
Appendix B – UNHCR Monitoring Plan

Canada–United States “Safe Third Country” Agreement

UNHCR MONITORING PLAN
US-CANADA "SAFE THIRD COUNTRY" AGREEMENT
(Subject to final exchange of letters between the Parties and UNHCR)

The Safe Third Country agreement (hereinafter “the Agreement”) notes, in keeping with the advice of UNHCR and its Executive Committee, that agreements among states may enhance international protection of refugees by promotion of orderly handling of asylum applications by the responsible party and the principle of burden sharing.

The Agreement acknowledges the international legal obligations of the Government of Canada and the Government of the United States (the “Parties”) under the principle of *non-refoulement* outlined in the 1951 Convention and its 1967 Protocol, as well as the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).

The Agreement notes the Parties’ determination to safeguard for each eligible refugee claimant on its territory access to a full and fair refugee status determination procedure as a means to afford the protections of the 1951 Convention, its Protocol and the Convention Against Torture.

Article 8(3) of the Agreement further provides that the parties to the Agreement will invite UNHCR to participate in the first review of the Agreement and its implementation. Under the Agreement, this review is to take place not later than twelve months from the date of the Agreement's entry into force. Under Article 8(3) "Parties shall cooperate with UNHCR in the monitoring of this Agreement and seek input from non-governmental organizations."

Objectives of UNHCR Monitoring

Pursuant to Article 8(3) of the Agreement, and further to its mandate under the 1951 Refugees Convention and Protocol, UNHCR will monitor the Agreement to assess whether implementation is consistent with its terms and principles, and with international refugee law.

Policy & Operating Guidelines

Before the commencement of monitoring activities, UNHCR will receive copies of all American and Canadian policy and operating guidelines for the Agreement. These will include any guidelines or instructions specific to each of the five major ports of entry (POEs) to be visited by UNHCR on a regular basis.

Methodology

Before Agreement Enters into Force

- One tripartite meeting (US, Canada, and UNHCR) to discuss the monitoring plan, on 6 August 2004, to be followed by any subsequent meetings deemed necessary by the parties;

- To the extent the data are reliable and may reasonably be obtained, US and Canada supply the latest statistics on the number of persons who presented refugee claims at a US-Canada land border POE and, of those, the number who were then detained;
- An “introductory” UNHCR visit to one designated land border POE after the monitoring plan is finalized and prior to entry into force of the Agreement;
- “Exchange of Letters” between US, Canada and UNHCR.

After Agreement Enters Into Force

- UNHCR visits to US-Canada designated land border POEs, in accordance with existing field visit protocols;
- UNHCR visits to detention centers in Canada and the US which hold asylum claimants referred by border officials, in accordance with existing practice or field visit protocols;
- Analysis of DHS/DOJ and CIC statistics, policies, case files, and other relevant documents;
- Analysis of information received from NGOs, including statistics, case files, and other relevant documents;
- Ongoing discussions with governmental and non-governmental counterparts;
- Interviews with individual asylum-seekers subject to the Agreement;
- Two tri-partite meetings (US, Canada and UNHCR) to discuss findings, after 6 months and 12 months of monitoring, as part of the first annual review (see also "Reporting" below).

Reporting

- General: UNHCR will formally report to the Parties its findings on the Agreement's implementation approximately six months and twelve months after the Agreement has entered into force. UNHCR expects that these reports will assist the Parties both in their implementation of the Agreement during the first year, and in their twelve-month review of the Agreements' implementation.
- UNHCR Six-Month Briefing: UNHCR will report orally to the Parties its interim observations regarding the implementation of the Agreement approximately six months after its entry into force.
- UNHCR Twelve-Month Review: UNHCR will report orally to the Parties its observations on the implementation of the Agreement approximately twelve months from the date of entry into force, focusing primarily on the last six months of implementation. The Parties and UNHCR will also discuss UNHCR's draft written monitoring report at this time. The final written monitoring report will be submitted to the Parties prior to their final review of the Agreement's implementation.
- Parties' Twelve-Month Report: The Parties will prepare, and share with UNHCR, their twelve-month implementation report, for review and comments. Following tripartite discussions on the Parties' draft report, the Parties and UNHCR will

adopt a final report, provided UNHCR is satisfied that its credibility and independence would be properly maintained. The joint tripartite report will be made public upon agreement of the Parties and UNHCR.

- UNHCR may report on, and/or request additional tripartite meetings to discuss emergent issues as necessary. This would not affect any ongoing and regular bilateral dialogue between UNHCR and the respective host Government on the Agreement.

Site Visits: Ports of Entry (POE) and Detention Facilities

In accordance with existing field visit protocols, UNHCR will conduct site visits to US/Canada POEs during the twelve months following the entry into force of the Agreement. The focus of the site visits will be to the major ports of entry, namely:

- Detroit/Windsor
- Buffalo/Fort Erie, coupled with
- Niagara/Rainbow Bridge
- Champlain/LaColle
- Blaine/Douglas

Some visits may be extended over a period of days. UNHCR visits to other land-border POEs may also be undertaken.

UNHCR staff in the US and in Canada may visit area detention facilities in connection with the scheduled monitoring visits; each office may visit detention centres on other occasions, scheduled separately by each office.

Prior to and/or during visits to ports of entry and detention facilities, the Parties will make individual case files available to UNHCR upon request, either with applicant's consent or redacted as necessary, and will enable UNHCR to have access to individual applicants detained either at the POE or at a detention facility (for purposes of confidential interviews, with applicants' consent).

Assumptions / Constraints

- UNHCR human and financial resources;
- UNHCR access to all aspects of border procedures, including to individuals seeking asylum subject to the Agreement and related documentation; Availability of reliable statistical data.

Statistics

The following statistical information from the Parties may assist the UNHCR in its monitoring objectives, once the Agreement comes into force. The following list is not exhaustive and may be supplemented at any time. In keeping with Article 8(3) of the Agreement, UNHCR will also seek input, to the extent available, from non-governmental organizations. For statistics originating from agencies other than the US Department of Homeland Security (DHS) or the Canadian Citizenship and Immigration Canada (CIC), the Parties will make best efforts to ensure that the

requested information is made available to UNHCR. With respect to the statistics described below, the Parties will provide them to the extent that they are reliable and reasonably available. The Parties will inform UNHCR if requested data is not being provided for reasons of reliability or availability.

1. General

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Total number of persons requesting asylum in the US and Canada at a US-Canada land border POE;
- b) Total number of persons found not to meet an exception and returned to country of last presence under the Agreement, and total number found to meet an exception.

2. Exceptions under Article 4 (2) (a) and (b) - Family Unity

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons deemed eligible to lodge refugee protection claims in the receiving country under Article 4(2)(a) and (b), and number of persons found to be ineligible under this exception.

3. Exceptions under Article 4 (2) (c) Unaccompanied Minors

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons considered "unaccompanied minors" subject to Article 4(2)(c);
- b) Number of unaccompanied minors (persons under the age of 18 not accompanied by a parent/guardian) who have parents, guardians, or close family members in the receiving country, but do not fall under Article 4(2)(a) or (b) of the Agreement, and who are returned to the country of last presence under the Agreement;
- c) To facilitate UNHCR access to these statistics in the US, UNHCR requests that the DHS Bureau of Customs and Border Protection provide Alien Registration Numbers and names of unaccompanied minors placed in removal proceedings at US-Canada land border POEs to the Executive Office for

Immigration Review so that appropriate cases may be identified and case-files made available for review by UNHCR.

4. Detention

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately *vis a vis* where the application was initially lodged. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

Total number of persons detained for more than 48 hours in the US or Canada while their cases are being examined under the Agreement. Data should include: (a) names and locations of detention centers; (b) reasons for detention; (c) dates of detention; and (d) for those detained while their cases are being examined under the Agreement, whether the person was deemed eligible to lodge a refugee claim in the receiving country under the Agreement.

5. Processing time

(The Parties will provide statistical data in this category on a monthly basis, broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually.)

The length of time it takes the Parties to make a decision regarding eligibility to apply for refugee protection in the receiving country under the Agreement for each application for refugee protection received, as well as the average length of time.

6. Expedited Removal

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons seeking refugee protection in the US at a US-Canada land border POE who were placed in: (1) expedited removal proceedings, and, (2) regular (INA 240) removal proceedings.
- b) Of those persons identified in (a)(1) and (a)(2) above, the number of persons deemed eligible to lodge an asylum claim in the US under the Agreement.

7. Removal through Territory of Other Party (Article 5)

(The Parties will provide statistical data in this category on a quarterly basis, which will be broken down to reflect gender, age and country of origin.)

- a) Total number of persons removed from Canada via the US and the number returned to Canada under Article 5(a);

- b) Total number of persons removed from the US via Canada, who are subject to Article 5(b)(i);
- c) Total number of persons removed from the US via Canada, who are returned to the United States under Article 5(b)(ii).

8. Effective Review Procedures

(The Parties will provide statistical data in this category on a monthly basis. Data will also be broken down to reflect gender, age and country of origin.)

- a) For the US, the total number of persons placed in regular (INA § 240) removal proceedings who appealed the decision of the Immigration Judge regarding their eligibility to apply for asylum in the US under the Agreement, and the decisions of the Board of Immigration Appeals on those appeals;
- b) For the US, total number of applicants placed in regular (INA § 240) removal proceedings who sought reconsideration of a determination that they do not fall under any of the exceptions to the Agreement. Information should also include: (i) the exception of the Agreement at issue (e.g., Article 4(2)(a)), and (ii) final decision rendered. For Canada, and to the extent possible, the number of persons who sought the review of the negative decision before the Federal Court;
- c) To facilitate UNHCR access to the requested statistics under (a) and (b) above in the US, UNHCR requests that the DHS Bureau of Customs and Border Protection provide Alien Registration Numbers and names of unaccompanied minors placed in removal proceedings at US-Canada land border POEs to the Executive Office for Immigration Review so that appropriate cases may be identified and case-files made available for review by UNHCR;
- d) The total number of cases reconsidered by each Party under the bilateral dispute resolution mechanism, the substantive provision of the Agreement at issue, and the outcome of such reconsiderations/decisions.

9. Use of Discretion (Article 6)

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

Total number of cases considered under Article 6 of the Agreement and total number deemed eligible to lodge a refugee protection claim in the receiving country under Article 6.

10. Resettlement provision (Article 9)

(The Parties will provide statistical data in this category once before the six-month review and as available thereafter.)

Total number of persons resettled to either the US or Canada, including information on first country of asylum, dates of resettlement and country of resettlement pursuant to Article 9 of the Agreement.

11. Other information on asylum applications

(The Parties will provide statistical data in this category on a monthly basis.)

Total number of refugee claims lodged inland in either country (*i.e.*, not at a POE). Total number for the same period of claims lodged in either country during the previous year, broken down by month, should also be provided.

Estimated UNHCR Monitoring Costs (in US\$)

The estimated costs (both UNHCR Canada and UNHCR USA) for the proposed UNHCR monitoring plan is approximately \$200,000, covering costs of staff travel, vehicle rental and daily subsistence allowances while on mission. The cost could be higher, depending on the number of site visits undertaken. Given UNHCR's current financial constraints, UNHCR encourages both governments to underwrite these costs to the extent possible.

14 December 2004