STATEMENT OF PRINCIPLES TO PROTECT ASYLUM PROCESSES FROM ABUSE BY PERSONS INVOLVED IN TERRORIST ACTIVITIES

Echoing paragraph 3 of the 1996 UN General Assembly Declaration,[1] on October 29, 2001, in Rome, the G8 States adopted a 25-point action plan to combat terrorism. Point 16 was "to ensure coordination within the CTC and, in conformity with international law, not to grant refugee status to perpetrators, organizers or facilitators of terrorist acts." In June 2002, G8 foreign ministers, in issuing their Recommendations on Counter-Terrorism, called upon States to "ensure, in conformity with international law and, in particular, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts." As a result, G8 experts have examined the asylum application and adjudication processes in their States for the purpose of identifying vulnerabilities and preventing abuse of those processes by terrorists.

In November 2001, G8 judicial cooperation experts called upon States to "provide the maximum cooperation possible under their laws in relation to asylum determinations concerning potential terrorists in other States", and commenced a detailed examination of the modalities for achieving such cooperation. On April 26, 2002, in Vancouver, the G8 asylum experts conducting an initial review of existing legal regimes for international exchange of asylum-related information "strongly encouraged . . . enhanced sharing and exchanging of information and related intelligence" to ensure that member States do not grant refugee status to terrorists. The experts recognized that while legal bases for such cooperation exist, available mechanisms for information exchange are underutilized. To facilitate greater cooperation between or among G8 member states to protect against terrorists' exploitation of asylum programs, States should review the need to develop new vehicles for sharing information. This cooperation may well lead to the use in asylum or related proceedings of information that has been obtained from another state, such as evidence of an asylum seeker's links to terrorism, their exclusion from the protection of the Convention by virtue of Article 1F, or their exemption from the non-refoulment obligations of Article 33(2). When they initiate bilateral discussions on information sharing related to asylum, States may also wish to explore the practicability of sharing information about other categories of people applying for residence, as well as persons who may be excluded from the protection of the 1951 Convention by virtue of Article 1F or Article 33(2).

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[1] "States should take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts, considering in this regard relevant information as to whether the asylum-seeker is subject to investigation for or is charged with or has been convicted of offenses connected with terrorism and, after granting refugee status, ensuring that that status is not used for the purpose of preparing or organizing terrorist acts intended to be committed against other States or their citizens."

Information-sharing, in most cases, should be pursued on a bilateral basis, so that national legal frameworks can be considered in detail and problems resolved between the two States that wish to share information. The G8 strongly encourages such bilateral efforts and will facilitate them through the adoption of a set of principles that can form the basis for bilateral discussions leading to such agreements for the sharing of information.

Mutual legal assistance treaties are often not adequate for this purpose. Such treaties are often limited to the exchange of information in relation to criminal proceedings. Asylum adjudications are not criminal proceedings, and therefore may often fall outside the scope and purpose of MLATs. Moreover, a bilateral agreement on sharing of information about asylum applicants might offer a higher degree of privacy protection than could be afforded pursuant to an MLAT. However, when the information or evidence is required in relation to criminal proceedings, G8 states may resort to mutual legal assistance treaties or letter rogatory requests.

Today, the G8 States reaffirm their shared need and determination to protect asylum regimes from abuse by terrorists. At the same time, the G8 recognizes the need to protect genuine asylum seekers from persecution. To that end, the G8 affirms its commitment to establish information-sharing mechanisms that take into account asylum seekers' legitimate confidentiality and privacy interests. Accordingly, the G8 States underscore the importance of entering into appropriate bilateral agreements and enacting appropriate legislation that facilitates the ability of States to protect their national security interests by sharing information about asylum applicants, but under strict controls and use limitations that take into account the legitimate interests of the asylum seeker. The G8 States therefore adopt the principles set out below as guidelines for the negotiation, where feasible, of bilateral agreements regulating the sharing of such information about asylum seekers:

1. Although information pertaining to asylum applicants is normally kept confidential, States are encouraged to ensure that there is no absolute bar to sharing asylum-related information with another state, for the purpose of facilitating identification of persons involved in terrorism..

2. Most of the G8 States' asylum and privacy laws allow for exceptions to the general principle of asylum confidentiality for such overriding purposes as the defense of national security, the execution of legitimate law enforcement or counterterrorism activities or the protection of public safety. In addition, disclosures are generally authorized for the purpose of adjudicating the asylum application. States are encouraged to have the legal authority to make disclosures of data about asylum applicants – including, where available and through appropriate channels, their criminal histories - to appropriate authorities in other States when such disclosures serve one of the above purposes, bearing in mind the principles set forth below, in particular those covering confidentiality. To this end, States should review their laws and regulations governing the disclosure of information for use in other States' asylum adjudications and where these laws do not permit information to be disclosed in the circumstances described above, should consider the desirability of, and scope for, amending or augmenting their laws accordingly.

3. Nearly all G8 countries recognize consent of the applicant as a basis for disclosure of information about the applicant. Countries should utilize such provisions to obtain consent, where possible and appropriate, so that asylum information held by other countries can be disclosed to the country dealing with the application for the purposes described in principle 2 above. Consent, however, should not always be a prerequisite for sharing information to identify persons involved in terrorism.

4. G8 states recognize that the type of information relevant will vary, and that different levels of protection may be appropriate for different types of information about an asylum applicant. They also recognize that States have different laws and international obligations governing disclosure of personal information, and that nothing done under an agreement made in accordance with these principles can override the domestic law or international obligations of the States concerned relating to the disclosure of such information. States providing information about an asylum applicant should ensure that the receiving country has: 1) appropriate safeguards in place, so that the information provided is not used for purposes other than the execution of legitimate law enforcement, national security or counter-terrorism activities, or the adjudication of asylum applications, and 2) effective mechanisms for protecting the privacy of the person whose information is disclosed.

5. Although there are a number of acceptable ways that information can be protected by the receiving state, the objective should be that disclosure will not endanger anyone, including the applicant, or the applicant's family, in the country of alleged persecution. Personal information should only be disclosed in accord with domestic law and applicable international obligations, in particular privacy and data protection safeguards and exceptions thereto. States should use persons with the appropriate expertise as the points of contact for such information exchanges so that the need for observing adequate safeguards is fully understood by all involved.

6. Whenever possible, and when not inconsistent with bilateral agreements specifically contemplating the exchange of information regarding asylum applicants, requests for cooperation in asylum matters should be made in a manner that does not disclose or give rise to a reasonable inference that an individual has applied for or has been granted asylum in the requesting state.

7. Recognizing that persons applying for asylum frequently do not possess satisfactory evidence of their identity, in order to ensure the accurate identification of asylum applicants, States that collect biometric data on asylum applicants should consider sharing it along with other types of information, in accordance with domestic law and international obligations, so that the identity of the asylum applicant can be confirmed, and misidentifications can be avoided.

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