

Other solutions

We support in principle the provision and amendments made in this article.

Burden Sharing

We support the provision in the article with the recommendation that major share of the financial contribution be borne by such countries and there should be minimum financial burden on the developing countries.

Rights granted apart from the Principles

Nothing in these Articles shall be deemed to impair any other rights and benefits granted or which lay thereafter be granted by a State to refugees.

Cooperation with international organizations

We agree that all States shall cooperate 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. (Letter from the Ministry of Foreign Affairs, Islamabad addressed to the Office of the UNHCR, dated March 12, 1999).

5. Saudi Arabia

First, regarding the loss or theft of travel documents or counterfeit travel documents and its use by persons seeking asylum and due to the increase in the number of applications for asylum, we feel obliged to add to these principles on article which could read:

"A person who uses or presents false or counterfeit travel documents, which enabled him to enter the State of asylum, will not be considered a refugee".

Secondly, the Bangkok Principles do not envisage the treatment and status to be accorded to a refugee who dies in the country of asylum, more specifically as regards the final rites to be conducted (burial). This could be a strong point of disagreement, between the country of asylum and the country of origin, visa-a-vis political refugees. We would like to add an article to the Bangkok Principles, which could read as follows:

"The body of the refugee shall be returned to the State of Origin after his death, or to the country of which he was the habitual resident - even if it is not to the country of his nationality, unless there is a written request ('will') by the deceased refugee himself stating that the should not be buried in such a place."

The concerned authorities in Saudi Arabia are of the following opinion concerning the Bangkok Principles.

- Add to Article I the phrase "unless he was tried for his crime"
- Delete paragraph 2 of the Article II, as it contradicts with paragraph 1
- Add to paragraph 1 of Article III, the phrase: "or because the internal rules of the country of asylum do not permit the granting to him of this rights".
- Add to paragraph 1, of Article V: "unless it is proved that he has committed an act which threatens or hinders the protection of the population of that State".

(Letter from the Royal Embassy of Saudi Arabia, New Delhi, dated March 9, 1999).

6. Singapore

The revised proposals for the Bangkok Principles are drafted with a view to concluding a Restatement of the Bangkok Principles. The nature of the restatement, when it is

concluded should affirm the understanding that these principles are only recommendatory in nature and not legally binding.

It may be useful to note that not all the proposed articles are accepted as legal norms and are reflective of the forward looking attributes of the AALCC's work in this area. It may be argued that whilst it is commendable that the AALCC progressively develop guiding principles concerning refugees, to avoid the lack of commitment evidenced by the low ratification of the 1951 Convention and 1967 Protocol, the status and treatment of refugees should be left largely to be dictated by the abilities and resources of each State.

Addressing root causes should remain a primary focus in any document concerning mass exodus. There is great suffering associated with the plight of persons who are uprooted from their homes and forcibly displaced. However, despite the consideration of providing relief, the necessity to find durable solutions should not be obscured. New Articles 5 (A) and (B) have been inserted under Part III of the revised principles on 'Durable Solutions'. These two articles deal with voluntary repatriation and other solutions, respectively. Essentially, the provisions oblige receiving States not to repatriate against the will of the refugee, and for States of origin to facilitate the voluntary return of refugees and asylum-seekers. Inter-State and inter-agency cooperation is also requested to ease voluntary repatriation. Voluntary repatriation is deemed "... the pre-eminent solution" (Article 5(B) para 1), and the issues of root causes is considered "...crucial for solutions... to the removal of the causes of refugee movement" (Article 5(B), para.3).

Part VI on 'Burden Sharing' incorporates the 1987 Addendum to the Bangkok Principles. Part V on 'Additional Provision' includes a new final Article 11 which is an obligation on States to cooperate with the office of the United Nations High Commissioner for Refugees and the United Nations Relief and Works Agency for Palestine Refugees in the Near-East.

General Comments

As a general observation, 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 would attract controversy, as they are more akin to principles of aspiration-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.

As with other international documents dealing with the status and treatment of refugees (the 1951 Convention and 1967 Protocol, OAU Convention, and Cartagena Declaration), the focus of these revisions are on establishing a definition from which rights can be claimed. These rights are accorded because the title, 'refugee', and are claimed against States of refugee, other resettlement States, and the State of origin. The revision has an opportunity to make clear that primary obligation for refugees should lie with States that cause mass exodus, whether States of origin or a third States whose acts of aggression or invasion has caused the movement of persons. Instead, this primary obligation is only alluding to in a minor provision in Part III of the revised principles. Further, the traditional solutions to refugee crises, namely, resettlement in third States or voluntary repatriation are both reactive rather than proactive solutions, such as, crisis prevention and early warning or implementing sound economic policies. A comprehensive plan of action must be multi-disciplinary with a strong focus on developing the political, social and economic solution within States to prevent mass exodus.

With regard to definition issues, there are disadvantages with an expanded definition of refugees. For example, it may be argued that it would prolong the internal conflict or foreign domination, assist the conduct of unlawful policies of forced displacement of persons, and might act to apply undue pressure on the economic or social conditions with the receiving State, particularly where persons arrive in large numbers. It may be suggested that inline 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 coordination 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. (Letter from the Singapore High Commission, dated September 30, 1998).

7. Sudan

1. Refugee Definition

Article 1: Definition of the term "Refugee".

What has been mentioned in the Bangkok Principles regarding the definition of the term "Refugee" is in compliance with what has been mentioned in the Geneva Convention of 1951, the amended protocol of 1967 and that of the 1969 (O.A.U.) Convention governing the Specific Aspects of Refugee Problem in Africa. Moreover, the exemptions included in the Bangkok Principle regarding the same are in conformity with the International Characters. As such the Government of the Sudan agrees to Article 1.

2. Asylum and Treatment of Refugees

Article III – Sub-Article 1

The Sudan Government Agrees to it.

Article VI: Minimum Standard of Treatment

It is in accordance with the International Characters. Thus the Sudan Government agrees to it.

Article VIII: Expulsion and Deportation

The Sudan Government agrees to it.

1. Durable Solutions:

Article IV: Right to return:

It is comprehensive and accurate. As such the Sudan Government agrees to it.

Article V: Right to Compensation

This Article stipulates that 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.

Article V(A): Voluntary Repatriation

The Sudan Government agrees to it.

Article V(B): Other Solutions

This article stipulates the voluntary repatriation local settlement or resettlement, that is, the traditional solutions, all remain viable and important responses to the refugee situation, even while voluntary repatriation is the pre-eminent solution. To this effect, states should undertake, with the help of international government and non-governmental organizations, development measures which would underline and broaden the acceptance of the three traditional durable solutions.

The Sudan Government agrees to that.

4. Burden Sharing

Article IX: Burden Sharing

The Sudan Government agrees to that

5. Additional Provisions

Article X: rights granted apart from Bangkok Principles.

The Sudan Government agrees to that.

(Letter from the Embassy of the Republic of the Sudan, dated March 1, 1999).

8. Turkey

The consolidated text of the AALCC is agreeable in principle. That said, the following amendments are recommended for the revision of the text, which, in our view, will improve the text and thereby enhance its acceptability.

- Art.1, Para.1 (a), Page 1:

Delete: "national", "country of nationality" and "habitual resident"

Insert: "persons"

These three terms in this para and in the other parts of the text should be replaced with "persons" which is consistent with Art.1 of the 1951 Convention.

Art.1, Para.2, Page 1:

Delete: "events seriously disturbing public order"

Insert: "armed conflict"

Art.1, Para.7, Page 3

Insert: in the second line, after "crime against humanity" add "including terrorist act"

Delete: "serious" before "non-political crime"

Insert: "any"

Attempting to qualify the nature and magnitude of non-political crime would not be appropriate

Art.3, Para 1, (footnote 18) Page 3:

Alternative formulation on the basis of Art.14 of the Universal Declaration of Human Rights would be preferable to the existing text based on the Vienna Declaration.

- Art.3, Para.3, Page 3:

Insert "so long as its peaceful and humanitarian nature is maintained" to end the second sentence.

- Art.3 A, Para.1, Page 4:

Delete: "nationality" and "ethnic origin"

- Art.3 A, Para.2, Page 4:

- Insert "national security" and "public order" This amendment would reflect the essence of Art. 32 of the 1951 Convention.

Delete: "serious"

Insert: "any"

-Art.4, Para.2, Page 7

Delete: "foreign domination, external aggression or occupation"

Insert: "international or internal armed conflict"

- Art.4, Para.3, Page 7:

Insert to the end of the sentence after "them "... 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".

-Art.5, Page 7-8:

Delete the article as a whole since this article seeks to bring a new element to the Law of the Refugees without due regard to its implications.

- Art.5B, Para.1, Page 9:

Insert "third country" before "resettlement".

- Art.6, Para.1, Page 4:

Delete: "generally accepted"

Insert: "applicable"

- Art.6, Para5, Page 5:

Delete: "nationality" and "ethnic origin"

- Art.8, Para.3, Page 6:

Delete: "nationality" and "ethnic origin"

- A new article should be formulated before article 8, concerning the responsibilities of the refugees along the lines and in the spirit of Art.2 of the 1951 Convention.

The Turkish authorities, in the context of Article 3 (A), para 3, would like to recall and confirm the validity of the geographical limitations it has introduced under the 1951 Convention.

I would kindly request that the proposed amendments should be incorporated in the next edition of the revised text and express my readiness to discuss with the Secretariat in greater detail the rationale of our proposals, should you deem appropriate. (Letter from the Turkish Embassy dated January 21, 1999).

VIII. DEPORTATION OF PALESTINIANS AND OTHER ISRAELI PRACTICES AMONG THEM THE MASSIVE IMMIGRATION AND SETTLEMENT OF JEWS IN OCCUPIED TERRITORIES IN VIOLATION OF INTERNATIONAL LAW PARTICULARLY THE FOURTH GENEVA CONVENTION OF 1949

(i) Introduction

The item 'Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territories' was first placed on the work programme of the Secretariat of the Committee at its 27th Session (Singapore) following upon a reference by the Government of Islamic Republic of Iran. During that Session it was pointed out by the delegate of the Islamic Republic of Iran that: "the Zionist entity (Israel) had deported a number of Palestinians from Palestine as a brutal response to the upheaval by the people in the occupied territory. The deportation of people from the occupied territory, both in the past and recent times constituted a severe violation of the principles of International law and also violated the provisions of international instruments and conventions such as the Hague Conventions of 1899 and 1907, the U.N. Charter 1945 and the Geneva Convention relative to protection of Civilian Persons in time of war 1949 all of which prohibited deportation as a form of punishment of deterrent factor, especially in an occupied territory". After preliminary exchange of views the Islamic Republic of Iran had submitted to the AALCC Secretariat a Memorandum, and the Secretariat was called upon to study the legal consequences of the deportation of Palestinians from occupied territories.

The topic was considered at the 28th and 29th Sessions of the Committee held at Nairobi and Beijing respectively. The

study presented at the 28th Session concluded that the deportation of Palestinians did indeed constitute a flagrant violation of customary international law of armed conflicts as well as contemporary international humanitarian law, and hence the occupying powers were acting in flagrant violation of international law. It also affirmed the inalienable right of Palestinian people for self determination and the right to return to their land and directed the Secretariat to undertake a further study including the question of payment of compensation of Palestinians. Pursuant to that decision the study presented at the 29th Session tried to establish that payment of compensation for deportation is both a matter of customary international law as well as an explicit stipulation of contemporary international law as codified in the Hague Convention of 1907, the Fourth Geneva Convention of 1949 and the 1977 protocols thereto. The study also emphasized that not only had the Palestinian people been denied exercise of their fundamental human rights and freedoms but grave injustice had been perpetrated against them. After due consideration of the topic at Beijing (1990) the Secretariat was directed to follow up the subject with consideration of legal aspects, of the resettlement in violation of international law by the State of Israel, of a large number of Jewish migrants in Palestine.

The Study presented at the 30th Session held in Cairo in 1991 focused on the Israeli Settlements in the occupied territories. Since 1967 through expropriation of Palestinian lands and the issue of massive immigration of Jews from the former Soviet Union and their resettlement in the occupied territories of Palestine. The right of the Palestinian people to return to their homeland had also been discussed in the Secretariat study. During the Session concern was expressed at the continuing denial and deprivation of the inalienable human rights of the Palestinian People including the right to self-determination and the right to return and establishment of their independent State on their national soil. The AALCC was directed to continue to monitor the events and legal developments in the occupied territories of Palestine and decided to include the item on the agenda of its 31st Session.

Following the conclusion of a Co-operation Agreement with the League of Arab States, the Secretariat convened in conjunction with the office of the League of Arab States, a two day Workshop on the question of deportation of Palestinians and the Israeli policy and practice of immigration and settlement of Jews in New Delhi. The brief for the 32nd session held in Kampala in 1993, reflecting the developments since the Islamabad Session included a report of the aforementioned Workshop for which the Secretariat had prepared a Working Paper on the Legal Aspects of the Palestine Question. The brief of documents prepared for consideration at the AALCC's 32nd session (Kampala, 1993) established that the Hague Conventions of 1899 and 1907 were applicable to the territories occupied by the Israelis since 1967 as their occupation stems from acts of aggression and invasion. It also demonstrated that the 1949 Geneva Conventions are also applicable to these occupied territories, particularly since Israel is a High Contracting party to those conventions and that therefore the Palestinians in the occupied territories are protected persons by virtue of the applicability of the principles of International Humanitarian Law. Further, it demonstrated that contemporary International Law prohibits the deportation of the civilian population in occupied territories to the territory of the occupying power or any other State. It also pointed out that the International Law Commission had in its Draft Code of Crimes Against the Peace and Security of Mankind expressly stipulated that the deportation of people, and the resultant demographic changes, is a crime against humanity.

The study prepared for the 34th Session held in Doha reflected the events and developments following the Middle East Peace Process including the principles on Interim self Government Arrangement of September 1993 and, the 1994 Agreement on the Gaza Strip and Jericho area. At that Session, the Committee, *inter alia*, decided that this item be considered in conjunction with the question of the Status and Treatment of Refugees. After due deliberations the AALCC at its 35th Session (Manila 1996) took cognizance of the hardships suffered by the Palestinian refugees and directed the Secretariat to continue to monitor the developments in the

occupied Territories from the view point of relevant legal aspects. It also decided to place the item on the agenda of the 36th Session.

Pursuant to the resolution adopted at the 35th Session, the Secretariat monitored with great concern the important events which occurred in Palestine and the occupied territory within the context of this agenda item since the Manila Session. It registered through events and the specialized comments and analysis contained in Legal Journals of International Law the major developments concerning the Deportation of Palestinians and massive immigration of Jews. The study prepared for the 36th Session had exposed to the AALCC Member States the serious developments in the occupied territories which could lead to deterioration of the situation in the region and to resumed cycle of tension and violence, endangering peace and security not only in the Middle East but throughout the world.

In view of the importance of the subject it had been placed on the agenda of the 37th Session. The Secretariat had monitored the situation over the past one year and the situation was not satisfactory. The Israeli Government had continued to evade the implementation of the agreements and commitments that had been agreed upon thus endangering the whole peace process.

The decision of the Israeli Government to build a Jewish residential neighbourhood on Jabal-Abu-Ghneim, South of Arab Jerusalem, was a step in flagrant violation of principles on which the peace process was based and of all international laws and resolutions in particular Security Council resolutions 242 and 338. The Deputy Secretary General was of the view that these measures were strongly condemned. These decisions violated international law, were a threat to the peace process and could plunge the region into struggle, tension and instability. The systematic violation of the "peace process" had compelled the international community to take some decisive decision on bringing peace to the region.

The Deputy Secretary General informed the Committee that during its 52nd Session the General Assembly vide resolutions 52/66 and 52/67 had expressed grave concern about the decision of the Government of Israel to resume settlement activities, including construction of the new settlement in Jabal Abut Ghneim, in violation of international humanitarian law, relevant United Nations resolutions and agreements between the parties, as well as the dangerous situation resulting from Israeli actions in the occupied territory.

The 10th Emergency special Session (ESS) of the General Assembly (Uniting for Peace Formula) was resumed a second time on 13 November, 1997, to consider the continuation of illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian Territory. The resumption was a follow up of the results of previous meetings of the ESS and to specifically consider the report of the UN Secretary General on the issue of convening a conference of the High Contracting Parties to the fourth Geneva Convention of 12 August 1949, on measures to enforce the Convention in the occupied Palestinian Territory, including Jerusalem. The resumed 10th ESS was a tremendous success as it had put the international community on the road to convening a conference on the enforcement of the Fourth Geneva Convention.

The *Delegate of Palestine* appreciated the work undertaken by the Secretariat on this subject of vital importance. He stated that even after fifty years of suffering just and durable peace evaded the people of Palestine.

Even though the Palestinian Liberation Organization adopted all diplomatic ways and means on the path of peace, justice and rightness, the beam of light which appeared after the conclusion of the Madrid and Oslo Agreements had vanished due to the policies adopted by the Israeli Government. The policies adopted by the Israelis were in contravention of established principles of international law. Instead, Israel was attempting to place new principles and