STOWAWAY ASYLUM – SEEKERS AND THE PRINCIPLE OF NON- REFOULEMENT

32. The problem posed by stowaway asylum-seekers has been a recurring protection concern for the international community over the last decade in particular in the South-East Asian region. As with other asylum-seekers, the immediate task with respect to stowaway asylum-seekers consists in providing initial protection through their admission into the territory of a State where their refugee status can be determined.

33. Obtaining agreement by States as to where a stowaway asylum-seeker should disembark is, however, no simple task. A typical stowaway incident involving asylum-seekers will concern several States, including the State of embarkation, the flag State of the ship involved, the first and subsequent port States visited by the ship following discovery of the stowaway and any State where the individual may have significant contacts. Some States hold that flag States have the ultimate duty to accept responsibility for stowaway asylum-seekers; others contend that this duty lies with the State where the first port of call is situated; yet other States favour *ad hoc* solutions depending upon the particular circumstances of each incident. As a result of disagreement between States over which of them is responsible for admitting the stowaway asylum-seekers, so-called orbit situations are created. In several such situations, stowaway asylum-seekers have been confined for many weeks and even months on board ships travelling from one port to another.

34. International maritime law provides no definite principles governing the protection of stowaway asylum-seekers. Of relevance is the International Convention Relating to Stowaways which was adopted by the Diplomatic Conference of Maritime Law at its session in 1957.

35. Although not yet a source of legal obligation, the Convention is important nevertheless, as evidence of a measure of States' agreement on relevant principles. It only offers a detailed framework for allocating the responsibility for stowaways among States and recognizes expressly the special dangers faced by stowaways fleeing persecution.

36. The Convention expresses special concern for stowaways who are asylum-seekers. Paragraph 2 of Article 5 requires the ship's Master and authorities at the port of embarkation to "take into account the reasons which may be put forward by the stowaway for not being disembarked at, or returned to, those ports or States mentioned in this Convention". Paragraph 3 of the same Article further provides that,"The provisions of this Convention shall not in any way affect the power or obligation of a contracting State to grant political asylum".

37. Read together, these provisions acknowledge the particular situation of stowaways who are also asylum-seekers and they underline that, in relation to these persons, States have broader obligations including *non-refoulement* under general international law.

38. As stated earlier, the principle of *non-refoulement* is now a part of customary international law, binding upon all States independently of specific assent. Rejection at the frontier is increasingly recognized as constituting *refoulement* where it leads to expelling or returning persons to the frontiers of a territory where their life or freedom would be threatened.

39. If the flag State disclaims any responsibility for the stowaway and the ship's next port of call is in a State where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a social group or political opinion, the practical effect of disclaiming responsibility and refusing admission is *refoulement*. The problem of *refoulement* will become increasingly acute when a flag State continues to disclaim responsibility for the stowaway asylum-seekers and refuse to allow disembarkation. Where disembarkation is the only alternative to *refoulement*, both port and flag States have an unequivocal duty to prevent the latter from occurring. How best this can be achieved will depend upon the circumstances, but more than not, it will be through disembarkation at the first port of call.

40. The Executive Committee of the UNHCR at its 39th Session held in 1988 (No. 53 (XXXIX), noted that "there are at present no general and internationally recognized rules dealing specifically with stowaway asylum-seekers and at the same time recognizing that asylum-seekers should be given the special consideration that their situation demands;" recommended that States and UNHCR take into account the following guidelines when dealing with actual cases of stowaway asylum-seekers, *inter alia* that the stowaway asylum-seekers must be protected against forcible return to their country of origin"(*refoulement*).

BANGKOK PRINCIPLES AND PRINCIPLE OF NON-REFOULEMENT

41. The Bangkok Principles in its Article III, paragraph 3, provides that :

> "No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the population, 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 intergrity or liberty in that territory."

42. The striking difference between the provision of the Bangkok Principles and the 1951 Geneva Convention is that the Bangkok Principles reiterates the phrase "well-founded fear of persecution" in a situation like *refoulement*. But on the other hand the Geneva Convention 1951 does not provide the scope for a refugee to substantiate its objective-cum-subjective "well-founded fear of persecution" at the time of expulsion.

43. That means to claim a refugee status a person has to provide substantial evidence that he or she possess "well-founded fear of persecution", under Article 1A(2) of the Convention. But in the case of expulsion or

deportation under Article 33, a different standard has to be evolved to determine his state of life or freedom on account of his race, religion, nationality, membership of a particular social group or political opinion.

44. This dual standard of treatment has also been reflected in the US Immigration and Nationality Act, 1952. This fundamental difference was raised at the Supreme Court of the United States in the *INS* V. *Cardoza-Fonseca* case.

45. Section 243(h) of the US Act provides that the Attorney General can withhold deportation of an alien who demonstrates that his "life or freedom would be threatened" thereby on account of specified factors. The above-quoted phrase requires a showing that "it is more likely than not that the alien would be subject to persecution" in the country to which he would be returned. In contrast S. 208(a) of the same Act authorises the Attorney General in his discretion, to grant asylum to a "refugee" who, under S. 101(a) (42) (A) of the Act, is unable or unwilling to return to his own country because of persecution or "a well-founded fear" thereof on account of particular factors.

46. In the *INS V. Cardoza-Fonseca* deportation hearing the Immigration Judge applied S. 243(h) "more likely than not" proof standard to her S 208(a) asylum claim, holding that she had not established "a clear probability of persecution" and therefore was not entitled to relief. The Board of Immigration Appeals (BIA) affirmed, but the Court of Appeals for the Ninth Circuit reversed the decision. The Court of Appeals stated that S. 208(a)'s "well-founded fear" standard is more generous than the S. 243(h) standard in that it only requires asylum applicants to show either past persecution or "good reason" to fear future persecution.

47. The Supreme Court of the United States held in this case that there are two sets of standards for determination. The S. 243(h) "clear probability" standard of proof does not govern asylum applications under S. 208(a) of the US Act. The Court further stated that the plain meaning of the statutory language indicates a Congressional intent that the proof of standards under S. 208(a) and S. 243(h) should differ. S. 243(h)'s "would be threatened" standard has no subjective component, but in fact requires objective evidence that it is more likely than not that the alien will be subject to persecution upon deportation. In contrast S. 208(a)'s reference to "fear" makes the asylum eligibility determination turn to some extent on the alien's subjective mental state, and the fact that the fear must be "well-founded" does not transform the standard into a "more likely than not" one. Moreover, the different emphasis of the two standards is highlighted by the fact that, although Congress simultaneously drafted S. 208(a)'s new standard and amended S. 243(h), it left S. 243(h)'s old standard intact. Thus the legislative history demonstrates the congressional intent to provide different standards to be applied under S. 208(a) and S. 243(h) respectively.

48. Here it may be added that due to the drafting difference in Article 1A(2) and Article 33(2) of the 1951 Geneva Convention dual standard of

treatment has come into practice. The standard which may be applied in case of granting asylum or refugee status may not be the same while considering deportation of an "illegal alien".

49. On the other hand, as may be observed, the Bangkok Principles has maintained the consistency by incorporating the phrase "well-founded fear of persecution" in Article III while dealing with *non-refoulement*.

50. It may be observed that the Bangkok Principles use the phrase "should" in the text of the paragraph. On the use of the word "should" one of the member countries at the Eighth Session held in Bangkok (1966), stated that it connotes a moral obligation and not a legal obligation and added that a moral obligation or a moral compulsion will affect certainly the legal rights set out in Article III. However, the fact that there is ambiguity in regard to interpretation of the word "should" cannot be denied. It may be interesting to note that in the corresponding provisions contained in Article 33 of the 1951 Geneva Convention, Article 3 of the UN Declaration on Territorial Asylum (1967), paragraph 3 of Article II of the OAU Convention on Refugees, or paragraph 2 of the 1967 Resolution on Asylum to Persons in Danger of Persecution of the Council of Europe, the word used is "shall" which is unambiguously mandatory.

51. It may be added that at the Committee's Eleventh Session held in Accra (Ghana) in 1970, an amendment was mooted to make the provisions of paragraph 3 of Article III mandatory for the States, by substituting the word "shall" for the word "should", but it was not adopted by the Committee.

CONCLUSIONS

52. While the principle of *non-refoulement* is universally recognized, the danger of *refoulement* could be more readily avoided if the States concerned accepted a formal legal obligation defined in international instruments, such as the 1951 Geneva Convention and its 1967 Protocol. States that have not yet acceded to these instruments should nevertheless apply the principle of *non-refoulement* in view of its universal acceptance and fundamental humanitarian importance.

53. In the field of *non-refoulement*, particular regard should be given to the fact that a determination of refugee status is only of a declaratory nature. It should not, therefore, be assumed that merely because a person has not been formally recognized as a refugee, he/she does not possess the refugee status and, therefore, not protected by the principle of *non-refoulement*.

(iii) SECRETARIAT STUDY ON THE ESTABLISHMENT OF A SAFETY ZONE IN THE COUNTRY OF ORIGIN FOR THE DISPLACED PERSONS

INTRODUCTION

1. The humanitarian problem of refugees has always had international dimensions since there is always the potential to endanger international peace and security. It is, therefore, desirable that any refugee problem should be tackled and solved by the international community at large. During the past four decades the entire Asian and African region has witnessed numerous refugee situations which account for the growing concern of nations for the well being of those who are forced to leave their homeland. Millions of refugees have crossed international borders for their security. In some cases the situations are so volatile that at any moment mass exodus might take place. Although there are numerous studies on the root cause of the refugee problem, the situation of mass exodus remains endemic. Many States are, therefore, forced to bear the brunt of the refugee problem of admitting thousands of them into their territory and granting them asylum.

2. The root causes of mass exodus or expulsions are several; it would be noticed that in some cases, people have sought refuge in other countries due to natural disasters like famines, droughts, floods, earthquakes and other economic reasons. However, in the vast majority of cases, whether it be in the Southern Africa, South-Asia, South-East Asia, Middle East or Central America, the causes leading to the mass exodus of populations have primarily been due to armed conflicts, foreign interventions, aggression, illegal occupation, policy of *apartheid*, civil wars or situation akin to civil war besides persecution of political opponents or ethnic or religious minorities by regimes in power or authority in the country of origin. In most of these situations, people have left their homeland out of desperation, often in isolation or in disorganized groups to avert imminent danger. Some had failed in the attempt, others have crossed the frontier only to be forcibly pushed back. The majority, however, have found refuge in a hospitable neighbouring land while others have been fortunate to be resettled in developed countries with favourable opportunities often far beyond their frontiers.

3. The refugee problem has come to assume such proportions that not only the host countries but also the international community has found itself over-strained to the utmost. While States have an international obligation to prevent the creation of an environment which would generate refugee situations, nevertheless the influx of refugees to neighbouring countries creates numerous socio-economic and political problems. While States have a duty not to create a situation within their territory which could harm other States, they also have responsibility for conditions in their territory which lead to the infliction of harm on other States.

4. Nevertheless in reality, the countries which happen to be geographically so situated as to have a common border within easy reach, either by land or by sea, from the countries where refugee situations are recurrent or a continuing factor, have had to bear a heavy burden due to the influx of

refugees. This poses for them a major social and economic burden in the case resettlement of an alien population. The sudden influx of refugees may indeed result in destabilization of the economy of the State of asylum. Often the socio-economic situation of the State of asylum is not much better than that of the State of origin of refugees. The individuals who seek asylum too, face many problems and hardships after entering a foreign and sometimes hostile territory. Due to differences of language, culture, religion, climate and habits, the refugees may be faced with unending difficulties in the State of asylum or in the State of resettlement.

THE CONCEPT OF SAFETY ZONES

5. The theme of the proposal on Safety Zone was that the State of origin, particularly where refugee situations are a constant and recurrent phenomenon due to foreign aggression, civil war or a situation akin to civil war and destabilization, might be called upon to designate a specific geographical area as a 'safety zone' of a temporary nature, so as to help in an orderly movement of persons intending to leave.

6. The concept of safety zone essentially has the following fundamental ingredients : it has to be with the consent of the State of origin and it should be of a temporary nature.

7. The main purpose behind the establishment of such zone is to have an orderly movement of persons intending to leave. It may even help to reduce the outflow because it is quite conceivable that the situation creating the flow would change in the meantime, and thus eliminate the cause of mass exodus. Moreover, the orderly movement would not only ensure that the refugees find a place for a safe refuge but it would also enable the neighbouring States as well as countries willing to grant them permanent asylum, to plan and process their reception in regulated stages and in a manner conducive to their well being.

8. It would, however, be difficult in the present state of international law to contemplate the creation of a 'safety zone' under the control or even supervision of an outside authority. The idea of creation of a safety zone, however, needs to be looked at as another possible avenue to tackle the issue. While there are weighty considerations to support the concept, norms have to be developed through international efforts whereby the establishment of safety zones should be accepted as much as a part of humanitarian principles as the rights and duties of the State of asylum are currently accepted. If the international community has been prepared to accept the rights and duties of a State of asylum, there should be no reason why the State of origin should not accept the establishment of a properly regulated safety zone on humanitarian basis. Such a zone should, however, be consensual and not imposed.

STATUS OF THE PERSON SEEKING ASYLUM IN THE SAFETY ZONE

9. Article 1A(2) of Convention relating to the Status of Refugees (1951), defines a person as a refugee who 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...." If the safety zone is to be established within the country of origin and the asylum seekers are provided refuge therein, under the provisions of Article 1, the asylum seekers would not be "refugees". Thus the role of the UNHCR to provide material and other reliefs would not seem to be applicable. Such asylum seekers in the safety zones could only be 'displaced persons' over whom the UNHCR has somewhat restrictive and *ad hoc* mandate.

10. In practice when the situation warrants, as observed after the recent Gulf War when the Kurdish people's outflow started, the UNHCR has been very much present within Iraq to provide material relief to the Iraqi Kurds. Thus there should not be insurmountable difficulties for international organizations or UNHCR to grant the necessary relief in such situations.

THE ISSUE OF DOMESTIC JURISDICTION

11. It would be perhaps difficult in the present state of international law to contemplate the creation of a safety zone under the control or even supervision of outside authorities. Without the consent of the government in power, such an innovation might be tantamount to interference in the internal affairs of the State. Thus the AALCC has always emphasized that any safety zone has to be established with the consent of the State of origin. The exception to Article 2(7) of the Charter of the United Nations on non-interference in the domestic affairs of State authorises the United Nations to undertake enforcement measures under Chapter VII which deals with "Action with respect to threats to the peace, breaches of the peace and acts of aggression" (Articles 39-51).

12. Dealing with the history of the drafting of the U.N. Charter, Goodrich and Hambro expressed the following view "In the course of discussion at San Francisco it was amphasized that this (paragraph) is not a technical and legalistic formula. Whereas Article 15(8) of the League Covenant and pargraph 7 of Chapter VIII, Section A of the Dumbarton Oaks Proposals had included a reference to international law as the standard of interpretation, the substitute proposal of the sponsoring Governments at San Francisco contained no such reference. Proposals to include a reference to international law were resisted on the grounds that in any case the intention of the new paragraph was not to establish a legalistic formula but rather a general principle. On the other hand, it was agreed that the inclusion of a reference

to international law was unnecessary since the paragraph, being part of an international agreement, would be interpreted by reference to international law in any case.[1]

13. However, the flexibility of the provision and the assumption in practice that it does not override other potentially conflicting provisions have resulted in the erosion of the reservation of domestic jurisdiction though its draftsmen had intended its reinforcement.

14. Practice to date has evidenced a lack of general agreement on whether the principle of this paragraph is to be regarded primarily as a legal limitation or a political principle. Arguments with respect to the interpretation of the paragraph have very often been legalistic in content. In practice, however, the United Nations organs, particularly on the basis of Chapters IX and XI of the Charter and the provisions on human rights in Articles 55 and 56, have taken action on a wide range of topics dealing with the relations of governments with their own people.[2] Though the question of competence when raised before the organs of the United Nations has not as a rule been explicitly decided, the organs concerned have taken decisions which have clearly implied determinations of the preliminary question. The usual practice, however, has been to circumvent the issue rather than face it directly. Resolutions on breaches of human rights, the right of self-determination, *apartheid* and colonialism, and non-self-governing territories have been adopted regularly.

15. Brownlie is very specific with respect to paragraph 7 that "the domestic jurisdiction reservation does not apply if the United Nations agency is of the opinion that a breach of a specific legal obligation relating to human rights in the Charter itself has occurred".[3]

16. Article 2(7) has also been invoked during the consideration by organs of the United Nations on questions of human rights. In the case of South Africa the General Assembly appears to conclude that a matter relating to the treatment of nationals was not essentially within the domestic jurisdiction of a State if it impairs friendly relations between States and if there is a question of the violation of international obligations.[4]

Concluding their discussion on Article 2(7), Goodrich and Hambro observe that :

> "the Charter text, the discussions at San Francisco, and the practice of the United Nations to date do not give any very satisfactory indication of the exact meaning of Article 2(7) on the role it is going to play in the development of the Charter system. While on the one hand it has on a number of occasions been invoked in support of restrictive interpretation of the Charter and the functions and activities of the United Nations, it has not thus far proved to be a serious limitation upon the actual work of the United Nations as was feared by some in the beginning .... The practice of the United Nations makes it clear, as indeed does the phraseology of Article 2(7), that the word 'intervention' as used in the paragraph is not to be given a narrow technical interpretation .... In its advisory opinion, the PCIJ in the case of *Nationality Decrees in Tunis and Morocco* held that the rule of international law (provides) that a matter ceases to be within the domestic jurisdiction of a State if its substance is controlled by the provisions of international law, including international agreements. In a sense it could be argued that this is the only valid test."[5]

17. Thus it could be concluded that there is no justification on the part of the State of origin to invoke Article 2(7) particularly where there is a violation of human rights since such a situation may pose a threat to international peace and security.

18. It might be argued that the UNHCR, an organ of the United Nations, becomes directly involved wherever a refugee situation arises. Perhaps the UNHCR should get involved even at the pre-outflow stage of refugees, particularly when people start moving out due to internal situation.

THE CONCEPT OF SAFETY ZONE VIS-A-VIS THE RIGHT TO FREEDOM OF MOVEMENT AND RIGHT TO SEEK ASYLUM

19. The concept of safety zone as such could be detrimental to fundamental principles such as the right to seek and enjoy in other countries asylum from persecution, the right to leave and return to one's country or the right to freedom of movement as enshrined in the Universal Declaration of Human Rights.[6]

20. Article 13 of the Universal Declaration of Human Rights states :

(i) Every one has the right to freedom of movement and residence within the borders of each State.

(ii) Every one has the right to leave any country, including his own, and to return to his country.

21. Article 13, however, does not explicitly grant an individual the right to enter any other country. Thus under the freedom of movement provisions no individual can enjoy unrestricted right to enter any country, other than

1 L.M. Goodrich and E. Hambro. *Charter of the United Nations : Commentary and Documents*" (Boston, 1949), p. 113.

2 Ian Brownlie—*Principles of Public International Law*, Third Edition (1979), p. 294.

3 *Ibid.*, p. 552-53.

4 UN General Assembly Resolution adopted — during the Second Part of its First Session .... Doc/A/64/Add. 1, p. 69.

5 Goodrich & Hambro, *op. cit.*, n. 4, p. 210.

6 Adopted and proclaimed by the UN General Assembly Resolution 217A (111) of 10 December 1948.

his own. There are established procedural formalities for seeking permission to enter a foreign country by an alien. Even the right to leave any country, particularly his own, often cannot be enjoyed absolutely. It is a fact that almost all countries have specific rules and procedures, such as requirement of passport, health documents etc. not to mention exit permits in many countries, which the individual must comply with.

22. The main purpose behind the establishment of a safety zone is to provide immediate relief such as protection, security, shelter, food and medicare, besides organizing orderly movement of persons intending to leave. If a safety zone is established within the State of origin, which would be temporary in nature, it would not necessarily infringe upon an individual's right to freedom of movement. An individual's uppermost concern in such situations would be to have safety and security, which a safety zone could provide, rather than exercising the right to freedom of movement which in the circumstances could be problematic. The rationale behind the creation of a safety zone need not be seen as the restriction of the right of freedom of movement of an individual, but rather to regulate such freedom so as to avoid possible fear of further persecution.

23. The fear has also been expressed that the concept of safety zone could possibly undermine the right to seek and enjoy in other countries asylum from persecution. Here it may be recalled that the right to seek asylum of an individual is neither absolute nor unrestrictive. It depends largely on the discretion of a sovereign State. This is borne out by the Universal Declaration of Human Rights particularly in Article 14 which provides :

(1) Everyone has the right to seek and enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

24. Further, the United Nations Declaration on Territorial Asylum of 14 December 1967 provides :

Article 1

(1) Asylum granted by a State in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

(2) The right to seek and to enjoy may not be invoked by any person with respect to whom there are serious reasons for considering that 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.

(3) It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

Article 3

(2) Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

(3) Should a State decide in any case that exception to the principle stated in paragraph 1 of this Article would be justified, it shall consider the possibility of granting to the person concerned under such conditions as it may deem appropriate an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

25. The Bangkok Principles (1966) adopted by the Asian-African Legal Consultative Committee further provide that :

Article III

Asylum to a Refugee

(1) A State has the sovereign right to grant or refuse asylum in its territory to a refugee.

(2) . . . . . .

(3) No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the population 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.

26. The Universal Declaration of Human Rights thus states the right of an individual to seek and enjoy asylum with some exceptions. It may be observed that the Declaration does not provide it to be an absolute right of an individual. On the contrary the Declaration on Territorial Asylum and the Bangkok Principles provide that the grant or refusal of asylum is a sovereign act. Thus from the above analysis a conclusion may be drawn that an individual can exercise his right to seek and enjoy asylum with some limitations.

27. The purpose of a safety zone is to provide interim relief and the individuals residing within the safety zone always have the right to seek asylum in any country through orderly departure programme. They can also exercise the option to return to their original habitual place of residence when the situation permits. Thus the concept of safety zone does not necessarily amount to the curtailment of the right of an individual to seek and enjoy asylum.

THE STATUS OF THE SAFETY ZONE

28. The legal status of a safety zone depends directly on how it is established. What the scheme of this paper advocates is that such a zone should only be established with the consent of the State of origin. Such a safety zone should be treated *at par* or akin to a demilitarized or neutral zone, which shall be immune from all hostilities and hostile acts. Thus such a zone should be similar to a neutralized zone as envisaged in Article 15 of the Geneva Convention (1949) and expanded by Article 60 of its Protocol – I.

29. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 provides as follows :

Article 14

In time of peace, the High Contracting Parties and, after the outbreak of hostilities the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospitals and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospitals and safety zones and localities.

Article 15

Any party to the conflict may, either directly or through a neutral State or some humanitarian organization, propose to the adverse party to establish in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction :

(a) Wounded and sick combatants or non-combatants.

(b) Civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and duration of the neutralization of the zone.

30. The Protocol – I additional to the Geneva Convention of 1949 provides :

Article 60

Demilitarized Zones

1. It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement.

2. The agreement shall be an express agreement which may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian organization, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peace time, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, if necessary, lay down the methods of supervision.

3. The subject of such an agreement shall normally be any zone which fulfils the following conditions :

   (a) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;

   (b) no hostile use shall be made of fixed military installations or establishments;

   (c) no acts of hostility shall be committed by the authorities or by the population; and

   (d) any activity linked to the military effort must have ceased.

   The Parties to the conflict shall agree upon the interpretation to be given to the condition laid down in subparagraph (d) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.