

- and general practices relating to the status and treatment of refugees in the Asian and African regions;
4. Recognizes, the need to bring the process of updating the Bangkok Principles initiated in Manila in 1996 to a conclusion and the importance of further and on-going consultations between Member States on the Status and Treatment of Refugees generally;
  5. Requests the Secretary General to undertake further consultations with Member States and with the Office of the United Nations High Commissioner for Refugees, in particular on the draft consolidated revised text, with a view to finalize the text of the revised Bangkok Principles;
  6. Urges Member States which have not yet done so, to forward their comments on the consolidated revised text to the Secretary General as soon as possible; and
  7. Decides to place the item "Status and Treatment of Refugees" on the Agenda of the Thirty-ninth Session.

### (iii) Secretariat Study: Status and Treatment of Refugees

The outcome of the Expert Group Meeting at Tehran was placed before the AALCC at its Thirty-seventh Session held in New Delhi (April 1998). A consolidated text containing a revised version of the Bangkok Principles was also tabled at that Session. This consolidated text had incorporated the recommendations of the Manila Seminar and the Tehran Meeting.

The Committee, while taking note of the Secretary General's Report and the consolidated text of proposed revisions to the Bangkok Principles, in a resolution adopted on this item had requested "the Secretary General to undertake consultations with Member States and with the Office of the UNHCR, in particular on the consolidated text, with a view of submitting to the Thirty-eighth Session recommendations on the revisions to the Bangkok Principles".

Consistent with this mandate the Secretary General had written to AALCC Member States in May, October and December 1998 drawing their attention to the above-noted resolution and requested them to send their comments on the text of the revised version of the Bangkok Principles.

### Response from AALCC Member States

In Response to the request from the Secretary General, the AALCC Secretariat, as of 17 March 1999, is in receipt of comments from 8 Member States. The list of Member States that have responded includes: People's Republic of China, Republic of Indonesia, Japan, Pakistan, Saudi Arabia, Singapore, Republic of the Sudan, and Turkey. Besides this, the following four governments - the Arab Republic of Egypt, Ghana, Uganda and the Islamic Republic of Iran have, in the course of the Tehran Expert Group Meeting offered specific proposals towards the revision of the Bangkok Principles.

It may be stated that the proposals by Egypt, Ghana, Uganda and Iran have been made at a stage prior to the formulation of the consolidated text on the revised Bangkok Principles. During the Expert Group Meeting held at Tehran (Annex II of this document) Egypt proposed that the crime of 'terrorism' should be included as an element in the exclusion provisions of the refugee definition. Ghana had proposed a comprehensive definition for refugees. Uganda suggested that "colour" as a criteria for defining refugees may be included. The Islamic Republic of Iran stated that, taking into consideration that voluntary repatriation constitutes a right of the refugee, Article IV (right to return) of the Bangkok Principles should stress the importance of strengthening, extending and promoting the ways and means to facilitate conditions for voluntary return.

Following, in essence, are the comments received from Member States on the consolidated text of the revised version of the Bangkok Principles (Annex III). The People's Republic of China has at this stage, no comments on the consolidated text. While Japan has no particular comments, it is agreeable to the revision of the AALCC's Bangkok Principles. The Republic of Indonesia had stated that it has studied the consolidated text, and recommends submitting it without any further revisions. The salient features of the recommendations from Singapore are as follows.

- While the revision is consistent with the intention of being guiding principles, many of the provisions are not specific enough to create binding legal norms and may attract controversy, as they are more akin to principles of aspirational value only. Accordingly, it would be preferable that the non-binding status of the principles be clearly stated in the preamble, as this was the original intention of the Bangkok Principles in 1966.
- This revision is an opportunity to make clear that the primary obligation for refugees should lie with States that cause mass exodus, whether States of origin or a third State whose acts of aggression or invasion has caused the

movement of persons. Instead, this primary obligation is only alluded to in a minor provision in Part III of the revised principles.

It may be suggested that, in line with seeking durable solutions and burden sharing, instead of broadening the definition of refugees other avenues may be explored. For example, the concept of temporary safe havens within the State of Origin or the wider protection and co-ordination of both local and international aid agencies to provide for persons within the State of origin could be developed so as to prevent the occurrence of mass exodus.

The Government of Pakistan in its response on the subject, supports in principle the provision and amendments relating to: minimum standards of treatment, expulsion and deportation, right of return, voluntary repatriation, other solutions and co-operation with international organizations. Besides, with respect to the definition of the term "refugee", it supports the inclusion of the reference to "ethnic origin". On the provision of "Asylum to a refugee", the Pakistan Government agrees that the erroneous impression that all refugees are terrorists should be avoided. On non-refoulement, it assure that Pakistan has not resorted to harsh measures of rejection, return or expulsion of refugees, yet, does not support the proposal to make it legally binding on States. The right to compensation is perceived to create financial hardships for developing and third world countries, including Pakistan. It supports the provision of 'burden-sharing' with the recommendation that the major share of the financial contribution be borne by rich countries and there should be minimum financial burden on the developing countries.

The Government of Saudi Arabia in its comments, has *inter alia* drawn attention to the following two aspects. First, it proposes that a provision to the effect that "a person who uses or presents false/counterfeit travel documents, which enabled him to enter the State of asylum, will not be considered a refugee", could be included in the revised text of the Bangkok Principles. Second, the absence of specific rules in the Bangkok

Principles as to the treatment and status of refugees who die in the country of asylum, could be a potential issue of disagreement between the country of asylum and country of origin. Hence, it is suggested that a provision may be added to the revised text of the Bangkok Principles, stating that the body of the deceased refugee shall be returned to the country of origin, unless there is a written request ('will') by the deceased to the contrary.

The Republic of the Sudan, in its written comments noted its agreement with most aspects of the consolidated text. As regards Article V on the Right to Compensation, the Sudan Government does not agree with what has been mentioned in this article as it entails financial costs on the part of the countries left by the refugees, the majority of which are developing countries with difficult economic situations and in no position to compensate the refugees.

The communication for Turkey states that the consolidated text of the AALCC is agreeable in principle. The Turkish Government noted the following amendments, *inter alia*, would enhance the acceptability of the text.

- The terms 'national', 'country of nationality' and 'habitual resident' may be deleted in Article I, para (a) of the consolidated text and should be replaced with "persons", to be consistent with Article 1 of the 1951 Refugee Convention.
- As regards Article 3, para 1 of consolidated text, the alternative formulation on the basis of Article 14 of the Universal Declaration of Human Rights would be preferable.
- Article V on right to compensation may be deleted as it seeks to bring a new element to the Law of Refugees without due regard to its implications.
- A new Article should be formulated before Article VIII, concerning the responsibilities of the refugee along the lines and in the spirit of Article 2 of the 1951 Refugee Convention.

In light of the above comments received by the AALCC Secretariat, the Committee may direct the Secretariat as to the future course of work on this item. It was proposed at the Accra Session, if feasible to convene an open-ended Working Group to consider the comments and recommendations of the AALCC Member States.

## ANNEX-I

### REVISED PROPOSALS FOR THE "BANGKOK PRINCIPLES"<sup>1</sup>

#### 1. The Refugee Definition

##### Article I

##### Definition of the term "refugee"

1. A Refugee is a person who, owing to persecution or a well-founded fear of persecution for reason of race, colour, *nationality*, *ethnic origin*<sup>2</sup>, *political opinion*<sup>3</sup> or membership of a particular social group.
  - a) leaves the State of which he<sup>4</sup> 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; and<sup>5</sup>
  - b) being outside of such a State or Country, is unable or unwilling to return to it or to avail himself of its protection.

In this draft, the parts in regular characters are from the Bangkok Principles, their Exceptions, 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.

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

<sup>3</sup> The term "opinion" is used in all the other international refugee definitions, instead of "belief".

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

<sup>5</sup> 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.

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<sup>6</sup> in another place outside his country of origin or nationality.

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.<sup>7</sup>

4. The dependents of a refugee shall be deemed to be refugees.<sup>8</sup>

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.<sup>9</sup>

6. A refugee shall lose his status as refugee if:<sup>10</sup>

<sup>6</sup> Art. I (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. I 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.

<sup>7</sup> Note (vi) to Art. I of the Bangkok Principles.

<sup>8</sup> Explanation of Art. I of the Bangkok Principles.

<sup>9</sup> Exception (I) to Art. I of the Bangkok Principles.

<sup>10</sup> 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.

- (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*<sup>11</sup> the loss of status as a refugee under *this sub-paragraph*<sup>12</sup> will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality;<sup>13</sup> 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.

*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.*<sup>14</sup>

<sup>11</sup> Stylistic addition.

<sup>12</sup> Idem.

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

<sup>14</sup> Art IC (5) of the 1951 Convention. This sub-paragraph useful 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 changes justifying cessation of refugee status should be of a fundamental nature.

7. A person<sup>15</sup> who, prior to his admission into the Country of refugee, has committed a crime against peace, a war crime, or a crime against humanity as defined in international instruments drawn up to make provisions in respect of such crimes<sup>16</sup> or a serious non-political crime outside his country of refuge prior to his admission to that country as a refugee<sup>17</sup>, or has committed acts contrary to the purposes and principles of the United Nations, shall not be a refugee.

## II Asylum and Treatment of Refugees

### Article III

#### Asylum to a 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.<sup>18</sup>

<sup>15</sup> This paragraph is derived from Exception (2) of the Bangkok Principles. It is a set of exclusion clauses. Exclusion clauses were 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.

<sup>16</sup> Art I (5) (a) of the OAU Convention and Art. IF (a) of the 1951 Convention.

<sup>17</sup> Art I (5) (b) of the OAU Convention and Art. IF (b) of the 1951 Convention.

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

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.<sup>19</sup>

3. The grant of asylum to refugees is a peaceful and humanitarian act.<sup>20</sup> It<sup>21</sup> 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.<sup>22</sup>

### Article VI

#### Article III A<sup>23</sup>

#### 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,

<sup>19</sup> 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".

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

<sup>21</sup> Stylistic substitution.

<sup>22</sup> 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.

<sup>23</sup> The Manila Seminar proposed 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.