

solutions; and (d) burdensharing. The meeting held extensive discussions in particular on the agenda item 'definition of refugees' in the light of recommendations made at the Manila Seminar. As directed, the Secretariat has prepared a comprehensive summary record of the discussions. The 'draft' will be sent to the participants in the Expert Group Meeting with a view to invite their comments. Once these comments are received, the Secretariat will prepare the final record as well as an in-depth study as recommended by the Expert Group Meeting. A paper containing revised proposals for the Bangkok Declaration has also been included in this study. This has been prepared taking into account the recommendations of the Manila Seminar and the views expressed at the Expert Group Meeting in Tehran.

Proposals Submitted At The Experts Group Meeting In Tehran

1. Egypt

The Delegation of Egypt proposed that an expanded definition should include in its "exceptions" part the "crime of terrorism". Moreover, the crime of terrorism should also be considered as one of the reasons for the loss of status as refugee.

2. Ghana

The Delegate of Ghana proposed a definition of refugee as follows: 'A. refugee is a person who.... is outside the country of his nationality and is unwilling or cannot, for the time being, return to his home country because his life, freedom or personal security would be at risk there; the risks emanating from a pattern of persecution on account of race, religion, nationality, membership of a particular social group or political opinion and/or from generalized violence (international war, internal armed conflict, foreign aggression or occupation, severe disruption of public order) or from massive violations of human rights in the whole or part of the country of nationality'.

3. Uganda

The Delegate of Uganda proposed to include 'colour' in the definition

of refugees i.e. "persecution as result of colour ethnicity..." etc.

4. Islamic Republic of Iran

Proposal made by the Delegate of the Islamic Republic of Iran concerning Article IV (right to return).

Taking into consideration that voluntary repatriation constitutes a right of the refugee, the importance of strengthening, extending and promoting the ways and means to facilitate conditions for voluntary return should be emphasized.

Revised Proposals for "Bangkok Principles"¹

I. The Refugee Definition

Article I

Definition of the term "refugee"

1. A refgee is a person who, owing to persecution or a well-founded fear of persecution for reasons of race, colour, *nationality*, *ethnic origin*², *political opinion*³ membership of a particular social group:

¹ In this draft, the parts in regular characters are from the Bangkok Principles, their *Exception, Explanations, Notes, and Addenda*. The texts in italics come from other sources, including recommendations of the Manila Seminar or the Tehran Meeting of Experts, and provisions of other international instruments. All sources other than Articles of the Bangkok Principles are *specified* in footnotes.

² Both the Manila Seminar and Tehran Meeting of Experts strongly recommended adding the ground of "nationality". The Tehran Meeting of Experts recommended "ethnic origin".

³ The term "opinion" is used in all the other international refgee definitions, instead of "belief".

(a) leaves the State of which he⁴ 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; and⁵

(b) being outside of such a State or Country, is unable or unwilling to return to it or to avail himself of its protection.

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation foreign domination or event 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.⁶

3. 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 of which he is a habitual resident, at the time of the events which caused him to have a well founded fear of the above-mentioned persecution, and is unable or unwilling to return or to avail himself of its protection shall be considered a refugee.⁷

⁴ It may be preferable in these times to use, whenever appropriate, the formulas "he/she" and "his/her".

⁵ Recommended as a substitute for "or" in Note (iv) to Art. I of the Bangkok Principles: this is also consistent with all other international refugee definitions.

⁶ Art. 1 (2) of the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa. This addition was recommended both at the Manila Seminar and at the Tehran Meeting of Experts. This paragraph also reflects Note (ii) to Art. I of the Bangkok Principles which refers to "invasion" and occupying" of the State of origin, and para. 1 of the 1970 Addendum to the Bangkok Principles, which lists "foreign domination, external aggression or occupation". In conformity with the discussions at the Tehran Meeting of Experts, it does not include the formula of the 1983 Cartagena Declaration on Refugees which refers to "generalized violence, [...] internal conflicts, massive violation of human rights [...]" One participant at the Tehran Meeting of Experts was unfavourable to an expansion of the definition.

⁷ Note (vi) to Art. I of the Bangkok Principles.

4. The dependents of a refugee shall be deemed to be refugees.⁸

5. 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.⁹

6. A refugee shall lose his status as refugee if:¹⁰

(i) he voluntarily returns to the State of which he was a national, 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;

*it being understood that*¹¹ at the loss of status as a refugee under this sub¹² paragraph will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality¹³; or

(iii) he voluntarily acquires the nationality of another State or Country and is entitled to the protection of that State or Country; or

[iv] [...] 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.

⁸ Explanation of Art. I of the Bangkok Principles.

⁹ Exception (I) to Art. I of the Bangkok Principles.

¹⁰ This paragraph is Art. II (Loss of Refugee Status) of the Bangkok Principles, the latter's cessation provisions, with some modifications derived from the Notes to the same Article and from the 1951 Convention.

¹¹ Stylistic Addition.

¹² Idem.

¹³ This sentence is derived from Note (ii) to Art. II of the Bangkok Principles.

*Provided that this paragraph shall not apply to a refugee [...] 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.*¹⁴

7. A person¹⁵ who, prior to his admission into the Country of refuge, has committed a crime against peace, a war crime against humanity as defined in international instruments drawn up to make provisions in respect of such crimes¹⁶ or a serious non-political crime out-side his country of the refuge prior to this admission to that country as a refugee¹⁷, or has committed acts country acts to the purposes and principles of the United Nations, shall not be a refugee.

¹⁴ Art. 1 C(5) of the 1951 Convention. This sub-paragraph usefully complements the rest of the text, the core of which is protection, as repeatedly indicated at the Tehran Meeting of Experts. It is also consistent with the recommendation of a participant at the Tehran Meeting that the chances justifying cessation of refugee status should be of a fundamental nature.

¹⁵ This paragraph is derived from Exception (2) of the Bangkok Principles. It is a set of Exclusion clauses recommended at the Tehran Meeting of Experts. The text is modified to correspond to the formulations of existing universal and regional instruments on refugees, as specified below. One participant proposed a specific reference to terrorism as a ground for exclusion. It was pointed out that, if properly applied, the exclusion clauses as stated in this paragraph and indeed in all the major international refugee instruments, should exclude a terrorist. While the problem of terrorism is not to be denied, it was deemed important to avoid giving the erroneous impression that all refugees are terrorists, which would in turn undermine the institution of asylum.

¹⁶ Art. 1(5)(a) of the OAU Convention and Art. 1 F(a) of the 1951 Convention.

¹⁷ Art. 1(5)(b) of the OAU Convention and Art. 1 F(b) of the 1951 Convention.

II. Asylum and Treatment of Refugees

Article III

Asylum to Refugee

1. *Everyone, without any distinction of any Kind is entitled to the right to seek and to enjoy in other countries asylum from persecution.*¹⁸

2. *A State has the sovereign right to grant or to refuse asylum in its territory to a refugee in accordance with its international obligations and national legislation.*¹⁹

3. *The grant of asylum to refugees is a peaceful and humanitarian act²⁰ It²¹ shall be respected by all other States and shall not be regarded as an unfriendly act.*

4. *Member States 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.*²²

¹⁸ Para. 23 of the 1993 Vienna Declaration on Human Right. An alternative formulation might be: "Everyone has the right to seek and to enjoy in other countries asylum from persecution[...]." (Art. 14(1) Universal Declaration of Human Rights).

¹⁹ This insert was recommended by the Manila Seminar and amended by the Tehran Meeting of Experts from "domestic" to "national". One participant also proposed placing the word "its" in front of "national".

²⁰ Art. II (2) of the OAU Convention and the preamble of the United Nations Declaration on Territorial Asylum.

²¹ Stylistic substitution.

²² Art. II (1) of the OAU Convention. This proposed paragraph would indeed reflect the positive State practice in the Afro-Asian region in the past three decades.

Non-refoulement

1. No one seeking asylum in accordance with these principles shall be subjected to measures such as rejection at the frontier, return or expulsion which would result in his life or freedom being threatened on account of his race, religion, nationality, ethnic origin,²⁴ membership of a particular social group or political opinion.²⁵

2. The provision as outlined above may not however be claimed by a person when there is reasonable ground to believe the person's presence is a danger to the security of the country in which he is, or whom having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.²⁶

3. 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 it may deem appropriate, to enable the person thus endangered to seek asylum in another country.²⁷

²³ The Manila Seminar propose removing para. 3 from Art. III of The Bangkok Principles and making it into a separate Article in two paragraphs, as per the first two paragraphs below. The third paragraph below is actually para. 3 of Art. III of the Bangkok Principles.

²⁴ The addition of "ethnic origin" in the *non-refoulement provision* was recommended at the Tehran Meeting of Experts. It is in any case consistent with the grounds in the refugee definition.

²⁵ Rephrasing of Art. III as per footnote (22) above.

²⁶ *Idem*.

²⁷ Para 3 of Art. III as per footnote (22) above.

Minimum standards of treatment

1. A State shall accord to refugees treatment no less favourable than that generally accorded to aliens in similar circumstances, *with due regard to basic human rights as recognised in generally accepted international instruments.*²⁸

2. The standard of treatment referred to 'in *paragraph I*²⁹ shall include the rights relating to aliens contained in the Final Report of the Committee on the status, of aliens, to the extent 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 or the Country of nationality of the refugee or, if he is stateless, the state or Country of his former habitual residence.

²⁸ Insert recommended by the Manila Seminar. At the Tehran Meeting of Experts, one participant suggested substituting "as regards" for "with due regard". No explanation was given. Another proposed substituting "international human rights conventions" for "generally, accepted international instruments." One participant in the Meeting of Experts complained that refugees were sometimes given a higher standard of treatment than nationals. Another doubted this, pointing out that the rules of operation were precisely, not to give the refugees higher treatment than the locals. On the contrary, the services made available to refugees in a given area are often extended, as necessary, to internally, displaced persons and the local population as well.

²⁹ As this is a restatement of para. 2 of this Art. VI, it had to be rephrased accordingly.

5. States undertake to apply these principles to all refugees without distinction as to race, religion, nationality, ethnic origin, gender, membership of a particular social group or political opinions, in accordance with the principle of non-discrimination.³⁰

6. States shall adopt effective measures for improving the protection of refugee women and, as appropriate, ensure that the needs and resources of refugee women are fully understood and integrated to the extent possible into their activities and programmes.³¹

7. States shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present principles and in other international human rights instruments to which said States are Parties.³²

8. States shall give special attention to the protection needs of elderly refugees to ensure not only their physical safety, but also the full exercise of their rights, including their right to family reunification. Special attention shall also be given to their assistance needs, including those relating to social welfare, health and housing.

³⁰ Derived from Art. IV of the OAU Convention and Art. 3 (partially,) of the 1951 Convention. The grounds of "ethnic origin" and "gender" are added to reflect current international standards, the latter reflecting Art. 18 of the Vienna Declaration on Human Rights and foreshadowing the next paragraph. This clause reflects recommendation (d) of the Manila Seminar under "Points for Further Review".

³¹ See para. (a) of UNHCR Executive Committee Conclusion No. 64 (XL1) on Refugee Women and International Protection. At the Tehran Meeting of Experts, during the discussion of a possible provision on women, children and elderly refugees, one participant proposed a general provision on vulnerable groups as an alternative to, a separate one on each such group as in paragraphs 8, 9 and 10.

³² Art. 22 (1) of the 1989 Convention on the Right of the Child.

Expulsion and deportation

1. Save in the national or public interest or in order to safeguard the population,³³ 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 and as applicable to aliens under such circumstances.³⁴

3. A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, nationality, ethnic origin,³⁵ religion, political opinion,³⁶ or membership of a particular social group.

4. The expulsion of 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

³³ This excerpt is taken from Art. 3 (2) of the UN Declaration on Territorial Asylum. It substitutes for "on the ground of violation of the conditions of asylum". Another alternative proposed in Note (I) to Art. VIII of the Bangkok Principles would be: "save on ground of national security or public order, or a violation of the vital or fundamental conditions of asylum"; "national security and public order" are the only grounds.

provided for by the 1951 Convention in Art. 32 (1).

³⁴ The phrase "as applicable to aliens under the same circumstances" is taken from Note (2) to Art. VIII.

³⁵ These additional grounds were recommended for the refugee definition by the Manila Seminar and the Tehran Meeting of Experts respectively. See footnote (2) above.

³⁶ See footnote (3) above.

and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.³⁷

III. Durable Solutions

Article IV

Right of return

1. A refugee shall have the right to return if he so chooses to the State of which he is a national or the country of his nationality and in this event it shall be the duty of such a State or Country to receive him.

2. This principle should apply to, *inter alia*,³⁹ any person who because of foreign domination, external aggression or occupation has left his habitual place of residence or who⁴⁰ being outside such place desires to return thereto.

3. It shall [...] be the duty of the Government or authorities in control of such place of habitual residence to facilitate, by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them.⁴¹

³⁷ Art. 32 (2) of the 1951 Convention. This paragraph is consistent with the recommendation of a participant of the Tehran Meeting of Experts that a refugee should not be expelled without due process of law. It is also in conformity with Art. 13 of the 1966 International Covenant on Civil and Political Rights. In the national context, the refugee's right to due process of law in expulsion cases was reaffirmed in the January 1996 decision of the Supreme Court of India in the case of *National Human Rights Commission v. State of Arunachal Pradesh and Another* (1996 [1] Supreme 295).

³⁸ This and the next two paragraphs are paras. (1), (2) and (3) of the 1970 Addendum to the Bangkok Principles. The incorporation of this Addendum was understood as appropriate in both Manila and Tehran.

³⁹ Stylistic addition.

⁴⁰ *Idem*.

⁴¹ 1970 Addendum, para. 2.

4. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependants of all such persons as are referred to in paragraph I⁴² above.⁴³

Article V

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.⁴⁴

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 the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authority of the state or country, public officials or mob violence.

3.⁴⁵ Where such person does not desire to return, he shall be entitled to prompt and full compensation by the Government or the authorities in control of such place of habitual residence as determined, in the absence of agreement by the parties concerned, by an international body designated or constituted for the purpose by the Secretary General of the United Nations at the request of either party.

4. If the status of such a person is disputed by the Government or the authorities in control of such place of habitual residence, or if any other

⁴² Modified due to change in paragraph numbering.

⁴³ 1970 Addendum, para. 3.

⁴⁴ While a Tehran Meeting of Experts participant called compensation a utopia, another called attention to its necessity when, for example, refugees' property has been confiscated. He was probably referring to historical cases of compensation and restitution from Germany and from Uganda.

⁴⁵ This paragraph and the next are paras. (4) and (5) of the 1970 Addendum. See footnote (37) above for explanation.

dispute arises, such matter shall also be determined, in the absence of agreement by the parties concerned, by an international body designated or constituted as specified in paragraph (3)⁴⁶ above.⁴⁷

Article V(A)⁴⁸

Voluntary repatriation⁴⁹

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 or for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the relevant universal and regional organizations⁵⁰ inviting refugees to return home without risk and to take up a normal and peaceful life without fear of being*

⁴⁶ Numbering modified as per the new numbering of the paragraphs.

⁴⁷ 1970 Addendum, para. 5.

⁴⁸ Under "Durable Solutions" the Manila Seminar made detailed recommendations on voluntary repatriation which are reflected in this new Article taken from the OAU Convention.

⁴⁹ Art. V of the OAU Convention. Similar provisions are found in UNHCR's EXCOM Conclusion No. 40 (XXXVI) Voluntary Repatriation.

⁵⁰ This phrase is substituted for "the Administrative Secretary-General of the OAU"

disturbed and 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 inter-governmental organizations to facilitate their return.⁵¹*

Article V (B)⁵²

Other solutions

1⁵³ Voluntary repatriation, local settlement or resettlement, that is, the traditional solutions, all remain viable and important responses to refugee situations, even while voluntary repatriation is the pre-eminent solution. To this effect, States should undertake, with the help of international governmental and nongovernmental organizations,⁵⁴ development measures which would underpin and broaden the acceptance of the three traditional durable solutions.

⁵¹ This and the other paragraphs of this proposed Article should meet the requirements of the Tehran Meeting of Experts participants who called for "ways and means to facilitate return", for "the means of integration after return", and for "sustainable reintegration".

⁵² While the Manila Seminar expressed the sense that the international climate was not ripe for a formal inclusion of local integration as a solution, it conceded that it had provided some positive experiences. As for third country resettlement, while the Seminar deemed it not a solution for the vast majority of refugees in the Afro-Asian region, it nevertheless agreed that the resettlement option needed to be left open. (Report of the Seminar, p. 6). At the Tehran Meeting of Experts, both views were expressed and several participants called attention to the need to preserve these three traditional solutions in light of positive experiences in specific refugee contexts. This proposed Article reflects these views.

⁵³ UNHCR's EXCOM Conclusion No. 61 (XLI) Note on International Protection, paras. (iv) and (v).

⁵⁴ Stylistic insertion.