

STATUS AND TREATMENT OF REFUGEES

(i) Introduction

The subject "Status and Treatment of Refugees" has been on the agenda of the Asian African Legal Consultative Committee following a reference made by the Government of Egypt, since its sixth session held at Cairo in 1964. At its eighth session (Bangkok), the AALCC adopted a set of Principles concerning the Status and Treatment of Refugees 1966 (commonly referred to as the "Bangkok Principles"). Subsequently in 1970 and 1987, the Committee adopted two addenda on the right of refugees to return and the norm of burden-sharing respectively. The work of the AALCC in these areas has been carried out in consultation and active support of the office of the United Nations High Commissioner for Refugees (UNHCR).

At the Thirty-fifth session of the AALCC (Manila 1996), the UNHCR representative recalled that the year 1996 marked the 30th Anniversary of the Bangkok Principles and suggested that the commemoration of this occasion would afford a good opportunity for AALCC Member States to take stock of the experience acquired during the last thirty years. She expressed the willingness of UNHCR to cosponsor with the AALCC a Seminar or colloquium on refugee law to review the Bangkok Principles. In the resolution adopted at that session on "Status and Treatment of Refugees", the committee took note of this proposal and requested the AALCC Secretariat, "to organize in collaboration with the financial and technical assistance of the UNHCR, a Seminar in 1996, on the Status and Treatment of Refugees to commemorate the 30th Anniversary of the Principles of Refugees adopted by the AALCC at its 8th Session in Bangkok in 1966.

In pursuance of that decision, a Preparatory Meeting of the AALCC Member States was held in New Delhi in September 1996, it proposed that the Seminar should be held from 11 to 13 December 1996 at Manila, Philippines. The aim of the Commemorative event should be (a) the promotion of the knowledge of these principles, and (b) their re-examination in the light of developments in law and practice in the Afro-Asian region since 1966, with a view to recommending further action. The four subjects identified for consideration at the Manila Seminar included "(i) the definition of refugees, (ii) asylum and standards of treatment, (iii) durable solutions, and (iv) burden sharing.

A commemorative Seminar was held at Manila from 11-13 December 1996. The report and conclusions of this seminar were placed before the Thirty-sixth Session of the AALCC held in Tehran in 1997. It was decided that the re-examination of the Bangkok Principles on the Status and Treatment of Refugees would be a key sub-item under the item "Status and Treatment of Refugees". The Committee in its resolution on the item, while acknowledging the importance of the recommendations adopted at the Manila Seminar, requested the Secretary-General to convene as appropriate, a meeting of experts in order to conduct an in-depth study of the issue, and report to the Thirty-seventh session.

The Expert Group meeting on the status and Treatment of Refugees was held in Tehran on 11-12 March 1998. The deliberations, while reviewing the Manila recommendations, also offered scope for addressing specific issues regarding the four identified themes. Drawing upon their national experience in dealing with refugee problems, delegates examined the formulations arrived at the Manila Seminar. The

discussions focussed on the need to reconcile the fundamental interests of states and the humanitarian obligations of states to protect refugees.

Thirty-ninth Session: Discussions

The **Deputy Secretary General Mr. Ryo Takagi** introduced the Report of the Secretary General on this subject, and stated that since the 35th Session of the AALCC, the focus of discussion on this item has been on the proposals concerning the revision of the AALCC's Principles on Status and Treatment of Refugees adopted in Bangkok in 1966. The four main issues identified included (i) the definition of refugees, (ii) asylum and standards of treatment; (iii) durable solutions and (iv) burden sharing.

Recalling the mandate of the 37th Session of AALCC which requested the Secretary General to undertake consultations with the AALCC Member States, on the consolidated text on revision to the Bangkok Principles, he said that the Secretary General had in May, October and December 1998 written to the Member States seeking their response on the consolidated text. Responses were received from only 8 Member governments. Further, at the 38th Session held in Accra the Secretary General was requested to undertake further consultations with Member States and UNHCR in particular, on the draft consolidated text with a view to finalizing the text of the revised Bangkok Principles. Subsequent to the Accra Session, reminder letters were sent to those Member States which had not yet sent their comments. The Secretariat has so far received replies from 16 Member States.

It may be added that the Secretariat in consultation with the UNHCR office in Geneva had prepared a draft of the Revised Consolidated text, which was placed before the session for consideration.

He noted that during the 39th Session in accordance with the approval of Heads of Delegations at their first meeting, informal consultations were held on 21st February 2000, under the chairmanship of Dr. A. El Ashaal, Deputy Assistant (Legal Affairs) Ministry of Foreign Affairs, Arab Republic of Egypt.

Dr. A. El-Ashaal, Chairman of the Informal Consultations was invited by the Vice President to give brief account of the informal Consultations. Dr. Ashaal noted with satisfaction that the informal consultation was attended by more than 20 Member States, in addition to the AALCC Secretariat and UNHCR officials. The discussions were spread over two sessions, and focussed mainly on the modalities to enhance the speedy completion of the process of finalization of Revision of the Bangkok Principles. There was general agreement on this issue. The main outcome of the consultations was a recommendation to be made to the Plenary for the establishment of an open ended working group which should meet during the inter-sessional period. The terms of reference of the Working Group would be to build up on what had been done in Manila and the different comments which were forwarded to the Secretariat for consideration. He appreciated the role of the Member States, and also the technical assistance and preparedness of the UNHCR to collaborate with the AALCC and with the Working Group. Concerning the venue of the meeting, he said, that this would be finalized by the Secretariat in consultation with the Government of Egypt.

The **Representative of UNHCR Mr. Kallu Kalumiya, Deputy Director, Department of International Protection** welcomed the opportunity to address this very important item: "The Status and Treatment of Refugees". On behalf of Mrs. Sadako Ogata, the UN High Commissioner for Refugees, he wished to convey her best wishes for the success of the Cairo Session and her particular wish that the deliberations would lead to a fruitful and positive outcome, not least on the item on the refugees.

He drew attention to the tragic plight of millions of displaced people around the world. He said that from the perspective of states, whether as producers or recipients of people who have been forcibly displaced, the movement of large numbers of people within and across national borders can pose serious security concerns. For other states, the cost of providing humanitarian relief often places a severe burden in financial and social terms -- often where their resources are already over-stretched by competing national demands.

He stressed that ad hoc responses by individual states were no longer a sufficient response to the challenges presented. As a global problem, forced displacement called for a comprehensive and global response. It was precisely for this reason, that UNHCR has placed so much emphasis on the process to update the 1966 Bangkok Principles concerning the Treatment of Refugees ("The Bangkok Principles").

He stated that over the past four years, the process of expert consultation and discussions has been comprehensive and exhaustive. In addition to convening expert meetings in Manila, New Delhi and Tehran, the Secretary General had undertaken very extensive inter-sessional consultations with member States and UNHCR. The four key areas were identified and analysed. These were: the definition of term "refugee", the nature of asylum and standards of treatment of refugees; the issue of durable or sustainable solutions; and lastly, the difficult issue of burden-sharing. All of these issues were interdependent and together, they form a "package" of key issues that have to be addressed if a coherent and comprehensive legal framework was to be found.

The text presented to this Session, he believed reflected the contemporary concerns and values of States within both the regions and yet preserves the best traditions of asylum offered by Asian and African States over the last 30 years. Moreover, the positive modifications to the text could make the Bangkok Principles a living document in the years to come. In UNHCR's view, this text was sufficiently pragmatic and flexible to meet the specific concerns of States whilst at the same time, ensuring that State practices remains consistent with the basic principles embraced by all members of the international community.

The process to update the Bangkok Principles has had to confront two main problems: First, it would be impossible - and indeed undesirable - to capture in the body of a single document, all of the specific concerns of individual States. The many different concerns expressed in the Expert Seminars and consultations reflect the size and range of the AALCC Membership. In these circumstances, consensus would have led to a devaluation of the key Principles that must be protected. Secondly not all the principles are applicable to every context. The special circumstances and traditions of each country will mean that some of the Principles have greater application than others.

The revised text has been able to overcome both of these obstacles. First, the text has been able to capture the diverse concerns of individual States, either in the body of the text or through a series of footnotes. Secondly, the Principles as modified by

the Consolidated text do not impose any legally binding obligations on Member States. They do not encroach upon nor do they compromise the sovereignty of any State.

He concluded his statement by expressing UNHCR's gratitude to all Members of the AALCC for the unique opportunity to discuss such important issues of concern to his Office and hoped that the AALCC will continue to be a forum where issues relating to refugees and forced displacement in the Asian and African regions can be frankly debated, revitalized that re-enforced.

The **Delegate of Nepal** considered that the item on "Status and Treatment of Refugees" was both relevant and timely from legal as well as humanitarian point of view. He observed that ethnic clashes, human rights violations, civil war, natural calamities etc. were among these factors which were largely responsible for forced displacement of people and since it was manifestly universal, the response of the international community to the issue should also equally be a global one. He referred to the proposed Revised Bangkok Principles which in his view, provided a broad agreed framework of legal principles providing the basis for a predictable, principle and balanced action.

He said that although his country faced serious social and economic problems, however it was hosting thousands of refugees purely on humanitarian grounds. Further, Nepal was not a party to the Geneva Convention of 1951 and its Protocol of 1967 on Refugees, but it accords refugees basic minimum standard of treatment, support and security.

Referring to the proposed amendment to the definition of refugee as stipulated in the Bangkok Principles, he stated that such definition should make a clear distinction between *bonafide* refugees and *malafide* ones. As regards the concept of burden sharing, it should take into account the source of the countries and those better endowed should assume greater responsibility.

He considered that voluntary repatriation was the most viable and pre-eminent solution to the refugee problems. In attaining this goal, not only the country of asylum, the country of origin, voluntary agencies and international and inter-governmental organizations but also the country of transit should be under an obligation to render every possible assistance. He therefore, suggested that Article V (A) 5 of Bangkok Principles should be reformulated incorporating the obligation of the transit country. He recognized that the role of the country of origin in this regard was predominant and cardinal and as long as favourable environment was not created in the country of origin, refugees would seldom return voluntarily. Hence he suggested that the Bangkok Principles should elaborate the right of return in a concrete way.

The **Delegate of the Republic of Korea** stated that since the adoption of the Bangkok Principles in 1966 the refugee problem had assumed a complex nature and had attracted the attention of the international community. The way this issue is perceived has also undergone a substantial change. He said that in order to meet these changes the AALCC had taken necessary steps to revise the Bangkok Principles since the 36th Session held in Tehran. In his view the proposed amendment to the Bangkok Principles was the fruit of such endeavours and could be considered as an important international instrument complimenting the outdated features contained in the 1951 Refugees Convention and the 1967 Refugee Protocol. As regards the definition of refugee, he welcomed the approach taken by the AALCC and recognized the scope of expansion of the definition to cover those persons who flee from armed conflict on a

large scale or mainly in the Asian and African region. He agreed with the proposed amendment and hoped that the consolidated text would be adopted as soon as possible.

The **Delegate of Pakistan** stated that although his country was not a signatory to the 1951 Refugee Convention and the Protocol of 1967, it had been extending to the Afghan Refugees facilities in excess of those stipulated in the 1951 Convention. While appreciating the assistance provided by the UNHCR as well as of the friendly countries, his country continued to maintain the generous approach to the refugees provided by Islam, over 1400 years ago.

However, he reiterated the fundamental importance of the international protection to refugees as well as the mandated role of the UNHCR, for the upkeep and betterment of refugees. He appreciated the contribution extended by UNHCR to Pakistan towards promoting the protection of refugees, and facilitating a lasting solution to the refugee crises. He emphasized that refugee protection is primarily the responsibility of the State in which the influx has taken place. Pakistan he said has adopted an open door policy for refugees, thus enabling them to earn their own livelihood.

He was of the firm belief that the only durable solution to the refugee problem was voluntary repatriation. He added that, because of the prolonged stay of refugee his country was facing a host of economic, social as well as political problems. He said that he had put forth the problems faced by his country in dealing with the refugee crises. Nevertheless, assimilation and local integration of refugees is not acceptable to the Government of Pakistan, because of its economic limitations as well as security considerations.

The **Delegate of the Islamic Republic of Iran** thanked the UNHCR for its cooperation and efforts in contributing to the improvement of the situation of refugees in the Asian-African countries. He said that it was unfortunate that despite continuous efforts by the international community, the question of refugees remains a major international concern. The continuous influx of refugees mainly resulting from tensions, local disputes, and armed conflicts has added to the complexity of the crisis. In addition other causes such as underdevelopment, the gap between the poor and the rich and natural disasters had forced people to leave their homeland.

He noted that the countries of Asia and Africa had over the past three decades developed a positive practice on the treatment of refugees. In this context the Islamic Republic of Iran has remained as the first host country of refugees for the last eight years. During the last two decades they had sheltered a staggering 4.5 million refugees and displaced persons, however due to the continuation of the crisis the refugee situation in Iran had further complicated.

His country attached great importance to the refugee problem and would support any initiative by the AALCC in order to upgrade the Bangkok Principles in the light of State practice on treatment of refugees evolved in the two continents over the past thirty years. He was of the view that the consolidated text is a good basis for establishment of a framework for cooperation regarding the refugee crisis in the region.

As the refugee crisis has assumed international dimensions its resolution requires international effort and political will. He believed that greater partnership and burden sharing by the international community should be seriously considered. He considered voluntary repatriation as the best and most durable solution of the refugee problem.

He said that efforts by the International community in bringing peace and stability to war-torn territories as well as assisting post-war reconstruction would not only dry out the root causes of forced population movements, but would create supportive environment for voluntary repatriation of refugees. He believed that in case voluntary repatriation does not take place with adequate speed, the international community should consider resettlement as a viable means of protection for refugees.

The **Delegation of Japan** expressed the view that it was very meaningful to have intensive discussions among Member States of AALCC on the issue of the protection of refugees in the Asian and African region especially from the legal point of view. He said that the Government of Japan supports the process of revising the Bangkok Principles, he appreciated the active role played by the UNHCR, and hoped that by this process the Member States would promote domestic legislation concerning the protection of refugees.

The **Delegate of India** made detailed comments on the Draft revised Bangkok Principles. She referred to Article I (2) which set out the definition of the term refugee and stated that India was not in favour of the expanded definition of refugees. The proposed elements of enlarged definition drawn from human rights and humanitarian law principles were vague in terms of their meaning, scope and contents. They have different orientation reflecting the specificities of the special regimes they belong to. The importation of such elements would unsettle the balance of the rights and duties envisaged in the refugee related instruments and weaken the protection afforded to genuine refugees.

Therefore inclusion of such elements in the definition of refugees would lead to duplication and congestion of provisions besides distorting the desired orientation. Further, the expanded definition sought to impose duties and obligation on host States without concomitant obligation on the States from which refugee flows occur. She stressed that the fundamental concept of well founded fear of persecution was the core of the definition and any expansion of definition might lead to its dilution. She therefore, proposed deletion of that paragraph.

As regards Article III dealing with Asylum, she suggested incorporation of an alternative definition in Article III (1) based on Article 14(1) of the Universal Declaration of Human Rights which provides that "every one has the right to seek and to enjoy in other countries asylum from persecution". Further, she proposed that in Article III (2), the qualifying phrase "in accordance with its international obligation and national legislations" be deleted.

In Article VIII concerning Expulsion and Deportation of Refugees, she was not in favour of inclusion of a new para 4 which referred to recourse to appeals etc. as "due process of law" would cover that aspect.

While supporting voluntary repatriation as the most preferred solution for the problem of refugees, she did not consider it appropriate to set out a separate article on "other solutions" as it was obvious that if voluntary repatriation fails the traditional solutions would automatically be explored.

The **Delegate of Sudan** stated that in the Bangkok Principles the right to compensation should be conditional. The receiving country should be encouraged to grant nationality by naturalization for the refugees who stay for a long period in that

country. He believed this to be a major solution for this problem. In his view funding of the UNHCR should be obligatory on the rich countries especially for the G-7 countries. He said that the Bangkok Principles did not have a provision on family reunion which is very important for the refugee problem.

Turning to internal displacement, he said, that this phenomena concerned the State itself and in absence of UNHCR support it proved to be a menace for the State. Lastly he said that some countries had received refugees for a long time, and they had degraded the environment which resulted in losses for the host country. He suggested that countries suffering environmental degradation should be compensated by the UNHCR and other funding States.

The **Delegate of the Arab Republic of Egypt** stated that he did not think it necessary to elaborate any further on the topic, as the interest of his country in trying to conclude the matter of adoption of the Bangkok Principles was clearly evident. Once these principles are adopted the AALCC can take up other new related topics. In his view the process of finalization of the revision of the Bangkok Principles should be completed within six months so that they are adopted in the forthcoming fortieth session.

The **Delegate of the People's Republic of China** said that his country would actively join the efforts with other delegations in the Working Group to finalize the Bangkok Principles on refugees.

The **Representative of the UNHCR** stated that he was gratified to hear the very important statements made by a number of delegations. He said the revision of the Bangkok Principles was necessary in order to seek enhanced protection of refugees. He also observed a strong support for linking international protection with pursuit for durable solutions, because a refugee situation could not go on for ever. In his view organizations like the UNHCR should ideally be working themselves out of business and states should pursue policies which could make UNHCR irrelevant because the existence of UNHCR was a barometer for abnormal state of Affairs, within, between and among States.

He stated that some delegations had rightly observed that since the Bangkok Principles were adopted 34 years ago the number of refugees instead of diminishing had increased. Thus, pursuit of durable solution is very clearly a mandate of UNHCR, working with governments and it is clear from the statements made, that the pre-eminent solution foreseen by governments is voluntary repatriation. He said that UNHCR strongly supported this solution and had strongly pursued policies of voluntary repatriation to the extent of sometimes being criticized for promoting voluntary repatriation under conditions which were seen to be less than ideal. But in his view repatriation would itself act as a catalyst for stabilizing post conflict situations for consolidation of the peace policy.

In conclusion he reiterated UNHCR support for updating the Bangkok Principles, and said that it would be closely working with the Governments as well as the AALCC Secretariat to bring the process to a satisfactory conclusion. He said that in this regard the Egyptian delegation had expressed strong support for finalization of the process by fortieth session. He once again thanked the delegations who had made contribution to this process. Once this framework is adopted, the next challenge facing the AALCC and UNHCR will be to translate these principles into concrete reality. He wished that the next working group established would be on durable solution.

The **Delegate of Ghana** supported the view expressed by the delegate of Egypt that the agreement reached after the informal consultations should be given the required push so that by the next session a finalized text could be ready for consideration. Posing a question on voluntary repatriation, he said, his country had received a number of displaced persons from countries experiencing civil war, but after peace was restored in that country, why those people had refused to go back to their countries. In such a situation, he desired that the AALCC and UNHCR should find out how best such situations could be dealt with. He reiterated his governments views on burden sharing, and said that they were prepared to take their part, but the international community should also take up its responsibility, as a large number of the developing countries did not have the economic resources to look after refugees and displaced persons for a long time.

The **Representative of UNHCR** said that he was aware of the situation referred by the delegate of Ghana, the protracted refugee situation in his country had lasted 10 years and it is correct that the cause of the situation which led to the initial outflow, no longer existed. In his view main problem has been the consequences of the civil war, it would take a very long time for that country to build up its infrastructure and economy, and this was the reason why refugees did not want to return to their country of origin. Therefore, he said, it is a challenge for the international community as well as the UNHCR in creating factors that will encourage refugees to return. He added that quite a large number of refugees had returned and are still returning. The focus of UNHCR was on returning the rest of them or trying to resettle them elsewhere.

(ii) **Resolution on the "Status and Treatment of Refugees"**
(Adopted on 23.2.2000)

The Asian African Legal Consultative Committee at its Thirty-ninth Session

Recalling the Principles Concerning Treatment of Refugees adopted by the Eighth Session in Bangkok in 1966 ("The Bangkok Principles") and subsequent Addenda thereto;

Recalling Resolution 38/2 adopted by the Thirty-eighth Session which requested the Secretary-General to undertake further consultations with Member States and the Office of the United Nations High Commissioner for Refugees, in particular on the Draft Revised Consolidated Text of the Bangkok Principles with a view to submitting to the Thirty-ninth Session a finalized text thereof;

Recalling also Resolution 38/2 which recognized the need to bring the process of updating the Bangkok Principles initiated in Manila in 1996 to a conclusion;

Having considered the item Status and Treatment of Refugees and the Secretariat Document No. AALCC/XXXIX/CAIRO/2000/S.2;

Welcomed the Secretary-General's Report entitled "Status and Treatment of Refugees", the Draft Revised Consolidated Text of the Bangkok Principles,

and the Proposals and Comments received from AALCC Member States and appearing as Annexes I, II and III respectively in the said Report;

1. **Expresses** appreciation to Secretary-General for undertaking the further consultations with Member States and with the Office of the United Nations High Commissioner for Refugees;
2. **Urges** Member States which have not yet done so, to forward their comments on the said Draft Revised Consolidated Text to the Secretary-General as soon as possible;
3. **Takes note** with interest of the Report of the Secretary-General on the Status and Treatment of Refugees, the Draft Revised Consolidated Text of the Bangkok Principles, the proposals and comments submitted by Member States during the said consultations and of the report of informal consultations held during this Thirty-ninth Session;
4. **Recognizes** that the Bangkok Principles and Addenda thereto as well as the Revised Consolidated Text are of a declaratory character and are intended to guide and inform Member States on relevant principles and good practices relating to the status and treatment of refugees;
5. **Recognizes** also the urgent need to bring the process of updating the Bangkok Principles initiated in Manila in 1996 to a final conclusion at the Fortieth Session;
6. **To that effect** requests the Secretary-General, with the technical assistance of the Office of the UN High Commissioner for Refugees, to convene an open-ended working group meeting of interested member states within six months in order to undertake a final review of the Revised Consolidated Text of the Bangkok Principles and to submit it to the Fortieth Session for adoption threat;
7. **Decides** to place the item 'Status and Treatment of Refugees' on the Agenda of the Fortieth Session.

(iii) Secretariat Study: Status and Treatment of Refugees

A consolidated text prepared in light of discussion held in the Seminar held in Manila and the Expert Group Meeting in Tehran was placed for consideration at the Thirty-seventh Session (New Delhi, 1998). The Committee, while taking note of the Secretary General's report and the consolidated text of the 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 to 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-mentioned resolution and requested them to send their comments on the text of the revised version of the Bangkok Principles.

At the Thirty-eighth Session held in Accra 1999, the Heads of Delegations considered a proposal for constitution of an open ended Working Group for consideration of the replies received from 8 Member Governments (China; Japan; Indonesia; Pakistan; Saudi Arabia; Sudan; Singapore and Turkey). As there was no consensus, such a Working Group could not be constituted. However, the item was taken up for consideration at the fourth Plenary meeting.

It may also be recalled that the **President of Ghana Hon'ble Ft. Lt. Jerry John Rawlings**, in his inaugural address at the Accra Session, while underscoring importance of upgrading the Bangkok Principles on the Status and Treatment of Refugees stressed that this task should be taken up very seriously. He stressed the relevance of the UN Convention Relating to the Status and Treatment of Refugees 1951 and its Protocol of 1967, but on the other hand mentioned that the Bangkok Principles should take into consideration the fact of the upsurge in the number of displaced persons in Africa. He reaffirmed his governments commitment to the principle of burden-sharing. He stated that the burden of looking after the displaced persons is an international responsibility which should not be left in the hands of a few countries and non-governmental organizations. Furthermore, such burden sharing must take into account the resources of the countries carrying this burden, and those countries which are better endowed to take a better proportion or higher proportion of the numbers involved.

The resolution adopted on this item at the Accra Session *inter alia*, recognized the need to bring the process of updating the Bangkok Principles initiated at 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. It requested the Secretary General to undertake further consultations with Member States and with the Office of the UNHCR, in particular on the draft consolidated text with a view to finalizing the text of the revised Bangkok Principles. It also urged Member States which have not yet done so, to forward their comments to the Secretariat on the consolidated text as soon as possible.

Subsequent to the Accra Session, reminder letters were again sent in June 1999, to those Member Governments which had not yet sent their comments on the consolidated text. As of the end of December, 1999 the Secretariat received comments from 8 other Member States i.e. Gambia; Islamic Republic of Iran; Jordan; Kuwait; Philippines; Qatar; Tanzania; and Thailand, in addition to 8 Member States referred to earlier.

From the responses received so far it appears that some Member States (China, Gambia, Indonesia, Japan and Qatar) have no specific comments and are agreeable to the revision of the Bangkok Principles. Some other Member States have made specific comments which are as follows:

Definition of "refugees": Some Member States have proposed specific changes in the definition of the term "refugees", and certain amendments have been proposed for enlargement of the definition keeping in view other regional and international conventions and declarations.

Burden Sharing: is another issue on which emphasis has been placed. Most of the Member Governments in principle support it, but would not want any financial obligations to fall on them, in case they are to host refugees. This burden according to

them should be equitably borne by the international community. A few States have expressed reservation with regard to "right of compensation".

Asylum: matters concerning asylum to a refugee have evoked a mixed response. One observation in this regard is that 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. Another comment received in this regard pertains to the dependents of a refugee who shall be deemed to be refugees.

Minimum Standard of Treatment is another grey area which needs to be considered, especially with regard to children, women and the elderly refugees. The problems and difficulties facing women, children and the elderly vary, according to their social, cultural and economic backgrounds. There is need to do an in-depth study of the problems in order to come up with recommendations of appropriate protection befitting the disadvantaged group.

Some other concerns related to the principles of non-refoulement, expulsion and deportation and durable solutions.

Based on the comments received so far, the Secretariat in consultation with the UNHCR office in Geneva has prepared a revised text which is reproduced in Annex-I, to this chapter.

ANNEX-I

DRAFT REVISED CONSOLIDATED TEXT OF THE "BANGKOK PRINCIPLES" 1[1]

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 reasons of race, colour, *nationality*, *ethnic origin*,^{2[2]} political *opinion*^{3[3]} or membership of a particular social group:^{4[4]}

1[1] 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 and the Tehran Meeting of Experts, and provisions of other international instruments. All sources other than Articles of the Bangkok Principles including comments submitted by individual state members during inter-sessional consultations between 1997-1999 are specified in footnotes. The comments of the Islamic Republic of Iran were made during the 38th Session of the AALCC held in Accra (1999).

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

- (a) leaves the State of which he⁵[5] 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; and⁶[6]
- (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 refuge⁷[7] 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.⁸[8]

"ethnic origin". The Islamic Republic of Iran proposed to replace "ethnic origin" to "ethnicity".

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

4[4] The Islamic Republic of Iran proposed the addition of "membership of a particular social or political group". It proposed the inclusion of religion also as a cause for persecution.

5[5] It may be preferable in these times to use, whenever appropriate, the formulas "he/she" and "his/her".

6[6] 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.

7[7] During inter-sessional consultations, the Government of Thailand requested deletion of the word "events seriously disturbing public order" from the expanded definition of "refugee". The Government of Turkey proposed that the same words be replaced by the words "armed conflicts". The Government of Singapore expressed some caution about a broader definition. It suggested that other approaches to managing large number of refugee -- such as temporary protection -- might be more helpful in some situations.

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 [?]".

8[8] Note (vi) to Art.I of the Bangkok Principles.

4. The dependents of a refugee shall be deemed to be refugees.^{9[9]}
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.^{10[10]}
6. A refugee shall lose his status as refugee if:^{11[11]}
- (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*^{12[12]} the loss of status as a refugee under *this sub-paragraph*^{13[13]} will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality;^{14[14]} 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.^{15[15]}

- (v) *If it becomes evident to the country of refugee that the refugee acquired the refugee status on the basis of false information, incorrect documents or he cheated which influenced the decision of national authority to grant him refugee status".*^{16[16]}

^{9[9]} Explanation of Art. I of the Bangkok Principles. During inter-sessional consultations, the Government of Tanzania proposed more flexibility in the application of this provision to give a degree of choice to affected family members.

^{10[10]} Exception (I) to Article I of the Bangkok Principles.

^{11[11]} 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 Articles and from the 1951 Convention.

^{12[12]} Stylistic addition.

^{13[13]} Idem.

^{14[14]} This sentence is derived from Note (ii) to Art. II of the Bangkok Principles.

^{15[15]} Art. IC (5) of the 1951 Convention. This sub-paragraph usefully complements the rest of the text, the core of which is protection, as repeatedly indicated at the Tehran Meeting of Experts. It is also consistent with the recommendation of a participant at the Tehran Meeting that the changes justifying cessation of refugee status should be of a fundamental nature.

^{16[16]} The provisions in sub-para (v) were proposed by the Government of Kuwait. A similar proposal was made by Saudi Arabia.

7. A person¹⁷[17] who, prior to his admission into the country of refuge, has committed a crime against peace, a war crime, or crime against *humanity*¹⁸[18] *as defined in international instruments drawn up to make provisions in respect of such crimes*¹⁹[19] or a serious non-political crime *outside his country of refuge prior to his admission to that country as a refugee*²⁰[20], 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.*²¹[21]

2. A State has the sovereign right to grant or to refuse asylum in its territory to a refugee²²[22] *in accordance with its international obligations and national legislation.*²³[23]

¹⁷[17] 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.

¹⁸[18] During inter-sessional consultations, the Government of Turkey proposed the addition of the words "including terrorists act" after the words "a crime against humanity" and substituting the words "any non-political crime" for the words "serious non-political crime".

¹⁹[19] Art.I(5) (a) of the OAU Convention and Art. IF(a) of the 1951 Convention.

²⁰[20] Art.I(5) (b) of the OAU Convention and Art. IF(b) of the 1951 Convention.

²¹[21] Para. 23 of the 1993 Vienna Declaration 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).

²²[22]The Government of Islamic Republic of Iran during the 38th Session of AALCC proposed to substitute "entitled to seek and to enjoy in other countries asylum from persecution" by "eligible to seek asylum from persecution and enjoy protection in the country of asylum".

²³[23]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". The Government of Islamic Republic of Iran during the 38th Session of AALCC, proposed to substitute "a refugee in accordance with its international obligation and national legislation" by

3. *The grant of asylum to refugees is a peaceful and humanitarian act.*^{24[24]} It^{25[25]} shall be respected by all other States and shall not be regarded as an unfriendly act.

4. *Member States*^{26[26]} shall use their best endeavours consistent with their respective legislation's 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.^{27[27]}

Article III A28[28]

Non-refoulement

1. *No one seeking asylum*^{29[29]} 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,^{30[30]} membership of a particular social group or political opinion.^{31[31]}

2. *The provision as outlined above may not however be claimed by a person when there is reasonable ground to believe the person's presence is a danger to the security of the*

"asylum seeker within its international obligation and in accordance with national legislation and policy.

^{24[24]}Art.II (2) of the OAU Convention and the preamble of the United Nations Declaration on Territorial Asylum.

^{25[25]}Stylistic substitution. During inter-sessional consultations, the Government of Turkey proposed addition of the words "so long as its peaceful and humanitarian nature is maintained".

^{26[26]}During inter-sessional consultations, the Government of Thailand proposed the addition of the words "particularly the States which are not the States of first refuge" after the words "member States" and the Government of Pakistan was of the view that this Article should be declaratory rather than legally binding on States.

^{27[27]} Art. II (I) of the OAU Convention. This proposed paragraph would indeed reflect the positive State practice in the Afro-Asian region in the past three decades.

^{28[28]} 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.

^{29[29]} During inter-sessional consultations, the Government of Thailand proposed deletion of the words "seeking asylum" and substitution with the words "After asylum is granted".

^{30[30]} The addition of "ethnic origin" in the non-refoulement provision was recommended at the Tehran Meeting of Experts. It is in any case consistent with the grounds in the refugee definition. The Government of Turkey proposed deletion of the words "nationality" and "ethnic origin" from the definition.

^{31[31]} Rephrasing of Art.III as per footnote (23) above.

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. 32[32]

3. In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions it may deemed appropriate, to enable the person thus endangered to seek asylum in another country. 33[33]

Article VI

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* 34[34] *as recognized in generally accepted international instruments.* 35[35]

2. The standard of treatment referred to in paragraph 136[36] 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 distinction 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.* 37[37]

32[32] Idem. The Government of Turkey proposed the words "national security" and "public order" be used in the sense of Article 33(2) of the 1951 Convention and the word "serious" be replaced by the word "any".

33[33] Para 3 of Art. III as per footnote (23) above.

34[34] The Government of the Islamic Republic of Iran proposed to replace "as recognized in generally accepted international instrument's" with "in generally accepted international instruments" "in generally accepted instruments and within its potentials and possibilities" after human rights.

35[35] Insert recommended by the Manila Seminar. At the Tehran Meeting of Experts, one participant suggested substituting "as regards" for "with due regard". During the inter-sessional consultations, the Government of Thailand proposed replacing the words with the words "international law" and the Government of Turkey proposed the word "applicable" instead of the word "generally accepted".

36[36] As this is a restatement of para. 2 of this Art. VI, it had to be rephrased accordingly.

37[37] Derived from Art. IV of the OAU Convention and Art. 3 (partially) of the 1951 Convention. The grounds of "ethnic origin" and "gender" are added to reflect current international standards, the latter reflecting Art. 18 of the Vienna Declaration on Human Rights and foreshadowing the next paragraph. This clause reflects recommendation (d) of the Manila Seminar under "Points for Further Review". In

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.38[38]

7. States shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered 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.39[39]

8. States shall give special attention to the protection needs of elderly refugees to ensure not only their physical safety, but also40[40] 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.

9. The body of the refugee shall be returned to the State of origin after his death, or to the country of which he was he habitual resident - even if it is not the country of his nationality, unless there is a written request (will) by the deceased refugee himself stating that he should not be buried in such a place.41[41]

Article VIII

Expulsion and Deportation

1. Save in the national or public interest or in order to safeguard the population,42[42] the State shall not expel a refugee.

inter-sessional consultations, the Government of Turkey proposed deletion of the grounds "nationality" and "ethnic origin" from the text.

38[38] See para (a) of UNHCR Executive Committee Conclusion No.64 (XLI) on Refugee Women and International Protection. At the Tehran Meeting of Experts, during the discussion of a possible provision on women, children and elderly refugees, one participant proposed a general provision on vulnerable groups as an alternative to a separate one on each such group as in paragraphs 6, 7 and 8.

39[39] Art. 22(1) of the 1989 Convention on the Rights of the Child.

40[40] During inter-sessional consultations, the Government of Thailand proposed the addition of the words "to the extent possible" after the words "but also". The Government of Turkey proposed addition of a new article concerning the responsibilities of refugees along the lines and in the spirit of Article 2 of 1951 Convention.

41[41] Paragraph 9 was proposed by the Government of Saudi Arabia.

42[42] This excerpt is taken from Art.3(2) of the UN Declaration on Territorial Asylum. It substitutes for "on the ground of violation of the conditions of asylum". Another alternative proposed in Note (i) to Art. VIII of the Bangkok Principles would be: "save on ground of national security or public order, or a violation of the vital or fundamental conditions of asylum"; "national security and public order" are the only grounds provided for by the 1951 Convention in Art.32(1).

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.^{43[43]}

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*,^{44[44]} religion, political *opinion*,^{45[45]} 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.*^{46[46]} *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.*^{47[47]}

III. Durable Solutions

Article IV

Right of return

1. A refugee shall have the right to return if he so chooses to the State of which he is a national or the country of his nationality and in this event it shall be the duty of such a State or Country to receive him.^{48[48]}

2.^{49[49]} *This principle should apply to, inter alia*,^{50[50]} any person who because of foreign domination, external aggression or occupation^{51[51]} has left his habitual place of residence, or who^{52[52]} being outside such place desires to return thereto.

^{43[43]} The phrase "as applicable to aliens under the same circumstances" is taken from Note (2) to Art. VIII.

^{44[44]} These additional grounds were recommended for the refugee definition by the Manila Seminar and the Tehran Meeting of Experts respectively. See footnote (2) above. In inter-sessional consultations, the Government of Turkey expressed its reservations to the grounds "nationality" and "ethnic origin" in the text.

^{45[45]} See footnote (3) above.

^{46[46]} During inter-sessional consultations the Government of Thailand requested deletion of the words "The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law".

^{47[47]} Art. 32(2) of the 1951 Convention. This paragraph is consistent with the recommendation of a participant of the Tehran Meeting of Experts that a refugee should not be expelled without due process of law. It is also in conformity with Art. 13 of the 1966 International Covenant on Civil and Rights. In the national context, the refugee's right to due process of law in expulsion cases was reaffirmed in the January 1996 decision of the Supreme Court of India in the case of National Human Rights Commission v. State of Arunachal Pradesh and Anther (1996 [I] SC 295).

^{48[48]} The Government of Islamic Republic of Iran proposed the addition of "nothing shall prevent a refugee from exercising his/her right of return" at the end of Article IV para (1).

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.⁵³[53]

4. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependents of all such persons as are referred to in paragraph 1⁵⁴[54] above.⁵⁵[55]

Article V

Right to Compensation

1. A refugee shall have the right to receive compensation from the State or the Country which he left or to which he was unable to return.⁵⁶[56]

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.

3.⁵⁷[57] 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

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

⁵⁰[50] Stylistic addition.

⁵¹[51] In inter-sessional consultations, the Government of Turkey proposed substituting the words "international or internal armed conflict" for the words "foreign domination, external aggression or occupation".

⁵²[52] *Idem*. During inter-sessional consultations, the Government of Turkey proposed 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".

⁵³[53] 1970 Addendum, para 2.

⁵⁴[54] Modified due to change in paragraph numbering.

⁵⁵[55] 1970 Addendum, para. 3.

⁵⁶[56] While a participant at the Tehran Meeting of Experts called compensation a utopia, another called attention to its necessity when, for example, refugees' property has been confiscated. He was probably referring to historical cases of compensation and restitution from Germany and from Uganda. In view of the financial implications for many developing nations, a number of reservations were expressed at the Manila and Tehran meetings on the refugees to receive compensation from their country of origin or former habitual residence. During the inter-sessional consultation process, particular reservations to Article V notably paragraph i, were expressed by the Governments of Sudan, Pakistan, Turkey, Jordan, Tanzania. Government of Tanzania also proposed a reference to some mechanism accessible by all parties, that can deal with compensation issues.

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)58[58] above.59[59]

Article V (A)60[60]

Voluntary Repatriation61[61]

1. *The essentially62[62] voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.*

2. *The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.*

3. *The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.*

4. *Refugees who voluntarily return to their country shall in no way be penalized for having left it or for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the relevant universal and regional organizations63[63] 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 result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations to facilitate their return.64[64]*

57[57] This paragraph and the next are paras. (4) and (5) of the 1970 Addendum. See footnote (38) above for explanation.

58[58] Numbering modified as per the new numbering of the paragraphs.

59[59] 1970 Addendum, para.5.

60[60] Under "Durable Solution" the Manila Seminar made detailed recommendations on voluntary repatriation which are reflected in this new Article taken from the OAU Convention.

61[61] Art. V of the OAU Convention. Similar provisions are found in UNHCR's EXCOM Conclusion No.49 (XXXVI) on Voluntary Repatriation.

62[62] The Government of Islamic Republic of Iran proposed the deletion of "essentially" from para 1, Art V(a).

63[63] This phrase is substituted for "the Administrative Secretary-General of the OAU".

64[64] This and the other paragraphs of this proposed Article should meet the requirements of the Tehran Meeting of Experts participants who called for "ways

6. UNHCR shall, with the support of donor countries, facilitate/promote the voluntary repatriation whenever the conditions for return to the country of origin are prepared and conducive.65[65]

Article V (B)66[66]

Other Solutions

1. 67[67] *Voluntary repatriation, local settlement or resettlement, that is, the traditional solutions, all remain viable and important responses to refugee situations, even while voluntary repatriation is the pre-eminent solution.*68[68] *To this effect, States should undertake, with the help of international governmental and non-governmental organizations,*69[69] *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.*70[70]

3. *The issue*71[71] *of root*72[72] *causes is crucial for solutions and international efforts should also be directed to the removal of the causes of refugee*

and means to facilitate return", for "the means of integration after return", and for "sustainable reintegration". During inter-sessional consultations, the Government of Tanzania called for some reference in paragraphs 3-5, to the consequences for states which do not honour their undertakings to receive returning refugees and do not accord them rights to which they are entitled.

65[65] This paragraph was proposed by the Government of Islamic Republic of Iran at Accra Session.

66[66] While the Manila Seminar expressed the sense that the international climate was not ripe for a formal inclusion of local integration as a solution, it conceded that it had provided some positive experiences. As for third-country resettlement, while the Seminar deemed it not a solution for the vast majority of refugees in the Afro-Asian region, it nevertheless agreed that the resettlement option needed to be left open. (Report of the Seminar, p.6). At the Tehran Meeting of Experts, both views were expressed and several participants called attention to the need to preserve these three traditional solutions in light of positive experiences in specific refugee context. This proposed article reflects these views.

67[67] UNHCR's EXCOM Conclusion No.61 (XLI) Note on International Protection, paras (iv) and (v).

68[68] The Government of Turkey proposed the addition of the words "third country" before the word "resettlement". The Government of Islamic Republic of Iran proposed to replace "local settlement or resettlement" with "Voluntary repatriation, integration in the country of asylum, or resettlement in a third country".

69[69] Stylistic insertion.

70[70] Manila Seminar (see Report of the Seminar, p.6). At the Tehran Meeting of Experts, one participant recommended the consideration of "regional approaches" which in fact are not at all excluded from the concept of "comprehensive approaches".

*movements.*⁷³[73] *And the creation of the political, economic, social, humanitarian and environmental conditions conducive to voluntary repatriation.*⁷⁴[74]

IV. Burden Sharing

Article IX⁷⁵[75]

Burden Sharing

1. The refugee phenomenon countries 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 the 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, 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 cooperation in burden sharing should be manifested whenever necessary, through effective concrete measures in support of States requiring assistance, whether through financial or material aid through resettlement opportunities.

71[71] The word "issue" is substituted for "aspect" for stylistic purposes.

72[72] The word "root" is added to the text in order better to reflect the recommendation made at the Tehran Meeting of Experts.

73[73] UNHCR's EXCOM Conclusion No.40 (XXXVI).

74[74] Addressing the root causes of refugee movements by ensuring "sustainable repatriation" was recommended at the Tehran Meeting of Experts.

75[75] The Manila Seminar recommended that paras.I to IV of the 1987 Addendum be incorporated into the Bangkok Principles under the heading of "Burden Sharing" and become a new Art. IX (Report of the Seminar. P.6.). During inter-sessional consultations, the Government of Singapore noted that although the Principles deal primarily with the rights of refugees in States of refuge, the primary responsibility rests with States of origin to prevent the root causes of displacement from developing.

During inter-sessional consultations, the Government of Pakistan expressed the view that "the major share of the financial contribution be borne by rich countries and there should be minimum financial burden on developing countries" and the Government of Tanzania proposed there should be a right of host states to request and receive "necessary and adequate assistance from the international community which can enable them to accord refugees the minimum standards of treatment".

5.76[76] *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' fulfilment of their responsibilities in this regard.*

V. Additional Provisions77[77]

Article X78[78]

Rights granted apart from these Principles79[79]

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 XI80[80]

Cooperation with International Organizations

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.81[81]

ANNEX-II

PROPOSALS SUBMITTED AT THE EXPERTS GROUP MEETING IN TEHRAN

1. Egypt

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

2. Ghana

The Delegate of Ghana proposed a definition of refugee as follows: "A refugee is a person who? Is outside the country of his nationality and is unwilling or cannot, for the

76[76]This paragraph is added to ensure a more complete statement of the principle of burden sharing and arises out of the discussions at the Tehran Meeting of Experts.

77[77] Title added for clarity.

78[78] This is the former Art.IX. The Manila Seminar had recommended that a new Art. IX be inserted under the rubric "Burden Sharing" and that this text be renumbered Art.X.

79[79]Title added for clarity. During the inter-sessional consultations, the Government of Pakistan expressed some reservations about the word "higher" in the draft text.

80[80]Under the heading of "Cooperation with international Organizations", the Manila Seminar "expressed its appreciation to UNHCR as well as to UNRWA for their dedication to their duties on behalf of refugees".(Report of the Seminar, p.5.)

81[81]On cooperation with UNHCR, see Art.VIII (I) of the OAU Convention, Art.35 of the 1951 Convention, and Art.II of the 1967 Protocol relating to the Status of Refugees.

time being, return to his home country because his life, freedom or personal security would be at risk there; the risk emanating from a pattern of persecution on account of race, religion, nationality, membership of a particular social group or political opinion and/or from generalized violence (international war, internal armed conflict, foreign aggression or occupation, severe disruption of public order) or from massive violations of human rights in the whole or part of the country of nationality".

3. Uganda

The delegate of Uganda proposed to include 'colour' in the definition of refugees i.e. "persecution as result of colour ethnicity?quot; etc.

4. Islamic Republic of Iran

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

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

ANNEX III

COMMENTS RECEIVED BY THE SECRETARIAT AS OF 12 NOVEMBER 1999 FROM AALCC's MEMBER STATES ON THE CONSOLIDATED TEXT ON THE REVISED BANGKOK PRINCIPLES

1. People's Republic of China

The Government of the People's Republic of China has no comments on the consolidated text on the revision of the Bangkok Principles at this stage". (Letter from the Embassy of the People's Republic of China, dated July 31, 1998).

2. Gambia

The Government of Gambia in its response, supports the revised proposals in toto. It has found them to be reasonable, proper and timely. (Letter from the Attorney Generals' Chambers and Department of State and Justice, Banjul, dated 31 August 1999).

3. Republic of Indonesia

The Government of Indonesia has studied the text on the Revision of Bangkok Principles on Status and Treatment of Refugees and recommends to submit it without any further revisions. (Letter from the Embassy of the Republic of Indonesia, New Delhi, dated July 30, 1998).

4. Islamic Republic of Iran

The delegate of the Islamic Republic of Iran in his statement made at the Accra Session, proposed the following amendments, which would enhance the acceptability of text.

I. Article 1, Definition of the term "Refugee"

The following definition was proposed:

"A refugee is a person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, nationality, ethnicity, political opinion or membership of a particular social or political group."

II. Asylum and Treatment of Refugees

Article 3, Asylum to a Refugee.

Para 1. Everyone, without any distinction of any kind, is eligible to seek asylum from persecution and enjoy protection in the country of asylum.

Para 2. A state has the sovereign right to grant or to refuse in its territory to a asylum seeker within its international obligations and in accordance with national legislation and policy.

Article VI, Minimum Standards of Treatment

1. A state shall accord to refugees treatment no less favourable than generally accorded to aliens in similar circumstances, with due regard to basic human rights in generally accepted instruments and within its potentials and possibilities.

III. Durable Solutions

Article IV, Right to return

Para 1,? Nothing shall prevent a refugee from exercising his/her right for return (this sentence comes at the end of para 1).

Article V(A), voluntary repatriation

1. We suggest the word "essentially" be omitted in this para, and reads as follows. The voluntary character of.....

(this is also consistent with conclusion Nos. 18 and 40 of EXCOM).

An additional para to the above mentioned article.

5. UNHCR shall, with the support of donor countries, facilitate/promote the voluntary repatriation whenever the conditions for return to the country of origin are prepared and conducive.

Article V(B) other solutions

Para 1. Voluntary repatriation, integration in the country of asylum, or resettlement in a third country?, while voluntary repatriation is considered as the most viable solution. To this effect.....

IV. Burden sharing

Article IX Burden Sharing

We support the provision in the article of the consolidated text and inclusion a new paragraph (para 5) in the article IX. Considering the fact that most of the world's refugee population is hosted in the third world developing countries of Asia and Africa, "equitable burden sharing" is the principle factor in international solidarity, and it is a vital requirement of international protection and relevant standard for refugee treatment.

5. Japan

The Government of Japan has no particular comment on the above revision and is agreeable to the Revision of the AALCC's Bangkok Principles on Status and Treatment of Refugees. (Letter from the Embassy of Japan, New Delhi, dated August 13, 1998).

6. Jordan

The Government of Jordan has advanced three points for their reservation to the revision of the Bangkok Principles:

- (1) That the Palestinian refugees in Jordan enjoy a special status. They are accorded the same rights accorded to Jordanians including nationality without prejudicing their right to return or to compensation.
- (2) The issue of the Palestinian Refugees linked to the overall Middle East question is not yet resolved. The parties have postponed it until the final negotiations take place. Therefore, Article (1) 6 (iii) of the Principles could negatively affect the right of Palestinian refugees to return and be compensated. Furthermore, it could affect the final negotiations.
- (3) The Government of Jordan is known for its concern for humanitarian issues. It is also committed to human right and other humanitarian principles. Though Jordan is

not a signatory to the International Instruments concerning refugees, it has in reality applied the principles contained therein. In order to support the refugee community, Jordan's treatment to refugees, has at times exceeded the international standards. (Fax message JORAM/INDNE/HCR/0387 dated 15 March, 1 999).

7. Kuwait

The government of Kuwait in its comments on the subject, has *inter alia* drawn attention to the following four aspects: First, the changes in the definition of refugee is a humanitarian issue and not a political one, and does not include intervention into the internal affairs of the country giving refuge. Secondly, if the broadening of the definition of the term refugee is to strengthen the international protection system for refugees, it is to be kept in mind that this would entail huge cost for some countries, this sheltering refugees and, would not be possible without international cooperation. Thirdly, the Kuwaiti Constitution of 1962 according to its provision 64, does not allow handing over of political refugees, the state provides protection to such refugees. Lastly, the ministry of Justice has proposed the addition, to the provision relating to "loss of refugee status"

"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 he cheated which influenced the decision of national authority to grant him refugee status".*

(Letter from the Embassy of the State of Kuwait, dated 12 November, 1999).

8. Pakistan

Definition of the term "refugee"

In these Revisions we support the additions of the words "ethnic origin" as proposed in Tehran as far as the term "he" is concerned the substitution 'he/she' and 'his/her' may be adopted.

Asylum to a Refugee

We support the details already provided and agree that we should avoid giving erroneous impression that all refugees are terrorists which would in turn undermine the institution of asylum from persecution according to universal declaration of human rights.

Non-refoulement

This article laid down the condition that no one seeking asylum in accordance with these principles shall be subjected to measures such as rejection at the frontier, return or expulsion from the host country. Although Pakistan has not resorted to using these harsh measures against refugees yet we do not support making it legally binding.

Minimum standards of treatment

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

Right of return

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

Right to compensation

* Unofficial translation.

Implementation of this article is likely to create financial hardships for developing and third world countries including Pakistan.

Voluntary repatriation

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

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 with major share of the financial contribution be born by such countries and there should be minimum financial burden on the developing countries.

Rights granted apart from the Principle

Nothing in these Articles shall be deemed to impair any other rights and benefits granted or which may hereafter 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).

9. Philippines

The Government of Philippines has studied the text on the Revision of the Bangkok Principles and while referring to the revised definition of the term "refugee" is of the opinion that, although the addition of the 1996 OAU Convention governing specific Aspects of the Refugee Problem in Africa was recommended both at the Manila Seminar and the Tehran Meeting of Experts, there was no consensus among the participants at the Tehran meeting regarding the formulation of one comprehensive international definition of the term refugee to be incorporated in the Bangkok Principles.

As to whether or not the government of Philippines would support the consolidated text when presented, would be relayed to the AALCC Secretariat after the matter is discussed at a cabinet meeting. All the same they reiterated the fact that they had no objections to the consolidated text relative to the updating of Bangkok Principles.

(Letter from Department of Justice, Manila, dated 11 January, 1999).

10. Qatar

The Government of Qatar has informed the AALCC that the concerned authorities in the State of Qatar have considered the consolidated text, and while they have appreciated the revised text, have no comments on the consolidated text.

(Letter from the Embassy of the State of Qatar, dated 9 July, 1999).

11. 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 an 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, vis-à-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 the country of his nationality, unless there is a written request ('will') by the deceased refugee himself stating that he 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 does 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 population of that State".

12. 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 2).

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 refuge, 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, re-settlement 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 mutli-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 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 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).

13. 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 (OAU) 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 Charters. 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 Charters. Thus the Sudan Government agrees to it

Article VIII: Expulsion and Deportation

The Sudan Government agrees to it.

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.

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.

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 the refugee situation, even while voluntary repatriation is the pre-eminent solution. To this effect, states should undertake, with the help of international governmental 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 from Bangkok Principles.

The Sudan Government agrees to that

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

14. Tanzania

The communication for Government of Tanzania states that it attaches great importance to the cause of refugees and their protection, it supports all effects which are aimed at alleviating refugee problems. The Tanzanian Government noted the following amendments, inter alia would enhance the acceptability of the text:

Definition of refugees

Regarding the definition of refugees, it supports the developments made both at Manila Seminar and the Tehran meeting of experts, which sought to expand the definition of Refugees to cover those persons who take refuge from places of their ordinary abode for fear of persecution on the ground of "Ethnic Origin". The expansion of the definition in this regard is timely and highly welcome. They supported all the recommendations made at the above two meetings, but had observations on the expansion of the definition to include "the dependents of the refugees."

"The dependants of a refugee shall be deemed to be refugees".

For those countries which have hosted refugees for generations, have a difficult experience of intermarriages and the resultant upshot of generation of "crossbreed". There is a great possibility for these persons to have a right of nationality of their own in

the host countries. Care is required before they are deemed to be refugees. The refugee status may not necessarily accord them the desired protection. They may end up with dual status. They may have problems with local integration or lose recognition from one of their parenthood. The phrase may as well be qualified in order to introduce either an element of choice on the part of refugee dependants or by uniting its application only to those dependants at the time of determination of refugee status or protection of the individual refugee.

Asylum

Two comments can be made regarding paragraphs 2 and 4. As regards paragraph 1 of the Bangkok Principles, these principles are more elaborate and more precise, for it makes very clear that asylum must be granted to all persons without distinction of any kind. Paragraph 4 places a duty on Member States to use their best endeavours to receive and to secure the settlement of refugees. This paragraph complements paragraph 3 of Article IV which places a duty to Government or authorities in control of such place of habitual residence to facilitate the return of refugees should they wish. There is a need to address the duty of such later authorities to address themselves in a more meaningful manner, matters that facilitate safe exist of persons in need of asylum protection and those who wish to return. The coming studies should therefore address in these areas and deal with the details of this problem and its solutions.

Minimum standards of treatment

The Government of Tanzania supports the recommendation of the Manila Seminar that further studies be made on the standard of treatment of disadvantaged groups like women children and elderly refugees. Women and children need special attention to ensure that their particular needs are addressed to and their additional burden to rare and care for children are appropriately alleviated. The problems and difficulties facing women, children and the elderly vary, according to their social, cultural and economic backgrounds. There is need to do an in-depth study of the problems in order to come up with recommendations of appropriate protection befitting the disadvantaged group. Taking the elderly refugees as an example, the recognition of their presence and their past contribution to the society have to be recognized. They may not have much to contribute from their unspent life. Nevertheless, their past contributions may be recognized and honoured. In all, this grey area is one, which calls for further studies.

Durable solution

This area too calls for consideration, while they agreed with most of the recommendations, nevertheless the area of payment of compensation which is generally acceptable, proposes a methodology of payment which is rather illusory. Paragraph 3 of Article V envisages agreement by parties on the quantum and possible methodology of settlement. They proposed a mechanism which will be accessible by all parties, especially when it is considered that a relationship of the Refugee and his country of origin is the cause for refugee Status. It may not be possible for the parties to forge a relationship which may produce a workable agreement. Under these circumstances a tribunal could be the best option. The envisaged OAU Human Rights Court would, if replicated in other regions be a good option. The protocol of the court creates a locus

standi to individuals. It is hoped the Refugee victims of human rights abuse will find a recourse to such an institution.

Voluntary Repatriation

Regarding the voluntary repatriation, they supported the general framework for the right to return; and the work which has already been done on the area. However, more work needs to be done in order to shelter refugee confidence, when making decisions to return. Paragraphs 3 to 5 provide for the facilitation of return. Nothing is said on the effect of breach of those rights. The article needs to address the issue of the duty of those rights. The article needs to address the issue of the duty of States which dishonour undertakings made and contained under the article and the rights of refugees who might happen to suffer as a result of infringement.

Burden Sharing

Looking at the problem of refugees at its greater perspective, burden sharing is at the Centre of it. The problem calls for a global approach. The current practice of sharing the Burden of Refugees demonstrates uncertainties and inconsistencies. There is therefore need to look at the problem in a more uniform and certain manner globally. The proposal should answer the questions what rights should attach and be enjoyed by the States which are compelled to receive, house and accommodate refugees beyond their physical and fiscal capacity.

The Principles should develop a definite right for the host states to seek from the international community necessary and adequate assistance which can enable them to accord refugees the minimum standards of treatment, and possibly recuperate where run downs occur. (Fax message dated 14 April 1999, from the Ministry of Justice and constitutional Affairs, Tanzania).

15. Thailand

The Government of Thailand in its response, has proposed the following changes to the consolidated text:

1. Definition of the term "refugee"

Article 1 para 2 on definition of the term refugee. The phrase "events seriously disturbing public order" should be deleted, in order to avoid any divergence in interpretation as to which situations would fall under that definition.

2. Asylum to refugee

Article 3 para 4 on Asylum to refugee. The phrase "particularly the States which are not the State of first refugee" should be added after the words "member states" in order to emphasize the equal responsibility of all member States, and not only states of first refugee.

3. Non-refoulement

In Article 3A para 1 on non-refoulement, the words "seeking asylum" should be substituted with "after asylum is granted" in order to be consistent with the principle of non-refoulement.

4. "minimum standards of treatment.

In Article 6 para 1 on Minimum standards of treatment, the words "generally accepted international instruments" should be changed to "international law" for clarity. In para 9, the phrase "to the extent possible" should be added after the words "but also" for flexibility.

5. Expulsion and deportation

In Article 8 para 4 on expulsion and deportation, the first sentence, i.e. "expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law", should be deleted. (letter from Royal Thai Embassy in New Delhi dated 10 May 1999).

16. 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.

Article 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 Article 1 of the 1951 Convention.

Article 1, Para 2, Page 1:

Delete: "events seriously disturbing public order"

Insert: "armed conflict"

Article 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

Article 3, Para 1, (footnote 18) Page 3:

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

Delete: "generally accepted"

Insert: "applicable"

Article 6, Para, Page 5:

Delete: "Nationality" and "ethnic origin"

Article 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 Article 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 limitation 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).

ANNEX-IV

TABLE OF SPECIFIC COMMENTS RECEIVED FROM MEMBER STATES

Definition of the term "refugee"

- (i) **Iran:** In Article 1, "religion should be added and membership of a particular social group" should be changed to "membership of a particular social or political group.
- (ii) **Kuwait:** In Article 6, it is proposed the provision that if it becomes evident to the countries of refugee that the refugee acquired the refugee status on the basis of false information, incorrect document or the cheated which influenced the decision of national authority to grant him refugee status.
- (iii) **Pakistan:** The word he should be substituted to he/she, and his to his/her.
- (iv) **Singapore:** 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, e.g. the concept of temporary safe havens within the state of origin.
- (v) **Tanzania:** Article 4 may as well be qualified in order to introduce either in element of choices on the part of the refugee dependant or by uniting its application only to those dependant at the time of determination of refugee status or protection of the individual refugee.
- (vi) **Thailand:** In article 1 (Para 2, the phrase "events seriously disturbing public order should be deleted, in order to avoid any divergence in interpretation as to which situation would fall under that definitions.
- (vii) **Turkey:** Article 1, (para 1 (a), delete "national", "country of nationality" and habitual resident". Insert: "persons". These three terms in this para in the other parts of the text should be replaced with "persons" which is consistent with Article 1 of the 1951 Convention. Article 1, para 2. Delete: "events seriously disturbing public order", Insert: "armed conflict". Article 1, para 7, Insert: in the second line, after "crime against humanity" add "including terrorist act. Delete "serious" before "non-political crime",

Insert: "any". This is necessary because attempting to qualify the nature and magnitude of non-political crime would not be appropriate.

2. Asylum to a refugee

- (i) **Iran:** The following amendments would enhance the acceptability of the text: Article 3, Asylum to a Refugee: Para I. Everyone, without any distinction of any kind, is eligible to seek asylum from persecution and enjoy protection in the country of asylum.

Para 2: A state has the sovereign right to grant or to refuse in its territory to a asylum seeker within its international obligations and in accordance with national legislation and policy.

- (ii) **Kuwait:** The Kuwaiti constitution of 1962 according to its provision 64, does not allow handing over of political refugees, the State provides protection to such refugees. The Ministry of Justice has also proposed the addition, to the provision relating to "loss of refugee states" "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 he cheated, which influenced the decision of national authority to grant him refugee status" (unofficial translation).
- (iii) **Pakistan:** Supports the details already provided and agrees that we should avoid giving erroneous impression that all refugees are terrorists which would in turn undermine the institution of asylum from persecution according to universal declaration of human rights.
- (iv) **Saudi Arabia:** has suggested the following "A person who used or presents false or counterfeit travel documents, which enabled him to enter the state of asylum, will not be considered a refugee". Also 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 right".
- (v) **Tanzania:** has made two comments regarding paragraphs 2 and 4. As regards paragraph 1 of the Bangkok Principles, these principles are more elaborate and more precise, for it makes very clear that asylum must be granted to all persons without distinction of any kind. Paragraph 4 places a duty on Member States to use their best endeavours to receive and to secure settlement of refugees. This paragraph complements para 3 of Article IV which places a duty to government or authorities in control of such place of habitual residence to facilitate the return of refugees should they wish. There is need to address the duty of such later authorities to address themselves in a more meaningful manner, matters that facilitate safe exit of persons in need of asylum protection and those who wish to return. The coming studies should therefore address these areas and deal with the details of this problem and its solutions.
- (vi) **Thailand:** Article 3 para 4 on Asylum to refugee. The phrase "particularly the States which are not the state of first refugee" should be added after the words "member states" in order to emphasize the equal responsibility of all Member States, and not only states of first refugee.

- (vii) **Turkey:** Article 3, para 1, (footnote 18) Alternative formulation on the basis of Article 14 of the Universal Declaration on Human Rights would be preferable to the existing text based on the Vienna Declaration. Delete: "generally accepted", Insert "applicable".

3. Non-refoulement

- (i) **Pakistan:** This article laid down the condition that no one seeking asylum in accordance with these principles shall be subjected to measures such as rejection at the frontier, return or expulsion from the host country. Although Pakistan has not resorted to using these harsh measures against refugees, yet it does not support making it legally binding.
- (ii) **Thailand:** In Article 3-A para I on non-refoulement, the words "seeking asylum" should be substituted with "after asylum is granted" in order to be consistent with the principle of non-refoulement.

4. Minimum Standards of Treatment

- (i) **Iran:** Article VI, "A State shall accord to refugees treatment no less favourable than generally accorded to aliens in similar circumstances, with due regard to basic human rights in generally accepted instruments and within its potentials and possibilities.
- (ii) **Pakistan:** Supports in principle the provision and amendments made in this article.
- (iii) **Tanzania:** The government of Tanzania supports the recommendation of the Manila Seminar, that further studies be made on the standard of treatment of disadvantaged groups like women, children and the elderly refugees.
- (iv) **Thailand:** In Article 6 para 1, the words "generally accepted international instruments" should be changed to "international Law" for clarity. In para 9, the phrase "to the extent possible" should be added after the words "but also" for flexibility.
- (v) **Turkey:** Article 6, Delete "nationality" and "ethnic origin".

5. Expulsion and Deportation

- (i) **Thailand:** In Article 8 para 4, the first sentence, i.e. "expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law", should be deleted.
- (ii) **Turkey:** Article 8, para 3, 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 spirit of Article 2 of the 1951 Geneva Convention.

6. Right to Return

- (i) **Iran:** Article IV, para 1,? Nothing shall prevent a refugee from exercising his/her right for return (this sentence comes at the end of para 1).

- (ii) **Jordan:** That the Palestinians refugees in Jordan enjoy a special status. They are accorded the same rights accorded to Jordanians including nationality without prejudicing their right to return or to compensation.
- (iii) **Pakistan:** Supports in principle the provision and amendments made in this article.

7. Voluntary Repatriation

- (i) **Iran:** Article V (A), has suggested the word "essentially" be omitted in this para, as reads as follows:

The voluntary character of.. (this is also consistent with conclusion Nos. 18 and 40 of EXCOM). An additional para to the above mentioned article "UNHCR shall, with the support of donor countries, facilitate/promote the voluntary repatriation whenever the conditions for return to the country of origin are prepared and conducive".

- (ii) **Pakistan:** Supports in principle the provision and amendments made in this article.
- (iii) **Singapore:** New Articles 5 (a) and (B) have been inserted under part III of the revised principles on "Durable Solutions". A deals with voluntary repatriation essentially 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 required to ease voluntary repatriation. It is "deemed the pre-eminent solution".
- (iv) **Tanzania:** They supported the general framework for the right to return; and the work which has been done on the area. However, more work needs to be done in order to shelter refugees confidence, when making decision to return.

8. Right to compensation

- (i) **Jordan:** has reservations to the revision of Bangkok Principles inter alia the issue of Palestinian refugees is linked to the middle East question which is not yet resolved. The parties have postponed it until the final negotiations take place. Therefore Article (1)6(iii) of the Principles could negatively affect the right of Palestinian refugees to return and be compensated. Furthermore, it could affect the final negotiations.
- (ii) **Pakistan:** Implementation of this article is likely to create financial hardships for developing and third world countries including Pakistan.
- (iii) **Sudan:** 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 refugee.

9. Burden Sharing

- (i) **Iran:** Supports the provision in the article of the consolidated text and inclusion of a new para (5) in article IX. Considering the fact that most of the world's refugee population is hosted in the third world developing countries of Asia and Africa, "equitable burden sharing" is the principle factor in international solidarity, and it is a vital requirement of international protection and relevant standard for refugee treatment.
- (ii) **Pakistan:** Supports the provision in this article with the recommendation with major share of the financial contribution be borne by such countries and there should be minimum financial burden on the developing countries.
- (iii) **Singapore:** Part IV incorporates the 1987 Addendum to the Bangkok Principles. Part V on "additional Provision" includes a new final Article which is an obligation on States to cooperate with the office of the UNHCR and the United Nations Relief and Works Agency for Palestinian Refugees in the Near-East. International aid agencies could provide for persons within the State of origin, this could be developed so as to prevent the occurrence of mass exodus.
- (iv) **Tanzania:** Looking at the problem of refugees at its greater perspective, burden sharing is at the center of it. The problem calls for a global approach. The current practice of sharing the Burden of Refugees demonstrates uncertainties and inconsistencies. There is therefore need to look at the problem in a more uniform and certain manner globally. The proposal should answer questions what rights should attach and be enjoyed by the State which are compelled to receive, house and accommodate refugees beyond their physical and fiscal capacity.

82[1] 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 and the Tehran Meeting of Experts, and provisions of other international instruments. All sources other than Articles of the Bangkok Principles including comments submitted by individual state members during inter-sessional consultations between 1997-1999 are specified in footnotes. The comments of the Islamic Republic of Iran were made during the 38th Session of the AALCC held in Accra (1999).

83[2] Both the Manila Seminar and Tehran Meeting of Experts strongly recommended adding the ground of "nationality". The Tehran Meeting of Experts recommended "ethnic origin". The Islamic Republic of Iran proposed to replace "ethnic origin" to "ethnicity".

84[3] The term "opinion" is used in all the other international refugee definitions, instead of "belief".

85[4] The Islamic Republic of Iran proposed the addition of "membership of a particular social or political group". It proposed the inclusion of religion also as a cause for persecution.

86[5] It may be preferable in these times to use, whenever appropriate, the formulas "he/she" and "his/her".

87[6] 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.

88[7] During inter-sessional consultations, the Government of Thailand requested deletion of the word "events seriously disturbing public order" from the expanded definition of "refugee". The Government of Turkey proposed that the same words be replaced by the words "armed conflicts". The Government of Singapore expressed some caution about a broader definition. It suggested that other approaches to managing large number of refugee -- such as temporary protection -- might be more helpful in some situations.

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 [?]".

89[8] Note (vi) to Art.I of the Bangkok Principles.

90[9] Explanation of Art. I of the Bangkok Principles. During inter-sessional consultations, the Government of Tanzania proposed more flexibility in the application of this provision to give a degree of choice to affected family members.

91[10] Exception (I) to Article I of the Bangkok Principles.

92[11] 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 Articles and from the 1951 Convention.

93[12] Stylistic addition.

94[13] Idem.

95[14] This sentence is derived from Note (ii) to Art.II of the Bangkok Principles.

96[15] Art. IC (5) of the 1951 Convention. This sub-paragraph usefully complements the rest of the text, the core of which is protection, as repeatedly indicated at the Tehran Meeting of Experts. It is also consistent with the recommendation of a participant at the Tehran Meeting that the changes justifying cessation of refugee status should be of a fundamental nature.

97[16] The provisions in sub-para (v) were proposed by the Government of Kuwait. A similar proposal was made by Saudi Arabia.

98[17] 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.

99[18] During inter-sessional consultations, the Government of Turkey proposed the addition of the words "including terrorists act" after the words "a crime against humanity" and substituting the words "any non-political crime" for the words "serious non-political crime".

100[19] Art.I(5) (a) of the OAU Convention and Art. IF(a) of the 1951 Convention.

101[20] Art.I(5) (b) of the OAU Convention and Art. IF(b) of the 1951 Convention.

- 102[21] Para. 23 of the 1993 Vienna Declaration 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).
- 103[22]The Government of Islamic Republic of Iran during the 38th Session of AALCC proposed to substitute "entitled to seek and to enjoy in other countries asylum from persecution" by "eligible to seek asylum from persecution and enjoy protection in the country of asylum".
- 104[23]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". The Government of Islamic Republic of Iran during the 38th Session of AALCC, proposed to substitute "a refugee in accordance with its international obligation and national legislation" by "asylum seeker within its international obligation and in accordance with national legislation and policy.
- 105[24]Art.II (2) of the OAU Convention and the preamble of the United Nations Declaration on Territorial Asylum.
- 106[25]Stylistic substitution. During inter-sessional consultations, the Government of Turkey proposed addition of the words "so long as its peaceful and humanitarian nature is maintained".
- 107[26]During inter-sessional consultations, the Government of Thailand proposed the addition of the words "particularly the States which are not the States of first refuge" after the words "member States" and the Government of Pakistan was of the view that this Article should be declaratory rather than legally binding on States.
- 108[27] Art. II (I) of the OAU Convention. This proposed paragraph would indeed reflect the positive State practice in the Afro-Asian region in the past three decades.
- 109[28] 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.
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- 110[29] During inter-sessional consultations, the Government of Thailand proposed deletion of the words "seeking asylum" and substitution with the words "After asylum is granted".
- 111[30] The addition of "ethnic origin" in the non-refoulement provision was recommended at the Tehran Meeting of Experts. It is in any case consistent with the grounds in the refugee definition. The Government of Turkey proposed deletion of the words "nationality" and "ethnic origin" from the definition.
- 112[31] Rephrasing of Art.III as per footnote (23) above.
- 113[32] Idem. The Government of Turkey proposed the words "national security" and "public order" be used in the sense of Article 33(2) of the 1951 Convention and the word "serious" be replaced by the word "any".
- 114[33] Para 3 of Art. III as per footnote (23) above.
- 115[34] The Government of the Islamic Republic of Iran proposed to replace "as recognized in generally accepted international instrument's" with "in generally accepted international instruments" "in generally accepted instruments and within its potentials and possibilities" after human rights.
- 116[35] Insert recommended by the Manila Seminar. At the Tehran Meeting of Experts, one participant suggested substituting "as regards" for "with due regard". During the inter-sessional consultations, the Government of Thailand proposed replacing the words with the words "international law" and the Government of Turkey proposed the word "applicable" instead of the word "generally accepted".
- 117[36] As this is a restatement of para. 2 of this Art. VI, it had to be rephrased accordingly.
- 118[37] Derived from Art. IV of the OAU Convention and Art. 3 (partially) of the 1951 Convention. The grounds of "ethnic origin" and "gender" are added to reflect current international standards, the latter reflecting Art. 18 of the Vienna Declaration on Human Rights and foreshadowing the next paragraph. This clause reflects recommendation (d) of the Manila Seminar under "Points for Further Review". In inter-sessional consultations, the Government of Turkey proposed deletion of the grounds "nationality" and "ethnic origin" from the text.
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- 119[38] See para (a) of UNHCR Executive Committee Conclusion No.64 (XLI) on Refugee Women and International Protection. At the Tehran Meeting of Experts, during the discussion of a possible provision on women, children and elderly refugees, one participant proposed a general provision on vulnerable groups as an alternative to a separate one on each such group as in paragraphs 6, 7 and 8.
- 120[39] Art. 22(1) of the 1989 Convention on the Rights of the Child.
- 121[40] During inter-sessional consultations, the Government of Thailand proposed the addition of the words "to the extent possible" after the words "but also". The Government of Turkey proposed addition of a new article concerning the responsibilities of refugees along the lines and in the spirit of Article 2 of 1951 Convention.
- 122[41] Paragraph 9 was proposed by the Government of Saudi Arabia.
- 123[42] This excerpt is taken from Art.3(2) of the UN Declaration on Territorial Asylum. It substitutes for "on the ground of violation of the conditions of asylum". Another alternative proposed in Note (i) to Art. VIII of the Bangkok Principles would be: "save on ground of national security or public order, or a violation of the vital or fundamental conditions of asylum"; "national security and public order" are the only grounds provided for by the 1951 Convention in Art.32(1).
- 124[43] The phrase "as applicable to aliens under the same circumstances" is taken from Note (2) to Art. VIII.
- 125[44] These additional grounds were recommended for the refugee definition by the Manila Seminar and the Tehran Meeting of Experts respectively. See footnote (2) above. In inter-sessional consultations, the Government of Turkey expressed its reservations to the grounds "nationality" and "ethnic origin" in the text.
- 126[45] See footnote (3) above.
- 127[46] During inter-sessional consultations the Government of Thailand requested deletion of the words "The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law".
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- 128[47] Art. 32(2) of the 1951 Convention. This paragraph is consistent with the recommendation of a participant of the Tehran Meeting of Experts that a refugee should not be expelled without due process of law. It is also in conformity with Art. 13 of the 1966 International Covenant on Civil and Rights. In the national context, the refugee's right to due process of law in expulsion cases was reaffirmed in the January 1996 decision of the Supreme Court of India in the case of National Human Rights Commission v. State of Arunachal Pradesh and Anther (1996 [I] SC 295).
- 129[48] The Government of Islamic Republic of Iran proposed the addition of "nothing shall prevent a refugee from exercising his/her right of return" at the end of Article IV para (1).
- 130[49] This and the next two paragraphs are paras. (1) (2) and (3) of the 1970 Addendum to the Bangkok Principles. This incorporation of this Addendum was understood as appropriate in both Manila and Tehran.
- 131[50] Stylistic addition.
- 132[51] In inter-sessional consultations, the Government of Turkey proposed substituting the words "international or internal armed conflict" for the words "foreign domination, external aggression of occupation".
- 133[52] Idem. During inter-sessional consultations, the Government of Turkey proposed 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".
- 134[53] 1970 Addendum, para 2.
- 135[54] Modified due to change in paragraph numbering.
- 136[55] 1970 Addendum, para. 3.
- 137[56] While a participant at the Tehran Meeting of Experts called compensation a utopia, another called attention to its necessity when, for example, refugees'
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property has been confiscated. He was probably referring to historical cases of compensation and restitution from Germany and from Uganda. In view of the financial implications for many developing nations, a number of reservations were expressed at the Manila and Tehran meetings on the refugees to receive compensation from their country of origin or former habitual residence. During the inter-sessional consultation process, particular reservations to Article V notably paragraph i, were expressed by the Governments of Sudan, Pakistan, Turkey, Jordan, Tanzania. Government of Tanzania also proposed a reference to some mechanism accessible by all parties, that can deal with compensation issues.

138[57] This paragraph and the next are paras. (4) and (5) of the 1970 Addendum. See footnote (38) above for explanation.

139[58] Numbering modified as per the new numbering of the paragraphs.

140[59] 1970 Addendum, para.5.
