

### **III. Effective Implementation of the Agreement**

In December 2001, U.S. Attorney General John Ashcroft and Canadian Minister of Citizenship and Immigration Elinor Caplan issued a joint statement, committing their two governments to pursuing a Safe Third Country Agreement. Mr. Ashcroft and Ms. Caplan noted that:

“Cooperation between our two countries will enhance the orderly handling of refugee claims, strengthen the public confidence in the integrity of our asylum systems and help reduce abuse of refugee programs ...”

The Agreement reaffirms the two governments’ mutual commitment to the following core principles<sup>7</sup>:

- the necessity for solidarity and cooperation, expressed through international responsibility-sharing arrangements; and
- the importance of refugee protection, and in particular to the concept of “*non-refoulement*” which prohibits the return of any person to a place where s/he would face persecution or torture.

The purpose of this review is to assess the effectiveness of the implementation of the Agreement in light of the policy goals articulated by the U.S. and Canadian governments.

#### **Cooperation to Enhance the Orderly Handling of Refugee Claims**

By establishing a clear foundation for cooperation, Canada and the U.S. have put in place an effective and transparent mechanism to share responsibility for providing protection to refugees in North America. The Agreement creates a binding cooperative regime that concretely allocates responsibility for the adjudication of refugee status claims based on objective criteria while ensuring that all asylum seekers have access to a fair and full protection process in at least one country.

The Agreement contributes to efforts by Canada and the U.S. to more effectively manage our shared border and builds on long-established traditions of practical cooperation in migration and refugee protection issues.

#### **Strengthening Public Confidence and Reducing Abuse**

Public confidence in the integrity of asylum systems in Canada and the U.S. has been strengthened by the successful implementation of the Agreement. When a significant number of individuals bypass an opportunity to seek protection in one country in order to achieve a migration outcome based on economic, cultural or social preferences, the objective of asylum systems—to provide protection to those who are fleeing persecution or torture—may become distorted. Asylum determinations are rendered more complex and public support for protection institutions is eroded if protection considerations are not emphasized over the challenges of irregular migratory flows.

The Agreement represents an important effort by the Canadian and U.S. governments to demonstrate their commitment to safeguarding their asylum systems and bolster the public confidence upon which those systems depend.

## **Effective Implementation of the Agreement**

Recognizing the importance of providing effective protection opportunities for refugees fleeing persecution, both governments have found that implementation of this Agreement has been in full compliance with international refugee protection principles, including the principle of *non-refoulement*. As required by the Agreement, each asylum seeker subject to the Agreement has been provided access to a full and fair refugee status determination in one country or the other. Furthermore, Canada and the U.S. are implementing the Agreement in accordance with international human rights instruments and in adherence to recognized human rights standards for the treatment of asylum seekers and refugees. There have been no disputes between the Parties concerning implementation of the Agreement. Both governments are pleased to note that the UNHCR has observed that “the Agreement is being implemented by the Parties according to its terms, and, with regard to those terms, international refugee law.”<sup>8</sup>

Several other important binational policy objectives were also taken into consideration when crafting the Agreement, including the shared commitment to family unity, the need to take into account the best interests of children, and the ability of each country to take responsibility for any application where it would be in the public interest to do so. These issues were incorporated in the Agreement and Regulations as exceptions to the general principle that requires the country of last presence to take responsibility for adjudicating the refugee claim.

Exceptions to the Agreement are being effectively adjudicated by officers representing both governments. Refugee claimants who meet an exception to the Agreement are identified and processed accordingly, and conversely, those who do not are being dealt with fairly and expeditiously. Officers are using flexible, discreet and responsive means to determine if a person meets an exception, in a fashion sensitive to cultural and linguistic differences. Officers make exceptional efforts to ensure that claimants are given full opportunity to present evidence to meet their burden of proof to establish an exception under the Agreement.

In addition, the Agreement has successfully achieved its goal with respect to responsibility sharing. Pursuant to Article 9, Canada and the U.S. have expanded their cooperation in the resettlement of refugees from outside of North America. During the first year of implementation, 14 Haitian refugees were resettled to Canada in response to referrals from the U.S. government, and the two countries are pursuing a dialogue related to their reciprocal commitment to cooperation in refugee resettlement.

In the following country-specific chapters, the successes and challenges of the first year of implementation are framed by these foundational policy objectives.

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<sup>7</sup> From the preamble of the *Agreement between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries*.

<sup>8</sup> UNHCR Monitoring Report: Canada-United States “Safe Third Country” Agreement, 29 December 2004 – 28 December 2005.