Improving exchange of information, including country of origin information, between UNHCR and governments

#### **29 April 2004**

09.00 – 12.30 Developing co-ordination / strategies among states to ensure removal of those who have been rejected after a fair and effective refugee status determination procedure

12.30 – 14.00 Lunch

14.00 – 17.30 Working on durable solutions for refugees (including the promotion of effective protection in countries of first asylum)

#### **4. Methodology**

Each session will be divided into:

1. a 45 minutes presentation
2. a 15 minutes questions and answers
3. a 15 minutes coffee / tea break
4. a 90 minutes slot to discuss case studies in small working groups
5. a 45 minutes wrap-up in plenary

#### **5. Participants**

There will be around 35-40 participants from the countries, which participated in the Bali II Conference. Participants should be senior government officials, who are policy makers in border control, immigration and/or refugee issues.