

## ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

### “FINAL TEXT OF THE AALCO’S 1966 BANGKOK PRINCIPLES ON STATUS AND TREATMENT OF REFUGEES” AS ADOPTED ON 24 JUNE 2001 AT THE AALCO’S 40<sup>TH</sup> SESSION, NEW DELHI

#### 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 reasons of race, colour, religion, nationality, ethnic origin, gender, political opinion or membership of a particular social group:

- (a) leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or,
- (b) being outside 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 events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. 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 mentioned above and is unable or unwilling due to well founded fear thereof to return or to avail himself of its protection shall be considered a refugee.

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

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.

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

- (i) he voluntarily returns permanently, 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 the loss of status as a refugee under this sub-paragraph will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality;) 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).

- (v) if it becomes evident to the country of refuge that the refugee acquired the refugee status on the basis of false information, incorrect documents or cheating which influenced the decision of national authority to grant him refugee status.

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

## **Article II 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.

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.

3. The grant of asylum to refugees is a humanitarian, peaceful and non-political act. It shall be respected by all other States and shall not be regarded as an unfriendly act so long as its humanitarian, peaceful and non-political nature is maintained.

4. States shall, bearing in mind provisions of Article X, use their best endeavours consistent with their respective legislation 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.

## **Article III 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, membership of a particular social group or political opinion.

The provision as outlined above may not however be claimed by a person when there are reasonable grounds to believe the person's presence is a danger to the national security or public order of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

2. In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

## **Article IV 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.

2. The standard of treatment referred to in paragraph 1 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 fulfil requirements which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.

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

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.

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 the said States are Parties.

8. States shall give special attention to the protection needs of elderly refugees to ensure not only their physical safety, and to the extent possible, 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.

### **Article V Expulsion and deportation**

1. Save in the national or public interest or in order to safeguard the population, 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.

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, religion, political opinion, 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 and be represented for the purpose before the competent authority or a person or persons specially designated by the competent authority.

### **Article VI 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 or if he has no nationality to the State of which he is a habitual resident and in this event it shall be the duty of such a State or Country to receive him.

2. This principle should apply, inter alia, to any person who because of foreign domination, external aggression or occupation has left his habitual place of residence, or who 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.

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 1 above.

## **Article VII**

### **Voluntary repatriation**

1. The essentially, voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.
3. The country of origin, shall provide all necessary documents to expedite their return on receiving back refugees, 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 penalised 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 organisations inviting refugees to return home without risk and to take up a normal and peaceful life without fear of being 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, country of transit, voluntary agencies and international and intergovernmental organisations to facilitate their return.

## **Article VIII**

### **International Co-operation on comprehensive solutions**

1. Voluntary repatriation, local settlement or third country 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 may undertake, with the help of inter governmental and non-governmental organizations, development measures which would underpin and broaden the acceptance of the three traditional durable solutions.
2. States shall promote comprehensive approaches, including a mix of solutions involving all concerned States and relevant international organizations in the search for and implementation of durable solutions to refugee problems.
3. The issue of root causes is crucial for solutions and international efforts should also be directed to addressing the causes of refugee movements and the creation of the political, economic, social, humanitarian and environmental conditions conducive to voluntary repatriation.

## **Article IX**

### **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 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. 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 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) above.

#### **Article X Burden Sharing**

1. The refugee phenomenon continues to be a matter of global concern and needs the support of international community as a whole for its solution and as such the principle of burden sharing should be viewed in that context.

2. The principle of international solidarity and burden sharing needs to be applied progressively to facilitate the process of durable solutions for refugees, whether within or outside a particular region, keeping in perspective that durable solutions in certain situations may need to be found by allowing access to refugees in countries outside that region, due to political, social and economic considerations.

3. The principle of international solidarity and burden sharing should be seen as applying to all aspects of the refugee situation, including the development and strengthening of the standards of treatment of refugees, support to States in protecting and assisting refugees, the provision of durable solutions and the support of international bodies with responsibilities for the protection and assistance of refugees.

4. International solidarity and co-operation in burden sharing should be manifested whenever necessary, through effective concrete measures where major share be borne by developed countries in support of States requiring assistance, whether through financial or material aid (or) through resettlement opportunities.

5. In all circumstances, the respect for fundamental humanitarian principles is an obligation for all members of the international community. Giving practical effect to the principle of international solidarity and burden sharing considerably facilitates States fulfillment of their responsibilities in this regard.

#### **Article XI Obligations**

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or any other country or in activities inconsistent with or against the principles and purposes of the United Nations.

#### **Article XII Rights granted apart from these Principles**

Nothing in these Articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

#### **Article XIII Co-operation with international organizations**

States shall co-operate with the office of the United Nations High Commissioner for Refugees and, in the region of its mandate, with the United Nations Relief and Works Agency for Palestine Refugees in the Near-East.

### **NOTES, COMMENTS AND RESERVATIONS MADE BY THE MEMBER STATES OF AALCO**

#### **Introductory Remarks**

1. These notes, comments and reservations are an integral part of the main document of the Revised Bangkok Principles.

2. The Revised Bangkok Principles are declaratory and non-binding in character and aim *inter alia* at inspiring Member States for enacting national legislation for the Status and Treatment of Refugees and as a guide to deal with the refugee problems.

3. In all the Articles and paragraphs where it is referred to "**The unwillingness of the refugee to go back to his country of origin, nationality or habitual residence**", it is fully understood that this unwillingness is not a choice that the refugee can exercise on his own regardless of the consent of the country of asylum but means that the reasons of his well founded fears are still persistent and that his life or liberty if he is compelled to return would be threatened. Moreover the refugee can invoke convincing reasons out of previous persecution for refusing to return to one of the States mentioned above.

4. When the words "he" or "his" are used in the text, should be read to include "she" or "her".

#### Article I

1. The Government of **Bahrain** proposes the deletion of the phrase "**disturbing public order in either part or the whole of his country of origin or nationality**" in para 2 of Article I.

2. The Government of **UAE** proposes the addition of "**the country of his habitual residence**" in para 2 of Article I in order to make it consistent with para 3 of the same Article.

3. The Government of **Singapore** expressed its reservation to article 1(2) as it is too wide, and may result in undue pressures on receiving states in dealing with large number of refugees under this broader definition.

4. Referring to the present Article 1(2) being similar to Article 1(2) of the 1969 OAU Convention governing the specific aspects of refugee problems in Africa.

5. The Government of **India** is not in favour of the expanded definition of refugees given in para 2 of Article I. The definition drawn from Human Rights and humanitarian law instruments is too broad in its scope. The universally accepted criteria of "**well-founded fear of persecution**" should remain the core of the definition. Any expansion of the definition of refugees will have an adverse effect on promoting the concept of 'durable solutions' and may result in the weakening of protection afforded to genuine refugees.

6. The Government of **Oman** in para 4 of Article I proposes to relate the concept of "**lawful dependents**" to the national legislation of the country of asylum, for this concept can change from one country to another.

7. The Governments of **Pakistan** and **Bahrain** propose the deletion of the word "**permanently**" in para 6(i) of Article I.

8. The Government of **Bahrain** proposes the deletion of the entire sentence "**it being understood that the loss of status as a refugee under this sub-paragraph will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality**" at the end of para 6 (ii) for it is difficult to make sure that the refugee will succeed in regaining the protection of his country unless he returns to it for a second time.

9. (a) The Government of **Arab Republic of Egypt** has reiterated its view that the crime of terrorism should have been included in the text of Article 1(7) of the Principles, as a ground for refusal to grant the status of refugee due to the seriousness of such crimes as recognized by United Nations Resolutions and Declarations, particularly, General Assembly Resolution A/Res./49/60 of 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto. Furthermore, in the view of the Government of Egypt, the failure to recognize crimes of terrorism as grounds for refusal of refugee status could subject the entire refugee regime to exploitation and misuse, and consequently have a negative impact on legitimate asylum seekers". The Government of Turkey also supports this view.

(b) The Government of Bahrain proposes to include the “**crime of terrorism**” to para 7 Article 1 according to the definition approved by the “**Arab Convention to Combat Terrorism**”.

(c) The Government of Republic of Korea expressed its reservation to the inclusion of the “**crime of terrorism**”, given the lack of consensus on the definition of terrorism, it is of the view that any reference to terrorism could be used as a pretext by states to refuse asylum to genuine refugees.

## Article II

1. The Government of Pakistan proposes to substitute the word “**everyone**” with “**every refugee**” in para 1 of Article II.

2. The Government of India considers that the inclusion of the expression “**in accordance with its international obligations and national legislation**” in para 2 of Article II restricts the sovereign rights of states to grant or refuse asylum to a refugee.

3. The Government of UAE proposes the addition of “**or its habitual residence**” at the end of para 4 in order to be consistent with the entire text.

4. The Government of Bahrain proposes to delete the entire para 4 of Article II as it does not agree that a refugee should remain in the country of refuge because he is unable or unwilling to return to his country of origin or nationality after the circumstances of his refuge have ceased to exist.

## Article III

1. (a) The Government of Thailand proposes deletion of the words “**seeking asylum**” and substitution with words “**after asylum is granted**” in para 1 of Article III.

(b) The Government of Oman proposes to add the words “**after granting asylum**” after the words “**seeking asylum**” in para 1 Article III.

2. The Government of Kuwait proposes to redraft para 2 of Article III as follows “**A State may grant to a person seeking asylum provisional asylum, under conditions fixed by the granting State**”.

## Article IV

1. (a) The Government of Pakistan suggests deletion of the phrase “**aliens in similar circumstances**” in para 1 of Article IV as it is confusing and does not fit well with reference to the word “refugees”.

(b) The Government of Kuwait proposes the deletion of the last sentence of para 1 of Article IV “**with due regard to basic human rights as recognized in generally accepted international instruments**” as it is an unnecessary addition keeping in view that the first part gives to the refugee same treatment as any foreigner.

(c) The Government of Oman proposes the addition of “**in accordance with national legislation**” at the end of the present para 1 of Article IV, as it feels that the concept of basic human rights varies from one country to another.

2. In Article IV para 2 please refer to the Final Report of the Organization adopted at the AALCC’s Fourth Session held in Tokyo in 1961.

3. The Government of Oman is of the view that the word “**requirements**” in para 3 of Article IV should be further clarified and illustrated, for without specific clarification the term as it stands is very vague.

4. The Government of Kuwait proposes the redrafting of para 7 of Article IV for the sake of clarity and easier implementation to read as follows “**States shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee, shall receive**”

**appropriate protection and humanitarian assistance in accordance with international and national law**".

5. The Government of **UAE** proposes the addition of "**religious needs**" to the other needs of elderly refugees stipulated in para 8 of Article IV.

#### **Article V**

1. The Government of **Bahrain** proposes to use the word "**should**" instead of the word "**shall**" in para 1 of Article V.

2. In view of the Government of **UAE** the implementation of para 1 of Article V will not have a real effect because it relates the reason to expel a refugee to "**national interests or public interest or to protect people**" and all of these reasons have no precise definition or clear limits.

3. The Government of **Thailand** suggests deletion of the phrase "**the expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law**" in para 4 of Article V.

The Government of **Pakistan** sought some more clarification regarding the phrase "**due process of law**", in its view it is to be understood in light of the contents of para I of this article.

4. Regarding para 4 of Article V the Government of **Sudan** expressed a similar view as the Government of **Pakistan**, according to it "**competent authority**" should mean the relevant national bodies and not as a reference only to courts or judicial bodies

#### **Article VI**

1. The Government of **Turkey** proposes the deletion of the words "**foreign domination, external aggression or occupation**" in para 2 Article VI and replace them by the words "**international or internal armed conflict**". The Governments of **Pakistan** and **Kuwait** support the suggestion.

2. The Government of **Turkey** proposes the addition of the words "**taking into consideration the agreements reached with the Government or authorities of those persons and with a view to preventing further displacement of other already displaced persons as a result**" in para 2 of Article VI.

#### **Article VII**

1. Proposition of AALCO Secretariat and UNHCR to change earlier title "Other solutions" to "International Co-operation on Comprehensive Solutions".

2. The Government of **Pakistan** proposes the deletion of the word "**essentially**" in para 1 of Article VII as it seemed superfluous and could create problems. The Government of **Thailand** supports the suggestion.

3. The Government of **Kuwait** proposes the deletion of the entire paragraph 4 of Article VII as it tends to waive criminal responsibility of any person who committed criminal acts before seeking refuge in another country.

#### **Article VIII**

1. The Government of **India** expressed its reservation on including a separate Article VIII on "**International co-operation and comprehensive solutions**". It wants the emphasis to remain on 'voluntary repatriation'. The other solutions like 'local settlement' or 'third country resettlement', according to it, would have to be considered carefully in each case, given their political, economic or security implications, particularly in situations of mass-influx. In this connection, a distinction needs to be maintained between the 'individual refugees' and 'situations of mass-influx' as well as between

'convention refugees' and 'economic migrants'. Further, the implementation of these solutions and treatment of refugees is linked to the available resources and capacity of each State."

2. The Government of **Bahrain** proposes the deletion of the entire Article VIII.

3. In view of the Government of **Oman** the solutions contained in para 1 of this article are of a non-obligatory nature and do not bind the country of asylum. Nevertheless the country of asylum may fulfil these requirements in accordance with its national interests.

#### **Article IX**

1. In view of the financial and economic implications, reservations to paragraph 1 of Article IX were expressed by the Governments of **Sudan, Pakistan, Turkey, Jordan, Tanzania** and **Kuwait**.

2. (a) The Government of **Singapore** understands the phrase "**such place of habitual residence**" in para 3 Article IX as referring to the State or country which the refugee left or to which he is unable to return.

(b) The Government of **Pakistan** felt that para 3 of this article should be in conformity with para 1 and suggested that "**such place of habitual residence**" should be replaced with "**State or country which he left**".

3. Regarding para 3 of this article, the Government of **Oman** wants to make sure that if the refugee is unwilling to return to his country of origin, it does not mean that the country of asylum is compelled to maintain his refugee status forever.

4. The Government of **Bahrain** proposes the deletion of the entire article IX as in their view, most of the refugee cases happen due to unforeseen circumstances. The Government of **UAE** also has reservations on the entire Article IX.

#### **Article X**

1. The Government of **Singapore** maintains that the responsibility of refugees rests ultimately on the countries which caused the refugees to flee and/or remain abroad. Assistance to refugees by other countries, international organizations and donors should not relieve such countries of their basic responsibility, including that of paying adequate compensation.

2. The Government of **UAE** has a reservation to para 2 of Article X as it refers to the possibility of a refugee residing in another country than the country of asylum.

#### **Article XI**

1. The addition of words "or any other country" after "country of refugee".

#### **COMMENTS AND RESERVATIONS BY THE MEMBER GOVERNMENTS**

1. The words "he" or "his" wherever used in the text should read to include "she" or "her", as suggested by the delegate of Pakistan.

#### **ARTICLE I**

2. "The Government of India is not in favour of the expanded definition of refugees. This definition drawn from Human Rights and humanitarian law instruments is too broad in its scope. The universally accepted criteria of "well-founded fear of persecution" should remain the core of the definition. Any expansion of the definition of refugees will have an adverse effect on promoting the concept of 'durable solutions' and may result in the weakening of protection afforded to genuine refugees".

3. The Government of Egypt has reiterated its view that the crime of terrorism should have been included in the text of Article 1(7) of the Principles, as a ground for refusal to grant the status of refugee

due to the seriousness of such crimes as recognized by United Nations Resolutions and Declarations, particularly, General Assembly Resolution A/Res./49/60 of 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto. Furthermore, in the view of the Government of Egypt, the failure to recognize crimes of terrorism as grounds for refusal of refugee status could subject the entire refugee regime to exploitation and misuse, and consequently have a negative impact on legitimate asylum seekers". The Government of Turkey also supports this view.

4. The Government of India consider that the inclusion of the expression "in accordance with its international obligations and national legislation" restricts the sovereign rights of states to grant or refuse asylum to a refugee.

5. The Government of Thailand proposed deletion of the words "seeking asylum" and substitution with words "after asylum is granted".

6. Admission and Treatment of Aliens adopted at the AALCC's fourth Session held in Tokyo (1961)

7. The Government of Thailand suggested deletion of the phrase "The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law".

8. The Government of Turkey proposed substituting the words "international or internal armed conflict" for the words "foreign domination, external aggression or occupation".

9. The Government of Turkey proposed the addition of the words "taking into consideration the agreements reached with the Government or authorities of those persons and with a view to preventing further displacement of other already displaced persons as a result."

10. The Government of India expressed its reservation on including a separate Article VIII on "International co-operation and comprehensive solutions". It wants the emphasis to remain on 'voluntary repatriation'. The other solutions like 'local settlement' or 'third country resettlement', according to it, would have to be considered carefully in each case, given their political, economic or security implications, particularly in situations of mass-influx. In this connection, a distinction needs to be maintained between the 'individual refugees' and 'situations of mass-influx' as well as between 'convention refugees' and 'economic migrants'. Further, the implementation of these solutions and treatment of refugees is linked to the available resources and capacity of each State."

11. In view of the financial and economic reservations to paragraph 1 were expressed by the Governments of Sudan, Pakistan, Turkey, Jordan and Tanzania.