

ANNEXURE I  
PRINCIPLES CONCERNING TREATMENT  
OF REFUGEES

Article I

**Definition of the term 'Refugee'**

A Refugee is a person who, owing to persecution or well-founded fear of prosecution 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, if he has no nationality, the State of which he is a habitual resident; or,
- (b) being outside such State, 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 of the States of which he is a national. (2) A person who 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 Delegations of Iraq, Pakistan and 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.
  - (ii) The delegation 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.
  - (iii) The Delegation of Japan expressed the view that the word 'and' should be substituted for the word 'or' in the last line of paragraph (a).

Article II

**Loss of status as refugee**

A refugee shall lose his status as refugee if :—

- (i) he voluntarily returns to the State of which he is a national or, if he has no nationality, to the State of which he is a habitual resident; or
- (ii) he voluntarily acquires the nationality of another State and is entitled to the protection of that State.

*Note :* The Delegation of Iraq and United Arab Republic reserved their position on paragraph (ii).

Article III

**Asylum to a refugee**

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



## Article IV

**Right of return**

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

## Article V

**Right to compensation**

1. A refugee shall have the right to receive compensation from the State 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, 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 and Japan 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 and Pakistan 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.

## Article VI

**Right of movement and residence**

1. Subject to the conditions imposed for the grant of asylum in the State and subject also to the local laws, regulations and orders, a refugee shall have the right :—
  - (i) to move freely throughout the territory of the State; and
  - (ii) to reside in any part of the territory of the State.
2. The State may, however, require a refugee to comply with provisions as to registration or reporting or otherwise so as to regulate or restrict the right of movement and residence as it may consider appropriate in any special circumstances or in the national or public interest.

## Article VII

**Personal rights**

Subject to local laws, regulations and orders, a refugee shall have the right :—

- (i) to freedom from arbitrary arrest;
- (ii) to freedom to profess and practise his own religion;
- (iii) to have protection of the executive and police authorities of the State;
- (iv) to have access to the courts of law; and
- (v) to have legal assistance.



## Article VIII

**Right to property**

Subject to local laws, regulations, and orders and subject also to the conditions imposed for the grant of asylum in the State, a refugee shall have the right to acquire, hold and dispose of property.

## Article IX

**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 ordinarily 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 to a State where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

## Article X

**Conflict with treaties or conventions**

Where the provisions of a treaty or convention between two or more States conflict with the principles set forth herein the provisions of such treaty or convention shall prevail as between those States.

## Article XI

Nothing in these articles shall be deemed to impair any higher rights and benefits granted by a State to refugees.

## VII. COMMENTS OF U.N.H.C.R ON THE DRAFT PRINCIPLES CONCERNING TREATMENT OF REFUGEES ADOPTED BY THE COMMITTEE IN ITS INTERIM REPORT AT THE SEVENTH SESSION

## Article I

**Definition, inclusion and exclusion clauses**

The definition in the draft of Principles on the rights a refugee should have, follows in general the definition in the 1951 UN Refugee Convention in basing refugee status on the three elements of :—

- (i) the refugee's persecution or fear of persecution for specified reasons;
- (ii) the refugee leaving, or being outside his State of origin,
- (iii) the refugee's resulting inability or unwillingness to maintain his relations with this State.

The definition differs in the following respects and with the consequences outlined below :

- (i) *The mention of persecution as well as fear of persecution* makes explicit that not only those who, fear persecution but also those who have suffered it come within the definition. The drafters of the 1951 Convention assumed that the fear of all persons who had been persecuted was well-founded and that this could be therefore omitted.

The specified reasons which make the well-founded fear relevant are identical with those of the 1951 Convention except



for the replacement of the concept of "Nationality" by that of "Colour". The inclusion of the concept of "Nationality" in the 1951 Convention was to emphasise its relevance to the situation of refugees who belonged to national minorities which were absorbed against their will by larger national entities.

- (ii) The mention of the fact of leaving a country as well as the fact of being outside it for specified reasons as being relevant to refugee status also makes explicit the understanding of the drafters of the 1951 Convention who discussed the point at length. Their intention was to ensure that persons who were outside their country of origin at the time of the events which caused them thereafter to have well-founded fear should have the same protection as persons who only left their country subsequent to such events. Otherwise the man on the spot, the refugee "*sur place*" as he is usually termed, would be unprotected. Further, they argued that since no person would be a refugee until he had left his country, whether he left before or after the events which gave rise to his fear, mention of "leaving" as well as of "being outside" could be omitted.

There is a further technical difference in that *stateless refugees are defined with regard to their "habitual residence"* rather than their "former" habitual residence. If a stateless person did not have his habitual residence even at some previous time in the country of which he has fear, the situation there would not be relevant to his status. A distinction was therefore made between his *present* habitual residence and his *former* habitual residence. Otherwise it could be argued that stateless persons already outside their country of habitual residence at the time of the events which resulted in their becoming refugees would have no protection from being sent back to their country of origin.

The change of the word "*or*" which links (a) and (b) of the draft principles to "*and*" as was suggested in the discussions would result in the exclusion of all refugees "*sur place*" from the protection of which they are just as much in need as refugees who come subsequently.

*Exception (1)* : No comments.

*Exception (2)* : The second exception is generally less exclusive than that of the 1951 Convention since it is not sufficient for there to be serious reasons for believing that this provision applies. Only person who have indeed acted or committed one of the acts specified are excluded. Unless this can be demonstrated exclusion does not occur.

On the other hand, the corresponding exclusion clause in the 1951 Convention (Article 1(F) (e)) refers to a person 'who has committed a serious non-political crime *outside the country of refuge prior to his admission to that country as a refugee*. It was considered, when the 1951 Convention was drafted, that this exclusion clause should be limited to fugitives from justice and to persons who, because of their previous serious criminal record, could not be regarded as *bona fide* refugees. It was not, however, intended to cause loss of refugee status by any refugee who committed a serious crime even if this occurred a long time after he became a refugee and in such a completely different context that it was quite unconnected with his refugee status. The application of normal sanction would not, of course, be excluded.

## Article II

### Definition, cessation clauses

This article corresponds to Article 1 C of the 1951 Convention, but differs from it by enumerating only two situations in which refugee status should be lost, i. e. the refugee's voluntary return to his country of origin and the voluntary acquisition of a new nationality.



With regard to the *voluntary return* the 1951 Convention speaks not of "return" but of "re-establishment" which means that a short visit to the country of origin should not necessarily result in the refugee's losing his status. This principle has found wide-spread recognition in the practice of States in recognition in which refugees sometimes find themselves and which makes understandable the refugee's desire, if the circumstances allow this, for a short-term visit to that country, i. e. for regulation of urgent family matters. Furthermore, short visit to the home country have often helped the refugee to obtain a picture of the present situation in his home country which eventually led to repatriation. It might, therefore, be desirable to adjust the text of Article II(e) to Article I.C(4) of the 1951 Convention. In addition, in the case of stateless persons, reference should not be made to the State of which he is a habitual resident, but to the State of which he *was* a habitual resident, which would make clear that the country was meant which he has left or outside of which he remained for fear of persecution.

With regard to the second cessation clause an assimilation of the text of Article I.C(3) of the 1951 Convention might more adequately cover the special situation in which a refugee finds himself. *Acquisition of a new nationality* should lead to loss of refugee status only if this new nationality is really effective. The present text could result in a refugee's losing his protective status on the acquisition of a new nationality in spite of a subsequent refusal of national protection even though the person concerned is entitled to it under the law of the country of which he has become a national.

According to a proposal made by the delegate of India during the discussion of the article on expulsion, refugee status would also be lost if a refugee does not return to the country of origin or does not avail himself of the protection of that State even *after the circumstances in which he became a refugee ceased to exist*. (This clause should, if adopted, be included in Article

II of the draft principles rather than in Article IX). A clause to this effect which corresponds to Article I.C(5) and (6) of the 1951 Convention might lead to further clarification in the sense that refugee status should only be invoked as long as a person can reasonably have fear of being persecuted in the country concerned. On the other hand, such a clause is likely to raise difficult questions of interpretation. It should not lead to frequent re-examination of refugee status as long as the conditions in the country concerned have not so fundamentally changed that the basis for fear cannot be said to exist any longer at all. Otherwise this clause might allow refugee status to be subject to unduly frequent review, to the detriment of the refugee's sense of security which international protection is intended to create and the element of continuity which is inherent in refugee status.

Furthermore, attention is drawn to the proviso contained in Article I.C(5) and (6) according to which this cessation clause shall not apply to a refugee 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 provision was intended to make it possible for a person to maintain his refugee status, for instance if the particularly serious persecution from which he or his family have suffered makes it understandable that he does not wish to return to that country or to avail himself of the protection of its authorities. In such circumstances the wish of the refugee should be respected as far as possible.

In the 1951 Convention two grounds for cessation are mentioned which are not included in the draft principles:

The first stipulates that a person loses his refugee status if he has *voluntarily reavailed himself of the protection of the country of his nationality*. This clause deals with the situation where a refugee while still being outside the country of his nationality reavails himself of its protection, the most frequent example being that he accepts a national passport or a similar



document. It is evident that such a person is no longer in need of a special status and of international protection. A reference to this situation may, however, be desirable since the cessation clauses are meant to be exhaustive. Failing such a provision doubts may arise with regard to the status of such a person.

Finally, the 1951 Convention provides that a person loses refugee status if, *having lost his nationality he has voluntarily reacquired it*. This situation may be considered as being covered by Article II (ii), although the formulation "of another State" may give rise to doubts. It may therefore be desirable to introduce after the words "of another State" the words "or of the State whose nationality he has lost."

### Article III—Asylum

This article just confirms the traditional doctrine according to which a State in its sovereignty decides whom it shall admit to its territory.

According to this traditional doctrine the right of asylum is the sovereign right of the State to grant asylum which in so doing does not commit an unfriendly act towards other States. More recently, there has also been a general recognition that asylum is granted by States on humanitarian grounds and in the exercise of a humanitarian duty. There is, furthermore, a new trend in the doctrine on asylum which places the emphasis on the position of the individual and views the grant of asylum from the standpoint of the protection of his human rights.

This trend is reflected in the Draft Declaration on the Right of Asylum at present before the Third Committee of the U.N. General Assembly which stipulates the principle of *non-refoulement* from which States should deviate only in exceptional cases. Although it is maintained that it is for the receiving State to decide whether there is in fact any basis for the assertion that there are "overriding reasons of national security or safeguarding of the population" for deviating from

the principle of *non-refoulement*, it is provided that in the event of such deviation the State concerned "should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate to enable the person thus endangered to seek asylum in another country."

There is a world-wide recognition of the fact that persons who are in fear of persecution should at least be given temporary asylum, and it seems to be desirable that this principle somehow is reflected in the Draft Principles. This may be done in terms similar to Article 3 of the Draft U.N. Declaration.

### Article IV—Right of return

With regard to Article IV, it is for consideration whether in addition to the right of return, emphasis should not be given to the principle that no refugee shall be repatriated against his will, which has found its expression in so many resolutions of the General Assembly.

### Article V—Right to compensation

No Comments.

### Article VI—Right of movement and residence

No Comments.

### Article VII—Personal rights

To the extent to which certain of the rights mentioned in this Article are not expressly spelled out in the Convention, the Article may be said to be more favourable, e.g. freedom from arbitrary arrest and the right to have the protection of the executive and police authorities of the State. On the other hand, as regards those rights which are provided for in the Convention, i.e. freedom of religion, *access to courts and legal assistance*, these rights are made "subject to local laws, regulations and orders". This may open the possibility of



the application of a lower standard than that laid down by the Convention as regards these various rights.

As regards religion, the Article only refers to the refugee's "freedom to profess and practise his own religion". The Convention, on the other hand (Article 4), also mentions the refugee's *freedom as regards the religious education of their children*".

The Article mentions access to courts in general terms and legal assistance. Article 16, paragraph 2, of the Convention requires the grant to refugees of the treatment enjoyed by the nationals of the country of their habitual residence in matters pertaining to access to courts *including legal assistance and exemption from cautio judicatum solvi*. The latter is not referred to in the draft article.

#### Article VIII

##### Right to property

This Article requires the grant to refugees of the right to acquire, hold and dispose of property "subject to local laws, regulations and orders and subject also to the conditions imposed for the grant of asylum in the State". This condition could lead to a discrepancy with the Convention which, as regards the acquisition of movable and immovable property, lays down (Article 13) as a minimum standard "treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances".

#### Article IX

##### Expulsion and deportation

This draft Article differs in important points from the related 1951 Convention provisions. First, the draft affords less protection to refugees against expulsion by replacing the absolute "The Contracting States shall not expel a refugee..."

by the word "The State shall not ordinarily expel a refugee". The *introduction of the word "ordinarily"* opens the way for any otherwise disallowed expulsion to be permitted on the basis of any circumstances which can be considered out of the ordinary.

The second factor which results in the draft affording less protection to the refugee is the *replacement of the reasons justifying expulsion* in the 1951 Convention, namely "grounds of national security or public order" by "*national or public interest or on the ground of violation of the conditions of asylum*". National and public interests are not terms normally found in legal texts and therefore have the disadvantage of having no generally accepted definition which would prevent their interpretation at the complete discretion of any authority concerned. They are, therefore, likely to be interpreted primarily with the interest of the authority concerned in mind and without taking into account the refugee's precarious situation and constant need of protection.

The introduction of the element of *violation of the "conditions of asylum"* also may result in a grave danger to a refugee, who may infringe a very minor condition of the residence regulations to which he may be subject. He could, therefore, be expelled although the infringement might only be technical or quite out of proportion to the danger to the refugee if deported.

The draft omits, furthermore, any *provision for legal remedies*, such as the right of appeal against the decision, to be represented by counsel or to have the decision made in accordance with the due process of law, which are provided for in Article 32 of the 1951 Convention. It would, therefore, seem desirable to adapt paragraph 1 of draft Article IX more along the lines of Article 32, paragraph 1, of the 1951 Convention and to include after paragraph 1 a new paragraph corresponding to Article 32, paragraph 2, of the Convention.



Finally, with regard to paragraph 4 of Article IX the question arises whether the formulation "*a refugee shall not be deported*" is clear enough to include similar measure to which a refugee may be subjected such as *refoulement* at the border, summary expulsion and other methods of surrender. It might be desirable, therefore, to include after the word "deported" a formulation similar to the words "or returned in any manner whatsoever", which are used in Article 33 of the 1951 Convention. It is for consideration whether there should not be a paragraph in this article—or even a separate article—on extradition which might read as follows :

#### Article 3

##### Extradition

1. Extradition shall not be granted in the following circumstances :

- (a) If the offence in respect of which it is requested is regarded by the requested Member State as a political offence or as an offence connected with a political offence.
- (b) If the requested Member State has substantial grounds for believing that the granting of a request for extradition for an ordinary criminal offence would result in the prosecution or punishment of a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

2. A refugee shall not be extradited to a country to which his expulsion is not permitted under Article 2 (2).

3. On the same basis a refugee shall also not be expelled to a country to which his extradition is not permitted under paragraph 1 above.

#### Article X

##### Conflict with treaties or conventions

To the extent to which these Articles are adopted by States which are not parties to the 1951 Convention or to an instrument applying the Convention to post-dateline refugees, the present Article could result in a diminution of the rights of refugees to the extent to which these may be inconsistent with any other treaty or Convention. A possible alternative formulation might be to provide (a) that where the present Articles provide for the grant to refugees of more favourable rights than provided for in other international instruments, the present Articles shall prevail and (b) that the present Articles should not impair any similar or more favourable rights to be granted to refugees by other treaties or conventions. This would also seem to be in the spirit of Article XI which safeguards more favourable rights and benefits granted by a State to refugees.

We feel it should definitely be made clear that this Article should not give States the possibility of departing from the principles adopted by the Committee simply by agreeing between themselves on other principles of a lower standard.

#### Article XI

This Article is in accordance with Article 5 of the 1951 Convention which provides that : "Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention". These rights and benefits need not, however, necessarily be "higher" than those already provided for but may relate to other matters not explicitly mentioned. It would, therefore, seem appropriate for the word "higher" to be omitted from Article XI.

We would also like to make a remark of a more general nature which applies to the present Articles VI, VII and VIII



which, as you know, have been more or less verbally taken over from the principles on the treatment of aliens. In all these articles the rights stipulated are made "subject to the local laws, regulations and orders" and some of them "subject also to the conditions imposed for the grant of asylum". We wonder whether it is logically correct to make a principle subject to an exception which is so broadly defined that its application may nullify the principle itself. There are certain principles which, it would seem, are of a higher order and should not be made subject to specific laws. This applies in particular to the principle prohibiting arbitrary arrest which is universally admitted to be an absolute principle. The observance of such principles is important for refugees who, as distinct from other aliens, cannot return to their home country if they do not like the conditions in their country of residence and who generally also have no choice between various countries of asylum. In this connection we should like to refer to the 1951 Convention which for instance in Article 26 makes the freedom of movement subject to any regulations *applicable to aliens generally in the same circumstances*. An adoption of a similar wording might improve these provisions.

## IX. FINAL REPORT OF THE COMMITTEE ADOPTED AT THE EIGHTH SESSION



## IX. FINAL REPORT OF THE COMMITTEE ADOPTED AT THE EIGHTH SESSION

The Government of the United Arab Republic by a reference made under Article 3(b) of the Statutes requested this Committee to consider the subject of "The Rights of Refugees" in general and in particular the following issues :

1. Definition of refugees and their classifications.
2. The relation between the problem of refugees and the preservation of peace and justice in the world.
3. Principles guiding the solution of refugee problem :
  - (a) The right of asylum.
  - (b) The right of repatriation and resettlement.
  - (c) The right of indemnification.
4. Rights of refugees in the country of residence :
  - (a) The right to life and liberty.
  - (b) The right to fair trial.
  - (c) The right to speech, conscience and religion.
  - (d) The right of employment.
  - (e) The right to social security.
  - (f) The right to education.
5. International assistance to refugees :
  - (a) Travel documents-visas.
  - (b) Financial assistance.
  - (c) Technical assistance.
  - (d) International co-operation in the field of refugees : International agreements and International Agencies.