INTERNATIONAL REFUGEE LAW
A Lexicon of Principles Issues

Tuhin Malik

Legal Education & Training Institute
Bangladesh Bar Council

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A Lexicon of Principles & Issues

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International refugee law :
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3010091222

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First published December 1998

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MARC 21

ISBN 984-574-010-3

341.4
M231i
1998

Foreword

Tuhin Malik's book reminds me of the Fourth Regional Consultation on Refugee And Migratory Movement in South Asia held at Dhaka in November, 1997 which I had the honour to address as Chairman at the inauguration.

The mass involuntary movement of people all over the world due to war, persecution and human rights violations has given rise to the international problem of Refugees and Involuntarily Displaced Persons. The normative developments in these areas in the wake of the Second World War had led to the adoption of the 1951 UN Convention which helped to deal with these problems in Europe in a humane manner. The OAU Convention on Refugee problems (1969) in Africa and the Cartagena Declaration on Refugees (1984) in Latin America dealt with specific aspects of refugee problems in these regions. These represent their regional responses to the need for developing a framework for dealing with the issue of refugees and persons who are involuntarily displaced.

In the Fourth Regional Consultation held at Dhaka which is an ongoing process possibilities were explored for appropriate normative responses in South Asia including evolving of a regional consensus to be expressed in a regional declaration or enacting national legislation based on an agreed model law.

In the above context, I find **Tuhin Malik's** book to be of particular interest and importance and my views will be shared by those who are interested and/or working in this particular field of Refugee laws which is more than of a national concern.

The basic principles and issues regarding refugees originating from the 1951 Convention are discussed in a well disciplined manner. In search of both the underlying and total meaning of those principles, issues and doctrines, the writer has gone far beyond the traditional definition, and has tried to

explore a new dimension in the light of Convention, Protocol, Regional Arrangements, Conclusions, Case Laws and some of the most authentic works on the subject.

The inclusion of a brief history of Refugee Law would have been helpful for the readers to have a clear understanding of the subject. Also a chapter could have been devoted to the present picture of the refugees in the world today.

The scale of the problem is evident from the fact that mass involuntary movement of people in the SAARC region alone over the past decades has involved some 30 to 40 million people, who crossed national boundaries in India, Pakistan, Bangladesh, Sri Lanka and Nepal since 1947. Every country in this region has either produced refugees or received them and in some cases done both. The humanitarian issues raised relate both to ensuring humane treatment and protection of refugees, and of preventing situation which create such refugees. Humanitarian concerns present the rationale for devising policies as well as for the articulation of legal principles, rules and instruments.

To the best of my knowledge, this book is not only the first of its kind, but the first ever step on the subject in our country. The book is a reflection of the growing concern of the civil society for entering into a legal framework for the care and protection of refugees.

This book should prove informative reading material for policy-makers, refugee and human rights activists, scholars, lawyers and general readers as a whole. I believe this publication will be in aid to the awareness building programme of UNHCR.

I should pay a tribute to the young but adventurous author for his *ground-breaking, user-friendly* introduction to the International Refugee Law. He has done a good job.

Kudos to the Bangladesh Bar Council for helping publication of the book.

Justice A.T.M. Afzal
Chief Justice of Bangladesh

Prelude

International refugee law, like humanitarian law, is infact a branch of human rights law. It was developed to protect human being in specific circumstances. International refugee law mainly comprises of international instruments that define basic standards for treatment of refugees. The need for international action on the refugee problem was first recognised after the First World War, when faced with a wave of Russian refugee, certain European countries found it necessary to introduce special legislation to overcome the problem created by lack of identity paper, travel documents, etc. On 27th June, 1921, the Council of League of Nations decided to appoint a High Commissioner for Refugees. The High Commissioner's mandate was extended in 1924 to Armenian refugees, and in 1928 to Assyrian, Assyro-Chaldean and Turkish refugees, and subsequently refugees from Germany and Austria. To complement the High Commissioner's assistance to refugees from Germany and Austria, an international conference in 1938 set up an Intergovernmental Committee on Refugees (IGCR). In 1943 the alied powers created the United Nations Relief and Rehabilitation Administration (UNRRA) which assisted millions of refugees in Germany, Austria, Italy and certain areas of North Africa and Near East.

International Refugee Organisation (IRO) was established in 1947 after the United Nations had come into being. The office of the United Nations High Commissioner For Refugees (UNHCR) replaced the International Refugee Organisation in 1951. The 1950 Statute of the UNHCR declares that to protect the refugees and to look for the permanent settlement of their problems is the fundamental objective of this office. The Convention Relating to the Status of Refugees was adopted in the same year, the application of which was limited to victims of

persecution as a result of events occurring before January 1, 1951. This restriction was removed by the protocol of 1967 in order to make it universal and to waive the time factor.

Some regional arrangements like Organisation of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, and the Cartagena Declaration on Refugees, 1984, also made substantial contributions to the development of refugee law.

The general principles of human rights law apply universally to all be it a signatory state or not. They benefit everyone-nationals, foreigner, refugees, and asylum-seekers, whether lawfully or unlawfully in the territory of a state. According to the Universal Declaration of Human Rights everyone has the rights to seek and to enjoy in other countries asylum from persecution. The granting of asylum is an act of state sovereignty and can not ordinarily give rise to legal objections by another state. It is also a peaceful and humanitarian act and is not to be regarded as unfriendly by any State, notably the refugee's state of origin. For the refugee, being granted asylum implies protection against *refoulement* and the possibility of remaining in the territory either permanently or until an alternative solution is found. It is thus the cornerstone of international protection.

The challenge for the South Asian region in facing the problems of refugees can be fully understood, if viewed in its historic context of social, political, economic, ethnic, cultural and demographic dimensions. These problems also have deep underlying relationship with the basic human rights issues in the respective countries and their inter se relationship within as well as outside the country.

The history of this region is infested with innumerable instances of human miseries arising from civil strifes, communal riots, public disorder, political exterminations and genocides. These caused serious violation of minimum norms and breaches of human rights creating insecurities in the minds of religious,

ethnic and political minorities which caused huge exodus in turn of the history while reshaping the boundary of our political maps.

The sufferings of South Asian humanity is within our living memory since 1947 as two-way refugee movement between the two newly born countries (i.e. India and Pakistan) freed from the British colonial rule flowed in the millions during the early years (1947-48) of their independence.

Other massive exodus which took place in 1971 is yet another dimension of the same psyche, when the people of Bangladesh were denied right to make a secular choice to form the government for their own, mandated by a legitimate election. In order to deny the right of the elected people to form the constitution and form a government of their own choice they were subjected to the worst genocide known in the history of this region. In order to avoid death and violence and to escape from the rampage in form of i. e. loot, arson, rape and annihilation more than ten million people sought refuge in India. Similar number of people as a result were further displaced within the country moving from one village to another and many living as boat people on the reveries of Bangladesh.

South Asia also witnessed in the earlier part of the country the exodus of Burmese Indians having to come back to the place of their origin in India irrespective of the antiquity of their settlement in Burma. Similarly, Sri Lankan Indians were made to return to their country of origin following the independence of Sri Lanka from the British rule.

Recurrence of the flight of the Burmese Rohingyas to Bangladesh and that of Bangladesh Chakmas to India arise due to violation of minimum standard while the sending states functioning under the undemocratic regime at the relevant time perpetrate such violation pursuant to their so called military operations against the insurgents. Besides the typical area of the problems relating to the conventional refugees as recognised under the international law there is yet another category of migratory movement of people moving in search of food and employment which is more ancient then the emergence of the

state and the nationhood. This is as old as the human civilisation yet, in reshaping the national boundary and ethnic identity in the wake of modern state hood in the region, there are emerging highlights of the politico-demographic syndrome of Bengalis in Assam, Biharis in Bangladesh, Indians in Tarai region of Nepal, and the turn Nepalese in India, old Nepalese descendants from Bhutan, being in their turn now expelled to become refugees in Nepal. Besides the problems relating to migration and the displacement of population due to ethno-religious, linguistic or political reason there is yet another dimension of migrant workers, though not being part of international refugee law so far, but creating increased tensions between the sending and the receiving countries. This phenomena of migration is mixed with illegal trafficking of workers giving rise to the recent deportation of workers having their origin in the South Asian Region. Bangladesh workers particularly are facing deportation from Malaysia and Saudi Arabia. Corollary in India was the so called 'pushed back' campaign undertaken in similar degrading circumstances.

Established rules of international law nevertheless permit the conclusion that states are bound by a general principle not to create refugee outflows and to cooperate with other states in the resolution of such problems as they emerge, because the refugee is a person of concern to the international community. While states are conscious of the potential threat to their own security which a massive influx may pose, none can, however, claim to return a refugee to persecution.

Given the reality that most refugees both originate from and seek refuge in some of the poorest parts of the world, neither the country of origin nor the country of asylum can be expected to discharge their respective responsibility without the political and financial support of the international community. The refugee problem threatens to grow a monstrous proportion where maintenance of national and international peace and security would be almost impossible. In the final analysis refugees are symptoms of the deeper social, economic and political problem.

The challenge is not how to keep people away, but how to meet the needs of the victims and communities which received them, how to manage refugees in a way which upholds basic human rights, while addressing in the concerns of the states.

Refugees are frequently in need of legal assistance in order to draw effective benefit from the rights accorded to them in international legal instruments. This assistance may be limited to qualified legal advice, or it may involve the services of a lawyer to represent them in legal proceeding. Such assistance may be needed in asylum procedures, detention, restrictions on freedom of movement, the issue or identity, travel and other documents, access to naturalisation ensuring of and political, economic social and cultural rights.

The promotion and protection of human rights is an essential condition for maintaining domestic as well as international progress and peace. In the back ground of our own history in the region it is important that a lawyers as well decision makes and diplomats be equipped with the concept of human rights, of which refugee law is an important branch. The litigation concerning refugees is yet to make its room in our legal system, but a training on the subject will surely enable the participants to determine the legal status of hundreds of thousands of refugees, and to observe their unfortunate miserable life systematically.

The unique responsibility to deal with the matter of refugees, and to provide them protection to entrusted to the UNHCR, who have done admirable work in Bangladesh in tacking with serious problem in the Rohiynga refugees. Bangladesh Bar Council is imparting Refugee Law Training Programme for Lawyers (RLTP) in collaboration with UNHCR, so that there remain no gap between the theoretical knowledge of the law and the actual situation and activities of UNHCR. The objectives of Refugee Law Training Programme are to sensitise lawyers dealing with refugees, to provide practical knowledge and skills, and to disseminate knowledge of the laws and

principles governing the protection of refugees and proper recognition of their rights.

In view of the increasing recognition of the basic rights of refugees and for the establishment of minimum standards for their protection, we are at least able to publish a book on refugee law on the eve of 50th anniversary of the Universal Declaration of Human Rights. The book is expected to contribute to knowledge about the problems of uprooted refugees and the means of helping them. This book is designed to help familiarise lawyers with the principles and related issues of international refugee law, and how they can be used to complement and enhance refugee protection activities as a human rights activist lawyer. In order to give practical effect to this wide-ranging and complex subject matter, the book addresses those principles and issues which most commonly arise in the course of the protection of refugee rights. Last but not least, this book can and should be used in the context of Refugee Law Training Programme for Lawyers (RLTP), particularly (but not exclusively) targeting human rights activist lawyers.

Refugee problems are inherently transitional in nature, not only because they involve the movement of people across state borders, but also because as human being we have a responsibility to safeguard the security of all people. At the threshold of the 21st century, we are faced with the challenge to assure the human protection by reinforcing even more then before the bonds of human compassion and solidarity. We yearn for the day when people in every part of the world can live safely within their own country and community. We trust this publication will contribute towards the need for those who wish to explore a subject which concern as increasing number of people in the world.

This is very a humble and a preliminary attempt of its kind to provide a comprehensive, theoretically grounded explanation of refugee law principles and related issues. It may serve as a point of humane thinking, humane action and humane arrangements; and we hope that its contents will inspire policy-

makers in national, international and non-governmental contexts to redouble their efforts to meet the needs of refugees.

I am indebted to my colleagues and fellow members of the Bar Council and particularly the members of the Legal Education Committee whose continuing support strengthened my faith in collective efforts. I express my deep sense of gratitude to the Hon'ble Chief Justice of Bangladesh Mr. Justice A.T.M. Afzal for writing foreword to this book. It is our expectation that this publication will help long way in filling up the gap in the publication of all necessary and relevant materials on refugee law. I would like to acknowledge the great effort and contribution made by the author Advocate Tuhin Malik who has acquired considerable experience as Coordinator of the Refugee Law Training Programme. He deserves special felicitation for preparing this well documented and praiseworthy work.

The one lesson we can learn from the past is that building walls is not answer against those who feel compelled to flee. The answer should be to build bridges.

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Chairman, Legal Education & Training Institute,
Vice-Chairman,
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Preface

Greek writer *Euripides* nearly 2,500 years ago quoted that "there is no greater sorrow on earth than the loss of one's native land." Ever since mankind has existed there have been refugees. But, since the beginning of this century of the "homeless man", the number of refugees has risen significantly and especially in its second half. Whereas there were around 6 million at the time when the Office of the United Nations High Commissioner for Refugees (UNHCR) was founded in 1951.

The first international arrangements that dealt with refugees, during the time of the League of Nations, were founded on the simple fact of their presence outside their country of origin, and the denial or lack of its protection in fact or law. Although the numbers of refugees requiring assistance and protection in those days was significant, as a result of the aftermath of the First World War, the Russian Revolution and the collapse of the Ottoman and Austro-Hungarian empires, the majority were members of existing populations. International agreements thus focused on the problems of relatively stable groups, giving little heed to future flows.

After the Second World War, when a successor to the International Refugee Organization (IRO) was being discussed, several countries argued, as many do today, for "*internal refugees*" to be included within its mandate, seeing no fundamental distinction between the needs of those who had and those who had not crossed an international frontier. The "*compromise mandate*" of the UNHCR agreed in December 1950 was not to go so far, but neither was it restricted to existing groups of refugees, or to any particular region. States were only ready to recognize a limited category of refugees, when they

finalised the text of the United Nations Refugee Convention, which followed shortly thereafter in 1951.

The subject of refugees is high on the list of international concern today, not only because of its humanitarian significance, but also because of its impact on international peace, security and stability. To this day, the majority of states want the United Nations to assume responsibility for a broad category of persons in distress, who have been forced to flee their countries for variety of reasons. The rationale is simple enough— that is necessity. The lack of protection creates a vacuum, which the international community tries to fill. And that humanitarian necessity may be due to a well-founded fear of persecution for reasons of race, religion, nationality or political opinion; or to some *"man-made disaster"*.

Thus, considering these refugee dilemma the existing legal and institutional framework must respond to the shift in the nature and scope of refugee problems from the ones that existed after World War II. A recognition that generalised violence and danger to the life and security of groups of persons, rather than individually experienced persecution or fear of persecution, are increasingly at the source of today's refugee movements, demands that the problems of internal refugees or displaced persons, and of economic, environmental, or disaster- induced flows of persons must be addressed. While UNHCR has provided *de facto* aid for such persons, it is necessary to define the international obligation of all states to people thus afflicted. Redefinition alone is not enough even if it be feasible. Obligations of states under international law to refugees must be made clear. These obligations must be made to apply not only to the receiving states, but also to states that infact cause refugee flows.

Furthermore, it must be recognised that people often make the difficult decision to leave their homeland not for a single cause, but because of a variety of problems caused by violations of human rights. Such human rights violations must constitute an essential element to which international refugee law

must be responsive in redefining refugee status under international law. Institutionally, the legal mandates of UNHCR need to be further clarified, and its efforts need to be further supported by the world community.

At the same time, UN must increase its efforts at addressing the causes of refugee flows, in order to avert such flows. Also, in the area of resettlement of refugees, closer cooperation among receiving states, NGO's and UNHCR must continue, notwithstanding the reluctance on the part of many states to harbor asylum-seekers. While voluntary repatriation is an option in some cases, in many instances it is not available because of long-lasting problems in the country producing the refugees. In these cases, UNHCR has to be assisted in finding solutions for the permanent resettlement of refugees, not only through financial contributions but also in providing counseling and technical assistance to integrate refugees into the populations of the receiving state.

Philosopher Ludwig Wittgenstein has taught as that "the meaning of a word is its use in the language." While words have ordinary meaning, the same words can have different meaning in different language. When language change, then there is a change in concepts. and with the concepts of meanings of words change. In other words, things only have meanings in a field, that is in relation to the meanings of other things. This means that meanings cannot be identified except in relation to others. It does not therefore suffice to turn to the dictionary meaning of words. At this point legal interpretation should be made to the general problem of refugee definition and its principles and issues. In any discussion of the subject of refugee law, whether from a theoretical and jurisprudential or from a political and practical point of view, defining the notion "refugee" is both important and difficult at the same time. If one examines common terms such as "political refugee", "economic refugee", "mandate refugee", the distinction between them is often blurred and may in any case be of limited value.

Contemporary international protection of refugees has now become very dynamic. The new dimension of the refugee problem and the special, critical situation at the end of the twentieth century are determined by various factors. In the context of identifying emerging principles and issues of international refugee law more closely, we should assign interpreting to the words of global refugee norms only after situating them in relation to other meaning in the practical field. This book represents a modest contribution in that direction.

I am very much beholden and express my deep sense of gratitude to the Hon'ble Chief Justice of Bangladesh Mr. Justice A.T.M. Afzal for writing foreword to this book.

I owe and gratefully acknowledge the special encouragement I had always received from Barrister M. Amir-ul Islam, Vice-Chairman of the Bangladesh Bar Council, whose leadership qualities guided me through the years, without whose co-operation it could never see the light of the day. His guidance and advice has truly been invaluable for which I will always remain in his debt.

Needless to say, the guidance, supervision and advice of the members of Bar Council have been one of the most important factors in the successful completion of this work. Particularly, Mr. S.S. Halder and Mr. M.A. Salam Talukder have devoted considerable amount of their very valuable time to constantly supervise and advise in bringing out this publication.

My heartfelt thanks are due to the Hon'ble resource persons of Refugee Law Training Programme (RLTP), particularly Dr. Shahdeen Malik and Mr. M.M. Sunnah, National Legal Officer, UNHCR, for their vigilance and zeal. They extended their helping hand towards me in carrying out this work.

A special set of thanks is offered to Md. Mostofa Kamal, who typed several drafts of this manuscript with unfailing enthusiasm, impressive accuracy, and unbelievable promptness. The assistance rendered by my colleague Mr. M. Sarowere Alam is also deeply appreciated.

This book is dedicated to the memory of my father Late Advocate Fazlur Rahman, who taught me that above all we must accept primary responsibility for our personal well-being and for achieving our goals in life. He taught me to respect the integrity of every human being, always to pursue the truth, and never to turn away from an opportunity to serve humanity.

Finally I thank Almighty Allah for showering his blessings and allowing me to complete this task.

December, 1998 **Tuhin Malik**

A

Asylum, the concept of

The word asylum is the Latin form of the Greek *asylon* meaning something not subject to seizure or freedom from seizure. In ordinary sense, asylum means providing shelter to an alien in the territory of a state which will also imply permitting him to enter the territory, if he has not already entered. A man who qualifies for asylum is a man who has a reasonable fear of being persecution in his own country. The practice of asylum, i.e. states granting protection to individuals from persecution or violence by another states, was well established in antiquity and has been maintained to the present day. Article 14(1) of the Universal Declaration of Human Rights Lays down, "Everyone has the right to seek and enjoy in the other countries asylum from persecution." [1] Once a refugee has entered a state other than that of his origin or nationality, his first need is asylum. Asylum is the

[1] U. N. G. A. Res. 217A (111). December 10, 1948. at Art. 14 (1)

protection which a state grants on its territory or in some other place under the control of certain of its organ, to a person who comes to seek it.[2]

The principle of *non-refoulement* constitutes the very basis of the institution of asylum. There is a growing opinion that persons leaving their country of origin because of persecution (or a well founded fear thereof), have a primary and essential need to be granted asylum in another country, either permanently or, at least, temporarily pending permanent asylum being granted elsewhere, or repatriation to refugee's own country. This view is supported by Article 111 (4) of the Principles Concerning Treatment of Refugees 1966,[3] Article 3(3) of the United Nations Declaration on Territorial Asylum,[4] Article II (5) of the OAU Convention on Refugees 1969,[5] and the discussion in the UNHCR's Executive Committee in 1981.

Despite a general consensus in the international community that asylum is a necessary institution states have not been willing to agree on an *international legal obligation* to grant asylum. There remains substantial variation in the interpretation and implementation of the asylum principle. In some host countries, an individual is merely protected by the rule of *non-refoulement*, whereas in other countries the asylum seeker is offered the right to remain for the long term. However grant of asylum creates certain obligations for the asylum state which it must fulfil towards the person who has been granted asylum i.e. to protect him from any internal or external source of threat to his life and

[2] See Art. 1 of the Resolution adopted by the Institute of International Law in September 1950, 4 Am J. Int'l. L. (Suppl.) 15 (1951).
[3] Principles Concerning Treatment of Refugees. *Bangkok Principles*. 1966. Doc. No. AALCC/XXIV/II. Annexure 1.
[4] U.N.G.A. Res. 2312 of 14 Dec., 1967.
[5] OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Sept. 10, 1969, OAU Doc. CM/LEG/67/3/Rev. 5 (1981).

property; not to send him to any country where his security might be to stake; and to provide him assistance in procuring food and accommodation.

Recent challenges to asylum worldwide, over the last decade is that, the institution of asylum has come under increasing strain. Few of the existing refugee situations have been resolved while at the same time new ones have arisen. Developing countries have experienced tensions resulting from the economic burdens imposed by the refugees' presence as well as from security problems (for example, from incursions by armed groups from the origin countries) and from domestic discontent. Countries in the West and in East and Southeast Asia have faced the difficulty of balancing the need to safeguard asylum for *bona fide* refugees with the need to exclude from refugee recognition those who use the system as a proxy immigration channel. As a result of such strains, protection principles governing the asylum process are in danger of being violated or weakened. It is important to remember, when the institution of asylum is threatened, the refugee regime is in danger of breaking down.

Acquisition of a New Nationality and Protection

The Convention Relating to the Status of Refugees, 1951 cease to apply for refugee status to any person who has acquired as new nationality, and enjoys the protection of the country of his new nationality.[7] The applicability of this cessation clause is not subject to the provision of voluntariness. It applies irrespective of the way in which the person concerned acquires a new

Alam, Dr. M. Shah. *International Law : A Critical Review*, in Bangladesh Journal of Law, BILIA, Vol. 1, No. 1, June 1997, Dhaka, at 116

Article 1 (C) (3) of the 1951 Refugee convention.

nationality whether by naturalisation in the strict sense (grant on application), by marriage, or by operation of law in any manner whatsoever.[8] As James C. Hathaway noted: specifically, the refugee must be able to enter his new state of citizenship, reside there with protection against deportation or expulsion, and enjoy a reasonable expectation that his basic human rights will be fully respected. In such circumstances, adequate surrogate protection exists, and refugee status should locally come to an end.[9]

Acts Contrary to the Purposes and Principles of the United Nations

According to Article 1(F)(C) of the Convention Relating to the Status of Refugees, 1951, the provisions of the convention shall not apply to any person with respect to whom there are serious reasons for considering that he been guilty of acts contrary to the purposes and principles of the United Nations.

The Charter of the United Nations lists four purposes[10] of the organisation: to maintain international peace and security, to develop friendly and mutually respectful relations among nations, to achieve international co-operation in solving socio-economic and cultural problems and in promoting respect for human rights, and to serve as centre for harmonising actions directed to these ends. These basic purposes bind member states through a series of principles set out in Article 2, including respect for sovereign equality; good faith fulfilment of obligations; peaceful settlement of dispute; refraining from use of force against the territorial

[8] A Grahl Madsen, *The Status of Refugees in International Law*, 1966, at 395-6.
[9] Hathaway, James C, *The Law of Refugee Status*, Butterworths, Toronto, (1991), at 211
[10] Charter of the United Nations, signed June 25, 1945, 59 state, 1031, at Article 1.

integrity or political independence of another state; and promotion of the work of the United Nations.[11]

They enumerate fundamental principles that should govern the conduct of their members in relation to each other and in relation to the international community as a whole. From this it could be inferred that an individual , in order to have committed an act contrary to these principles, must have been in a position of power in a member state and instrumental to his State's infringing these principles.[12]

The interpretation of this exclusion clause mirror its confused drafting history.[13] One position is that the clause was intended to bar enemy collaborators from Second World War,[14] and is therefore of little contemporary relevance. Some argue that violation of the principles and purposes of the United Nations is essentially coterminous with crimes against peace and security,[15] such as genocide or a war crime.[16] Others take the view that the clause implies a duty to refrain from the subversion of an asylum state,[17] or even of the refugee's state of origin.[18] A fourth theory

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[11] Ibid. at Article 2.

[12] UNHCR, *Handbook on Procedure and Criteria for Determining Refugee Status*. Geneva, 1992. Para. 163.

[13] Hathaway, James C. supra, note 9 at 227.

[14] Statement of Mr. Heineken of the U.S.A., U.N. Doc. EAC.7/SR.160. August 18, 1950, at 16. Accord P. Weis, *The Concept of the Refugee in International Law*. (1960) 87 J. DU droit international 928, at 986.

[15] Statement of Mr. Rochefort of France, U.N. Doc. E/AC. 7/SR. 166, August 22, 1950, at 4.

[16] "What is to be understood by this last expression-over and above war crimes which are separately mentioned-is not made clear by the authors of the convention." C. Pompe, *The Convention of 28 July 1951 and International Protection of Refugees*, U. N. Doc. HCR/INF/42, May 1958, at 13.

[17] Statements of Mr. Hoare of the United Kingdom, U.N. Doc. A/CONF. 2/SR. 24, at 4, July 17, 1951; and of Mr. Chance of Canada, U.N. Doc. A/CONF. 2/SR. 24, at 16, July 17, 1951.

is that the barring of persons who fail to respect the principles and purpose of the United Nations is intended to exclude any person who acts in a manner inconsistent with basic human rights,[19] for example by engaging in acts of discrimination or opposing the right to self-determination.[20] Finally, it is argued that the clause disfranchise those who fail to respect any major initiative of the United Nations, including not only respect for human rights, but also such causes as the fights against hijacking and hostage-taking.[21]

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[18] K. Kawahara, *Analysis of Results of the First Session of the International Conference on Territorial Asylum*, in International Institute of Humanitarian Law, ed., *Round Table on some Current Problems of Refugee Law*, p. 26 (1978)

[19] G. Goodwin-Gill, *The Refugee in International Law*, (1983) pp. 63-64.

[20] This possibility was raised by the Chilean representative, Mr. Bernstein. U.N. Doc. E/AC. 7/SR. 160, August 18, 1950, at 18.

[21] Hathaway, James C. supra, note 9, p. 228

Benefit of the Doubt', the principle of

It is general legal principle that the burden of proof lies on the persons submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible or proof. In such cases, if the

applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.[22]

'After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. It is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognised. It is therefore frequently necessary to give the applicant the benefit of the doubt.

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.[23]

'*Burden-Sharing*' the principle of

When a refugee crosses over to the state of asylum, whether for a temporary period or permanently, there can be no denial that he is a burden on this new state, since one state's refugees are often another state's undesirables. If a number of refugees is small the state may be able to bear the burden. But if there is a mass influx of refugees, the burden will certainly be unbearable and more so if the country is poor. A very striking development from 1960 onwards in the field of refugee law has been the large-scale influxes of asylum-seekers in Asia, Africa and Latin America. As the countries of asylum in all these cases were economically poor

[22] UNHCR, Handbook, supra, note 12, para 196
[23] Ibid. at para 203-4.

developing countries and phenomenon imposed heaving strains on them, the question of burden-sharing became very important.

The principle of burden-sharing, which plays an important role in the protection of refugees, is getting more recognition by the international community. It was indirectly referred to in the Preamble of 1951 Convention, and specially provided in Article 2(2) of the Declaration on the Territorial Asylum (1967). The notion has been expressed at the regional level, such as, Article 4 of Council of Europe's Resolution 14 (1967) on Asylum to Persons in Danger of Persecution, and in the Article II (4) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The Asian-African Legal Consultative Committee at its 24th Session (1987) at Bangkok also adopted the notion of burden-sharing as an addition to its Principles Concerning Treatment of Refugees (adopted at its 8th Session in 1966 at Bangkok). The Executive Committee of the UNHCR Programme, in its Conclusion No. 22 (XXXII) on Protection of Asylum-Seekers in Situations of Large-Scale Influx (1981), ensures the establishment of effective arrangements in the context of international solidarity and burden-sharing for assisting countries which receive large number of asylum-seekers, and also an action with a view to burden-sharing should be directed towards facilitating voluntary repatriation, promoting local settlement in the receiving country, providing resettlement possibilities in third countries as appropriate.

It is apparent that the factors involved with regard to the burden-sharing are: countries of a first asylum(temporary or permanent), countries granting re-settlement, countries offering other sorts of co-operation (in funds, kinds, personnel or expertise), countries of origin, International Organisations and Agencies, and others

(Vol-NGOs, local governments, individuals, etc.)[24] Thus burden-sharing means that states should cooperate in efforts to find lasting solutions for world's refugee specially those from the developing countries, thereby allowing them to live peaceful and productive lives.

[24] Kurino, Ohtori. *Concept of Burden-Sharing*. Symposium on The Promotion. Dissemination and Teaching of Fundamental Human Rights of Refugees. p. 57 (Tokyo , 7-11, December, 1981).

C

Criterion for the Determination of Refugee Status

A person is a refugee within the meaning of the 1951 Conventi as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognised because he is a refugee.

Determination of refugee status is a process which takes place in two stages. Firstly, it is necessary to ascertain the relevant facts of the case. Secondly, the definitions in the 1951 Convention and the 1967 Protocol have to be applied to the facts thus ascertained.

The provisions of the 1951 Convention defining who is a refugee consist of three parts, which have been termed respectively "inclusion", "cessation" and "exclusion" clauses.

The inclusion clauses define the criteria that a person must satisfy in order to be a refugee. They form the positive basis upon which the determination of refugee status is made. To be a refugee, four basic condition must be met. The applicant must be (a) outside his country of origin; (b) have a well-founded fear of persecution; (c) this fear must be based on one of five grounds, e.g. race, religion, nationality, membership of a particular social group, or political opinion, (d) unable or unwilling to avail himself of the protection of that country, or to return there, for reason of fear of persecution.

The exclusion clauses stipulate that the convention shall not apply to persons who meet the inclusion criteria, but who do not need or deserve protection. This would apply to a person receiving protection or assistance from organs or agencies of the United Nations other than UNHCR; or, a reason benefiting from the same rights and obligations as nationals of the country in which he has taken residence; or, a person who has committed a crime against peace, a war crime or a crime against humanity, a serious, common law crime prior to admission to the country of asylum - or an act contrary to the purposes and principles of the United Nations. The cessation clauses stipulate that a person shall no longer be considered a refugee if there has been a fundamental change of political circumstances in the country of origin enabling him to take up renewed residence there. This clauses may applied after the person has been recognised as a refugee. The so-called cessation and exclusion clauses have a negative significance: the former indicate the conditions under which a refugee ceases to be a refugee and the latter enumerate the circumstances in which a person is excluded from the application of the 1951 Convention although meeting the positive criteria of the inclusion clauses.[25]

[25] UNHCR. Handbook. supra. note 12. para 20-31.

Council of Europe, refugee definition of

The Council of Europe has introduced standards of refugee protection that go beyond the convention definition, although the changes are significantly more modest than those of the OAU or OAS. In the Parliamentary Assembly's Recommendation 773 in 1976, the Council of Europe expressed its concern in regard to the situation of *de facto* refugees, that is, persons who either have not been formally recognised as convention refugees, although they meet the convention's criteria, or who are "unable or unwilling for ... other valid reasons to return to their countries of origin".[26]

Children Refugee

In general, children,[27] are entitled to the same basic human rights as adults. They have the right to life, the right not to be tortured, the right not to be detained arbitrarily or in substandard conditions, the right to adequate health care, and most of the other rights and freedoms recognised by international human rights law.[28] As a refugee, the largest group in almost any refugee camp or settlement is children, including unaccompanied minors.

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[26] Council of Europe, Parliamentary Assembly Recommendation 773 (1976).

[27] In the 1988 UNHCR *'Guidelines on Refugee Children'*, a child is defined as a person who is less then 18 years old, unless the age of majority is lower under applicable national law, unaccompanied children are children who are " separated from both parents and are not being cared for by an adult who, by law or custom, has responsibility to do so." UNHCR, 1988: 2, 27.

[28] Basic rights to which children are not a priority entitled include the right to marry and found a family, the right to public trail, the right to participate in elections and the right to work. See generally, Malik, Tuhin, *Manual on Human Rights Law*, Bangladesh Bar Council, Dhaka, 1997, at pp. 342 - 348.

So children require special attention during a refugee crisis, for their youth makes them especially vulnerable to the physical dangers associated with becoming refugees. Requirements for physical survival include sufficient nutrition, protection from physical harm and appropriate medical care. Developmental requirements and mental health needs differ depending on the age of the child. Special legal protection is important as well, ranging from the registration of births to presenting a coherent case for asylum for unaccompanied children.

The impact of the refugee experience depends on a child's age, the composition of his family, the conditions of flight, and the situation awaiting the refugee child in the host country. Legal instruments on children's rights, refugee children, or unaccompanied children have been under development since 1924. However, even though this century has witnessed many cases of children caught in the midst of conflicts, it was not until the 1980s that serious attention was focused on developing more concrete guidelines, standards, and training manuals for handling children in refugee situations. Two major shifts in thinking have occurred: an increasing emphasis on physical protection, in addition to the long-established concern with legal protection; and the demand that all assistance programmes take into account at least a minimum set of requirements concerning child welfare. The 1988 UNHCR Guidelines embody these principles and provide the current policy framework and directives to UNHCR field personnel for child care.

There are still numerous problems with the actual implementation of care and protection of child refugees. Today there are more than eighty international laws, covenants, and documents laying down the human rights of children. But the challenge is to ensure the implementation of these standards.

Crime Against Peace, Humanity and War Crimes

In mentioning crimes against peace, war crimes or crimes against humanity, the Convention refers generally to "international instruments drawn up to make provision in respect of such crimes". There are a considerable number of such instruments dating from the end of the Second World War up to the present time. All of them contain definitions of what constitute "crimes against peace, war crimes and crimes against humanity". The most comprehensive definition will be found in the 1945 London Agreement and Charter of the International Military Tribunal.

As customarily interpreted, this exclusion clause therefor bars those who commit three distinct types of crime. First, a "crime against peace" comprises the planning of or participation in an unlawful war. Second, a "war crime" involves the violation of a law of war, including the mistreatment of civilians and prisons of war, or the infliction of unjustified property damages during wartime. Third, a "crime against humanity" consists of fundamentally inhumane conduct, often grounded in political, racial, religious or other bias. Genocide, slavery, torture, and apartheid are also examples of crimes within this category.[29]

Infect, intention is a necessary element of such an offence, although some legal experts hold that it may be implied in the case of massive and systematic crimes, such as genocide or apartheid.[30] Because of this *mensrea* requirement, the draft report

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[29] Hathaway, James C. supra, note 9, p. 217. Accord. A. Grahl-Madsen, supra, note 8, p.276 and G. Goodwin-Gill, *The Refugee in International Law*, 1983, p. 60.
[30] Ibid.

of the International Law Commission[31] suggests that three limited exceptions to the general principle of responsibility are available. First, the leaders of the state may argue self-defence in respect of acts whose performance was ordered by them or which they carried out in response to an act of aggression directed against their state. Second, it is possible to invoke coercion, state of necessity, or "*force majeure*." Third, one may plead an error of law, in the sense of a lack of knowledge of the wrongfulness of the act committed.

Moreover, all the recognised exceptions to responsibility for these crimes are inoperative if the facts invoked constitute a breach of peremptory norm of international law, originate in a fault of the perpetrator, or result in the sacrifice of a greater interest than that protected.[32]

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[31] See Draft, adopted by the International Law Commission in 1987: Report of the International Law Commission to the General Assembly on the work of its Thirty-Ninth Session II(2), U.N. Doc. A/CN. 4/SER. A/1987/Add. 1 (part 2), at 13 (1987).

[32] Hathaway, James C. supra, note 9, pp. 217-220.

D

Definition of Refugee

A refugee is commonly defined as a person who is obliged to flee his habitual place of residence and seek refugee elsewhere. The reasons dictating, his flight may be varied; flight from oppression, prosecution, threat to life and liberty, deprivation, poverty, war or civil strife; flight from the consequences of natural disasters, earthquake, flood, draught, famine etc. Thus the reasons for flight may be characterised as either natural disasters or 'man-made' disasters.[33] In the legal sense, the Convention Relating to the Status of Refugees, 1951, whose scope of applicability was extended by the Protocol of 1967, is the most important document on the question of definition of refugee. According to Article 1 (A) (2) of the Convention, the term 'refugee' shall apply to any person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to

[33] G. Goodwin-Gill, supra, note 19, p. 1

such fear, is unwilling to avail himself of the protection of that country. Such refugees are usually referred to as *convention refugees.*

The Annex to the Statute of the Office of the United Nations High Commissioner for Refugees 1950,[34] extends the competence of the High Commissioner for the protection of refugees defined in Article 6(A) (1) in the terms similar to Article 1(A) 2 of the Refugee Convention 1951. There are three essential elements in the legal definition of the term 'refugee': (a) the person is outside the country of his nationality, or in the case of stateless persons, outside the country of habitual residence; (b) the person lacks natural protection; and (c) the person fears persecution.[35]

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969,[36] has extended the definition in the Refugee Convention 1951 to cover in the term 'refugee' also every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. This definition is wide enough to embrace virtually all victims of 'man-made' disasters, and so there is a growing trend for its adoption in the context of general international refugee law.

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[34] U. N. G. A. Res. 428 (V) 14, Dec. 1950.

[35] Khair, Dr. Sumaiya, *Protection and Assistance For Refugees in Armed Conflicts and International Disturbances*, in M. I. Patwari, (ed) Human Rights in Contemporary International Law, HEAB, 1995, Dhaka, p. 225.

[36] See OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, OAU Doc. CM/267/Rev. 1, 1001, U. N. T. S. 45.

The United Nations General Assembly in its resolution 1975 has extended the mandate of the High Commissioner to groups of Persons who did not necessarily satisfy the statutory definition of persons within his competence, but who were deemed by the General Assembly to be persons, who were his concern, and who were entitled to benefit from certain protection activities, as well as assistance, thus explicity linking 'refugees' with the 'displaced persons' in refugee-like situations.

The Report of the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia 1981, noted that the definition of the term 'refugee' in Article 1 of the 1969 OAU Convention, along with the extended responsibility of the UNHCR after 1975, had the effect of including within the ambit of its protection, provisions virtually all victims of 'man-made' disasters, including displaced persons, and approved it in relation to the definition of the term 'refugee' in Asia.

The Cartegena Declaration on Refugees of 1984, proposed an extension of the concept of 'refugee' as applied to Central America, stipulating that a 'massive violation of human rights' should be considered as a legal basis for extended definition of 'refugee'. It laid down that the definition of refugee could not only incorporate the elements contained in 1951 Convention and the 1967 Protocol (or the 1969 OAU Convention and General Assembly resolutions), but also cover persons who have fled their country because their life, their safety or their liberty were threatened by a massive violation of human rights.

There is another development in refugee situations in recent past, giving rise to refugees who leave their country, not due to any fear of persecution, or events seriously disturbing public order, but for economic reasons or other reasons of personal convenience. As Thorvald Stoltemberg observed that, today an

explosion of 'poverty-refugees' fleeing the destitution of their homelands, far exceeds the number of 'traditional refugees' fleeing persecution and war. It is not possible to accurately establish the number of 'poverty-refugees' but it is considerably greater than 29 million.

Discrimination

Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities.

Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances.[38]

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[37] Thorvold Stoltenberg, UNHCR, *Refugees- A Problem For All*, The Hindustan Times, 29 October, 1990. See also J. N. Saxena, *Problems of Refugees in the Developing Countries and the Need for International Burden - Sharing*, pp. 97-98.
[38] UNHCR, Handbook, supra, note 12, para 54-55.

Duties of Refugees

Refugees are no different from other individuals. They must conform to the laws and obligations of the country in which they find themselves. The very first draft of the 1951 Convention Relating to the Status of Refugees contained a disposition which confirmed that "refugees...authorised to reside in a country must conform to the laws in force".[39] The corresponding provision in the Preamble to the 1951 Convention is based upon a proposal submitted by the delegation of Yugoslavia, according to which states should forbid "all hostile activity on the part of political or other refugee organisations directed against the country of origin ... activity designed to exploit the difficult position of refugees, with a view to using it for political ends contrary to the principles and purposes of the United Nations Charter."[40] The 1969 OAU Convention takes the provisions of the 1951 convention relating to the duties of refugees several steps further. After recalling the general duties of refugees, the convention declares that refugees shall also abstain from any subversive activities against any member state of the OAU.

The 1928 Havana Convention on Asylum provides that refugees shall not be allowed to perform acts contrary to the public peace while enjoying asylum.[41] The 1939 Montevideo Treaty on Asylum and Political Refugee declares that territorial asylum shall be inviolable, but that it is the duty of the state granting asylum to prevent refugee from committing acts within its territory which may endanger the public peace of the state from which they came.[42] The 1967 United Nations Declaration on

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[39] UN doc. E/AC/32/2, p. 31.
[40] UN doc. A/CONF. 2/96.
[41] OAS Official Records, OEA/Ser. X/1, Treaty Series 34.
[42] Ibid.

Territorial Asylum holds that states granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.[43] In 1981 the Executive Committee of the High Commissioner's Programme declared that asylum-seekers should not become involved in subversive activities against their country of origin or any other state.[44]

Similarly, States meeting at the International Conference on Central American Refugees confirmed the obligation of refugees to avoid any activities which might affect the strictly civilian and humanitarian nature of camps and settlements, as well as any activity that is incompatible with the regional peace process.[45] Finally, it is worth recalling article 29 of the 1948 Universal Declaration of Human Rights according to which 'everyone has duties to the community in which alone the free and full development of his personality is possible.[46]

Dual or Multiple Nationality

It is an underlying assumption of refugee law that wherever available, national protection takes precedence over international protection. From this point of view, Article 1 (2), paragraph 2, of the 1951 Convention provides that,

"In the case of a person who has more than one nationality, the term the country of his nationality shall mean each of the countries of which he is national, and a person shall not be

[43] U. N. G. A. Res. 2321 (XXIII), 10 Dec. 1967.
[44] EXCOM Conclusion No. 22.
[45] CIREFCA/89/14, 31 May 1989, p.3.
[46] U. N. G. A. Res. 217 A(111), 10 Dec. 1948.

deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national."

This clause, which is largely self-explanatory, is intended to exclude from refugee status all persons with dual or multiple nationality who can avail themselves of the protection of at least one of the countries of which they are nationals.

'*draft - evader*' (Deserters and Persons Avoiding Military Service)

In countries where military service is compulsory, failure to perform this duty is frequently punishable by law. Moreover, whether military service is compulsory or not, desertion is invariably considered a criminal offence. The Penalties may vary from country to country, and are not normally regarded as persecution. Fear of prosecution and punishment for desertion or *draft-evasion* does not in itself constitute well-founded fear of persecution under the definition. Desertion or *draft-evasion* does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or *draft-evader*. A deserter or *draft-evader* may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion.[47]

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[47]UNHCR. Handbook. supra. note 12. para 167

The exception to the exclusion of military evasion and desertion from the scope of the convention involves claims based on the fact that conscription for engagement in a legitimate and lawful purpose is conducted in a discriminatory manner, or that prosecution or punishment for evasion or desertion is biased in relation to one of the five convention-based grounds of protection.[48] A second qualification to this rule arise when desertion or evasion reflects an implied political opinion as to the fundamental illegitimacy in international law of the form of military service avoided.

There is a range of military activity which is simply never permissible and an absolute political offence; that includes military action intended to violate basic human rights standards, ventures in breach of the Geneva Convention Standards for the Conduct of War,[49] and non-defensive incursions into foreign territory.[50] Where an individual refuses to perform military service which offends fundamental standards of this sort, "punishment for desertion or *draft evasion* could, in the light of all other requirements of the definition, in itself be regarded as persecution."[51] This exception has been specifically recognised by the General Assembly of the UN in its Resolution 33/165, dealing with the status of persons refusing service in military or police forces used to enforce apartheid in South Africa.[52]

The third exception to the exclusion of claims based on refusal to engage in military service relates to persons who raise principled objections to such activity. Objectors may be motivated by

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[48] Hathaway, James C. supra, note 9. p. 180.
[49] ICRC, *The Geneva Conventions of August 12, 1949*. (1983)
[50] Charter of the United Nations, 59 state. 1031 T. S. No. 993, June 26, 1945 at art. 2(4).
[51] UNHCR, Handbook, supra, note 12. at 40.
[52] U. N. G. A. Res. 35/105, December. 20 1978.

reasons of conscience or convictions of a religious, either moral, humanitarian, philosophical, or other nature.[53]

Conscientious objection is another exception to the exclusion of refugee claims based on refusal to engage in military service.[54] Because the right to conscientious objection is an emerging part of international human rights law which is contained in the International Bill of Human Rights.[55] The United Nations Commission on Human Rights has expressly recognised the right to conscientious objection as "a legitimate exercise of the right of freedom of thought, conscience and religion", and appealed to states to provide for alternative service of a civilian and non-combatant nature.[56] Thus, insofar as a state fails to make provision for the accommodation of conscientious objections, a principled claim to refugee status may be established.[57]

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[53] G. Goodwin-Gill, supra, note 19, pp. 33-34.

[54] B. Frelick, *Conscientious Objectors as Refugees*, in V. Hamilton; ed., *World Refugee Survey: 1986 in Review*, p. 31 (1987)

[55] See *Universal Declaration of Human Rights* U. N. G. A. Res. 217/A(111) December 10, 1948, at Art 18; and International Covenant on Civil and Political Rights, U. N. G. A. Res. 220 (XXI), December 19, 1966, at Art. 18.

[56] U. N. Doc. E/CN. 4/1989/L. 10/Add. 15, March 9, 1989.

[57] Hathaway, James C. supra, note 9, pp. 179-183.

E

Economic Migrants

A migrant is a person who, for reasons other than those contained in the refugee definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of a personal nature. If he is moved exclusively by economic considerations, he is an economic migrant and not a refugee.

The distinction between an economic migrant and a refugee is, however, sometimes blurred in the same way as the distinction between economic and political measures in an applicant's country of origin is not always clear. Behind economic measures affecting a person's livelihood there may be racial, religious or political aims or intentions directed against a particular group. Where economic measures destroy the economic existence of a particular section of the population (e.g. withdrawal of trading rights from, or discriminatory or excessive taxation of, a specific

ethnic or religious group), the victims may according to the circumstances become refugees on leaving the country.[58]

EXCOM Conclusions

The Executive Committee (EXCOM) of the United Nations High Commissioner for Refugee is a body of states representatives elected by the UN Economic and Social Council (ECOSOC). Representation in this body is drawn among countries which have shown good degree of interest and commitment to the refugee problem. EXCOM was created in 1958[59] with the essential tasks, such as, to approve the High Commissioner's annual assistance programmes and to advise the High Commissioner, at his request, in the exercise of his statutory functions.[60] International protection is included as a priority item on the agenda of each session of the Executive Committee (EXCOM). The consensus reached by the committee in the course of its discussion is expressed in the form of a general conclusion.

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[58] UNHCR, Handbook, supra, note 12, para 63.

[59] The decision to create EXCOM was taken by the General Assembly in November 1957, as formulated in Resolution 1166 (XII). ECOSOC was made responsible for arrangements for the actual establishment of EXCOM. These were contained in decision 672 (XXV), adopted early in 1958. See UNHCR Training Module, *UNHCR & the UN System: The Executive Committee of the High Commissioners Programme*. OHC 2, (1989) Geneva, p. 25.

[60] EXCOM has adopted conclusions on a wide range of subjects, they include: *Issues of General Concern* - international instruments, asylum, `non-refoulement', expulsion, determination of refugee status, family reunion, travel documents, voluntary repatriation, unfounded or abusive applications for refugee status or asylum, detention of refugees and asylum-seekers, refugees without an asylum country etc.; *The protection needs of specific groups* - refugee women, refugee children etc.; And *Problems Arising in Various Critical Protection Situation-military* or armed attacks on refugee camps and settlement, rescue of asylum-seekers at sea etc.

The Executive Committee is not a governing body as such, it has no role to play (for example, in the election of the High Commissioner). It is important to distinguish between international instruments, such as, 1951 Convention and 1967 Protocol, which have the force of law for the signatory states, and other texts, such as, declarations, resolutions, recommendations etc., which express an international consensus, but are not legally binding. The Conclusions of EXCOM belong to the latter category, which are not binding on states. But EXCOM Conclusions have come to be considered as making a positive contribution to the development of international refugee law to focus attention on protection issues, identifying existing short-coming; to reflect a consensus reached in a unique international found; and to propose appropriate remedies to forum, government authorities on their course of action.[61]

[61] Attar, Dr. Saad Al. *Legal Foundation of Refugee Law*, in M.I. Patwari, ed. Human rights in Contemporary International Law. HEAB, Dhaka (1995) pp. 123-25.

F

Family Unity, the principle of

In general, children are entitled to the same basic human rights as adults. One right is of special importance to children is the right to family unity.

Beginning with the Universal Declaration of Human Rights, which states that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the state,[62] most international instruments dealing with human rights contain similar provisions for the protection of the unit of a family.[63]

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[62] U. N. G. A. Res. 217 A (111). 10 Dec. 1948. Art. 16 (3).

[63] The 1959 Declaration on the Rights of the Child further elaborates on this concept in the *'Principle 6'*, stating "the child, for the full and harmonious development of his personality, needs love and understanding. He shall, whenever possible, group in the care and under the responsibility of his parents." These precepts are reaffirmed by the Preamble to the Convention on the Rights of the Child. Article 10 of CRC is intended, *inter alia*, to reconcile the rights of the refugee children not to be returned to their country of origin with the principle of family unity. It provides that "applications by a

The Final Act of the Conference that adopted the 1951 Convention:

"Recommends Governments to take the necessary measures for the protection of the refugee's family, especially with a view to: (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country. (2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.".

The 1951 Convention does not incorporate the principle of family unity in the definition of the term refugee. The above mentioned recommendation in the Final Act of the Conference is however, observed by the majority of states, whether or not parties to the 1951 Convention or to the 1967 Protocol.

If the head of a family meets the criteria of the definition, his dependants are normally granted refugee status according to the principle of family unity. It is obvious, however, that formal refugee status should not be granted to a dependent if this is incompatible with his personal legal status. Thus a depended member of a refugee family may be a national of the country of asylum or of another country, and may enjoy that country's protection. To grant him refugee status in such circumstances would not be called for.

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child or his or her parents to enter or leave a state party for the purpose of family reunification shall be dealt with by states parties in a positive, human and expeditions manner".

As to which family members may benefit form the principle of family unity, the minimum requirement is the inclusion of the spouse and minor children. In practice, other dependants, such as aged parents of refugees, are normally considered if they are living in the same household. On the other hand, if the head of the family is not a refugee, there is nothing to prevent any one of his dependants, if they can invoke reasons on their own account, from applying for recognition as refugees under the 1951 Convention or the 1967 Protocol. In other words, the principle of family unity operates in favour of dependants, and not against them.[64]

[64] UNHCR. Handbook. supra, note 12. para 185-86

G

'Good Offices'

By the late 1950's, the UNHCR faced political problems arising not only from the East-West nature of refugee flows but also from the South-North dimension of new refugee movements in the developing countries. It was realised that the traditional focus was rather limited and inadequate to meet the needs of those who became exiles not necessarily because of the fear of persecution, for such people would not qualify for relief. Consequently, UNHCR was authorised to use his *"good offices"* for the transmission of contributions to refugees who did not come under the competence of the United Nations. UNHCR's assistance, begun on a *"good offices"* basis, is now provided to various categories of exiles and asylum-seekers, such as displaced persons, people uprooted within their own country by the effects of natural disasters or civil strife, and returnees.

This mandate applied in particular to Chinese refugees in Hong Kong, who for legal reasons (the existence of the two Chinas) could not be determined to be refugees. The mass influx of

700,000 displaced persons put an enormous strain on Hong Kong authorities, but the UNHCR was initially prevented from assisting the arriving Chinese. The legal technicalities over contending recognition policies were sorted out in 1957, when the UN General Assembly made it possible for the UNHCR to assist Chinese refugees in Hong Kong without making an evaluation of the political conditions in either of the two Chinas[65] and without seeming to take sides between the two competing governments. The UN General Assembly acknowledged that "the problem of Chinese refugees in Hong Kong... is such as to be of concern to the international community" and requested the High Commissioner to "use his *good offices* to encourage arrangements for contribution" to the Chinese refugees in Hong Kong.[66] This UN resolution set an important precedent that led to a steady expansion of the High Commissioner's authority to mount assistance programmes throughout the developing world.

In a series of General Assembly resolutions adopted in the 1960's, the High Commissioner was authorised to provide assistance to refugees falling within his competence on the basis of his *"good offices"*. He was freed of the obligation to seek the approval of the General Assembly for each separate appeal for new groups of refugees.[67] He was also given authority to finance and co-ordinate permanent solutions to all refugees under his mandate on a continuing basis; and a new Emergency Fund was established with a $500,000 Ceiling, to be used solely at his discretion.[68]

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[65] The Chinese revolution had led to the creation of two Chinas. The Chinag Kai-Shek government in Taiwan took the position that aid to refugees from "China" would constitute implicit recognition of the PRC.

[66] U.N.G.A. Resolution 1167 (XII), November 26, 1957.

[67] U.N.G.A. Resolution 1129 (XI), November 21, 1956, paragraph 4.

[68] U.N.G.A. Resolution 1166, (XII), November 26, 1957.

In 1959, the UN General Assembly for the first time distinguished between refugees within the mandate of the UNHCR and "refugees who do not come within the competence of the United Nations", on whose behalf the High Commissioner was authorised to use his *"good offices"* to transmit contributions for their assistance.[69] The refugees assisted in this way were considered as falling within the definition of the Statute, on the basis of a *prima facie* group determination. In practice the High Commissioner applied broader humanitarian criteria, not limited to fear of persecution, in determining which groups of persons could be assisted as *"good offices"* refugees.

Gender, persecution on the account of

Gender is not an independent enumerated ground for convention protection, it is properly within the ambit of the "social group" category.[70] The Executive Committee of the UNHCR endorsed this approach in its 1985 conclusion on *Refugee Women and International Protection* ... States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social modes of the society in which they live may be considered as a "particulars social group" within the meaning of Article 1(A)(2) of the 1951 United Nations Refugee Convention".[71] Men, too, have occasionally benefited from

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[69] U.N.G.A. Resolution 1388 (XIV), November 20,1959

[70] D.Indra, *Gender: A key Dimension of the Refugee Experience* (1987), 6(3) Refugee 3: and J. Greatbatch, *The Gender Difference: Feminist Critiques of Refugee Discourse* (1989), 1(4) Intl..J.Refugee L.518.

[71] U.N.doc.ITCR/IP/2/Rev. 1986, at Conclusion No.39 (XXXVI).para (K), July 8,1985: The Executive Committee adopted additional conclusions which addressed the special needs of women refugees in each of 1987 and 1988: see generally A.Johnson.

gender-specific interpretations of the social group category. For example, where a young man, member of the broad social group, was the primary target of military and guerrilla alike. Because this young man of eligible age for military duty, who was subject to mistreatment after indiscriminate recruitment, a distinct group which made it the object of persecution.[72]

The International Protection of Women Refugees: A Summary of Principal Problems and issues (1989), 1(2) Int'l. J. Refugee L. 221.

[72] Cruz, Oscar Roberto, I.A.B.D. V83-6807, June 27, 1986: at 2, per B. Howard.

I

International Refugee Law

The 1951 Refugee Convention and 1967 Protocol define a refugee and also confer on persons qualifying as such certain protections and rights. Some regional arrangements, such as the 1969 OAU Refugee Convention,[73] extended the definition of refugee. Subsequently, in the 1981 African (Banjul) Charter on Human and Peoples' Rights, specific protections are provided for asylum-seekers.[74] Among other regional arrangements, the Council of Europe also provides for such protections;[75] while the American Convention on Human Rights provides for the right of asylum.[76] In 1984 state representatives and experts from Central American Nations approved the Cartagena Declaration, under which a refugee is defined broadly to include those who flee their

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[73] OAU Convention Governing the Specific Aspect of Refugee Problems in Africa, Sept. 10, 1969, OAU Doc.CM/267/Rev. 1, 1001. U N.T.S.45.

[74] Adopted June 27, 1981 OAU Doc. CAD/LEG/67/3/Rev.5(1981).

[75] See European Convention on Human Rights (art.3), European Treaty Series, No.5(1950).

[76] O.A.S.T.S.No. 36, p.1, OAS Doc. OEA/ser.L/V/II.23 doc. 21. art.22(7)

country because of generalised violence, international conflicts, or serious disturbances of public peace.[77] According to the UNHCR's Statute of 1950[78] the functions of UNHCR are twofold: to provide international protection to refugee, and to provide them with material assistance. The humanitarian efforts of UNHCR are considerable, and its material assistance is targeted at each of the four phases of refugee programmes, identified as (1) the phase of early warning and contingency planning; (2) the emergency phase; (3) the post emergency care and maintenance phase; and (4) the self-reliance phase.[79]

The existing refugee law suffers from serious inadequacies. First, to reiterate, the Refugee Convention, adopted in 1951 to meet the need of certain individuals targeted for persecution, fails to provide adequate protection to those individuals and especially to those groups of people who do not meet the persecution standard, but flee serious internal instability, disturbances. or armed conflicts and are unable or unwilling to return to their country of origin.[80]

Second, neither the Refugee Convention nor the Protocol requires that state parties grant asylum to those falling within the scope of the refugee definition, and since the *"non-refoulement"* protection is applicable only to those individuals who meet the persecution standard contained in the convention definition, a

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[77] See generally D. Perluss and J.Hartman, *Temporary Refugee: Emergence of a Customary Norm*. Vol. 26 Virginia Journal of International Law (1986). Pp. 592 - 93.

[78] U.N.G.A Res. 428, 5 U.N.G.A.O.R. supp. (No.20) 46, U.N.Doc.A/1775 (1950)

[79] See Addendum to the Report of the United Nations High Commissioner for Refugees, 42 U.N.G.A.O.R. supp. (No.12A)57, Annex. U.N. Doc. A/42/12//add 1 (Jan 22, 1988) at p.16.

[80] T.Howland. *A Comparative Analysis of the Changing Definition of a Refugee*. Vol 5 New York Law School Journal of Human Rights (1987): pp. 33-70.

large number of asylum-seekers are denied the convention protection.[81]

Third, the plight of a stateless refugee, who is a person lacks effective protection, notwithstanding the entry into force of the 1954 Convention Relating to the Status of Stateless Persons,[82] and the 1961 Convention on the Reduction of Statelessness.[83]

Finally, concerning the specific question of providing durable solutions to the refugee problem, no convention addresses the question of resettlement, although UNHCR does consider resettlement among primary objectives of its assistance, in addition to two such other objectives, voluntary repatriation and local integration in the country of asylum.[84]

So, it is essential that the existing inadequacies of refugee laws be effectively addressed and proper attention be given to the human rights issues in the contemporary problem and ongoing debate regarding further development of international refugee law.[85]

International Solidarity, the principle of

A basic principle of refugee law is international solidarity, a solidarity which transcends the many different distinctions that

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[81] See M. Gibney, *Who Is Our Favorite Refugee Today*? Vol. 15, No.12, Human Rights (summer 1988) at pp.30-33.

[82] Sept.28, 1954, 360 U.N.T.S. 117 (entered into force June 6, 1969).

[83] Aug. 30, 1961, U.N. Doc. A/CONF. 9/15 (1961) (entered into force Dec. 13, 1975).

[84] Report of the UNHCR, 42 U.N.G.A.O.R. supp. (No.12): 14 - 15, U.N. doc. A/42/12/(1987).

[85] See generally Ved P. Nanda, *Refugee Law and Policy. Studies in Human Rights*, No.9, Greenwood (1989) pp.7-10.

are made between human beings. It is clearly linked to the very first article of the Universal Declaration of Human Rights.[86] International solidarity relates to all aspects of refugee problem including security and well-being of refugees, defence of their rights, political and moral support to states in protecting refugees, search for durable solutions, etc. The principle of international solidarity established that the refugee is a person of concern to the international community. It is also the principle which establishes the obligation to extend refugee to those compelled to flee social order and violence and to treat them in a manner befitting their dignity. Finally, it is this principle which establishes that states have an obligation to share the responsibility of finding solutions for the people who have been deprived of a community.

Given the reality that most refugees both originate from and seek refuge in some of the poorest parts of the world, neither the country of origin nor the country of asylum can be expected to discharge their respective responsibilities without the political and financial support of the international community. At the political level, greater commitment is needed on the part of the international community towards preventive diplomacy and peace-making so solutions to refugee problems can be found within a comprehensive strategy for peace, as happened, for instance in Combodia and Mozambique.[87]

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[86] UDHR, U.N.G.A.Res.217A (III), 10 December, 1948.

[87] Iren Khan. *The Refugee Problem: Forging a New Strategy*, Bulletin on IHL & Refugee Law. Vol. 1. No.1. (Jan - June 1996). Indian Centre for Humanitarian Laws and Research, New Delhi, at p.119.

International Refugee Organisation

International Refugee Organisation (IRO) was created in 1947, as a specialised agency of the United Nations to deal with the residual problem of refugees, left after World War II. It was the first international agency to deal comprehensively with every aspect of refugee problems- registration, determination of status, repatriation, resettlement, legal and political protection etc.[88] IRO constitution included the assertion that its principal objective was "to encourage and assist in every way possible early return (of refugees and displaced persons) to their countries of origin," and that "no international assistance should be given to traitors, quislings and war criminals, and that nothing should be done in any way to prevent their surrender and punishment."[89]

During the four and one-half years of IRO's existence, no more than 54,000 people returned to Eastern and Central Europe. Although repatriation was initially its main objective, political developments in post-war Europe shifted the balance towards resettlement. Thus IRO resettled the majority of the refugee caseload it had inherited from UNRRA within the first year of its existence. Despite the IRO's successes in resettlement, there remained a large camp population mainly in Austria and Germany; an urgent caseload of some 5,000 European refugees mainly White Russians in Shanghai; groups in Turkey, Spain, Portugal and the Middle East; and a tense international situation in Europe that was daily generating large numbers of new refugees.[90]

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[88] UNHCR. *Training Module, RLD 1*. June 1992. p.5.
[89] IRO Constitution, Article 2: Annex, Article 1 (C).
[90] Gill Leoscher. *Beyond Charity: International Co-operation and the Global Refugee Crisis*, Oxford University Press, New York 1993. p.53.

The United Nations Organisation as a whole had not lived up to American expectations, and the IRO was a particular economic burden. In its brief period of existence, the IRO's expenditures totalled more than $400 million, a figure that greatly exceeded the combined operating budgets of the rest of the UN and the United States had contributed over $250 million of this amount. Increasingly, U.S. authorities came to believe that American national interests could be served better by relying on their own refugees schemes on bilateral, regional, or even international arrangements outside the United Nations system.[91] Against this view, discussions took place within the United Nations General Assembly and the UN Economic and Social Council (ECOSOC) from 1984 through 1950 regarding the creation of a new international refugee organisation- the office of the UNHCR and the drafting of the 1951 UN Convention on Refugees. Thus International Refugee Organisation (IRO) continued its activities until 1951 and its place UNHCR was crated.

[91] Ibid.

M

Mandate Refugee

Since 1957, the General Assembly, the Economic and Social Council, and the Executive Committee of the UNHCR have moved by a variety of means to respond to non-European refugee producing situations. UNHCR has been authorised to aid the full range of involuntary migrants, including the victims of all forms of both man-made and natural disasters.[92]

Thus, a person who meets the criteria of the UNHCR Statute qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not he is in a country that is a party to the 1951 Convention or the 1967 Protocol or whether or not he has been recognised by his host country as a refugee under either of these instruments. Such refugees, being within the High Commissioner's mandate, are usually referred to as "mandate refugees".

[92] G.Coles, *Problems Arising From Large Numbers of Asylum - Seekers. A Study of Protection Aspects*, p 15 (1981). See also Independent Commission on International Humanitarian Issues, *Refugees. The Dynamics of Displacement*, pp-48 - 49 (1986)

From the foregoing, it will be seen that a person can simultaneously be both a mandate refugee and a refugee under the 1951 Convention or the 1967 Protocol. He may, however, be in a country that is not bound by either of these instruments, or he may be excluded from recognition as a Convention Refugee by the application of the dateline or the geographic limitation. In such cases he would still qualify for protection by the High Commissioner under the terms of the Statute.[93] Infect, mandate refugees are those persons who determined to be refugees by the office of UNHCR, whereas convention refugees are those individuals determined to be refugees by the state party to the convention. The most important distinctions derives from the fact that because of the ever-increasing numbers of refugees and the dynamics of refugee flow, the UNHCR mandate, by virtue of the General Assembly, ECOSOC, and EXCOM; the Mandate of UNHCR has been expanded from time to time, showing flexibility and commitment to spreading protection, whereas the convention definition is much more rigid and depends on how the member state has chosen to interpret and implement the convention.

Membership of a Particular Social Group

A "particular social group" normally comprises persons of similar background, habits or social status.

Persecution for reason of membership of a "particular social group" to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a

[93] UNHCR, Handbook, supra, note 12, para 16 - 17.

common, immutable characteristic. It includes (a) groups defined by an innate, unalterable characteristic; (b) groups defined by their past temporary or voluntary status, since their history or experience is not within their current power to change; and (c) existing group defined by volition, so long as the purpose of the association is so fundamental to their human dignity that the ought not to be required to abandon it.[94]

Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies.[95]

The notion of membership of a particular social group became largely superfluous,[96] since the groups which were recognised illegal expatriates,[97] human rights activists, and various anti-government associations - could already be protected under the rubric of one of the four categories.

The social group criteria came into existence, *inter alia*, as a type of safety net in that this category was to include also race and ethnicity and, furthermore, was to operate as a kind of comprehensive provision for the categories of persons who had a legitimate claim upon being considered refugees in the

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[94] Hathaway C. James, supra, note 9, p 161

[95] UNHCR, Handbook, supra, note 12, para 78.

[96] R Sexton, *Political Refugees, Non refoulement and State Practice: A Comparative Study* (1985), 18 Vanderbilt J. Transnt. L. 731, at 788. Accord C Wydrzynski *Refugees and the Immigration Act* (1979), 25 McGill L.J 154, at 180.

[97] "It may be argued that when the punishment for illegal departure is excessive, all illegal expatriates constitute a special group and are persecuted for membership in that group". T Le and M Lesser, *The Vietnamese Refugee and U.S. Law*, (1981), 56 Notre Dame Lawyer 655, at 664

international sense, although they were not clearly included in the categories specially mentioned.[98] In fact, the intent of the framers of the Refugee Convention was not to address prior persecution of social groups, but rather to save individuals from future injustice. The "social group" category was meant to be a catch-all which could include all the bases for and types of persecution which an imaginative despot might conjure up.[99] This ground must be given a broad and liberal interpretation in order to protect groups or individuals who do not necessarily have political, religious or racial ties at the root of their fear of persecution. Otherwise, this ground of "social group" would be of very little value.[100]

Mentally Disturbed Persons

A mentally disturbed person may be a refugee and while his claim cannot therefore be disregarded it will call for different techniques of examination. The examiner should, in such cases, whenever possible, obtain expert medical advice. The medical report should provide information on the nature and degree of mental illness and should assess the applicant's ability to fulfil the requirements normally expected of an applicant in presenting his case. The conclusions of the medical report will determine the examiner's further approach.

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[98] I.Foighel, *Legal Status of the Boat People* (1979), 48 Nordisk Tidsskrift for Int'l. Ret. 217, at 222.

[99] A Helton, *Persecution on Account of Membership in a Social Group as a Basis for Refugee Status* (1983), 15 Columbia Human Rights. L. Rev.39.

[100] Richard Cid Requena Cruz, *Canadian Immigration Appeal Board Decision T83-10559*, C.L.I.C.April 8, 1986, at 5, per G Vidal

This approach has to vary according to the degree of the applicant's affliction and no rigid rules can be laid down. The nature and degree of the applicant's "fear" must also be taken into consideration, since some degree of mental disturbance is frequently found in persons who have been exposed to serve persecution. Where there are indications that the fear expressed by the applicant may not be based on actual experience or may be an exaggerated fear, it may be necessary, in arriving at a decision, to lay greater emphasis on the objective circumstances, rather than on the statements made by the applicant.

It will, in any event, be necessary to lighten the burden of proof normally incumbent upon the applicant, and information that cannot easily be obtained from the applicant may have to be sought elsewhere, e.g. from friends, relatives and other persons closely acquainted with the applicant, or from his guardian, if one has been appointed.[101]

[101] UNHCR, Handbook, supra, note 12, para 207 - 10.

N

'Nansen Passports'

The first demonstration of international solidarity emerged after World War I, to deal with mass movements linked mainly to the revolution in Russia and the collapse of the Ottoman Empire. In 1920, Dr. Fridtjof Nansen, the World-famous Norwegian explorer, was given the task of negotiating the repatriation of Russian war prisoners, and a year later he was appointed the first High Commissioner for Refugees, with special responsibilities for Russian refugees only.

Despite the much-publicised shortcomings of the inter-war refugee regime, the appointment of Nansen as High Commissioner constituted the first formal acknowledgement of international responsibility toward refugees, and Nansen proved to be a highly innovative and successful advocate for them.

particularly in facilitating assistance to certain groups of refugees.[102]

Initially, Nansen was concerned with the practical problems of Russian refugees, and in particular with the problems of refugee travel. However, the problem of Russian refugees was extremely complex and could not be resolved quickly. The majority could not simply return home; nor could they settle spontaneously in Europe or easily travel to North America or some other overseas destination for immigration. At first, the High Commissioner's staff attempted to protect them by providing consular services and diplomatic interventions with the host governments that threatened their expulsion and deportation.

Finally, through skilful diplomacy, Nansen tackled the problem head-on by persuading fifty-one governments to recognise travel documents termed "*Nansen Passports*" for stateless Russians. With these documents, not only Russian refugees but also others[103] could legally move from areas where their stays were temporary and often illegal to more hospitable areas in Europe and elsewhere. Governments moved quickly to adopt the *Nansen Passport* system and co-operated in the exchange and repatriation of massive numbers of refugees following the Greco-Turkish War of 1922.

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[102] Claudena Skran. *Profiles of the First Two High Commissioners*. Journal of Refugee Studies, 1 (1988): at 277-96.

[103] The Nansen Passport was later extended to include other refugee groups such as American refugees in 1924, Assyrian and Assyro-Chaldeans in 1928, and Saar refugees in 1935. See Louis Holborn, *Refugees: A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951 - 1972*. Vol. 1. Metuchen N.J.: Scarecrow Press, 1975. pp 8-10.

Nationality, persecution for reason of

The term "nationality" in this context is not to be understood only as "citizenship". Often nationality and citizenship are considered to be synonymous of each other. But there is a great difference between nationality and citizenship. By nationality under international law, we mean legal relationship which exists between the nation and the state. Citizenship on the other hand, denotes the relation between the person and the state law.[104] The term nationality generally receives a broad interpretation and can overlap with some of the other grounds. It is usually taken to include, as well as citizenship, members of specific ethnic or linguistic groups and may occasionally overlap with the term "race". Persecution for reasons of nationality is also understood to include persecution for lack of nationality, that is, persecution of stateless persons.[105] Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution. The co-existence within the boundaries of a State of two or more national (ethnic, linguistic) groups may create situations of conflict and also situations of persecution or danger of persecution.

'Non-refoulement', the principle of

The whole body of refugee law centre around the principle of non-refoulement, i.e. not to refuse entry the territory of a country

[104] Kapoor, Dr. S.K. *International Law*. Central Law Agency, Allahabad, ninth edition, 1996, at 140.
[105] A.Grahl-Madsen, *The Status of Refugees in International Law*, p. 219 (1966).

to the people fleeing from imminent danger from the country of their origin. The French word *refouler* which means "to drive back" may be considered to encompass measures of rejection at the frontier, expulsion or extradition which are prohibited by Article 33 of the 1951 Refugee Convention.[106] According to Article 33 of the Refugee Convention:

"1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."

In a country of asylum refugee-treatment must correspond with obligations to respect fundamental human rights, including the right not to be returned to a territory where the individual may be subjected to persecution, that is, *non-refoulement*.[107]

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[106] Stenberg, G. *Non-expulsion and Non-refoulement*, Uppasala, 1987, at 21.

[107] *Non-refoulement* provisions are included in several United Nations documents, including the 1951 convention/1967 Protocol: See art. 33. A similar Provision is also article 3 of the Declaration of Territorial Asylum, adopted by U.N.G.A. Res.2312 (XXII), 14 Dec. 1967. Even states not parties to the United Nations instruments are bound to respect *non-refoulement* as a fundamental principle of customary international law; see Goodwin-Gill,G. *The Refugee in International Law* (1983), p.97; Conclusion No.6 (XXVIII), in UNHCR, *Conclusions on the International Protection of Refugees* adopted by the Executive Committee of the High Commissioner's Programme (1980) p.14; Report of the 28th Session of the UNHCR Executive Committee (1977); UN doc. A/AC.96/549, para 53.

The Prohibition includes non-rejection at the border or shore, and in certain circumstances, it may even limit the exercise of a government's power on an extraterritorial basis, for example, the United States - Haiti High Seas Interdiction Programme (intercepting and returning boat people to Haiti). Apart from the Haitian interdiction programme, asylum-seekers have recently been subjected to measures in countries of reception which violate *non-refoulement*, including the recent "pushbacks" of Vietnamese boat people in Thailand and Malaysia: hundreds have died.[108]

State practice has undoubtedly broadened the scope of Article 33 of the 1951 Convention. First, it has confirmed that the duty of *non-refoulement* extends beyond expulsion and return and applies to measures such as rejection at the frontier and even extradition. Second, it has further established the principle of *non-refoulement* in international law by extending its application to a broader category of refugees.[109]

Non-refoulement also imposes an obligation to protect refugees residing within a State's borders. This view has been taken by the UNHCR, which has stressed that all individuals given refuge be allowed to enjoy basic humanitarian standards of treatment.[110]

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[108] See Lawyers Committee for Human Rights, *Refugee Refoulement: The Forced Return of Haitians under the U.S. - Haitian Interdiction Agreement (1990)*; Lawyers Committee for Human Rights, *Refugee Denied: Problems in the Protection of Vietnamese and Cambodians in Thailand and the Admission of Indochinese Refugee Protection in Thailand*. 1 IJRL 21, 27 (1989); U.S. Committee for Refugees, *The Right of Vietnamese Boat People* (1987).

[109] David, A. (ed). The New Asylum Seekers: Refugee Law in the 1980s. The Hague et all. 1988, at 105.

[110] Conclusion No. 19 (XXXI) *on Temporary Refuge, adopted by the UNHCR Executive Committee in 1980*, states: "The Executive Committee (a) *Reaffirmed* the essential need for the humanitarian legal principle of *non-refoulement* to be scrupulously observed in all situations of large-scale influx; ... (c) *Took note* of the extensive practice of granting temporary refuge in situations involving a large-scale

Nationals Whose Reasons for Becoming a Refugee Have Ceased to Exist

Article 1 C (5) of the 1951 Convention:

"He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;"

"*Circumstances*" refer to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution. A mere-possibly transitory- change in the facts surrounding the individual refugee's fear, which does not entail such major changes of circumstances, is not sufficient to make this clause applicable. A refugee's status should not in principle be subject to frequent review to the detriment of his sense of security, which international protection is intended to provide.

The second paragraph of this clause contains an exception to the cessation provision contained in the first paragraph. It deals with the special situation where a person may have been subjected to very serious persecution in the past and will not therefore cease to be a refugee, even if fundamental changes have occurred in his country of origin. The reference to Article 1 (A) indicates that the

influx of refugees; ... (e) *stressed* the exceptional character of temporary refuge and the essential need for persons to whom temporary refuge has been granted to enjoy basic humanitarian standards of treatment ..."

exception applies to "*statutory refugees*". At the time when the 1951 Convention was elaborated, these formed the majority of refugees. The exception, however, reflects a more general humanitarian principle, which could also be applied to refugees other than statutory refugees. It is frequently recognised that a person who- or whose family- has suffered under atrocious forms of persecution should not be expected to repatriate. Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.[111]

[111] UNHCR, Handbook, supra, note 12, para 135 - 6.

O

OAU, refugee definition of

The first regional arrangement concerning to the status of refugees was established by the Organisation of African Unity (OAU) in 1969. In addition to respecting the convention definition of a refugee, state parties to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa [112] broke new ground by extending protection to all persons compelled to flee across national borders by reason of any man-made disaster.

This Convention contains a definition of the term "refugee", consisting of two parts: the first part is identical with the definition in the 1967 Protocol (i.e. the definition in the 1951 convention without the dateline or geographic limitation). The second part applies the term "refugee" to: "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the

[112] U.N.T.S. 14, 691, entered into force June 20, 1974 ("OAU Convention")

whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality".[113] This standard represents an important conceptual adaptation of the convention refugee definition, in that it successfully translates the core meaning of refugee status to the reality of the developing world. The relevance of the OAU definition to conditions in the developing world has made it the most influential conceptual standard of refugee status apart from the convention definition itself. It has provided the basis for enhanced UNHCR activity in Africa.[114] was at the root of the proposed conventional definition of persons entitled to territorial asylum, and has inspired the liberalisation of a variety of regional and national accords on refugee protection.[115]

OAS, refugee definition of

The most recent regional extension of the refugee definition is derived from the Cartagena Declaration, adopted by ten Latin American States in 1984.[116] In addition to convention refugees, protection as refugees was extended to ".... persons who have fled their country because their lives, safety, or freedom have been threatened by unrealised violence, foreign aggression,

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[113] Ibid. at Art 1(2)

[114] "UNHCR's competence in Africa has been recognized as extending also to refugee who have fled owing to external aggression, occupation, foreign domination or events seriously disturbing public order": G Goodwin - Gill, *Refugee: The Functions and Limits of the Existing Protection System*, in A. Nash, ed., *Human Rights and the Protection of Refugees under International Law*, p 150 (1988)

115 Hathaway, James C. supra, note 9, p. 19.

[116] Annual Report of Inter-American Commission on Human Rights 1984 - 85, OEA/Ser.L/II.66 doc. 10, rev. 1, at 190 - 193.

internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.[117]

This definition was approved by the 1985 General Assembly of the Organisation of American States (OAS), which resolved "to urge Member States to extend support and, insofar as possible, to implement the conclusions and recommendations of the Cartagena Declaration on Refugees".[118] The OAS definition acknowledges the legitimacy of claims grounded in the actions of external powers by virtue of its reference to slight stemming from foreign aggression, and offers a qualified acceptance of the notions of group determination and claims in which the basis or rationale for harm is indeterminate.

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[117] Conclusion 3, Declaration de Cartegena.

[118] UNHCR, *OAS General Assembly: an inter-American initiative on refugees* (1986) 27 Refugees 5.

P

Persecution

There is no universally accepted definition of "persecution". The drafters of the convention intentionally left the meaning of persecution undefined because they realised the impossibility of enumerating in advance all of the forms of maltreatment which might legitimately entitle persons to benefit from the protection of a foreign state.[119] But in Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights—for the same reasons—would also constitute persecution.

The criteria to establish persecution is harassment, which is so constant and unrelenting that the victims feel deprived of all hope

[119] C.Forg. *Some Legal Aspects of the Search for Admission into Other States of Persons Leaving the Indo-Chinese Peninsula in Small Boats* (1981). 52 British Y.B. Int'l. L.53. at 92

of recourse, short of flight, from government by appression.[120] Persecution is a factual question, the official must have broad latitude in marking the determination as to whether the person claiming the benefit is in fact persecuted. Persecution is not restricted solely to physical abuse or incarceration.[121] Other measures in disregard of human dignity might also constitute persecution.[122] Any repeated or sustained attack on not only a persons physical integrity, but also on his moral integrity, also constitutes persecution. Grahl-Madsen draws an arbitrary standard for determining when emerging detention is of sufficient duration to amount to persecution: "when it comes to threats to freedom, it is hoped that my old conclusion still holds good: that imprisonment or detention for a period of three months or more constitutes persecution." [123]

Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective elements. The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned.[124]

Drawing the line on what is or is not persecution has been extremely difficult and politically charged. The position taken here is that there are different levels of persecution (and human rights violation) that are practised in the world, and such levels

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[120] Hernandez, Gladys Maribel, I.A.B.D. M 81-1212, Jan. 6, 1983; revg. F.C.A.D. May 20, 1982, at 5, Per G. Loiselle.

[121] A. Fragomen, *The Refugee: A Problem of Definition* (1970), 3 Case Western Reserve J. Int'l L. 45, at 54.

[122] P.Weis, *The Concept of the Refugee in International Law* (1960), 87 J. Du droit Int'l. 928, at 970. Accord Y. Shimada, *The Concept of the Political Refugee in International Law* (1975), 19 Japanese Ann. Int'l. L., 24, at 37.

[123] A. Grahl-Madsen, *International Refugee Law Today and Tomorrow* (1982), 1a Archiv des Volkerrechts 411, at 422.

[124] UNHCR, Handbook, supra, note 12, para - 51.

ought to be recognised in making refugee admission determinations.[125]

In sum, persecution is most appropriately defined as the sustained or systemic failure of state protection in relation to one of the core entitlements which has been recognised by the international community. But in reality it could be argued that in practice the element of "persecution" is no longer considered by some states to be a *sine qua non*, however, this may be an over simplification.[126]

Political Opinion, persecution for reason of

A person is a refugee if he has a well-founded fear based on political opinion. He need not have a well-founded fear based on political activity. Because the convention speaks not of political activities but of political opinions.

Traditionally it was thought that only those who enjoyed membership in a political party, or indeed only those in political leadership roles within a party could qualify for refugee status on the basis of political opinion. But nowhere in the convention does it say to be considered a refugee an applicant must have been prominent in the political life of his country of origin.

Where a person is subject to prosecution or punishment for a political offence, a distinction may have to be drawn according to whether the prosecution is for political opinion or for politically

[125] M.Gibney and M.Stohl, *Human Rights and U.S. Refugee Policy*, in M. Gibney, ed. *Open Brders? Closed Societies? The Ethical and Political Issues*. p. 159 (1988).

[126] G.Coles. *Background paper for the Asian Working Group on the International Protection of Refugees and Displaced Persons*. p. 99 (1980).

motivated acts. If the prosecution pertains to a punishable act committed out of political motives, and if the anticipated punishment is in conformity with the general law of the country concerned, fear of such prosecution will not in itself make the applicant a refugee. In determining whether a political offender can be considered a refugee, regard should also be had to the following elements: personality of the applicant, his political opinion, the motive behind the act, the nature of the act committed, the nature of the prosecution and its motives; finally, also, the nature of the law on which the prosecution is based. These elements may go to show that the person concerned has a fear of persecution and not merely a fear of prosecution and punishment-within the law-for an act committed by him.[127]

'Prima Facie' refugee

While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called "group determination" of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.

[127] UNHCR, Handbook, supra, note 12, para 85 - 86.

Person Who is Outside the Country of his Nationality

In this context, "nationality" refers to "citizenship". The phrase "is outside the country of his nationality" relates to persons who have a nationality, as distinct from stateless persons.

It is a general requirement for refugee status that an applicant who has a nationality be outside the country of his nationality.

Where an applicant alleges fear of persecution in relation to the country of his nationality, it should be established that he does in fact possess the nationality of that country. There may, however, be uncertainty as to whether a person has a nationality.

He may not know himself, or he may wrongly claim to have a particular nationality or to be stateless. Where his nationality cannot be clearly established, his refugee status should be determined in a similar manner to that of a stateless person, i.e. instead of the country of his nationality, the country of his former habitual residence will have to be taken into account.

The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so.[128]

[128] Ibid. Para 87 - 91.

Person Who is Unable or, Owing to Such Fear, is Unwilling to Avail Himself of the Protection of that Country

Being unable to avail himself of such protection implies circumstances that are beyond the will of the person concerned. There may, for example, be a state of war, civil war or other grave disturbance, which prevents the country of nationality from extending protection or makes such protection ineffective. Protection by the country of nationality may also have been denied to the applicant. Such denial of protection may confirm or strengthen the applicant's fear of persecution, and may indeed be an element of persecution.

The term "unwilling" refers to refugees who refuse to accept the protection of the Government of the country of their nationality. It is qualified by the phrase "owning to such fear" where a person is willing to avail himself of the protection of his home country, such willingness would normally be incompatible with a claim that he is outside that country "owing to well-founded fear of persecution". Whenever the protection of the country of nationality is available, and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee.[129]

Persons Already Receiving United Nations Protection or Assistance

According to the Article 1 (D) of the 1951 Convention:

"This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other

[129] Ibid. para 98 - 100

than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention."

At the time of the UNHCR statute's drafting, two specialised refugee relief agencies were already in existence, e.g. the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),[130] and the United Nations Korean Reconstruction Agency (UNKRA).[131] This exclusion clause was intended to present the overlapping of the mandates of UNHCR and these pre-existing agencies.

A refugee from Palestine who finds himself outside that area does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention. It should normally be sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is excluded from the application of the Convention under one of the exclusion clauses.[132]

In fact, there is reason to believe that this clause applies not only to those individuals who were actually receiving protection or assistance from UNRWA on 28 July 1951, but also to those

[130] UNRWA was established by December 8, 1949. Its territorial competence extends to Jordan, Syria, Lebanon, and the Gaza Strip.

[131] UNKRA was established by the General Assembly Resolution 410 (v), December 1, 1950.

[132] UNHCR, Handbook, supra, note 12 para 143.

individuals who became the concern of UNRWA at any later date, including those born after the signing of the convention; or, in other words, that this clause applies to persons within the mandate of UNRWA as a class or category, and not to individual persons.[133]

Persons Not Considered to be in Need of International Protection

According to Article 1(E) of the 1951 Convention, this convention shall not apply to a person who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

This exclusion clause was originally intended simply to bar from international protection of ethnic German refugees from Central and Eastern Europe who had taken residence in Germany during or following Second World War. This provision is intended to exclude from the benefits of the Convention members of former German minorities outside of Germany who returned to, sought refuge in, or were expelled to Germany, and who are living there. This clause reflects the view that these individuals should be and are being assimilated into the German community and are not properly refugees.[134]

So, this provision relates to persons who might otherwise qualify for refugee status and who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship. They are frequently referred to as "national refugees".

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[133] A. Grahl-Madsen, supra. note 105 p.265. Accord. Hathaway, James C. supra. note 9, p. 208.

[134] U.N. Doc. E/AC. 32/L. 38, at 16, February 1, 1950.

It may be said that the exclusion operates if a person's status is largely assimilated to that of a national of the country. In particular he must, like a national, be fully protected against deportation or expulsion. The clause refers to person who has "taken residence" in the country concerned. This implies continued residence and not a mere visit. A person who resides outside the country and does not enjoy the diplomatic protection of that country is not affected by the exclusion clause.[135]

Persons Having Resorted to Force or Committed Acts of Violence

Applications for refugee status are frequently made by persons who have used force or committed acts of violence. Such conduct is frequently associated with, or claimed to be associated with, political activities or political opinions. They may be the result of individual initiatives, or may have been committed within the framework of organised groups. The latter may either be clandestine groupings or political cum military organisations that are officially recognised or whose activities are widely acknowledged. A number of Liberation movements, which often include and armed wing, have been officially recognised by the General Assembly of United Nations. Other liberation movements have only been recognised by a limited number of Governments. Others again have no official recognition. Account should also be taken of the fact that the use of force is an aspect of the maintenance of law and order and may, by definition, be lawfully resorted to by the police and armed forces in the exercise of their functions.[136]

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[135] UNHCR, Handbook, supra, note 12, para 145-46.
[136] Ibid. Para 175.

Persons Considered not to be Deserving of International Protection

According to Article 1 (F) of the 1951 Convention, the provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

At the time when the Convention was drafted, the memory of the trials of major war criminals was still very much alive, and there was agreement on the part of States that war criminals should not be protected. There was also a desire on the part of States to deny admission to their territories of criminals who would present a danger to security and public order.[137]

The country of asylum need have only serious reasons for considering that the applicant is a criminal described in the exclusion clause; there is not requirement that he has been formally charged or convicted,[138] or even that his criminality be capable of establishment "beyond a reasonable doubt" by a Judicial procedure. It is enough that the determination authority have sufficient proof warrant in the assumption of the applicant's guilt of such a crime.[139]

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[137] UNHCR, Handbook, supra, note 12, para 148.
[138] A. Grahl Madsen, supra, note 105, at 277.
[139] Hathaway, James C. Supra, note 9, at 215.

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Refugee Protection

When we speak of "protection", we mean legal protection. The concept must be associated with entitlements under law and, for effective redress of grievances, mechanisms to vindicate claims in respect of those entitlements. The term "Refugee" has a specific legal connotation. If an individual cannot meet the requisites of the definition of 1951 Convention and 1967 Protocol, he or she is not entitled to protection under the convention or protocol.

Traditionally, refugee protection is reserved for those who have left their countries of origin. The decision to leave and cross a national border transforms an individual into an object of concern under international refugee law, wherever the circumstances are such that he or she has lost, or been deprived of, protection under law in his or her country of origin, and is in need of another source of protection. Individuals who do not cross a national boundary thus find themselves without recourse to the international refugee legal regime, not withstanding internal displacement or a fear of persecution by the authority.

Frequently, at the request of the Secretary-General of the General Assembly of the United Nations, the office of the United Nations High Commissioner For Refugee (UNHCR) has extended its mandate to internally displaced persons under a "good offices" jurisdiction.

Those individuals who flee across a border from the generalised threats posed by war or civil disturbance are outside the ambit of international refugee law. Such persons are considered not to have a sufficiently individualised fear of persecution. Member States of the Organisation of African Unity have subscribed to a broadened refugee definition, which includes war and civil disorder.[140] Governmental and expert discussions in Latin America and Asia have also recognised the positive utility of adopting such a broadened definition.[141] The continuing need for protection for internally displaced persons as well as those who flee generalised violence in their home country, must be studied and assessed.

The term "asylum" is not defined in international law, but for present purposes it can be taken to mean the act of providing "protection" to refugees. Under international refugee law, there is no categorical right for a refugee to receive asylum. The concept of "protection" can be taken to mean the act of respecting and upholding fundamental human rights, such as the core rights declared in the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

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[140] Article 1(2), *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session on 10 Sept. 1969; entered into force 20 June 1974; 1001 UNTS 45 (No.14691); text in UNHCR, p.193.

[141] *Annual Report of Inter-American Commission on Human Rights*, 1984-1985, OEA/Ser. L/V/II.66, DOC. 10, rev. 1 at 190 - 193. Also see *Report of the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia*, San Remo, International Institute of Humanitarian Law, 1981.

International concern over human rights issues, and the right to human treatment in all situations, has led to the adoption of a number of Treaties and Protocols. These instruments speak in broad terms of minimum standards of treatment for all persons; they therefore extend to refugees seeking asylum, who do not forfeit their fundamental rights when they leave their home countries. Concern with fundamental rights informs the Charter of the United Nations,[142] and is clearly expressed by the Universal Declaration of Human Rights of 1948.[143]

In 1985, the General Assembly also adopted the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live.[144] It provides that aliens shall enjoy the rights to security of person, and that no alien shall be subjected to arbitrary arrest or detention, or be subjected to cruel, inhuman, or degrading treatment.[145]

Although the United Nations has not adopted a declaration to deal specifically with the treatment of refugees who are women or children, several instruments extend protection. The UNHCR has noted that the majority of the world, refugee population comprises women and children, and has recognised that women and girls who are refugees are particularly vulnerable to "physical violence, sexual abuse, and discrimination".[146] In 1974,

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[142] See UN Charter, Arts. 1, 2, 55, 56.

[143] U.N.G.A. res. 217 A(111), 10 Dec. 1948, UN doc. A/810(1984).

[144] U.N.G.A. res. 40/144, 13 Dec. 1985

[145] Articles 5 and 6, respectively

[146] See UNHCR Executive Committee Conclusion No.39 (XXXVI) *on Refugee Women and International Protection* (1985); UNHCR, Conclusion, p. 84; Conclusion No.54 (XXXIX) (1988), texts in 1 IJRL 253 (1989). See also Conclusion No.60 (1989); text in 2 IJRL 152 (1990); Johnsson, A.B., *The International Protection of Women Refugees*, 1 IJRL 221 (1989); Kelly, N., *Report on the International Consultation on Refugee Women*, held in Geneva 15 - 19 November 1988, 1 IJRL 233 (1989).

The General Assembly drafted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.[147]

In fact, refugee protection encompasses two basic issues: One is determining the coverage afforded to refugees under international law; the other concerns compliance where coverage exists. The 1951 Convention, 1967 Protocol and the Statute of the Office of the United Nations High Commissioner for Refugees are traditional sources of protection for refugees. Principles embodied in humanitarian, human rights and aliens law also apply to their situation, but the mechanisms to implement these principles are less well established at the international level. Until uniform intergovernmental mechanisms are created, differential treatment of those in need of protection will continue to exist. Many refugees will simply remain unprotected, their plight precarious and exacerbated by the absence of any lasting solution.[148]

Contemporary international protection has now become very dynamic. Traditionally, protection is activated once a potential refugee can no longer avail himself of his country's protection and an international border has been crossed. Initially protection is in the form of non-deportation to country of origin, right to claim asylum and have it determined, and subsequently to try and find durable solutions as local integration resettlement, and voluntary repatriation. On the other hand, prevention of flow and the enforcement of the right to remain in the country of origin is

[147] U.N.G.A. res. 3318 (XXIX), 14 Dec. 1974.

[148] Helton, Arthur C., *Human Rights, Protection And Refugee Relief. What is Refugee Protection?* IJRL Special Issue, September 1990, p. 129.

now considered to be part of UNHCR's duty in international protection.[149]

Refugee Convention 1951

The Convention Relating to the Status of Refugees was adopted by a Conference of Plenipotentiaries of the United Nations on 28 July 1951, and entered into force on 21 April 1954.

The 1951 Convention and the 1967 Protocol contain three types of provisions:[150]

(i) Provisions giving the basic definition of who is (and who is not) a refugee and who, having been a refugee, has ceased to be one.

(ii) Provisions that define the legal status of refugees and their rights and duties in their country of refuge.

(iii) Other provisions dealing with the implementation of the instruments from the administrative and diplomatic standpoint. Article 35 of the 1951 Convention and Article 11 of the 1967 Protocol contain an undertaking by Contracting States to cooperate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions and, in particular, to facilitate its duty of supervising the application of the provisions of these instruments.

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[149] Ankerstjerne Henrik. *Role of UNHCR and International Protection of Refugees*, in Bulletin on IHL & Refugee Law. Indian Centre for Humanitarian Laws and Research. New Delhi. vol. 1, No. 1 January - June 1996. P. 125 - 126.

[150] UNHCR, Handbook, supra, note 12, Paragraph 12.

The two main characteristics of the Convention are its *strategic conceptualisation* and its *Eurocentric focus.* The strategic dimension of the definition comes from successful efforts of western states to give priority in protection matters to persons whose flight was motivated by pro-western political values.[151] The refugee definition was carefully phrased to include only persons who have been disfranchised by their state on the basis of race, religion, nationality, membership of a particular social group, or political opinion, matters in regard to which East bloc practice has historically been problematic.[152]

The convention was designed to create secure conditions such as would facilitate the sharing of the European refugee burden.[153] Notwithstanding the vigorous objections of several delegates from developing countries faced with responsibility for their own. Refugee populations, the Eurocentric goal of the western states was achieved by limiting the scope of mandatory international protection under the convention to refugees whose flight was prompted by a pre 1951 event within Europe.

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[151] Hathaway, James C. *The Law of Refugee Status*, Butterworths, Toronto, 1991, p. 6.

[152] See generally, *Amnesty International*, Report 1987, P.O.279 - 332 (1987). For example, in regard to the USSR, the Report (at p. 320) notes ".... no improvement in the harsh and arbitrary treatment of prisoners of conscience in 1986. Although it has learned of fewer political arrests. Amnesty International was disturbed that the Soviet authorities continued to imprison many citizens whose conscience led them to dissent peacefully from official policies, and to apply compulsory psychiatric measures to others."

[153] "It was .... one thing to frame a definition in the desire to assist all refugees irrespective of their country of origin, and quite another to adjust that definition to the remaining provisions of the convention ..... If, when considering the articles other than article 1, the conference had been aware that the convention was to apply to all refugees without distinction, it would undoubtedly have proceeded differently. As it was, the provision so far agreed upon had been adopted specifically for application to refugees from Europe countries. *Statement of Mr. Warren of the U.S.A.* U.N. Doc. A/CONF. 2/SR. 22, at 16, July 16, 1951. Accord Mr. Del Drago of Italy: "If the convention covered Europeans who wanted to settle in overseas countries with a western civilization, the rights and duties of refugee and the receiving country could be defined. " U.N. Doc. A/CONF. 2/SR. 19, at 15, November 26, 1951

Refugee Protocol 1967

1951 Refugee Convention contained the inclusion of the dateline of "Events occurring before 1st January 1951". With the passage of time and the emergence of new refugee situations, the need was increasingly felt to make the provisions of the 1951 Convention applicable to such new refugees. As a result, a Protocol relating to the Status of Refugees was prepared. After consideration by the General Assembly of the United Nations, it was opened for accession on 31 January 1967 and entered into force on 4 October 1967.

By accession to the Protocol,[154] states undertake to apply the substantive provisions of the 1951 Convention to refugees as defined in the Convention, but without the 1951 dateline. Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to states parties to the Convention.[155]

The 1967 Protocol achieved the formal universalization of the convention definition of refugee status and there was no review conducted of the substantive content of the definition.[156]

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[154] "For the purpose of the present protocol, the term "refugee shall .... mean any person within the definition of article 1 of the convention as if the words "As a result of events occurring before 1 January 1951 and ... and the words .... as a result of such events," in article 1 (A) (2) were omitted. The present protocol shall be applied by the states parties hereto without any geographic limitation, save that existing declarations made by states already parties to the convention in accordance with article 1 (B) (1) (a) of the convention, shall, unless extended under article 1 (B) (2) thereof, apply also under the present protocol." *Protocol Relating to the Status of Refugees*, 606 U.N.T.S. 8791, entered into force on October 4, 1967 ("Protocol"), at Article 1(2) - (3).

[155] UNHCR, Handbook, supra note 12, at paragraph 8 - 9.

[156] Hathaway, James C...supra, note 151, at 10.

Race, persecution for reason of

The origin of the phrase makes it quite clear that the world "race" denotes not only the major ethnic groups, such as European "the white race", African "the black race", Mongols "the yellow race", Red Indians, etc., but also groups which are less easily differentiated, such as Muslims, Rohingas, Chakmas, Gypsies, etc. In the present context the world "race" is therefore referring to social prejudice rather than to a more or less scientific division of mankind. In other words, the term "race", as used in Article 1 (A(2) of 1951 Convention, is a social more than an ethnographic concept, and is applicable whenever a person is persecuted because of his ethnic origin. As Grahl-Madsen suggests that the reference to "race" is derived from *SHAEF Administrative Memorandum Number 39* which was "aimed at helping Jewish victims of Nazi persecution, of whom some were persecuted because of their Jewish race, some because of their Jewish religion, and some for both reasons."[157] The widely accepted International Convention on the Elimination of all Forms of Racial Discrimination[158] defines racial discrimination as including differential treatment based on "race, colour, decent, or national or ethnic origin."[159] The clear majority of delegates to the Conference on Territorial Asylum similarly agreed to extend protection to persons persecuted for reasons of "race, colour, national or ethnic origin."[160] The Executive Committee of the

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[157] A.Grahl-Madsen, *The Status of Refugees in International Law*, pp.217 - 18 (1966). Accord P. Hyndman, *The 1951 Convention Definition of Refugee: An Appraisal with Particular Reference to the Sri Lankan Tamil Applicants* (1987), 9 Human Rights Q 49, at 69.

[158] U.N.G.A. Res. 2106 A (XX), December 21, 1965, entered into force January 4, 1969.

[159] Ibid. at Art. 1(1).

[160] U.N. doc. A/CONF. 78/12, at Art. 2(1)(a).

UNHCR adopted this perspective and has recommended a comprehensive definition of race to states:-

Race has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as "races" in common usage. Frequently it will also entail membership of a specific social group of common descent forming a minority within a larger population. Discrimination for reasons of race has found world-wide condemnation as one of the most striking violations of human rights. Racial discrimination, therefore, represents an important element in determining the existence of persecution.

In sum, "race" is not only major ethnic groups but also embraces the social concept e.g. Ibos from Nigeria, the Mohajirs and Biharis of Pakistan, the Baganda from Uganda, Guyanese of East Indian descent, Tamils from Sri Lanka, Chakmas from Bangladesh, Rohingas from Myanmar, the Baluba from Zaire, Tibbatian from China, and Gypsies of Polish origin etc. The primary notion which united these groups is their exclusion from state protection based on "identifiable ethnicity".

Religion, persecution for reason of

Persecution for "reasons of religion" may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practice their religion or belong to a particular religious community.

Religion as a ground for refugee status includes two dimensions.[161] First is the protection of persons who are serious jeopardy because they are identified as adherents of a particular religion. For example, this century has seen large-scale persecution of Jews under the hegemony of Nazi and Axis power up to 1945, while more recent targets have included Jehovah's witnesses in Africa, Muslims in Myanmar, Bahais in Iran and believers of all persuasions in totalitarian and self-proclaimed atheist states.[162] It is not necessary that an asylum-seeker have taken any kind of active role in the promotion of his beliefs, nor even that he be particularly observant of its precepts or rituals. Secondary, religion includes behaviour, which flows from belief, including participation in or abstention from formal worship and other religious acts, expression of views and the ordering of personal behaviour.

Rape and Sexual Assault, persecution on account of

Gender is absent as an enumerated basis for fear of persecution in the Refugee Convention. In practice, women are much less likely to be involved in politics or the publicly active religious, racial, nationalistic or social groups whose persecution is well known.[163] The definition fails to recognise expressly that in some countries women face persecution simply because they are women.[164] Rape and other forms of sexual violence are inflicted on women detains in many countries, but rarely inflicted on men.

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[161] See G. Goodwin-Gill, supra, note 19, pp. 27 - 28.

[162] Ibid.

[163] Felicite Stairs & Lori Pope, *No place Like Home: Assaulted Migrants Women's Claims to Refugee Status and Landing on Humanitarian and Compassionate Grounds* (1990) 6 Journal of Law and Social Policy 149, at 163.

[164] D. Indra, *Gender: A Key Dimension of the Refugee Experience* (1987) 6 "Refugee" 1.

Interrogators and other government officials use rape as torture to intimidate women from pursuing activities that are viewed as subversive and to extract information or confessions.[165]

It is clear that rape is a form of torture which violates women physically and mentally, humiliates them, devastates their sense of self-respect, undermines their dignity, and often leaves them with a sense of inferior status in the community which may never be undone. Threat of rape makes threat of such violation a permanent feature of the landscape of women's lives. So, rape should be considered a form of persecution for the purpose of the refugee definition when it is used by the state as a form of torture, when there is no system for the woman to prosecute her attacker in her home country, or when bringing the assault to the attention of the authorities would put her life in danger. This argument implies that the state connection requirement should be interpreted broadly, so that not only persecution inflicted by the state but also the state's unwillingness or inability to protect the persecuted constitute a state connection. There is some scope for basing a claim for refugee status of this sort on the ground of political opinion or social group. If the women in question was not politically active, the social group category will likely be most useful. As Stairs and Pope argue; women constitute a social group both because they share certain immutable characteristics and because they are frequently treated differently from men. To a greater extent than most social groups, women are an easily identifiable "group". Only women can become pregnant, and women generally are children's primary caregivers; women's position in the economy is inferior to that of men; women are paid less for their work (and in the case of homemakers, receive no wage at all), are subjected to harassment in the workplace and

[165] Amnesty International, *Women in the Front Line: Human Rights Violations Against Women*, (New York: John D. Lucas Printing, 1990) at 8.

elsewhere because of their sex and are less likely to reach senior positions in the work force. This combination of biological and socially attributed characteristics make women a social group within the manning of the convention definition.[166]

However, this category will be limited if it is interpreted to mean those groups which are a perceived threat to the government, as the rationale for categorising women as a social group is related to their lack of power rather than any real or perceived threat they may pose. As rape is clearly a gender offence, given that the victims are almost exclusively women and the perpetrators men, the inclusion of gender in the refugee definition would help to ensure that women who are tortured through rape receive the same type of consideration as those suffering other forms of persecution.[167]

Regional Instruments Relating to Refugees

In addition to the 1951 Convention and the 1967 Protocol and the Statute of the Office of the United Nations High Commissioner for Refugees, there are a number of regional agreements, conventions and other instruments relating to refugees, particularly in Africa, America, and Europe. These regional instruments deal with such matters as the granting of asylum, travel documents and travel facilities, etc. Some also contain a definition of the term "refugee", or of persons entitled to asylum.

In Latin America, the problem of diplomatic and territorial asylum is dealt with in a number of regional instruments

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[166] Stairs & Lon Pope, supra, note 163, at 163.

[167] Jacqueline R Castel, *Rape, Sexual Assault and the Meaning of Persecution*, IJRL Vol 4, No 1 (1992) at 56.

including the Treaty on International Penal Law, (Montevideo, 1889); the Agreement on Extradition, (Caracas, 1911); the Convention on Asylum, (Havana, 1928); the Convention on Political Asylum, (Montevideo, 1933); the Convention on Diplomatic Asylum, (Caracas, 1954);and the Convention on Territorial Asylum, (Caracas, 1954). A more recent regional instrument is the Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Assembly of Heads of State and Government of the Organisation of African Unity on 10 September 1969.

Refugee Aid And Development, the concept of

The concept of refugee aid and development has been repeatedly discussed over the years, and was taken at the meeting of the UNHCR Executive Committee in autumn 1988.[168] There is nothing new about this idea, but the relevance of the measures in relation to the new dimensions of the world refugee problem today has increased. Treaty-like arrangements for co-ordinated action exist between the UNHCR and development organisations, for example, the Memorandum of 1982 and 1986 with the World Bank (WB); the 1985 Agreement with the World Food Programme (WFP); the exchange of letters with the United Nations Development Programmes (UNDP) in 1981 and 1987; and the 1988 Co-operation Agreement with the International Fund for Agricultural Development (IFAO). Experience since 1982 with the UNHCR/WB Second Income Generating Project in Pakistan, which is at the rate of 80 percent to the benefit of refugees and up to 20 percent helping the normal population, appears to confirm the rightness of the concept of refugee aid and

[168] See Report of the 39th Session: UN Doc. A/AC. 96/721.

development. The planning of two more major projects has also been completed.[169] International Conference on Central American Refugees in 1989 brought a new dimension to the co-operation between UNHCR and UNDP.[170]

This refugee-orientated development aid should not be a one-way trafficking. The solidarity of donor countries should rather be complemented by the will, and corresponding measures on the part of the receiving countries to change their policy in one way or another.[171] The existing concept of refugee aid and development is on the right lines and should be implemented more effectively. The prospects for new financial resources through saving in the field of disarmament, potentially amounting to billions of dollars, have never been as good as they are today. Much will depend on the political will to divert these saving into expenditures for development and humanitarian aid.

[169] In Sudan, the World Bank UNHCR Southern Kassala Agricultural Project and in Iran, the IFAD-UNHCR South Khorasan Range Land Rehabilitation and Refugee Income Generating Project.

[170] For text of the *Declaration and Concerned Plan of Action*, see I IJRL 582 (1989)

[171] Horst-Wolfrum Kerill, *New Dimensions of the Global Refugee Problem and the Need for a Comprehensive Human Rights and Development-Oriented Refugee Policy*, IJRL, Special Issue, (1990) pp 245-47

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Statute of the UNHCR

Pursuant to a decision of the General Assembly, the Office of the United Nations High Commissioner for Refugees ("UNHCR") was established as of 1 January 1951. The Statute of the Office is annexed to Resolution 428 (V), adopted by the General Assembly on 14 December 1950. According to the Statute, the High Commissioner is called upon *inter alia* to provide international protection, under the auspices of the United Nations, to refugees falling within the competence of his Office.

The Statute contains definitions of those persons to whom the High Commissioner's competence extends, which are very close to, though not identical with, the definition contained in the 1951 Convention. By virtue of these definitions the High Commissioner is competent for refugees irrespective of any dateline or geographic limitation.

The High Commissioner is designated as the authority charged with providing international protection to refugees, and is

required *inter alia* to promote the conclusion and ratification of international conventions for the protection of refugees, and to supervise their application, But the individualistic character of the refugee definition contained in the 1950 UNHCR Statute made it difficult initially for the organisation to respond in a meaningful way to the needs of refugees outside Europe. Besides this, the UNHCR Statutes contains an apparent contradiction i.e. it affirms that the work of the Office shall relate, as a rule, to groups and categories of refugees. On the other hand it proposes a definition of the refugee which is essentially individualistic, requiring a case by case examination of subjective and objective elements.[172]

Statutory Refugee

Persons who meet the definitions of international instruments prior to the 1951 Convention are usually referred to as "statutory refugees".

Article 1 A (1) of the 1951 Convention deals with statutory refugees, i.e. "For the purposes of the present Convention, the term 'refugee' shall apply to any person who: (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organisation: decisions of non-eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent the status of refugees being accorded to persons who fulfil the conditions of paragraph 2 of this section."

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[172] G.Goodwin - Gill, *The Refugee in International Law*, (1983) P.6

'Sur Place' Refugees

A person who has left his country for whatever reason but subsequently owing to well-founded fear of being persecuted refuses or becomes unable to avail himself of being persecuted refuses or becomes unable to avail himself of the protection of that country or, in the case of a stateless person owing to well-founded fear of being persecuted refuses or becomes unable to return to the country of his former habitual residence, is equally a refugee. These persons have become known a *"refugee sur place"*.

A person becomes a refugee *"sur place"* due to circumstances arising in his country of origin during his absence. Diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others have applied for refugee status during their residence abroad and have been recognised as refugees.

For example, the Canadian Court Decision in *"Chaudri, Tahir Ahmed Nawaz V. Minister of Employment and Immigration"*[173] involved a Pakistani citizen who had been an activist in the ruling Pakistan People's Party (PPP) prior to the military overthrow of 1979. Mr. Chaudri had been in Canada for some three years prior to the coup. In 1980 he learned that the new military government of Pakistan had issued a politically inspired warrant for his arrest that could lead to indefinite detention. The Canadian Federal Court of Appeal held that he was properly considered a convention refugee *sur place* since his fear of persecution, while not extant at the time of his departure from Pakistan, was nonetheless well-founded in subsequent events. Another same result was reached in the case of *"Mohammed*

[173] (1986), 69 N.R. 114 (F.C.A.); revg. I.A.B.D. T82-10012, Oct.23, 1984.

Mustaq"[174] where a Pakistani abroad prior to the coup who arrived in Canada only after the Bhutto government was overthrown.

Serious Non-Political Crime

The aim of this exclusion clause as contained in Article 1 F (b) of the 1951 Convention is to protect the community of a receiving country from the danger of admitting a refugee who has committed a serious common crime. It also seeks to render due justice to a refugee who has committed a common crime (or crimes) of a less serious nature or has committed a political offence.[175]

This exclusion clause is not a means of bypassing ordinary criminal due process for acts committed in a country of asylum, nor a pretext for ignoring the protection needs of those whose transgressions abroad are of a comparatively minor nature. Rather, it is simply a means of bringing refugee law into line with the basic principles of extradition law,[176] by ensuring that important fugitives from justice are notable to avoid the jurisdiction of a state in which they may lawfully punished.

In determining whether an offence is "non-political" or is, on the contrary, a "political" crime, regard should be given in the first

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[174] Immigration Appeal Board Decision M81-1122, C.L.I.C. Notes 47.6, October, 26, 1982.

[175] UNHCR, Handbook, supra, note 12, para 151.

[176] The text of the clause adopted by the Economic and Social Council (ECOSOC) explicitly excluded a person "in respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition": 11 UNESCOR (325th mtg.) at 670, December 14, 1950.. See also A.Grahl-Madsen, supra, note 105, at 272 - 73.

place to its nature and purpose i.e. whether it has been committed out of genuine political motives and not merely for personal reasons or gain. There should also be a close and direct causal link between the crime committed and its alleged political purpose and object. The political element of the offence should also outweigh its common-law character. This would not be the case if the acts committed are grossly out of proportion to the alleged objective. The political nature of the offence is also more difficult to accept if it involves acts of an atrocious nature.[177]

A refugee committing a serious crime in the country of refuge is subject to due process of law in that country. In extreme cases, Article 33 paragraph 2 of the Convention permits a refugee's expulsion or return to his former home country if, having been convicted by a final judgement of a "particularly serious" common crime, he constitutes a danger to the community of his country of refuge.

As P. Weis observed that this exclusion clause refers to crimes committed "prior to his (the refugee's) admission to that country (i.e. the country of asylum) as a refugee"[178] while persons who have committed a serious crime in the country of residence remain refugees, but may in certain conditions denied asylum and returned to their country of origin (Article 33(2) of the Convention).

What constitutes a "serious" non-political crime for the purposes of this exclusion clause is difficult to define, especially since the term "crime" has different connotations in different legal systems. In some countries the word "crime" denotes only offences of a serious character. In other countries it may

[177] UNHCR, Handbook, supra, note 12, para 152

[178] P.Weis, supra, note 122, at 984.

comprise anything from petty larceny to murder. In the present context, however, a "serious" crime must be a capital crime or a very grave punishable act. Minor offences punishable by moderate sentences are not grounds for exclusion under Article 1 F (b) even if technically referred to as "crimes" in the penal law of the country concerned. Atle Grahl-Madsen interprets this clause to mean that only crimes punishable by several years imprisonment are of sufficient gravity to offset a fear of persecution. If, for political reasons, a person is threatened with certain death, imprisonment for life, serious bodily harm or the like upon his eventual return to his country of origin: it would, indeed, seem equitable to recognize him as a refugee, even if he were considered guilty of a truly serious non-political crime.[179] UNCHR defines seriousness by reference to crimes which involve significant violence against persons, such as homicide, rape, child molesting, wounding, arson, drugs traffic, and armed robbery.[180] These are crimes which ordinarily warrant severe punishment, thus making clear the Convention's commitment to the withholding of protection only from those who have committed truly abhorrent wrongs. It is not enough that the crime committed have been "serious", but it must be "particularly serious" and sustain the conclusion that the offender "constitutes a danger to the community.[181]

Stateless Person, the status of

All stateless persons are not refugees. They must be outside the country of their former habitual residence for the reasons indicated in the definition. Where these reasons do not exist, the stateless person is not a refugee.

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[179] A.Grahl-Madsen, supra. note 105,pp. 297 - 98.
[180] G. Goodwin-Gill, *The Refugee in International Law* (1983), p.62
[181] Hathaway, James C. supra. note 151, at p. 226.

Such reasons must be examined in relation to the country of "former habitual residence"[182] in regard to which fear is alleged. In the first phase of international refugee law, formal statelessness was a condition precedent to recognition as a refugee. The expanded focus of refugee law in the years leading up to the second world war recognized *de facto* lack of protection as an equally compelling basis for international protection, but continued to protect stateless persons adrift in the international system as refugees. The divorce of *de jure* statelessness and refugee status came only during the drafting of the 1951 convention. This was defined by the drafters of the 1951 convention as "the country in which he had resided and where he had suffered or fears he would suffer persecution if he returned". The Economic and Social Council approved the drafting of a convention which would extend comprehensive humanitarian protection to both persons who lacked formal or *de jure* protection (stateless persons) and persons who lacked *de facto* protection, notwithstanding their retention of a particular nationality (refugees).[183]

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[182] The notion of a country of his "*former habitual residence*" as an appropriate state of reference is applicable only to stateless persons: see UNESCOR sec. Supp. 1 (1946) at 20, U.N. Doc. E/REF/75 (1946), at Art. 1(A)(2), Para. 1. This structure was intended to meet the concern expressed by the Director of the International Refugee Organisation during the drafting process: The term "*former habitual residence*" has been interpreted by the IRO to apply only to stateless persons... It is, therefore, suggested to reconsider the wording of para. A (2) (1). In the case the words "*former habitual residence*" should be retained, they might at least be qualified by the terms "*in the case of stateless persons*": U.N.Doc. E/AC.32/2 16, at 3, January 30,1950.

[183] Hathaway, James C.supra, note 151, p. 60.

Stateless Persons Whose Reasons for Becoming a Refugee have Ceased to Exist

Article 1 C (6) of the 1951 Convention:

"Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence."

This cessation clause deals exclusively with stateless persons who are able to return to the country of their former habitual residence. It should be stressed that apart from the changed circumstances in his country of former habitual residence, the person concerned must be able to return there. This, in the case of a stateless person, may not always be possible.[184]

South Asia, refugees in

After Second World War the huge migrations accompanying the 1947 partition of the Indian subcontinent were probably the largest and most concentrated in time that have been record in modern history. About fourteen million people moved between

[184] UNHCR, Handbook, supra, note 12, para 139

1947 and 1951. This migration may also have been the most violent. About 600,000 were killed and hundreds of thousands injured.[185] In China, just two years later in 1949, the civil war was drawing to an end, setting off a large population movement from the mainland to the nearly islands. In 1959 the Tibetan rebellion was ruthlessly suppressed, causing almost 100,000 Tibetans (a sizeable 7 to 8 percent of the population) to flee to neighbouring India, where most remained thirty years later. The Indochinese conflicts generated one of the greatest contemporary flows of internationally recognized refugees, which started to taper off only in the mid- 1980s. In the preceding decade, about 1.7 million people left Vietnam, Laos, and Kampuchea. By 1988, about five million Afghans remained abroad, primarily in neighbouring Pakistan and Iran.[186]

Each of these conflicts led to large refugee flows. The Bangladeshi War of Independence in 1971 generated in outflow of ten million people who were given temporary refugee assistance in India. The Tamil separatist conflict in Sri Lanka in the 1980s has given rise to a much smaller absolute number of refugees, although in proportion to the Tamil minority population in the island, it is significant. At the light of the conflict in 1985, about 250,000 or 12.5 percent, of the estimated two million Sri Lankan Tamils had left.[187] In the plural states of South Asia, the structure of conflict in the postindependence period was to a

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[185] Aristide R.Zolberg, Astri Suhrke, and Sergio Aguayo, *"Escape From Violence", Conflict and the Refugee Crisis in the Developing World*, New York, Oxford (1989) at 129.

[186] Ibid., at 128.

[187] Because Tamils reside abroad under a variety of administrative categories, estimates are uncertain. This figure is based on U.S. Department of State, *Country Reports on the World's Refugee Situation: Statistics* (Washington, D.C., U.S. Government Printing Office, 1985); *Tamil Refugee* (London: Central British Fund For Tamil Refugees Rehabilitation) various issues; and S. Guy de Fontgalland, *Sri Lankans in Exile* (Madras: Cerro publications 1986).

large extent shaped by the demands for rights, power, and protection advanced by groups defined along lines of religion, language, or culture.[188]

The legal and operational concept of refugee that emerged from partition of Indian subcontinent was based on the right of people to escape violence targeted along religious lines. Under the 1950 *Nehru-Liaquat Pact*, the two countries as a result of communal violence (i.e. along religions lines) until the end of the year. Members of religious diapora - Muslim from India, Hindu and Sikh from Pakistan - were also the ones who availed themselves of refugee assistance, by registering for relief and rehabilitation. The refugees from partition were not international refugees in the customary sense. Yet material assistance was desperately needed for refugees who lacked shelter, food, and medicines and who generally were in "a terrible plight.[189] The international refugee regime at that time was explicity Europe centered and preoccupied with aiding Europeans uprooted, displaced, and persecuted during World War II. That the partition of India did not connect with the emerging superpower conflict between the United States and the Soviet Union reinforced western indifference. Rather some assistance was rendered by the U.N. agencies; the World Health Organisation (WHO) and the U.N. International Children's Emergency Fund (UNICEF), as well as the International Red Cross and Private Organisations, but it was a paltry effort.

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[188] The term "ethnic" is sometimes used to include all these distinctions, but the more common, subcontinental usage is to have separate designations for religion (namely communal) and caste, leaving only language and culture as "ethnic" dimensions. The term will be used here in the later manner. See Urmila Phadtis, *Ethnicity and Nation-building in South Asia* (New Delhi).

[189] Jacques Varnant, *The Refugee in the Post War World*, (London), Allen & Unwin, 1953, p.82.

Since the partition of Indian-Subcontinent some 35 - 40 million people have moved across borders in the Indian subcontinent. Bangladesh has twice in it's life span received refugees from Myanmar, each time exceeding 250,000 persons, most of whom have fortunately returned home, while India hosted ten million[190] refugees who fled Bangladesh in 1971 and a large number of Chakma refugees who were displaced by the Kaptai Hydel Power Project since 1964. In the past there has also been the exodus of Burmese Indians to India, the exodus of Sri Lankan Indians and Sri Lankan Tamils, the issue of "*Stranded Pakistanis*" (Bihari's) when Bangladesh became independent, the flight at Afghans to Pakistan in 1978 and Tibetans to India.

Hence, the streams of migrations experienced by the South Asian nations continue. Traditional migratory streams are now arousing the apprehensions of people, promoting them to oppose the influx of migrants into their areas,[191] as they pose to be a threat to the peace and harmony of a nation, and also anticipating interethnic conflicts. These influxes also have an impact on the maintenance of internal socio-political equation and aggravates ethnic tension.[192] All these instances reveal one factor that none of the countries of South Asia have the capacity to control mass influxes. As for the treatment rendered to refugees inspite of economic constraints, asylum is provided to large population influxes looking into the general welfare, providing educational

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[190] Though an exact figure has not been precisly calculated, this is the commonly accepted approximation of the number of refugees in thousands of refugee camps in India during 1971. See generally Malik. Dr. Shahdeen, *Overview of the Situation of Refugees, Stateless Persons and Internationally Displaced Persons in Bangladesh*. Paper presented at the "*Regional Consultation on Refugee and Migratory Movements in South Asia*," New Delhi, 14-15 Nov. 1996, at 25.

[191] Lok Raj Baral, *Regional Migrations, Ethnicity and Security, the South Asian Case*. (1990). p. VII Preface.

[192] Ibid.

facilities, healthcare etc.[193] The entire problem with respect to refugees in South Asian rests with the fact that there is the lack of a legal framework for protection. There is not a single country in the sub-continent which is a signatory to the 1951 Convention or its 1967 Protocol. Further there is no regional instrument relating to refugees, specific to the South Asia refugee situation, or a specific refugee rights regime, to govern the situation.[194] Nevertheless, the principles concerning the treatment of refugees have been adopted by the Asian-African Legal Consultative Committee.[195] Similarly there is no refugee status determination structures administered by governments within the subcontinent.[196] Large groups of asylum seekers are granted refugee under policy/administrative procedures. Those granted refuge have normally originated from countries within the subcontinent or having the same ethnic/religions background as the host country's population and also geopolitical factors have played a vital role in the granting of refuge.[197]

In Bangladesh we have been working on a policy of good neighbourliness and taking sustained efforts in solving refugee problems. One of the Fundamental Principles of State Policy of Bangladesh Constitution is that the state shall base its international relations on the principles for respect for international law and the principles enunciated in the UN Charter and shall strive for the renunciation of the use of force in international relations. Our Foreigner Act, 1946 gives seemingly absolute right to the Government to expel foreigners from

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[193] Rose Varghese, *The Contemporary Regugee Problem and the Concept of Asylum in South Asia*, Bulletin on IHL & Refugee Law, vol. 1, No.1, (Jan- June 1996), Indian Centre for Humanitarian Laws and Research, New Delhi, at 139.

[194] Ibid. At 141.

[195] Eighth Session, Bangkok 1996

[196] W.M. Lim, *Asylum in the Subcontinent*, paper presented at the UNHCR Regional Protection Seminar, Delhi, February 1-3,1995

[197] Ibid.

territory of Bangladesh. Provisions of the Foreigners Act and Passport Act do not make any difference between asylum seekers and other aliens. In spite of these provisions that limit the rights of asylum seekers, but a large number of justiciable human rights Articles 31, 32, 33, 34, 35 and 44 of Bangladesh Constitution are available to non-citizens as well. Among them Article 31 which says that apart from citizens every other person for the time being within Bangladesh has "the right to enjoy the protection of the law and to be treated in accordance with law, and only in accordance with law, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law" still we must not loose sight of the fact that we do not have any legal framework for refugee protection.[198]

Thus, the fact remains that South Asian countries have to reconsider the issue of accession to the 1951 Convention in order to promote human rights standards vis-a-vis refugee problems. Further, the South Asian countries could independently or jointly consider the enactment of regional instruments which are refugee specific.

State Responsibility

According to the draft articles on the state responsibility, adopted by the International Law Commission in 1980.[199] an

[198] Statement by Mr. Justice M. Habibur Rahman, at the Inaugural Ceremony of *the 4th Regional Consultation on Refugee and Migratory Movements in South Asia*, Dhaka, 10 November 1997.

[199] Rightly stressed by Hofmann, R., *Refugee-Generating Policies and the Law of State Responsibility*, 45 Zao RV (1986), p. 694, at 700. See also Akhavan, P. Bergsmo, M., *The Application of the Doctrine of State Responsibility to Refugee Creating States*, 58 Nordic Journal of International law (1989) p.243.

Internationally wrongful act presupposes first and foremost that an act or omission has occurred which is attributable to the state concerned (Article 2A). This requirement excludes many scenarios from the scope of possible claims under the law of state responsibility.[200] Natural disasters, famine and epidemics are not phenomena that can be directly imputed to human activity, although in many cases it might be found that preventive measures could have avoided the fatal consequences. Nor does civil war as such constitute a complex of occurrences wholly under the responsibility of a national government: it can only be made accountable for actions carried out by its own troops.[201] Lastly, it stands to reason that a state cannot be answerable if its citizens flee the country because it has become the victim of foreign aggression. However, what essentially remains as a pattern of actions susceptible of entailing responsibility is a policy that flagrantly violates human rights to the detriment of almost all citizens or a specific group of the population of the state of origin.[202]

There exists no international legal rule which in explicit terms puts states under an obligation not to turn themselves into a source of refugee flows. Receiving states can rely on non-observance by a state of origin of its basic human rights obligations; they can claim, additionally, that such conduct necessarily affects their sovereign right of territorial integrity.[203]

On more than one occasion the General Assembly has stressed that flows of refugees unleashed by one country affect the entire

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[200] Ibid. at 252.

[201] For a full discussion see Von Sternberg, M.R., *Political Status, Human Rights and Humanitarian Law Concerns*, 5 IJRL (1993), PP. 153 at seq.

[202] Christian Tomuschat, *State Responsibility and the Country of Origin* in "The Problem of Refugees in The Light of Contemporary International Law Issues". Graduate Institute of International Studies, Geneva, (1994), p.61.

[203] Ibid. at 73.

International community.[204] Indeed, this simple truth finds confirmation in the fact that persons having lost the protection of their home state must be given a place to stay, food, shelter and medical care. To assist national governments in performing this task, the UN has created the office of the UNHCR, which for its part requires to be financed by the members of the international community. In order to implement the responsibility of the state of origin, the international community can make use of the powers of the security council, provided that the requirements for action in accordance with Article 39 of the UN charter are met. Except in the case of the Kurds of Iraq, the Security Council has never taken the view that to generate a flow of refugees may constitute a threat to international peace and security.[205]

UN, as the legal person to which UNHCR belongs, has a right to recover the costs disbursed by it from a state of origin that has willfully caused massive departures of its citizens through a policy of systematic human rights violations.[206] Normally, whoever supplies necessities to an indigent person who should have been taken care of by the principal, has a right to be compensated for his expenditure.[207] State responsibility is not the only possible basis for a legal claim to compensation. One could also resort to objective liability in the sense that a state of origin, whatever its human rights record, is duty-bound to repair the damage caused to other states by a massive influx of its nationals into their territories.[208]

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[204] 204 Resolution 48/139 of 20 December 1993, Preamb. Para 5 (general); 48/152, 20 December 1993, op. Para. 13 (Afghanistan); 48/118, 20 December 1993, Op. Para. 6 (Africa).

[205] Resolution 688 (1991), Preamb. Para.3.

[206] See ICJ Rep. 1949, p. 174, at 186. For a negative stance see Kamminga, M.T. *Inter-State Accountability for Violations of Human Rights* Philadelphia, 1992, p 164.

[207] See Stoljar, S.J., entry *Negotiorum Gestio in International Encyclopaedia of Comparative Law*, Vol. X, Chapter 17, (1984), sections 134 - 166, 301.

[208] Christian Tomuschat, supra, note 202, pp. 78 - 79.

U

UNHCR

United Nations High Commissioner for Refugee (UNHCR) was conceived in the aftermath of the Second World War. at the time when the issue of human rights was high on the agenda of the international community. Its immediate predecessor. the International Refugee Organisation (IRO), had been concerned with resettling people displaced by the war, and reached the end of its mandate in 1950. By decision of the General Assembly of the United Nations. UNHCR began operations in 1951[209] as a subsidiary organ of the General Assembly under Article 22 of the UN Charter. The High Commissioner is elected by the General

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[209] UNHCR owes its existence to Resolution 319 (IV), adopted by the General Assembly in December 1949. A year later, UNHCR s Statute was formally adopted as an Annex to Resolution 428 (V). UNHCR began its activities on 1 January 1951. "And it was a modest beginning. The first High Commissioner Dr. Van Heuven Goedhart, found at his disposal only three empty rooms." See *UNHCR Training Module*, *OHC* 2, (1989), Geneva, p. 11

Assembly and reports to that body through the Economic and Social Council (ECOSOC). In accordance with the Statute of UNHCR[210] the function of UNHCR is humanitarian and non-political in character.[211] UNHCR has two basic functions, i.e. to provide international protection to refugee, and to seek lasting solutions to their problems. These solutions fall into three categories: *voluntary repatriation* - usually the preferred solution; *local settlement* - assisting refugees to integrate within the host community; *resettlement* - encouraging governments to offer places for permanent settlement.[212]

These direct links to the General Assembly and ECOSOC are intended to allow the High Commissioner the degree of independence needed to perform effectively his tasks, notably that of protection. Unlike other UN institutions, UNHCR has no formal governing board or authority.[213] According to the Statute, UNHCR's primary task is to provide international protection, while the area of material assistance was a more limited one. It was, however, extended by later General Assembly resolutions.

UNHCR is a temporary institution. It was originally established for a period of three years. Thereafter it was extended for successive periods of five years up to the present time. The Statute of UNHCR lists nine specific activities[214] in the context of High Commissioner's protection function i.e. (1) to promote the conclusions and ratification of international conventions,

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[210] Annexed to Resolution 428 (V) of U.N.G.A. 14 December 1950.

[211] UNHCR, *Training Module on Interpreting in a Refugee Context*, RLD 3, June (1993) p.7.

[212] Ibid.

[213] The Executive Committee later created in 1957 is responsible for approving his annual assistance programmes, and advising him, at his request, on the exercise of his functions, including international protection. See *UNHCR Training Module on An Introduction to The International Protection of Refugees*, RLD 1, June 1992, p.6 - 7.

[214] Ibid at 10.

supervising their application and proposing amendments; (2) to promote measures to improve the situation of refugees and reduce the number requiring protection; (3) to assist efforts to promote voluntary repatriation or local settlement; (4) to promote the admission of refugees to the territories of States; (5) to facilitate the transfer of refugees' assets; (6) to obtain from Governments information concerning refugee numbers and conditions, and relevant laws and regulations; (7) to keep in touch with Governments and inter-governmental organisations; (8) to establish contact with private organisations; and (9) to facilitate the coordination of their efforts.

In practice, UNHCR suffers from several structural and organisational problems. These involve resources and planning, the ambiguity of international law and norms, the restricted base of its state membership, and the chronic tension that exists between the humanitarian tasks on UNHCR and the political context in which it has to work.

UNRWA

In the period leading up to the declaration of the State of Israel by the Jewish in May 1948 some 700,000 Palestinians by fled or were expelled from their homeland. They arrived in miserable condition in the surrounding countries. The task of providing for these refugees fell to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established by the UN General Assembly in December 1948.

UNRWA's mandate was to provide aid, but no resettlement opportunities in western countries, to Palestinian refugees. It was authorized to foster the economic integration of the refugees, in

their host countries, but it was not called upon to provide legal protection to Palestinians nor to seek a political solution to the Arab-Israeli conflict.[215] At the insistence of Arab States, Palestinians registered with UNRWA were purposely excluded from the UNHCR, both in its Statute and in the 1951 Convention. When Palestine refugees are outside the UNRWA area of operations, they fall within UNHCR's mandate, like any other refugees. This agency provides assistance to Palestine refugees in Jordan, Lebanon, Syria and Israeli-occupied territories.

UNKRA

United Nations Korean Reconstruction Agency (UNKRA) was created to provide a limited service to the millions of people displaced by the Korean War, and it assisted South Korea in relocating refugees from Communist North Korea and in repatriating Koreans from Japan.[216] Although the 1951 Refugee Convention only applied to Europeans and therefore excluded Koreans, Korean refugees nevertheless benefited from a massive UN relief effort. The provision of material assistance to those who had either fled from North Korea or been displaced by the war was considered integral to the anti-Communist war effort by

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[215] For background, see Edward H Buehrig, *The United Nations and the Palestinian Refugees: A Study in Non Territorial Administration*, Bloomington, Ind. Indiana University Press, 1971; David Forsythe, *UNRWA, The Palestinian Refugees, and World Politics*, International Organisation 25, 1971, at 26 -45; Howard Adelman, *Palestine Refugees, Economic Integration and Durable Solutions*, in Anna Bramwell, ed., *"Refugees in the Age of Total War,"* London, Unwin Hyman, 1988; and Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947 - 1949*, Cambridge, Cambridge University Press, 1987.

[216] Gene M Lyons, *Military Policy and Economic Aid: The Korean Case*, Columbus, Ohio University Press, 1961.

American forces who were fighting on the South Korean side under the UN flag. Like the Palestinian refugee situation in the Middle East this special organisation was created to administer to their needs.

In both instances, the refugee assistance programmes were viewed as supporting American interests in strategically important regions, and there was little risk that the activities of these agencies might generate demands for resettlement in the United States. Thus, U.S.A. provided the bulk of financing for these organisations, For instance, by March 1954, only slightly more than one-third of the $3 million had been collected, and only eleven of sixty UN members had contributed at all. While refusing to give a penny to the UNHCR, U.S.A. became the principal donor supporting two other UN refugee agencies for its own interest; UNRWA, at a level of funding reaching over $150 million; and UNKRA, at around $75 million.[217]

UNRRA

During and after World War II, two expensive and politically controversial[218] refugee organizations, the United Nations Relief and Rehabilitation Agency (UNRRA) and the International Refugee Organization (IRO), each with a radically different mandate, further developed the international organizational framework of refugee regime.

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[217] Gill Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, Oxford, New York, 1993, at p.66.

[218] Ibid, at p.33.

In November 1943, the western powers set up the United Nations Relief and Rehabilitation Agency (UNRRA)[219] to provide immediate relief when the anticipated anti-Axis counter offensive and liberation of Europe occurred. In 1944 and 1945, UNRRA provided temporary emergency assistance for millions of displaced persons who fell into Allied hands, thus following the pattern set in the interwar period. UNRRA, however, was not strictly a refugee organization; it aided all who had been displaced by the war, and only incidently refugees with political fears, working directly under Allied military command, UNRRA was given a very limited mandate. It was to extend aid to civilian nationals of the Allied nations and to displaced persons in countries liberated by the Allied armies. UNRRA had no power to resettle refugees and displaced persons to this countries; the goal simply to return home as soon as possible all the people who had been uprooted and displaced by the war.

UNRRA devoted a substantial part of its efforts to aiding Allied military forces in identifying displaced persons, separating them into broad national categories, putting them into trucks and boxcars, and shipping them back to the countries from which they had originally come, without regard to their individual wishes.

By the end of 1946, less than one-quarter of the estimated 2.5 million Soviet Nationals in the British, American and French zones had not been handed over to Soviet authorities, and over 1 million demoralised people remained in camps. They presented a relief and security problem that UNRRA was hot in a position to solve. Nonetheless, it had to continue to support them. The United States remained strongly critical of UNRRA operations,

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[219] For more detailed history, see George Woodbridge, *The History of UNRRA*, New York, Columbia University Press, 1950; and Kim Salomon, *Refugee in the Cold War*, Lund, Sweden, Lund University Press, 1991.

in particular its repatriation policies and its rehabilitation programmes in Eastern bloc countries, which it felt only served to consolidate Russian political control over Eastern Europe. Toward the end of 1946, the United States, which provided 70 percent of UNRRA-funds and much of its leadership, took action to kill UNRRA by refusing either to grant it additional aid or to extend its life beyond 1947.[220] In its place an inter-governmental organisation, named International Refugee Organisation (IRO), was created in 1947.

Unaccompanied Minors

There is no special provision in the 1951 Convention regarding the refugee status of persons under age. In such cases rules for the treatment of unaccompanied minors can be derived from three sources - (a) international conventions; (b) international documents and declarations or resolutions, not having the status of conventions and protocols; and (c) the family and child welfare law of the country in which the child has sought refugee.[221] When it is necessary to determine the refugee status of a minor, problems may arise due to the difficulty of applying the criteria of "well-founded fear" in his case. If a minor is accompanied by one (or both) of his parents, or another family member on whom he is dependent, who requests refugee status, the minor's own refugee status will be determined according to the principle of family unity.

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[220] Dean Acheson. *Present at the Creation*, New York. Norton. 1966. p.201.

[221] E.Diane Pask. *Unaccompanied Refugee and Displaced Children: Jurisdiction, Decision - Making and Representation*. IJRL Vol.1. No 2 (1989) at 200.

The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of children, it will generally be necessary to enrol the services of experts conversant with child mentality. A child, and for that matter, an adolescent not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in the minor's best interests. In the absence of parents or of a legally appointed guardian, it is for the authorities to ensure that the interests of an applicant for refugee status who is a minor are fully safeguarded.

Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent's maturity.

The circumstances of the parents and other family members, including their situation in the minor's country of origin, will have to be taken into account. If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution, the child himself may be presumed to have such fear.[222]

[222] UNHCR, Handbook, supra, note 12, para 218

V

Voluntary Repatriation

According to the UNHCR Statute, the promotion of voluntary repatriation is an essential part of international protection, as it represents the most desirable solution to the refugee problem. Although international projection arises where individuals cannot seek protection in their own country and are forced to flee, and as such are legally stranded, voluntary repatriation is protection of a different kind in the sense that it represents the ultimate solution. where the refugee feels he can himself of his country's protection. UNHCR thus has to oversee many factors before voluntary repatriation can be pursued. It must make sure that the decision to repatriate is the decision of the refugee himself and that coercion and compulsion were not decisive factors. This entails conducting an interview to ensure the voluntariness of the repatriation. Secondly, examination of the situation in the country of origin is essential to acquire a clear, objective picture as to the relative safely and anticipated security of the refugee. Thirdly, necessary travel documents must be provided and any financial assistance given.

Involvement in large-scale voluntary repatriation movements has been an important feature of UNHCR's activities in recent years. Support has been formally expressed by the EXCOM Conclusions 18 and 40. Large-scale voluntary repatriation movements may be organised on spontaneous. They have mainly involved refugees in Central America, Africa and south-west Asia.[223]

There has been considerable expansion of the repatriation role of UNHCR including the rendering of assistance in rehabilitating the returnee through income-generating schemes and mini projects, so as not to leave them stranded, and more so, the internally displaced.[224]

Voluntary Re-availment of National Protection

1951 Convention shall cease to apply for refugee status to any person falling under the terms of section A, if he has voluntarily re-availed himself of the protection of the country of his nationality. According to Article 1(C)(1) of 1951 Convention a refugee who has voluntarily re-availed himself of national protection is no longer in need of international protection. He has demonstrated that he is no longer "unable or unwilling to avail himself of the protection of the country of his nationality".

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[223] UNHCR, *Training Module, RLD 1*, June 1992, at p.57.

[224] Henrik Ankerstjerne, Role of UNHCR and International Protection of Refugees, Bulletin on IHL & Refugee Law, Vol.1.No.1, Jan - June 1996, Indian Centre for Humanitarian Laws and Research, New Delhi, at p 129.

This cessation clause implies three requirements: First, the request for formal protection must be made voluntary.[225] In order to cases of application for and obtaining a national passport or the renewal of a passport, it may be presumed, in the absence of evidence to the contrary, that revilement of protection is intended. Possession of national passport and a visit to the country of origin would mean conclusive as to cessation of refugee status.[226]

Second, the diplomatic request must be made as an act of re-availment of protection, thus implying an intention to have one's interests defended by the issuing state.[227] In contrast purely practical forms of diplomatic contact, such as requests for the certification of educational or occupational qualifications, or access to personal birth, marital, and other records, are dictated by practical necessity, rather than by a desire for protection.[228]

Third, the clause does not apply unless diplomatic or consular protection is actually given. The refugee must actually obtain re-availment. The important point is that, not the application for protection or repatriation, but the fact of obtaining it.[229]

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225 P. Weis, *The Concept of the Refugee in International Law* (1960), 87 J.De droit international 928, at 974 - 76.

226 G.Goodwin-Gill, *The Refugee in International Law*, (1983), p. 48.

227 "what seems to be determinative, as to whether there was a willingness on the part of the applicant to accept protection of the country of origin, in his motivation in obtaining or renewing the passport". C. Wydrzynski, *Canadian Immigration Law and Procedure*, P.337 (1983)

228 A. Grahl-Madsen, *The status of Refugees in International Law*, (1966), p 379.

229 Statement of Mr. Cabada of Peru, U.N. Doc. E/AC. 7/SR. 165, at 19, August 19 1950.

Voluntary Re-acquisition of Nationality

Under the Article 1 C (2) of the 1951 Convention a person loses his refugee status by voluntary re-acquiring the nationality previously lost. The granting of nationality by operation of law or by decree does not imply voluntary reacquisition, unless the nationality has been expressly or impliedly accepted.

This clause should be applied very reluctantly indeed to other categories of refugees, the continued existence of well-founded fear of persecution being the overriding consideration in cases of doubt.[230] For example, re-acquisition of nationality through operation of law upon marriage or otherwise may fail to meet the requirement of voluntarism, and hence not suffice to deprive a refugee of his status.[231] Nor is it enough to show that the refugee could have re-acquired for former citizenship but failed to do so, since there is no consummation of the act of protection. This cessation clause does not apply to persons who are stateless from birth, but only to those who have at some point been denationalised or who have successfully renounced their citizenship, and who then go on to have their status as citizens reinstated.[232]

Voluntary Re-establishment in the Country Where Persecution was Feared.

Article 1 C (4) of the 1951 Convention refers to "voluntary re-establishment", applies both to refugees who have a nationality

[230] A.Grahl-Madsen,supra. note 228, p.395.
[231] Ibid. at 393 - 95.
[232] Hathaway, James C. supra. note 151 , at 197

and to stateless refugees. This is to be understood as return to the country of nationality or former habitual residence with a view to permanently residing there. A temporary visit by a refugee to his former home country, not with a national passport but, for example, with a travel document issued by his country of residence, does not constitute "re-establishment" and will not involve loss of refugee status under the present clause.[233]

Re-establishment requires more than mere physical presence.[234] and a greater commitment to the country of origin,[235] than is evinced, for example, by a temporary return to visit an ailing parent, or to bring out relatives, friends, or property.[236] It is not appropriate to construe this cessation clause effectively to penalise refugees who return to "test the waters" in their state of origin.[237]

Before a finding of cessation based on voluntary re-establishment is made, therefore, both the facts underlying the original, successful claim to refugee status and post-re-establishment factors should be taken into account.[238]

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[233] UNHCR, Handbook, supra, note 12, at para 134.

[234] A. Grahl-Madsen, supra, note 228, at p.371; G.Goodwin-Gill, supra, note 226 p.51

[235] "It is probably correct to define "re-establishment" ... as residence with the explicit or implicit intention of remaining in the country and to infer that a prolonged stay implies such an intention. A. Grahl-Madsen, supra, note 228, p.372

[236] P.Weis, supra, note 225, at 978.

[237] Canadian Immigration and Refugee Board Decision: V89-00618, August 1989. R.L.R.V. Cat. Sig. 10395, at 5, per H Neufeld.

[238] Hathaway, James C.supra, note 151, at 199.

'Well-Founded Fear' of Being Persecuted

The term "Fear" defined in "The Oxford English Dictionary"[239] as "the emotion of pain or uneasiness caused by the sense of impending danger", And may also mean "a particular apprehension of some future evil.... an apprehensive feeling towards anything regarded as a source of danger, or toward a person regarded as able to inflict injury or punishment".

To the element of fear, a state of mind and a subjective condition, is added the qualification *"well-founded"*. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The adjective *"well - founded"* is meant to signify that a person has either been actually a victim of persecution or can show why he faces persecution. In order to other words, *"a well-founded fear"* of

[239] IV The Oxford English Dictionary 117 (1961)

persecution does exist on the basis of circumstantial evidence to corroborate a persons personal judgement derived from his state of mind.[240] The term "well-founded fear" therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.

In the recent decision of the British House of Lords in the case of *"R.V. Secretary of State for the Home Department, ex prate Sivakumaran*[241] provides a through analysis of the meaning of the phrase *"well-founded fear"*. In a concurring Judgement, *Lord Goff* states succinctly .... the true object of the convention is not just to assuage fear, however reasonable and plausibly entertained, but to provide a safe haven for those unfortunate people whose fear of persecution is in reality well founded.[242]

A moderate interpretation of the *"well-founded fear"* standard would indicate that so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility.[243] In the United States the accepted approach is to insist on proof of risk on a balance of probabilities.[244] Recognition as a refugee would occur only where harm is reasonably likely to occur.[245]

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[240] Y. Shimada, *The Concept of the Political Refugee in International Law*, (1975), 19 Japanese Anm. Int'l. L.24, at 33 - 34

[241] (1988) 1 all E.R. 193 (H.L.)

[242] Ibid. At. 202 Per Lord Goff of Chierely.

[243] See generally M.Gibney, *A "Well-Founded Fear" of Persecution*, (1988), 10(1) Human Rights. Q.109.

[244] A.Evans, *Political Refugees and the United States Immigration Laws: Further Development* (1972), 66 A.J.I.L. 571, at 575.

[245] D. Gross, *The Right of Asylum Under United States Law*, (1980), 80 Columbia L.Rev.1125, at 1134., Accord P. Woods, *The term "Refugee"* in International and *Municipal Law An Inadequate Definition in plight of the Cuban Boatlift*, (1981) AU.L.S Int'l L.Y.39, at 44.

It will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religious, national, social or political group, his own interpretation of his situation, and his personal experiences, in other words, everything that may serve to indicate that the predominant motive for his application is fear. Fear must be reasonable and the decision-maker must be satisfied that the person in question subjectively has a real fear.[246]

In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.

It is apparent that the likelihood of becoming a victim of persecution may vary from person to person. For example, a well known personality may be more exposed to persecution than a person who has always remain obscure. Also some persons are more strong-willed or more outspoken than others, and therefore more susceptible to attract the attention of the authorities than other people.[247]

Women Refugee

International refugee instruments make no distinction between male and female refugees, but tend to maintain gender biases. Despite the fact that two-thirds of the world's refugees are

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[246] P. Hyndman, *Refugees under International Law with a Reference to the Concept of Asylum* (1986), 60 Australian L.J.148, at 149.

[247] Statement of the Secretary-General, U.N.Doc. A/C. 3/527 at 7, October 26, 1949. Accord A. Grahl-Madsen, *The Status of Refugees in International Law*, (1966), p.175.

women and young girls,[248] little has been done by the international community to deal with them as women in a particular situation and with particular needs. Although the "social group" argument can be advanced to include many women as refugees under the 1951 convention, it does not address the core issue of discrimination on grounds of sex, as a violation of fundamental rights, or with the problems of violence specifically directed against women as women.

Moreover, for women refugees, travelling to potential countries of asylum to make a claim for refugee status is particularly difficult, owing to their responsibility for the care of children, their lack of financial resources, cultural and other restrictions.[249] Thus, refugee women also find it more difficult than men to meet the legal criteria for refugee status. Yet since the Office of the United Nations High Commissioner for Refugee (UNHCR) was establishment in 1950, none of the main commentaries on the refugee instruments mentions world women, or given women any individual attention; not even UNHCR's Handbook on Procedures and Criteria for the Determination of Refugee Status. Not until well into the United Nations Decade for Women, is attention paid to the situation and needs of women refugees, and only in 1985 did the Executive Committee of the UNHCR Programme discuss the particular needs of women refugees. Although it adopted a landmark conclusion that year on the international protection of refugee women,[250] very limited progress has been achieved since then. But transgressing social

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[248] The Activities and Programmes of the UNHCR on behalf of Refugee Women, *World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, Nirobi, Kenya, 15 - 26, July 1985; UN Doc A/CONF.116/11, 30 Apr. 1985, at 5, para. 14.

[249] Felicite Stairs & Lori Pope, *No place like Home: Assaulted Migrant Women's Claims to Refugee Status and Landings on Humanitarian and Compassionate Grounds* (1990) 6 Journal of Law and Social Policy 149 at 162

[250] Report of the thirty-sixth Session: UN doc A/AC. 96/673, para 115 (4).

mores is not expressly recognised in the universal refugee definition. For this reason, the European Parliament adopted a resolution in 1984, in which it called upon states to consider women in this situation as constituting a "particular social group" within the meaning of article 1 (A) similar recommendation was adopted by the Soesterburg Conference on Refugee Women, held in 1985.

The same year, UNHCR suggested to the Executive Committee that it consider adopting an identical recommendation: but that was not to be. Some states felt that to do so would imply criticism of certain religious beliefs or social or cultural practices. As a compromise, the Executive Committee simply "recognised that states, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transferred the social mores of the society in which they live may be considered as a particular social group within the meaning of Article 1 A(2) of the United Nations Refugee Convention."[251] The reality is that the 1951 Convention definition is not easily adaptable to include persecution on grounds of sex, and there are similarly shortcomings in the criteria for the grant of special humanitarian status or B- Status.[252]

Protection strategies for refugee women will depend upon the protection offered in any particular country, not only to refugees generally, but also nationals, particularly women. If, in the country of asylum, women are accorded social status equal, or almost equal, to men, and provided with education and training, women refugees are that much more likely to receive fair

[251] Ibid. para 115 (4) (K).

[252] Anders B Johnson, *The International Protection of Women Refugees. A Summary of Principal Problems and Issues* IJRL, vol 1, No. 2(1989) pp 224 - 25

treatment from the national authorities. Similarly, the position of women in society in the country of origin will to a large extent determine the treatment refugee women receive from other members of the refugee community.

Awareness of the underlying issues and needs is essential when dealing with the protection problems of women refugees. In contrast to most other protection areas, however, the general absence of such an awareness is striking in the context of refugee women. Refugees themselves, agency workers, staff of international organisations, and not least, government officials, often do not know what are the particular protection needs of refugee women, or how to solve them. Refugee women have to be part of the process which analyses their problems, identifies the solutions, and implements the programmes established for that purpose. Without their full participation, they cannot be adequately protected, and solutions will not be found for their problems and those of the refugee community at large.

War Refugees

Persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol, unless they were otherwise covered by Article 1 of the convention.

They do, have the protection provided for in other international instruments, e.g. the Geneva Conventions of 1949 on the Protection of War Victims and the 1977 Protocol additional to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts.

The Convention definition leaves out many persons commonly thought of as refugee. It does not cover most of those who flee the scene of an armed conflict, and armed conflict is a conspicuous source of many influxes that reach massive proportions.[253] Moreover, a majority of today's refugees are victims of the military factor which although not enough in itself to satisfy eligibility criteria, plays an important complementary role in refugee flows.[254] In practice UNHCR is providing assistance to the victim of war, and it is arguable that a customary norm of providing temporary refuge to the victims of generalised violence is evolving from the practice of states. Nonetheless, the convention today remains firmly anchored in the notion of elevating only a subset of those at risk of war and violent conflict to the status of refugee.

Thus, while the general proposition is that, the victims of war and violence are not by virtue of that fact alone refugees, it is nonetheless possible for persons coming from a strife-torn state to establish a claim to refugee status. This is so where the violence is not simply generalised, but is rather directed toward a group defined by civil or political status; or, if the war or conflict is non-specific in impact, where the applicant's fear can be traced to specific forms of disfranchisement within the society of origin.[255]

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[253] D. Martin, *Large-Scale Migrations of Asylum Seekers* (1982), 76 A.J.I.L. 598, at 607. Accord, D. Hull, *Displaced Persons: The New Refugees* (1983), 13 Georgia J.Int'l. Comp. L. 755, at 757.

[254] Z. Rizvi, *Causes of the Refugee Problem and the International Response*, in A. Nash, ed. *Human Rights and the Protection of Refugees under International Law* p.122 (1988).

[255] Hathaway, James C.supra, note 151, at 188.

STATUTE OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

United nations General Assembly. Resolution 428 (V) of 14 December 1950

Chapter 1

GENERAL PROVISIONS

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the resent Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organisations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities. In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of the advisory committee on refugees if it is created.

2. The work of the High Commissioner shall be of an entirely non-political character, it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.

3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.

4. The Economic and Social Council may decide, after hearing the views of the High Commissioner on the subject, to establish an advisory committee on refugees, which shall consist of representatives of States Members and States non-members of the United Nations, to be selected by the Council on the basis of their demonstrated interest in the devotion to the solution of the refugee problem.

5. The General Assembly shall review, not later than at its eighth regular session, the arrangements for the Office of the High Commissioner with a view to determining whether the Office should be continued beyond 31 December 1953.

Chapter II

FUNCTIONS OF THE HIGH COMMISSIONER

6. The competence of the High Commissioner shall extend to :

A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the constitution of the International Refugee Organisation.

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his

former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph;

The competence of the High Commissioner shall cease to apply to any person defined in section A above if;

(a) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(b) Having lost his nationality, he has voluntarily re-acquired it; or

(c) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(d) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(e) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

(f) Being a person who has no nationality, he can no longer, because the circumstances in connection with which he has been

recognised as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;

B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

7. Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person:

(a) Who is a national of more than one country unless he satisfies the provisions of the preceding paragraph in relation to each of the countries of which he is a national; or

(b) Who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or

(c) Who continues to receive from other organs or agencies of the United Nations protection or assistance; or

(d) In respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article VI of the London Charter of the International Military Tribunal or by the

provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

8. The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by:

(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

(b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;

(e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;

(f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

(g) Keeping in close touch with the Governments and inter-governmental organisations concerned;

(h) Establishing contact in such manner as he may think best with private organisations dealing with refugee questions;

(i) Facilitating the co-ordination of the efforts of private organisations concerned with the welfare of refugees.

9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.

10. The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate public agencies which he deems best qualified to administer such assistance. The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilised. The High Commissioner shall not appeal to Governments for funds make a general appeal, without the prior approval of the General Assembly. The High Commissioner shall include in his annual report a statement of his activities in this field.

11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies. The High Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly.

12. The High Commissioner may invite the co-operation of the various specialised agencies.

Chapter III

ORGANISATION AND FINANCES

13. The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General. The terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly. The High Commissioner shall be elected for a term of three years, from 1 January 1951.

14. The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

15. (a) Within the limits of the budgetary appropriations provided the staff of the Office of the High Commissioner shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions.

(b) Such staff shall be chosen from persons devoted to the purposes of the Office of the High Commissioner.

(c) Their conditions of employment shall be those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

16. The High Commissioner shall consult the Government of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognising such need, there may be appointed a representative approved by the Government of that country. Subject to the foregoing, the same representative may serve in more than one country.

17. The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.

18. The Secretary-General shall provide the High Commissioner with all necessary facilities within budgetary limitations.

19. The Office of the High Commissioner shall be located in Geneva, Switzerland.

20. The Office of the High Commissioner shall be financed under the budget of the United Nations, Unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditures relating to the functioning of the Office of the High Commissioner shall be borne on the budget of the United Nations and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.

21. The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General.

22. Transactions relating to the High Commissioner's funds shall be subject to audit by the United Nations Board of auditors, provided that the Board may accept audited accounts from the agencies to which funds have been allocated. Administrative arrangements for the custody of such funds and their allocation shall be agreed between the High Commissioner and the Secretary-General in accordance with the Financial Regulations of the United Nations and rules promulgated thereunder by the Secretary-General.

CONVENTION RELATING TO THE STATUS OF REFUGEES

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950.

Entry Into Force: 22 April 1954, in accordance with article 43

PREAMBLE

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the

international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognising the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognising that the effective co-ordinations of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner.

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article I - Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organisations:

Decisions of non eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent

the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. 1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

2) Having lost his nationality, he has voluntarily required it; or

3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

4) He has voluntarily re-established himself in the country which he left or outside which he left or outside which he remained owing to fear of persecution; or

5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1), of this article who is able to invoke compelling reasons arising out or previous persecution for refusing to avail himself of the protection of the country of nationality;

6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have cased to exist, able to return to country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke

compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Conventions shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

b) He has committed a serious non-political crime outside the country of refugee prior to his admission to that country as a refugee;

c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2 - General Obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3 - Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4 - Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Article 5 - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6 - The term "in the same circumstances"

For the purposes of this Convention, the term *'in the same circumstance'* implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7 - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 2 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8 - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their

legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9- Provisional measures

Nothing in this Convention shall present a contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that, that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10 - Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 - Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that shall give

sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II

JURIDICAL STATUS

Article 12 - Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13 - Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14 - Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15 - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16 - Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *caution judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatments granted to a national of the country of his habitual residence.

CHAPTER III

GAINFUL EMPLOYMENT

Article 17 - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

a) He has completed three years' residence in the country;

b) He has a spouse possessing the nationality of the country of residence, A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the rights to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19 -Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment ad favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV

WELFARE

Article 20- Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21 - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in, their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 - Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23 - public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24 - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

b) Social security (legal provisions in respect of employment injury, occupational diseases maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

1) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

2) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The rights to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the

maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V

ADMINISTRATIVE MEASURES

Article 25 - Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned therein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26 - Freedom of movement

Each contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27 - Identity Papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28 - Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting states may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29 - Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 - Transfer of assets

1. A contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31 - Refugees unlawfully in the country of refugee

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming

directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32 - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33 - Prohibition of expulsion or return ("refoulement")

1. No Contracting States shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34 - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as a far as possible the charges and costs of such proceedings.

CHAPTER VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35 - Cooperation of the national authorities with the United Nations

1. The Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it,

in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting states undertake to provided them in the appropriate form with information and statistical data requested concerning:

a) The condition of refugees,

b) The implementation of this Convention, and

c) Laws, regulation and decrees which are, or may hereafter be, in force relating to refugees.

Article 36 - Information on national legislation

The Contracting States shall communicate to the Secretary General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37 - Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII

FINAL CLAUSES

Article 38 - Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39 - Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40 - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Conventions for the State concerned, whichever is the later.

3. With respect to those territories to which this convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41 - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States:

b) With respect to those article of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

c) A Federal State Party to this Convention shall, at the request of any other contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to the provisions by legislative or other action.

Article 42 - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to article 1, 3, 4, 16(1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43 - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44 - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45 - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46 - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

a) Of declarations and notifications in accordance with section B of article 1;

b) Of signatures, ratifications and accessions in accordance with section B of article 39;

c) Of declarations and notifications in accordance with article 40;

d) Of reservations and withdrawals in accordance with article 42;

e) Of the date on which this Convention will come into force in accordance with article 43;

f) Of denunciations and notifications in accordance with article 44;

g) Of request for revision in accordance with article 45

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain

deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

PROTOCOL RELATING TO THE STATUS OF REFUGEES OF 31 JANUARY 1967

Entry into force: 4 October 1967, in accordance with Article VIII
Text: United Nations Treaty Series No. 8791, Vol. 606, p.267

Preamble

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January, 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I

General provision

1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and .... "and the words"..... a result of such events", in Article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article 1 B (1) (a) of the Convention, shall, unless extended under Article 1 B (2) thereof, apply also under the present Protocol.

Article 2

Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning: (a) The condition of refugees; (b) The implementation of the present Protocol; (c) Laws,

regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 3

Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article 4

Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 5

Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations.

Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6

Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with Article 1, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with Article 1, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with Article 1, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article 7

Reservations and declarations

1. At the time of accession, any State may make reservations in respect of Article IV of the present Protocol and in respect of the application in accordance with Article 1 of the present Protocol of any provisions of the Convention other than those contained in Articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this Article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by State Parties to the Convention in accordance with Article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under Article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State party concerned to the Secretary-General of the United Nations. The provisions of Article 40, paragraphs 2 and 3, and of Article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article 8

Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article 9

Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article 10

Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in Article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol. And of declarations and notifications relating hereto.

Article 11

Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in Article V above.

OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA

Adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session (Addis Ababa, 10 September 1969)

Entry into Force: 20 June 1974, in accordance with Article
Text: United Nations Treaty Series No. 14 691

PREAMBLE

We, the Heads of State and Government assembled in the city of Addis Ababa, from 6-10 September 1969,

1. Noting with concern the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future.

2. Recognizing the need for and essentially humanitarian approach towards solving the problems of refugees.

3. Aware, however, that refugee problems are a source of friction among many member States, and desirous of eliminating the source of such discord,

4. Anxious to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside.

5. Determined that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the

Problem of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965,

6. Bearing in mind that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

7. Recalling Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum,

8. Convinced that all the problems of our continent must be solved in the spirit of the Charter of the Organisation of African Unity and in the African context,

9. Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment,

10. Recalling Resolutions 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organisation who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa,

11. Convinced that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organisation of African Unity and the Office of the United Nations High Commissioner for Refugees,

Have agreed as follows:

Article 1

Definition of the term "Refugee"

1. For the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. In the case of a person who has several nationalities, the term "a country of which he is a national" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

4. This Convention shall cease to apply to any refugee if:

(a) he has voluntarily re-availed himself of the protection of the country of his nationality, or

(b) having lost his nationality, he has voluntarily reacquired it, or,

(c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or,

(d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or,

(e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or,

(f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or,

(g) he has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee:

(c) he has been guilty of acts contrary to the purposes and principles of the Organisation of African Unity;

(d) he has been guilty of acts contrary to the purposes and principles of the United Nations.

6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

Article 2

Asylum

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article 1, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum.

5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article 3

Prohibition of Subversive Activities

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Article 4

Non-Discrimination

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.

Article 5

Voluntary Repatriation

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without

fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organisations, to facilitate their return.

Article 6

Travel Documents

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.

3. Travel documents issued to refugees under previous international agreements by States Parties thereto shall be recognized and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.

Article 7

Co-operation of the National Authorities with the Organisation of African Unity

In order to enable the Administrative Secretary-General of the Organisation of African Unity to make reports to the competent organs of the Organisation of African Unity, Member States undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning:

(a) the condition of refugees;

(b) the implementation of this Convention, and

(c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 8

Cooperation with the Office of the United Nations High Commissioner for Refugees

1. Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees.

2. The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees.

Article 9

Settlement of Disputes

Any dispute between States signatories to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the Commission for Mediation, Conciliation and Arbitration of the Organisation of African Unity, at the request of any one of the Parties to the dispute.

Article 10

Signature and Ratification

1. This Convention is open for signature and accession by all Member States of the Organisation of African Unity and shall be ratified by signatory States in accordance with their respective constitutional processes. The instruments of ratification shall be deposited with the Administrative Secretary-General of the Organisation of African Unity.

2. The original instrument, done if possible in African languages, and in English and French, all texts being equally authentic, shall be deposited with the Administrative Secretary-General of the Organisation of African Unity.

3. Any independent African State, Member of the Organisation of African Unity, may at any time notify the Administrative Secretary-General of the Organisation of African Unity of its accession to this Convention

Article 11

Entry into force

This Convention shall come into force upon deposit of instruments of ratification by one-third of the Member States of the Organisation of African Unity.

Article 12

Amendment

This Convention may be amended or revised if any member State makes a written request to the Administrative Secretary-General to that effect, provided however that the proposed amendment shall not be submitted to the Assembly of Heads of State and Government for consideration until all Member States have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the Member States Parties to the present Convention.

Article 13

Denunciation

1. Any Member State Party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.

2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing State.

Article 14

Upon entry into force of this Convention, the Administrative Secretary-General of the OAU shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

Article 15

Notifications by the Administrative Secretary-General of the Organisation of African Unity

The Administrative Secretary-General of the Organisation of African Unity shall inform all Members of the Organisation:

(a) of signatures, ratifications and accessions in accordance with Article X;

(b) of entry into force, in accordance with Article XI;

(c) of requests for amendments submitted under the terms of Article XII;

(d) of denunciations in accordance with Article XIII.

IN WITNESS WHEREOF we, the Heads of African State and Government, have signed this Convention.

DONE in the City of Addis Ababa this 10th day of September 1969.

States Parties
As of 06 January 1995
Total Number of States Parties: 41
Most Recent Ratification: Kenya 23 June 1992

PRINCIPLES CONCERNING TREATMENT OF REFUGEES

As adopted by the

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

at its Eighth Session Bangkok 1966

Article I

Definition of the term "Refugee"

A refugee is a person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, political belief or membership of a particular social group:

(a) leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or,

(b) Being outside such State or Country, is unable or unwilling to return to it or to avail himself of its protection.

Exceptions

(1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or Country of which he is a national.

(2) A person who prior to his admission into the Country of refuge, has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purposes and principles of the United Nations shall not be a refugee

Explanation

The dependants of a refugee shall be deemed to be refugees.

Explanation

The expression "leaves" includes voluntary as well as involuntary leaving.

Notes

(i) The Delegation of Ghana reserved its position on this Article.

(ii) The Delegations of Iraq, Pakistan and the United Arab Republic expressed the view that, in their opinion, the definition of the term "Refugee" includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to occupying the State.

(iii) The Delegations of Ceylon and Japan expressed the view that in their opinion the expression "persecution" means something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilized nations.

(iv) The Delegations of Japan and Thailand expressed the view that the world "and" should be substituted for the word "or" in the last line of paragraph (a).

(v) In Exception (2) the words "prior to his admission into the Country of refuge" were inserted by way of amendment to the original text of the Draft Articles on the proposal of the Delegation of Ceylon and accepted by the Delegations of India.

Indonesia, Japan and Pakistan. The Delegations of Iraq and Thailand did not accept the amendment.

(vi) The Delegation of Japan proposed insertion of the following additional paragraph in the Article in relation to proposal under note

(vii): "A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State or the Country of which he is a habitual resident, at the time of the events which caused him to have a well-founded fear of above-mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered a refugee."

The Delegations of Ceylon, India, Indonesia, Iraq and Pakistan were of the view that this additional paragraph was unnecessary. The Delegation of Thailand reserved its position on this paragraph.

Article 2

Loss of Status as Refugee

1. A refugee shall lose his status as refugee if:

he voluntarily returns permanently to the State of which he was a national or the Country of his nationality, to the State or, the Country of which he was a habitual resident: or

(ii) he has voluntarily re-availed himself of the protection of the State or Country of his nationality: or

(iii) he voluntarily acquires the nationality of another State of Country and is entitled to the protection of that State or Country.

3. A refugee shall lose his status as a refugee if he does not return to the State of which he is a national or to the Country of his nationality, or, if he has no nationality, to the State or Country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or Country after the circumstances in which he became a refugee have ceased to exist.

Explanation

It would be for the State of asylum of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist.

Notes

(i) The Delegations of Iraq and the United Arab Republic reserved their position on paragraph I (iii).

(ii) The Delegation of Thailand wished it to be recorded that the loss of status as a refugee under paragraph 1 (ii) will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality because the right of protection was that of his country and not that of the individual.

Article 3

Asylum to a Refugee

1. A State has the sovereign right to grant or refuse asylum in its territory to a refugee.

2. The exercise of the right to grant such asylum to a refugee shall be respected by all other States and shall not be regarded as an unfriendly act.

3. No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

4. In cases where a State decides to apply any of the above mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article 4

Right of Return

A refugee shall have the right to return if he so chooses to the State of which he is a national or to the country of his nationality and in this event it shall be the duty of such State or Country to receive him.

Article 5

Right to compensation

1. A refugee shall have the right to receive compensation from the State or the Country which he left or to which he was unable to return.

2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of

human rights, death of dependants of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authorities of the State or Country, public officials or mob violence.

Notes

(i) The Delegations of Pakistan and the United Arab Republic were of the view that the word "also:" should be inserted before the words "such loss" in paragraph 2.

(ii) The Delegations of India and Japan expressed the view that the words "deprivation of personal liberty in denial of human rights", should be omitted.

(iii) The Delegations of Ceylon, Japan and Thailand suggested that the words "in the circumstances in which the State would incur state responsibility for such treatment to aliens under international law" should be added at the end of paragraph 2.

(iv) The Delegations of Ceylon, Japan, Pakistan and Thailand expressed the view that compensation should be payable also in respect of the denial of the refugee's right to return to the State of which he is a national.

(v) The Delegation of Ceylon was opposed to the inclusion of the words "or country" in this Article.

(vi) The Delegations of Ceylon, Ghana, India and Indonesia were of the view that in order to clarify the position, the words "arising out of events which gave rise to the refugee leaving such State of Country" should be added to paragraph 2 of this Article after the words "mob violence".

Article 6

Minimum Standard of Treatment

1. A State shall accord to refugees treatment in no way less favourable than that generally accorded to aliens in similar circumstances.

2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the status of aliens, annexed to these principles, to the extent that they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfill requirements which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.

Notes

(i) The Delegations of Iraq and Pakistan were of the view that a refugee should generally be granted the standard of treatment applicable to the nationals of the country of asylum.

(ii) The Delegation of Indonesia reserved its position on paragraph 3 of the Article.

(iii) The Delegations of Indonesia and Thailand reserved their position on paragraph 4 of the Article.

Article 7

Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations.

Notes

(i) The Delegations of India, Japan and Thailand were of the view that the words "or any other country" should be added after the words "the country of refuge" in this Article. The other Delegations were of the view that such addition was not necessary.

(ii) The Delegation of Iraq was of the view that the inclusion of the words "or in activities inconsistent with or against the principals and purposes of the United Nations" was inappropriate as in this Article what was being dealt with was the right and obligation of the refugee and not that of the State.

Article 8

Expulsion and Deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another

State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary.

3. A refugee shall not be deported or returned to a State of Country where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

Notes

(i) The Delegations of Ceylon, Ghana and Japan did not accept the text of paragraph 1. In the view of these Delegations the text of this paragraph should read as follows: "A state shall not expel or deport a refugee save on ground of national security or public order, or a violation of any of the vital or fundamental conditions of asylum."

(ii) The Delegations of Ceylon and Ghana were of the view that in paragraph 2 the words "as generally applicable to aliens under such circumstances" should be added at the end of the paragraph after the word "necessary"

Article 9

Nothing in these Articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

CARTAGENA DECLARATION ON REFUGEES

Adopted at a colloquium entitled "Coloquio Sobre la Protection International de los Refugiados en American Central, Mexico y Panama: Problemas Juridicos y Humanitarios" held at Cartagena, Colombia from 19 - 22 November 1984.

Having acknowledged with appreciation the commitments with regard to refugees included in the Contadora Act on Peace and Co-operation in Central America, the bases of which the Colloquium fully shares and which are reproduced below:

(a) "To carry out, if they have not yet done so, the constitutional procedures for accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees."

(b) "To adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph with a view to distinguishing refugees from other categories of migrants."

(c) "To establish the internal machinery necessary for the implementation, upon accession, of the provisions of the Convention and Protocol referred to above."

(d) "To ensure the establishment of machinery for consultation between the Central American countries and representatives of the Government offices responsible for dealing with the problem of refugees in each State."

(e) "To support the work performed by the United Nations High Commissioner for Refugees (UNHCR) in Central America and to establish direct co-ordination machinery to facilitate the fulfilment of his mandate."

(f) "To ensure that any repatriation of refugees is voluntary, and is declared to be so on an individual basis, and is carried out with the co-operation of UNHCR".

(g) "To ensure the establishment of tripartite commissions, composed of representatives of the State of origin, of the receiving State and of UNHCR with a view to facilitating the repatriation of refugees."

(h) "To reinforce programmes for protection of and assistance to refugees, particularly in the areas of health, education, labour and safety."

(i) "To ensure that programmes and projects are set up with a view to ensuring the self-sufficiency of refugees."

(j) "To train the officials responsible in each State for protection of and assistance to refugees, with the co-operation of UNHCR and other international agencies."

(k) "To request immediate assistance from the international community for Central American refugees, to be provided either directly, through or multilateral agreements, or through UNHCR and other organisations and agencies."

(l) "To identify, with the co-operation of UNHCR, other countries which might receive Central American refugees. In no case shall a refugee be transferred to a third country against his will."

(m) "To ensure that the Governments of the area make the necessary efforts to eradicate the causes of the refugee problem."

(n) "To ensure that, once agreement has been reached on the bases for voluntary and individual repatriation, with full guarantees for the refugees, the receiving countries permit official delegations of the country of origin, accompanied by representatives of UNHCR and the receiving country, to visit the refugee camps."

(o) "To ensure that the receiving countries facilitate, in co-ordination with UNHCR, the departure procedure for refugees in instances of voluntary and individual repatriation."

(p) "To institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees."

III. *The Colloquium adopted the following conclusions*

1. To promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol and, if necessary, establishing internal procedures and mechanisms for the protection of refugees. In addition, to ensure that the national laws and regulations adopted reflect the principles and criteria of the Convention and the Protocol, thus fostering the necessary process of systematic harmonization of national legislation on refugees.

2. To ensure that ratification of or accession to the 1951 Convention and the 1967 Protocol by States which have not yet taken these steps is unaccompanied by reservations limiting the scope of those instruments, and to invite countries having formulated such reservations to consider withdrawing them as soon as possible.

3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safely or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

4. To confirm the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underline the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.

5. To reiterate the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of *jus cogens*.

6. To reiterate to countries of asylum that refugee camps and settlements located in frontier areas should be set up inland at a reasonable distance from the frontier with a view to improving the protection afforded to refugees, safeguarding their human

rights and implementing projects aimed at their self-sufficiency and integration into the host society.

7. To express its concern at the problem raised by military attacks on refugee camps and settlements which have occurred in different parts of the world and to propose to the Governments of the Central American countries, Mexico and Panama that they lend their support to the measures on this matter which have been proposed by the High Commissioner to the UNHCR Executive Committee.

8. To ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration the conclusions of the UNHCR Executive Committee, particularly No. 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx.

9. To express its concern at the situation of displaced persons within their own countries. In this connection, the Colloquium calls on national authorities and the competent international organisations to offer protection and assistance to those persons and to help relieve the hardship which many of them face.

10. To call on States parties to the 1969 American Convention on Human Rights to apply this instrument in dealing with asilados and refugees who are in their territories.

11. To make a study, in countries in the area which have a large number of refugees, of the possibilities of integrating them into the productive life of the country by allocating to the creation or generation of employment the resources made available by the international community through UNHCR, thus making it

possible for refugees to enjoy their economic, social and cultural rights.

12. To reiterate the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.

13. To acknowledge that reunification of families constitutes a fundamental principle in regard to refugees and one which should be the basis for the regime of humanitarian treatment in the country of asylum, as well as for facilities granted in cases of voluntary repatriation.

14. To urge non-governmental, international and national organisations to continue their worthy task, co-ordinating their activities with UNHCR and the national authorities of the country of asylum, in accordance with the guidelines laid down by the authorities in question.

15. To promote greater use of the competent organisations of the inter-American system, n particular the Inter-American Commission on Human Rights, with a view to enhancing the international protection of asilados and refugees. Accordingly, for the performance of this task, the Colloquium considers that the close co-ordination and co-operation existing between the Commission and UNHCR should be strengthened.

16. To acknowledge the importance of the OAS/UNHCR Programme of Co-operation and the activities so far carried out and to propose that the next stage should focus on the problem raised by massive refugee flows in Central America, Mexico and Panama.

17. To ensure that in the countries of Central America and the Contadora Group the international norms and national legislation relating to the protection of refugees, and of human rights in general, are disseminated at all possible levels. In particular, the Colloquium believes it especially important that such dissemination should be undertaken with the valuable co-operation of the appropriate universities and centres of higher education.

IV. The Cartagena Colloquium therefore.

Recommends:

- That the commitments with regard to refugees included in the Contadora Act should constitute norms for the 10 States participating in the Colloquium and be unfailingly and scrupulously observed in determining the conduct to be adopted in regard to refugees in the Central American area.

- That the conclusions reached by the Colloquium (iii) should receive adequate attention in the search for solutions to the grave problems raised by the present massive flows of refugees in Central America, Mexico and Panama.

- That a volume should be published containing the working document and the proposals and reports, as well as the conclusions and recommendations of the Colloquium and other pertinent documents. and that the Colombian Government. UNHCR and the competent bodies of OAS should be requested to take the necessary steps to secure the widest possible circulation of the volume in question.

That the present document should be proclaimed the Cartagena Declaration on Refugees"

- That the United Nations High Commissioner for Refugees should be requested to transmit the contents of the present declaration officially to the heads of State of the Central American countries, of Belize and of the countries forming the Contadora Group.

Finally, the Colloquium expressed its deep appreciation to the Colombian authorities, and in particular to the President of the Republic, Mr. Belisario Betancur, the Minister for Foreign Affairs, Mr. Augusto Ramfrez Ocampo, and the United Nations High Commissioner for Refugees, Mr. Poul Hartling, who honoured the Colloquium with their presence, as well as to the University of Cartagena de Indias and the Regional Centre for Third World Studies for their initiative and for the realization of this important event. The Colloquium expressed its special recognition of the support and hospitality offered by the authorities of the Department of Bolivar and the City of Cartagena. It also thanked the people of Cartagena, rightly known as the "Heroic City", for their warm welcome.

In conclusion, the Colloquium recorded its acknowledgement of the generous tradition of asylum and refuge practised by the Colombian people and authorities.

Cartagena de Indias, 22 November 1984.

EXCOM Conclusion No. 5 (XXVIII) - 1977 Asylum

No. 5 (XXVIII) - 1977

ASYLUM

The Executive Committee,

(a) Noted with satisfaction the report of the High Commissioner that States have generally continued to follow liberal asylum practices;

(b) Concerned, however, that according to the report of the High Commissioner cases continue to occur in which asylum-seekers have encountered serious difficulties in finding a country willing to grant them even temporary refuge and that refusal of permanent or temporary asylum has led in a number of cases to serious consequences for the persons concerned;

Requested the High Commissioner to draw the attention of Governments to the various international instruments existing in the field of asylum and reiterated the fundamental importance of these instruments from a humanitarian standpoint;

(d) Appealed to Governments to follow, or continue to follow, liberal practices in granting permanent or at least temporary asylum to refugees who have come directly to their territory;

(e) Called on Governments to co-operate, in a spirit of international solidarity, with the High Commissioner in the performance of his functions-especially with respect to asylum-in accordance with General Assembly Resolution 428(V) of 14 December 1950.

EXCOM Conclusion No. 6 (XXVIII) - 1977
Non-Refoulement

No. 6 (XXVIII) - 1977

NON-REFOULEMENT

The Executive Committee.

(a) Recalling that the fundamental humanitarian principle of non-refoulement has found expression in various international instruments adopted at the universal and regional levels and is generally accepted by States;

(b) Expressed deep concern at the information given by the High Commissioner that, while the principle of non-refoulement is in practice widely observed. this principle has in certain cases been disregarded;

(c) Reaffirms the fundamental importance of the observance of the principle of non-refoulement- both at the border and within the territory of a State of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees.

EXCOM Conclusion No. 8 (XXVIII) - 1977
Determination of Refugee Status

No. 8 (XXVIII) - 1977

DETERMINATION OF REFUGEE STATUS

The Executive Committee,

(a) Noted the report of the High Commissioner concerning the importance of procedures for determining refugee status;

(b) Noted that only a limited number of States parties to the 1951 Convention and the 1967 Protocol had established procedures for the formal determination of refugee status under these instruments;

(c) Noted, however, with satisfaction that the establishment of such procedures was under active consideration by a number of Governments;

(d) Expressed the hope that all Governments parties to the 1951 Convention and the 1967 Protocol which had not yet done so would take steps to establish such procedures in the near future and give favourable consideration to UNHCR participation in such procedures in appropriate form;

(e) Recommended that procedures for the determination of refugee status should satisfy the following basic requirements:

(i) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State, should have clear instructions for dealing with cases which might me within the

purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

(ii) The applicant should receive the necessary guidance as to the procedure to be followed.

(iii) There should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance.

(iv)The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.

(v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying this refugee status.

(vi)If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing stem.

(vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority of to the courts is pending.

Requested UNHCR to prepare, after due consideration of the opinions of States parties to the 1951 Convention and the 1967 Protocol. a detailed study on the question of the extra-territorial effect of determination of refugee status in order to enable the Committee to take a considered view on the matter at a subsequent session taking into account the opinion expressed by representatives that the acceptance by a Contracting State of refugee status as determined by other States parties to these instruments would be generally desirable;

(g) Requested the Office to consider the possibility of issuing-for the guidance of Governments-a handbook relating to procedures and criteria for determining refugee status and circulating – with due regard to the confidential nature of individual requests and the particular situations involved – significant decisions on the determination of refugee status.

EXCOM Conclusion No. 39 (XXVI) - 1985
Refugee Women and International Protection

No. 39 (XXXVI) - 1985

REFUGEE WOMEN AND INTERNATIONAL PROTECTION

The Executive Committee,

(a) Welcomed the initiative of the Office in organizing the Round Table on Refugee Women in Geneva in April 1985;

(b) Welcomed further the recommendations regarding the situation of refugee and displaced women adopted by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women held in Nairobi (Kenya) in July, 1985;

(c) Noted that refugee women and girls constitute the majority of the world refugee population and that many of them are exposed to special problems in the international protection field;

(d) Recognized that these problems result from their vulnerable situation which frequently exposes them to physical violence, sexual abuse, and discrimination;

(e) Stressed the need for such problems to receive the urgent attention of Governments and of UNHCR and for all appropriate measures to be taken to guarantee that refugee women and girls are protected from violence or threats to their physical safety or exposure to sexual abuse or harassment;

(f) Noted with satisfaction the measures already undertaken by UNHCR to address the protection problems of refugee women and to ensure that they are adequately protected;

(g) Called upon States to continue to support UNHCR programmes established with a view to securing protection for refugee women, and UNHCR assistance programmes for refugee women, especially those aimed at helping refugee women become self-sufficient through educational and income-generating projects;

(h) Recommended that States, individually, jointly and in co-operation with UNHCR, redefine and reorient existing programmes and, where necessary, establish new programmes to meet the specific problems of refugee women, in particular to ensure the safeguard of their physical integrity and safety, and their equality of treatment. Women refugees should participate in the formulation and implementation of such programmes;

(i) Stressed the importance of a more detailed knowledge and understanding of the special needs and problems of refugee women in the international protection field and of gathering statistical, sociological and other data concerning refugee women and girls in order to identify and implement appropriate mechanisms to ensure their effective protection;

(j) Requested the High Commissioner to report regularly to members of the Executive Committee on the needs of refugee women, and on existing and proposed programmes for their benefit;

(k) Recognized that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having

transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1 (A)(2) of the 1951 United Nations Refugee Convention.

EXCOM Conclusion No. 40 (XXXVI) - 1985
Voluntary Repatriation

No. 40 (XXXVI) - 1985

VOLUNTARY REPATRIATION

The Executive Committee,

Reaffirming the significance of its 1980 conclusion on voluntary repatriation as reflecting basic principles of international law and practice, adopted the following further conclusions on this matter:

(a) The basic rights of persons to return voluntarily to the country of origin is reaffirmed and it is urged that international co-operation be aimed at achieving this solution and should be further developed;

(b) The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected;

(c) The aspect of causes is critical to the issue of solution and international efforts should also be directed to the removal of the causes of refugee movements. Further attention should be given to the causes and prevention of such movements, including the co-ordination of efforts currently being pursued by the international community and in particular within the United Nations. An essential condition for the prevention of refugee flows is sufficient political will by the States directly concerned

to address the causes which are at the origin of refugee movements;

(d) The responsibilities of States towards their nationals and the obligations of other States to promote voluntary repatriation must be upheld by the international community. International action in favour of voluntary repatriation, whether at the universal or regional level, should receive the full support and co-operation of all States directly concerned. promotion of voluntary repatriation as a solution to refugee problems similarly requires the political will of States directly concerned to create conditions conducive to this solution. This is the primary responsibility of States;

(e) The existing mandate of the High Commissioner is sufficient to allow him to promote voluntary repatriation by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them,, and by acting as an intermediary of channel of communication. In is important that he established, whenever possible, contact with all the main parties and acquaints himself with their points of view. From the outset of a refugee situation, the High Commissioner should at all times keep the possibility of voluntary repatriation for all or for part of a group under active review and the High Commissioner, whenever he deems that the prevailing circumstances are appropriate, should actively pursue the promotion of this solution;

(f) The humanitarian concerns of the High Commissioner should be recognized and respected by all parties and he should receive full support in his efforts to carry out his humanitarian mandate in providing international protection to refugees and in seeking a solution to refugee problems;

(g) On all occasions the High Commissioner should be fully involved from the outset in assessing the feasibility and thereafter, in both the planning and implementation stages of repatriation;

The importance of spontaneous return to the country of origin is recognized and it is considered that action to promote organized voluntary repatriation should not create obstacles to the spontaneous return of refugees. Interested States should make all efforts, including the provision of assistance in the country of origin, to encourage this movement whenever it s deemed to be in the interests of the refugees concerned;

(i) When, in the opinion of the High Commissioner, a serious problem exists in the promotion of voluntary repatriation of a particular refugee group, he may consider for that particular problem the establishment of an informal ad hoc consultative group which would be appointed by him in consultation with the Chairman and the other members of the Bureau of his Executive Committee. Such a group may, if necessary, include States which are not members of the Executive Committee and should in principle include the countries directly concerned. The High Commissioner may also consider invoking the assistance of other competent United Nations organs;

(j) The practice of establishing tripartite commissions is well adapted to facilitate voluntary repatriation. The tripartite commission, which should consist of the countries of origin and of asylum and UNHCR, could concern itself with both the joint planning and the implementation of a repatriation programme. In is also an effective means of securing consultations between the main parties concerned on the problems that might subsequently arise;

(k) International action to promote voluntary repatriation requires consideration of the situation within the country of origin as well as within the receiving country. Assistance for the reintegration of returnees provided by the international community in the country of origin is recognized as an important factor in promoting repatriation. To this end, UNHCR and other United Nations agencies as appropriate, should have funds readily available to assist returnees in the various stages of their integration and rehabilitation in their country of origin;

(l) The High Commissioner should be recognized as having a legitimate concern for the consequences of return, particularly where such return has been brought about as a result of an amnesty or other form of guarantee. The High Commissioner must be regarded as entitled to insist on his legitimate concern over the outcome of any return that he has assisted. Within the framework of close consultations with the State concerned, he should be given direct and unhindered access to returnees so that he is in a position to monitor fulfilment of the amnesties, guarantees or assurances on the basis of which the refugees have returned. This should be considered as inherent in his mandate;

(m) Consideration should be given to the further elaboration of an instrument reflecting all existing principles and guidelines relating to voluntary repatriation for acceptance by the international community as a whole.

EXCOM Conclusion No. 44 (XXXVII) - 1986
Detention of Refugees and Asylum-Seekers

No. 44(XXXVII) - 1986

DETENTION OF REFUGEES AND ASYLUM-SEEKERS

The Executive Committee.

Recalling Article 31 of the 1951 Convention Relating to the Status of Refugees.

Recalling further its Conclusion No. 22 (XXXII) on the treatment of asylum-seekers in situations of large-scale influx, as well as Conclusion No. 7 (XXVIII), paragraph (e), on the question of custody or detention in relation to the expulsion of refugees lawfully in a country, and Conclusion No. 8 (XXVIII), paragraph (e), on the determination of refugee status.

Noting that the term "refugee" in the present Conclusions has the same meaning as that in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, and is without prejudice to wider definitions applicable in different regions.

(a) Noted with deep concern that large numbers of refugees and asylum seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation;

Expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary detention may be resorted to only on grounds prescribed by law

to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;

(c) Recognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention;

(d) Stressed the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum-seekers, and that of other aliens;

(e) Recommended that detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review;

(e) Recommended that detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review;

(f) Stressed that conditions of detention of refugees and asylum seekers must be humane. In particular, refugees and asylum-seekers shall, whenever possible, not be accommodated with persons detained as common criminals and shall not be located in areas where their physical safety is endangered;

(g) Recommended that refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the

absence of such office, available national refugee assistance agencies;

(h) Reaffirmed that refugees and asylum-seekers have duties to the country in which they find themselves, which require in particular that they conform to its laws and regulations as well as to measures taken for the maintenance of public order;

(i) Reaffirmed the fundamental importance of the observance of the principle of non-refoulement and in this context recalled the relevance of Conclusion No. 6(XXVIII),

EXCOM Conclusion No. 59 (XL) - 1989
Refugee Children

No. 59 (XL) - 1989

REFUGEE CHILDREN

The Executive Committee,

Expressed appreciation for the Report on Refugee Children (A/AC.96/731), noted with concern the serious risks to their safety, immediate welfare and future development faced by many refugee children and recognized the efforts made by the Office of the High Commissioner to improve its effectiveness in responding to their special needs;

b) Reaffirmed its Conclusion concerning refugee children (No. 47 (XXXVIII) and stressed the continuing nature of the guidance provided;

(c) Commended the High Commissioner and his Working Group on Refugee Children for the development and dissemination of the Guidelines on Refugee Children and for the implementation of a work plan concerning refugee children and called upon UNHCR to seek the active co-operation and collaboration of governments, other United Nations bodies; among them UNICEF, non-governmental organisations and refugees themselves, in the implementation of the guideline;

(d) Requested the High Commissioner to ensure that the needs of refugee children are given particular attention through regularly assessing resources and requirements in each refugee situation; collecting and using in programme planning relevant

demographic, socio-economic and cultural information; and monitoring and evaluating the impact of his programmes on refugee children;

(e) Noted with serious concern the increasing incidence of nutritional deficiency diseases and malnutrition amongst refugee children dependent upon food aid and called upon UNHCR to initiate as a matter of urgency formal discussions with relevant United Nations bodies, donors and other humanitarian organisations to develop collaborative strategies for alleviating the nutritional problems of refugee children and to seek the incorporation into their programmes of appropriate provisions for such needs;

(f) Recognized the link between education and durable solutions and encouraged UNHCR to strengthen its efforts in assisting host country governments to ensure the access of refugee children to education, inter alia though the involvement of new organisations and governmental and non-governmental donors, and where necessary through the incorporation of appropriate arrangements in its programmes of assistance;

(g) Requested the High Commissioner to continue to give special attention to the needs of unaccompanied minors and inform the Executive Committee at its next session of the details of existing programmes and any difficulties encountered in their implementation;

(h) Called upon UNHCR to promote the best possible legal protection of unaccompanied minors, particularly with regard to forced recruitment into armed forces and to the risks associated with irregular adoption;

(i) Urged UNHCR to intensify efforts to increase public awareness of the situation and needs of refugee children and of the impact of armed conflict and persecution on them;

(j) Encouraged UNHCR to develop training materials to improve the capacity and effectiveness of field personnel in identifying and addressing the protection and assistance needs of refugee children;

(k) Recalled its request in its Thirty-seventh Session in 1986 (No. 41 (XXXVII) for the High Commissioner to report regularly to the Executive Committee on the needs of refugee children, and on existing and proposed programmes for their benefit.

EXCOM Conclusion No. 64 (XLI) - 1990
Refugee Women and International Protection

No. 64 (XLI) - 1990

REFUGEE WOMEN AND INTERNATIONAL PROTECTION

The Executive Committee,

Noting with serious concern the widespread violations of the rights of refugee women and their specific needs;

Underlining the potential of refugee women and the need to ensure their full participation in analyzing their needs and in designing and implementing programmes which make appropriate use of their resources;

Reaffirming its Conclusions No. 39 (XXXVI) on Refugee Women and International Protection:

Stressing that all action taken on behalf of women who are refugees must be guided by the relevant international instruments relating to the status of refugees as well as other applicable human rights instruments, in particular, for States parties thereto, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women;

Recognizing that ensuring equal treatment of refugee women and men may require specific action in favour of the former;

Recalling the special relevance of the Nairobi Forward-Looming Strategies on the Advancement of Women and the obligation of

the United Nations Systems as a whole to give effect to its provisions; Reiterating the importance of collecting data which allows for the monitoring of progress achieved in meeting the needs of refugee women,

a) Urges States, relevant United Nations organisations, as well as non-governmental organisations, as appropriate, to ensure that the needs and resources of refugee women are fully understood and integrated, to the extent possible, into their activities and programmes and, to this end, to pursue, among others, the following aims in promoting measures for improving the international protection of refugee women:

i) Promote energetically the full and active participation of refugee women in the planning, implementation and evaluation/monitoring of all sectors of refugee programmes;

ii) Increase the representation of appropriately trained female staff across all levels of all organisations and entities which work in refugee programmes and ensure direct access of refugee women to such staff;

iii) Provide, wherever necessary, skilled female interviewers in procedures for the determination of refugee status and ensure appropriate access by women asylum-seekers to such procedures, even when accompanied by male family members;

iv) Ensure that all refugees and the staff of relevant organisations and authorities are fully aware of, and support, the rights, needs and resources of refugee women and take appropriate specific actions;

v) Integrate consideration specific to the protection of refugee women into assistance activities from their inception, including

when planning refugee camps and settlements, in order to be able to deter, detect and redress instances of physical and sexual abuse as well as other protection concerns at the earliest possible moment;

vi) Extend professional and culturally appropriate gender-based counselling as well as other related services to refugee women who are victims of abuse;

vii) Identify and prosecute persons who have committed crimes against refugee women and protect the victims of such crimes from reprisals;

viii) Issue individual identification and/or registration documents to all refugee women;

ix) Provide all refugee women and girls with effective and equitable access to basic services, including food, water and relief supplies, health and sanitation, education and skills training, and make wage-earning opportunities available to them;

x) Provide for informed and active consent and participation of refugee women in individual decisions about durable solutions for them;

xi) Ensure that resettlement programmes make special provisions for refugee women at risk.

b) Invites UNHCR to develop comprehensive guidelines on the protection of refugee women as a matter of urgency in order to give effect to its policy on refugee women as contained in document A/AC.96/754.

EXCOM Conclusion No. 73 (XLIV) - 1993
Refugee Protection and Sexual Violence
No. 73 (XLIV) - 1993

REFUGEE PROTECTION AND SEXUAL VIOLENCE

The Executive Committee,

Noting with grave concern the widespread occurrence of sexual violence in violation of the fundamental right to personal security as recognized in international human rights and humanitarian law, which inflicts serious harm and injury to the victims, their families and communities, and which has been a cause of coerced displacement including refugee movements in some areas of the world.

Noting also distressing reports that refugees and asylum-seekers, including children, in many instances have been subjected to rape or other forms of sexual violence during their flight or following their arrival in countries where they sought asylum, including sexual extortion in connection with the granting of basic necessities, personal documentation or refugee status,

Recognizing the need for concrete action to detect, deter and redress instances of sexual violence to effectively protect asylum-seekers and refugees, Recognizing further that the prevention of sexual violence can contribute to averting coerced displacement including refugee situations and to facilitating solutions,

Stressing the importance of international instruments relating to refugees, human rights and humanitarian law for the protection of asylum-seekers, refugees and returnees against sexual violence, against sexual violence,

Bearing in mind the draft Declaration on the Elimination of Violence against Women adopted by the Commission on the Status of Women as well as other measures being taken by the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women, the Commission on Human Rights, the Security Council and other bodies of the United Nations to prevent, investigate and, as appropriate, according to their mandates, punish sexual violence,

Reaffirming its Conclusions No. 39 (XXXVI), No. 54 (XXXIX), No. 60 (XL) and No. 64 (XLI) concerning refugee women,

(a) Strongly condemns persecution through sexual violence, which not only constitutes a gross violation of human rights, as well as, when committed in the context of armed conflict, a grave breach of humanitarian law, but is also a particularly serious offence to human dignity;

(b) urges States to respect and ensure the fundamental right of all individuals within their territory to personal security, inter alia by enforcing relevant national laws in compliance with international legal standards and by adopting concrete measures to prevent and combat sexual violence, including:

(i) the development and implementation of training programmes aimed at promoting respect bylaw enforcement officers and members of military forces of the right of every individual, at all times and under all circumstances, to security of person, including protection from sexual violence,

(ii) implementation of effective, non-discriminatory legal remedies including the facilitation of the filing and investigation of complaints against sexual abuse, the prosecution of offenders,

and timely and proportional disciplinary action in cases of abuse of power resulting in sexual violence,

(iii) arrangements facilitating prompt and unhindered access to all asylum-seekers, refugees and returnees for UNHCR and, as appropriate, other organisations approved by the Governments concerned, and

(iv) activities aimed at promoting the rights of refugee women, including through the dissemination of the Guidelines on the Protection of Refugee Women and their implementation, in close cooperation with refugee women, in all sectors of refugee programmes;

(c) Calls upon States and UNHCR to ensure the equal access of women and men to refugee status determination procedures and to all forms of personal documentation relevant to refugees freedom of movement. welfare and civil status, and to encourage the participation of refugee women as well as men in decisions relating to their voluntary repatriation or other durable solutions;

(d) Supports the recognition as refugees of persons whose claim to refugee status is based upon a well-founded fear of persecution, through sexual violence, for reasons of race, religion, nationality, membership of a particular social group or political opinion;

(e) Recommends the development by States of appropriate guidelines on women asylum-seekers, in recognition of the fact that women refugees often experience persecution differently from refugee men;

(f) Recommends that refugee victims of sexual violence and their families be provided with adequate medical and psycho-

social care, including culturally appropriate counselling facilities, and generally be considered as persons of special concern to States and to UNHCR with respect to assistance and the search for durable solutions;

(g) Recommends that in procedures for the determination of refugee status, asylum-seekers who may have suffered sexual violence be treated with particular sensitivity;

(h) Reiterates the importance of ensuring the presence of female field staff in refugee programmes, including emergency operations, and the direct access of refugee women to them;

(i) Supports the High Commissioner's efforts, in coordination with other intergovernmental and non-governmental organisations competent in this area, to develop and organize training courses for authorities, including camp officials, eligibility officers, and others dealing with refugees on practical protection measures for preventing and responding to sexual violence;

(j) Recommends the establishment by States of training programmes designed to ensure that those involved in the refugee status determination process are adequately sensitized to issued of gender and culture;

(k) Encourages the High Commissioner to pursue actively her efforts, in cooperation with bodies and organisations dealing with human rights, to increase awareness of the rights of refugees and the specific needs and abilities of refugee women and girls and to promote the full and effective implementation of the Guidelines on the Protection of Refugee Women;

(l) Calls upon the High Commissioner to include the issue of sexual violence in future progress reports on the implementation of the Guidelines on the Protection of Refugee Women;

(m) Requests the High Commissioner to issue as an Executive Committee document and disseminate widely the Note on Certain Aspects of Sexual Violence against Refugee Women.

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