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THE STATUS AND TREATMENT OF REFUGEES

I. INTRODUCTION

1. The problem of refugees and stateless persons remain one of the central issues that the international community faces today. The two world wars and more than one hundred and thirty armed conflicts have resulted in large-scale displacements and mass exodus of refugees in various parts of the world.

2. The vulnerability of refugees and internally displaced persons was recognized by the United Nations more than fifty years ago when it adopted the Convention Relating to the Status of Refugees (1951) and its 1967 Protocol. Besides these two refugee specific instruments over which the edifice of international protection of refugees is built, there exist a number of other international instruments, which have a bearing on the situation of refugees. They are, the Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Crime and Punishment of the Crime of Genocide (1948), the Convention Relating to the Status of Stateless Persons (1954), the Convention on the Reduction of Statelessness (1961), the Convention on the Elimination of Racial Discrimination (1965), the Convention on the Elimination of Discrimination Against Women (1979), the Convention against Torture (1984), the Convention on the Rights of the Child (1989) and the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live (1985).

3. Though, both the international human rights regime and the international refugee protection regime came to be evolved at the same time, both had been developed in isolation from one another. The need of having to see both these regimes together in order to ensure the maximum protection of the refugees is increasingly felt by the international community. As a result the protection regime of refugees has come to include human rights and humanitarian law aspects as well.

4. Despite the fact that refugee flows are increasingly seen in the matrix of state responsibility in the recent era, the international community has not been successful in identifying the responsibility of states vis-à-vis refugees and asylum seekers. It needs to be reiterated here that the 1951 Convention on the Status of Refugees does not mention asylum procedures and makes no reference as to which state is responsible for determining whether a person is a refugee or not. However, two of the most important elements of the 1951 Convention, it is generally believed, are applicable to refugees even before their status is recognized formally. They are; one, the principle of *non-refoulement* (article 33) and second, the prohibition on the punishment for illegal entry provided they present themselves without delay and show good cause for their entry. Guidelines on

asylum procedures have been drawn up by the Executive Committee of the UNHCR, which could be used by States wishing to make determination of refugee status.¹

II. BACKGROUND

5. The item entitled “The Status and Treatment of Refugees” was placed on the agenda of AALCO upon a reference made by the Government of Arab Republic of Egypt in 1963. Since then it has been under consideration at its several annual sessions and inter-sessional meetings. From the very beginning, AALCO has been working closely with UNHCR. One of the fruitful outcomes of such collaborative arrangements was the adoption of AALCO’s “Principles on Status and Treatment of Refugees” at its Bangkok session in 1966. Although these principles have no binding force, it reflected the practice followed by the Asian and African States in dealing with matters concerning refugees.

6. An addendum to the Bangkok Principles elaborating rights of refugees to return was adopted at AALCO’s eleventh session held in Accra in 1970. Another addendum elaborating the Principles on burden sharing was adopted at the 26th session in Bangkok in 1987. At the AALCO’s Thirty-Fifth session held in Manila in 1996, a proposal put forward by UNHCR’s representative to commemorate the 30th anniversary of the adoption of the Bangkok Principles was welcomed by the AALCO Member States. It took four years to accomplish that objective. At the Fortieth session held in New Delhi (HQ) in 2001 vide Resolution 40/3; the Organization by acclamation adopted the Revised Text of the Bangkok Principles on Status and Treatment of Refugees, which marked an important phase in the work of the Organization.

7. Apart from the adoption of the Revised Text of the Bangkok Principles, two other important initiatives of AALCO related to the refugee item over the years were the preparation of a Model Legislation on Refugees and the concept of establishment of safety zones for internally displaced persons. It is a matter of great satisfaction that AALCO had always the benefit of active participation and assistance of UNHCR in developing its work programme on refugee matters. With a view to formalizing its long-established close relationship, a Memorandum of Understanding (MOU) was signed between the two Organizations on 23 May 2002. The MOU, besides providing for exchange of documentation and mutual representation also envisages undertaking jointly, preparation of studies and holding of seminars and workshops on topics of mutual interest and concern.

8. At the AALCO’s Forty-Third session held in Bali in 2004, the resolution adopted on the item (RES/43/S 3) appreciated the efforts of the Secretary-General in successfully holding a two-day seminar in cooperation with UNHCR on the topic “Strengthening Refugee Protection in Migratory Movements” on 17 and 18 October 2003 in New Delhi. The seminar discussion revolved around migration and refugee protection in the Asian African context, durable solutions and root causes, and international burden and responsibility sharing.

¹ UNHCR Executive Committee Conclusion, No. 5 (XXVII) of 1977 on “Asylum”

9. As a follow-up to the seminar, AALCO proposed an in-depth study on the topic of *“Statelessness: An Overview from the African, Asian and Middle Eastern Perspective”*.

10. At the Forty-Fourth Session held in Nairobi, Republic of Kenya (27th June-1st July 2005). **Mr. George Okoth-Obbo, Representative of the United Nations High Commissioner for Refugees (UNHCR)**, he said that UNHCR and AALCO have had a long record of mutually – beneficial co-operation, now rooted on a Memorandum of Understanding. The principal feature of this collaboration today figures in a joint study, which the two organizations have agreed to undertake on statelessness from the African, Asian and Middle Eastern perspective.

The Representative said that Statelessness is a problem that AALCO has been concerned with in its own right for several years now. In the case of UNHCR, refugees are people who find themselves in a situation of de facto statelessness. In addition to its refugee mandate, UNHCR has also been entrusted with the responsibility for the prevention and reduction of statelessness, including promoting accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Today, 57 States have acceded to the 1954 Convention and 29 to that of 1961. Clearly, much remains to be done to universalize the coverage of these international instruments, let alone in actually mitigating actual or potential situations of statelessness.

The Representative stated that the expectation is that the study, its findings and recommendations would be discussed at next year’s annual AALCO meeting and a basis would be formulated for further work at the country and regional levels to strengthen legal and practical responses to statelessness among AALCO’s member States. He said that UNHCR looks forward to working with the Secretariat of AALCO and the Member States in undertaking this study in the coming year. A positive outcome would further strengthen the cooperation between the two organizations and highlight the particular concerns on statelessness that exist in Africa, Asia and Middle East.

The Representative underlined that the challenge of refugees continued in all continents. UNHCR also looked forward to continuing work closely with AALCO and its member states for a world in which all people can be confident of being able to find safety, security and sustainability in their mother countries. Travel across borders would thus become a matter of free choice, and not a forced imperative to find safety from political, religious, ethnic or social persecution, war, strife, intolerance or hatred.

The Representative further stated that the questions with which AALCO is concerned in this session– human rights compliance, the fight against terrorism, people smuggling and corruption and ensuring sustainable resource and environmental management – are all vital to both the causes and addressing properly the refugee challenge. In some countries, measures taken to combat terrorism have placed the institution of asylum in a very uncertain and precarious position. UNHCR is also worried about refugees becoming targets of trafficking, especially young girls and boys. Further, refugee policies become hardened because of concerns over the environmental impacts of refugee presence. He

mentioned that the discussions, work and outcomes of AALCO in these respects would also continue to command the close interest of UNHCR.

III. PURPOSE OF THE STUDY

11. The proposed study on “Statelessness: An overview from the African Asian and middle Eastern Perspective”, which is currently underway,² would seek to determine the magnitude and scope of the problem of statelessness in the African, Asian and Middle Eastern Region; explore the interface between statelessness and migration displacement and trafficking; outline the particular vulnerabilities of individuals including women and children; and identify approaches or best practices adopted by State to address such cases and to fill in any gaps.

12. According to a recent survey, 59.4% of States queried globally had faced significant problems of statelessness³. Root causes of statelessness include, large-scale problems such as State Succession the lack of harmonized rules of private international law, denationalization (the rescinding of the nationality of an individual by a State) and the different approaches that are followed in the context of nationality determination.

13. The role that nationality or citizenship plays in the context of an individual, can hardly be exaggerated. It entitles the individuals living within a State to the protection of that State and as has been aptly remarked provides a “right to rights”. In other words, a person who is stateless, would not be able to exercise a number of rights which include, the right to legal protection, to register the birth of one’s children, to own property, medical care and many other rights. In order for a person to enjoy the fruits of citizenship, he has to be a citizen of that country. Statelessness affects women and children more because of their inherent vulnerabilities than it affects others.

14. In the light of the above said matter, this study is intended to gather information on the problem of statelessness generally and to provide some recommendations where appropriate for establishing effective mechanisms and on any associated problems of displacement.

Since the AALCO has been following the developments at the UNHCR, a brief review of current initiatives of that Organization has been set out briefly in the following part.

² Annex 1: Outline of the proposed study on “Statelessness: An Overview from the African, Asian and Middle East Perspective”.

³ See the “Final Report Concerning the Questionnaire on Statelessness Pursuant to the Agenda for protection” Department of International Protection, UNHCR, March 2004.

IV. EXCOM 56TH SESSION⁴

15. The Executive Committee of the High Commissioner's Programme held its fifty-sixth plenary session held in Geneva, from 3 to 7 October 2005. The High Commissioner called on the international community to join forces to "fight intolerance, preserve the institution of asylum, and bridge the gap between humanitarian relief and long-term development". Stressing that UNHCR was above all a refugee protection agency and that all staff members must see themselves as agents of protection, the High Commissioner reviewed key UNHCR operations, focused on UNHCR's role as a fully engaged partner in the United Nations' collaborative approach in addressing internal displacement, and examined the ongoing challenges of preserving asylum, especially in the context of mixed migration flows. UNHCR needed strong partnerships with the other actors in the field.

16. The Secretary-General of the United Nations, Mr. Kofi Annan, addressed the Committee and spoke of the outcome of the 2000 "Millennium Summit" and its relevance to humanitarian objectives. World leaders had endorsed the role of the United Nations in humanitarian action and the need for it to be equipped for swift and predictable responses to humanitarian crises. The return of refugees and internally displaced persons was critical in sustaining peace processes and the Secretary-General welcomed the High Commissioner's intention that UNHCR play a proactive role in the future work of the Peace building Support Office, which would be put in motion before the end of the year.

17. The Millennium Summit had advanced the agenda of the international community's response to internal displacement, although developing a more predictable response remained a challenge. The new partnerships and distribution of tasks put forward by the Inter-Agency Standing Committee were a promising step. The Secretary-General applauded the commitment by the High Commissioner to take the lead role in protection; emergency shelter and camp coordination in situations of internal displacement, while noting this expanded role should not detract from UNHCR's role with regard to refugees.

18. It had been an intellectual breakthrough that member States now accepted the links between security, development and human rights. The Secretary-General also highlighted the acceptance by United Nations member States of the concept of the responsibility to protect, with a focus on early conflict prevention. The Secretary-General thought the new standing Human Rights Council could help ensure a more effective protection response and believed the High Commissioners for Human Rights and Refugees could reinforce each other's operational as well as policy work. Finally, the

⁴ Report of the Fifty-Sixth Session of the Executive Committee of the High Commissioner's Programme, 3-7 October 2005. A/AC.96/1021

Secretary-General considered the recently released recommendations of the Global Commission on Migration and stressed that they required close analysis and reflection.

A. General Conclusion on International Protection

19. This is general conclusion on International Protection and it explicitly acknowledges the linkage between asylum issues and human rights. It notes the need for UNHCR to continue efforts to strengthen its protection presence in the field including in particular female protection staff.

20. It welcomed the accession of Afghanistan to the 1951 Convention relating to the Statutes of refugee and its 1967 Protocol, bringing the number of State Parties to either one or both of these instruments to 147. It also welcomed the inclusion of the 1951 Convention of its 1967 Protocol in the list of instruments identified by the Secretary-General for the annual treaty event entitled “Focus 2005: Responding to Global Challenges” held in New York in September 2005.

21. It welcomed the successful meeting hosted by the Govt. of Mexico in November 2004 to commemorate the 20th Anniversary of the 1984 Cartagena Declaration on Refugees. It expressed concern at instances of persecution generalized violence and violations of human rights which continue to cause and perpetuate displacement within and beyond national borders and increases the challenges faced by States in effecting durable solutions.

22. It noted with interest the results of the Humanitarian Response Review and welcomed the proposals made by the Secretary General and the UN General Assembly to strengthen the United Nations humanitarian system.

23. It welcomed the accession of Senegal to the 1961 Convention on the Reduction of Statelessness and called on States, in cooperation with UNHCR and other relevant actors to address the needs of persons in protracted situations of statelessness and to assist stateless persons to access legal remedies to redress statelessness, in particular which results from arbitrary deprivation of nationality

B. Conclusion on the Provision on International Protection Including Through Complementary Forms of Protections

24. The Ex-Committee of the UNHCR reaffirmed the view that the 1951 Convention relating to the Status of Refugees together with its 1967 Protocol is the fulcrum around which the entire concept of International Refugee Protection revolves, including the fundamental importance of the Principle of ‘non-refoulement’, which is generally considered to have attained the status of customary law.

25. The need to extend the International Protection to even those situations where the 1951 Convention and its 1967 Protocol do not apply, was highlighted by it when it reaffirmed (paragraph (1) of the conclusion No.74 (XLV) the Principle that all human

beings shall enjoy human rights and fundamental freedoms without discrimination including the right to seek and enjoy asylum.

26. It is noteworthy that, the 1969 OAU Convention governing the specific Aspects of Refugee Problems in Africa as well as the 1984 Cartagena Declaration on Refugees governing the specific aspects of the problem in the Latin American countries, which include among refugee persons who cannot return to their countries due to indiscriminate threats resulting from situations such as generalized violence, armed conflict or events seriously disturbing public order and the asylum legislation adopted by European Union which recognizes certain international protection needs beyond the 1951 Convention regime.

27. The importance of the 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness in so far as they could prevent and resolve the situations of statelessness was also recognized. While urging the State Parties to implement their obligations under the 1951 Convention and or its 1967 Protocol fully and effectively, calls upon the State Parties to interpret the criteria for refugee Status as found in the 1951 Convention regime in such a manner that all persons who fulfill the criteria are duly recognized and protected rather than being accorded a complementary form of protection.

28. It reiterated the need to ensure that the integrity of the asylum system is not abused by the extension of the refugee protection to those who are not entitled to it and to apply scrupulously the exclusion clauses stipulated in Article 1F of the 1951 Convention and in other relevant international instruments.

29. It also encouraged non-State Parties to consider acceding to the 1951 Convention and 1967 Protocol and where necessary to the regional instruments of State Parties to withdraw reservations to ensure the widest possible application of the Protection Principles.

30. It also called upon the State Parties to enact national legislation or procedures to give effect to regional instruments. It also reaffirmed that measures to provide complementary protection should be implemented in a manner that strengthens rather than undermines the existing international refugee protection regime.

31. It encouraged states in granting complementary forms of protection to those persons in need of it to provide for the highest degree of stability and certainty by ensuring the human rights and fundamental freedoms of such persons without discrimination, taking into account the relevant international instruments and giving due regard to the best interest of the child and family unity principles.

32. It recommends where it is appropriate to consider the ending of complementary forms of protection, States adopt criteria, which are objective and clearly and publicly articulated. It also noted that the doctrine and procedure standards in relation to the

cessation clauses of Act 1C of the 1951 Convention may offer helpful guidance in this regard.

33. It was also reaffirmed that though voluntary repatriation, local integration and resettlement remained the traditional durable solutions, the most preferred one is voluntary repatriation, in the majority of refugee situations. It also acknowledged that the global refugee situation represents an international challenge requiring international burden and responsibility sharing.

34. It recalled the Conclusion No.15 of the Ex-Committee that decisions by States with regard to the granting of asylum shall be made without discrimination as to race, religion, political opinion or membership of the particular social group, nationality or country of origin.

35. It recognized that the protection in all States of basic civil, economic and social rights including freedom of movement and the right to engage in income-generating activities is essential to the achievement of self reliance of refugees. It reaffirmed the importance of family unity and reunification.

V. GLOBAL CONSULTATIONS

36. As part of the commemoration of the 50th anniversary of the 1951 Convention, the UNHCR took an important initiative in December 2000, termed as Global Consultations involving governments, intergovernmental and non-governmental organizations and experts and focused attention on matters concerning promotion of the implementation of the 1951 Convention as well as protection problems that are not adequately or clearly covered by the Convention. Following 18 months of discussions, UNHCR and States Parties adopted a joint Agenda for Protection.

A. Agenda for Protection

37. The Agenda for Protection is intended to serve as a guide for concrete action to improve the protection of refugees and asylum seekers around the world. The agenda consists of two sections: the Declaration of States Parties and a Programme of Action.

38. The Declaration of States Parties was adopted unanimously by the States Parties to the 1951 Convention and/or its 1967 Protocol at the Ministerial Meeting of States Parties, organized jointly by Switzerland and UNHCR on 12-13 December 2001. This Declaration recognizes the enduring importance of the 1951 Convention and 1967 Protocol, reaffirms political commitment to upholding the values and principles they embody, and urges all States to consider ways to strengthen their implementation. It also affirms the need for closer cooperation between States Parties and UNHCR to facilitate UNHCR's duty of supervising the application of these instruments.

39. The Programme of Action, the other constituent of Agenda for Protection, identifies specific objectives and activities grouped according to six inter-related goals. These are:

a. Strengthening Implementation of the 1951 Convention and 1967 Protocol.

40. As the Convention and Protocol are the cornerstones of the international refugee protection regime, their implementation is considered to be the first step in improving protection of refugees and asylum seekers. The Programme of Action suggests that this can be done in myriad ways including, by working towards universal accession to the convention and Protocol, by improving domestic asylum procedures of States and bringing them in uniformity with other States. It also requires to offer other forms of protection to those who need it but may not be qualified under the 1951 Convention definition.

b. Protecting Refugees within Broader Migration Movements.

41. Apart from the movement of refugees there are other categories of people who move from one country to another. These include economic and other categories of migrants. However, there are limited ways through which migrants can move from one country to another and many persons who are not refugees try to enter countries as asylum seekers. Therefore, protection of refugees within broader migration movements can be achieved by encouraging States to develop migration management policies that do not jeopardize refugee protection and that promote a more positive environment for asylum by reducing strains on asylum seekers. The task also seeks UNHCR and International Organization for Migration, other intergovernmental agencies and States to collect more data on the nexus between asylum and migration. The Programme of Action further aims to better understand “push” and “pull” migration factors, i.e., factors that drive people out of their home countries and lure them to other countries. It further calls for combating human trafficking and smuggling and encourages States to accede to the 2000 United Nations Convention against Transnational Organized Crime and its Protocols.

c. Sharing Burdens and Responsibilities more Equitably and Building Capacities to Receive and Protect Refugees.

42. With a view to achieving this goal, the Programme of Action calls upon UNHCR to work with States, particularly first-asylum States, to develop specific burden-sharing agreements that would be applied in response to mass influxes and to resolve protracted refugee situations. The High Commissioner has termed this initiative and other related efforts “Convention Plus”⁵, since the intention is to build on the 1951 Convention by

⁵ Convention Plus is an initiative announced by the High Commissioner for Refugees, Ruud Lubbers, in September 2002, following the conclusion of UNHCR's Global Consultations on International Protection. Its basic premise is that while the Refugee Convention remains an essential framework of refugee rights it “does not alone suffice”. There is a need to clarify the apportioning of responsibilities and to promote a better sharing of responsibilities by States, notably in the context of mass influxes and mixed migratory

developing special agreements and multilateral arrangements to improve responsibility-sharing. States are also encouraged to make greater use of resettlement, both as a protection and burden-sharing tool, particularly in mass-influx situations.

d. Addressing Security-Related Concerns more Effectively.

43. Security problems confronting refugees can take many forms. The breakdown in social and cultural structures and norms; the separation from and loss of family members and community support; and impunity for perpetrators of crimes and violence make refugees, particularly women and children, vulnerable. Refugee women and girls are often subject to specific forms of abuse, such as rape, abduction, trafficking, or demands for sexual favors in exchange for offers of protection, documents or assistance. To address security-related concerns more effectively, four objectives, together with accompanying activities, have been identified. They are:

1. The resourcing of States for securing the safety of refugees and for the separation of armed elements from refugee populations.
2. Keeping the Secretary-General and the Security Council seized with the issue.
3. Prevention of military recruitment of refugees, including refugee children.
4. Prevention of age-based and sexual and gender-based violence.

e. Redoubling the Search for Durable Solutions.

44. The Programme of Action encourages countries of origin, host States, UNHCR, humanitarian partners and refugees to integrate voluntary repatriation, local integration and resettlement into a comprehensive approach to finding durable solutions, particularly for protracted refugee situations. The Programme of Action recognizes that voluntary repatriation in conditions of safety and dignity remains the preferred solution for refugees. Resettlement is also considered as a vital tool for protection and also as an instrument of international solidarity and burden sharing. Local integration is considered to have proven instrumental in resolving the plight of particular refugees or groups of refugees. In this regard eight objectives have been identified. They are:

1. Realization of comprehensive durable solutions strategies, especially for protracted refugee situations

flows, as well as for durable solutions. Convention Plus seeks to create a basis on which States might negotiate "special agreements" to address issues which are said not to be adequately covered by the Refugee Convention. Convention Plus does not seek to revise the Refugee Convention but to build on it through the adoption of non-binding agreements between States. Subject to content they may in some cases be legally binding. In terms of content, Convention Plus seeks to develop comprehensive plans of action to ensure more effective and predictable responses to mass influx, to secure development assistance as a way of addressing burden-sharing arrangements, to bring about multilateral commitments for resettlement, and to find clarity on roles and responsibilities of states in the context of irregular and secondary movements. Convention Plus draws, as the legal basis for the special agreements that it proposes, on paragraph 2(b) of General Assembly Resolution 428(V) of 14 Dec 1950, and paragraph 8(b) of the UNHCR Statute. Their purpose is "the execution of any measures calculated to improve the situation of refugees falling within the competence of the Office and to reduce the number requiring protection".

2. Improved conditions of voluntary repatriation
3. Strengthened cooperation to make repatriation sustainable
4. Local integration having its proper place as part of a comprehensive strategy for durable solutions
5. Expansion of resettlement opportunities
6. More efficient use of resettlement both as a protection tool and as a durable solution
7. Achievement of self-reliance for refugees
8. Rehabilitation of refugees-impacted areas in former host countries.

f. Meeting the Protection Needs of Refugee Women and Refugee Children.

45. The Programme of Action seeks States, UNHCR and other protection partners to ensure that refugee women participate equally in decision-making processes that affect their lives. It also envisages application of gender-sensitive approach while developing, implementing and evaluating programmes designed to assist refugees. It is observed that the international community and UNHCR have developed a wealth of international norms, policies and guidelines to improve the protection and care of refugee women and refugee children.⁶ However it is felt that there is a gap in the application and implementation. Thus, it is suggested that UNHCR will make sure that its Guidelines on Gender-Related Persecution, Guidelines on the Protection of Refugee Women and Guidelines on how to prevent and respond to sexual and gender-based violence are widely disseminated and implemented. It is further encouraged to ratify the 1979 Convention on the Elimination of All Forms of Discrimination against Women and its 1999 Optional Protocol and the 1989 Convention on the Rights of the Child and its 2000 Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography.

46. The UN High Commissioner for Refugees at the High Commissioner's Forum⁷ at its meeting in November 2005, which was devoted to "Convention Plus" stated that, it had been mainstreamed into the core of UNHCR's activities. Convention Plus was launched to find ways to meet new challenges which were not addressed by the 1951 Convention and 1967 Protocol. It is about finding more effective burden and responsibility sharing arrangements to attain durable solutions. The debate over the past two years had underscored the fact that engagement does not necessarily bring consensus. It was perfectly understandable that agreement had not been reached on all the stands. The number of these questions left open by various for a the 2005 World Summit was proof that all of them could not be resolved in the current framework.

47. The problems of refugees and other forcibly displaced persons could only be addressed by working together, including with the communities themselves. This was at the heart of the Convention Plus and remained crucial for tackling new and emerging

⁶ For eg. *An Independent Evaluation of the Impact of UNHCR's Activities in Meeting the Rights and Protection Needs of Refugee Children*, EPAU/2002/02 (May 2002) and *UNHCR Policy of Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation* (May 2002).

⁷ High Commissioner's Forum held its meeting in Geneva on 17 November 2005.

challenges. Convention Plus would, in view of the High Commissioner, make a difference in the lives of refugees, in the next phase.

VI. GENERAL COMMENTS

48. The UN Secretary General in his report to the General Assembly on the Work of the Organization 2004⁸ noted that during the past year the population of refugees had decreased significantly for the fourth consecutive year. UNHCR estimated that in 2004 the global number of refugees dropped from the earlier 9.7 million to 9.2 million, its lowest level since 1980. In spite of the decrease in the number of refugees the total population of concern to UNHCR increased from 17 million people at the end of 2003 to 19.2 million at the end of 2004. It may be noted that despite the progress made, new and lingering conflicts around the world continue to present many challenges for the humanitarian community, for instance the situation in the regions of Darfur and Chad. These conflicts give rise to regional security concerns due to cross-border incursions and the presence of armed groups in the border areas.

49. The UN Convention relating to the Status of Refugees of 1951 and the Protocol of 1967 still remain to be the parent and guiding instruments to protect the interests of refugees. In order that the refugees receive humane treatment, it cannot be overemphasized that the Convention needs universal ratification and application. It is evidenced from the latest figures of ratifications from “*States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*”, as of December 2005,⁹ that out of 47 Member States of AALCO, 20 are parties to the 1951 Convention and the 1967 Protocol, of which 13 Member States are from Africa and 7 are from Asia.¹⁰

50. Thus, it can be observed that even today more number of African countries are party to the said instruments, despite having the regional 1969 OAU (AU) Convention for refugees. The Asian countries, though by experience have always hospitably treated the refugee influxes, however are urged to consider ratifying the UN instruments for the protection of refugees, in absence of having a regional Convention to safeguard the interests of refugees.

51. The office for the Coordination of Humanitarian Affairs, through its inter agency internal displacement division also continued its efforts to support the effective implementation of a collaborative response. Ensuring effective security for refugees and internally displaced persons continues to be a pressing and vital need as demonstrated by the massacre of 156 Congolese refugees at the Gatumba Camp in Brurundi in August 2004 and the continuing use of sexual violence as a tool of war in places like Darfur and the eastern part of the Democratic Republic of Congo.

⁸ A/60/1

⁹ Please see the attached Annex II.

¹⁰ Please see the attached Annex III.

52. To counter gender based violence, the Inter-Agency standing Committee adopted in January 2005 a statement of commitment on action to prevent gender-based violence, ensure appropriate care for survivors and work towards holding perpetrators accountable in a world which is increasingly characterized by conflicts and civil wars, it becomes all the more important for States to become Parties to the 1951 Convention and its 1967 Protocol. The costs of granting prolonged asylum are difficult to quantify since they are not only economic but also include adverse effects on the environment as well as on the social infrastructure. In the light of above, a more equitable burden sharing is indispensable in favour of developing countries that account for more than 7 out of 10 refugees worldwide. Accession to 1951 Convention, and the Conventions on Statelessness would go a long way in ensuring this equitable burden sharing.

53. Increased burden sharing figured prominently in the Agenda for Protection the Programme of action for States, UNHCR's Executive Committee endorsed it last year as well as this year. Besides this, burden and responsibility sharing through concrete financial and other support to solve refugee problems lies at the heart of the convention plus, imitative of the UN High Commissioner for refugees. It may be noted that the adoption of the revised text of Bangkok Principles on Status and Treatment of refugees, of its New Delhi (HQ) Session in 2001 was a significant milestone in AALCO's long Journey in the field of International Law. The normative development of refugee concepts the burden sharing, durable solution, non-refoulement etc have come to be incorporated into various instruments international regional of national refugee laws. Thus AALCO and UNHCR can continue to play a vital role in developing the normative framework of international protection for refugees.

54. Also on the Protection front violence against refugees and internally displaced women and children continues to be a major concern. An increase in rape and gender based violence as a tool of war has been manifested in various contemporary conflict situations. UNHCR has revised several of its guidelines on gender-based violence against refugees, and against internally displaced persons so as to ensure maximum prevention and response. This seeks to ensure that better prevention and response mechanisms are put in place.

55. The UN Refugee agency helps certain groups of war affected populations and increasingly has been asked to assist the growing numbers of stateless persons. Exact numbers are difficult, but there are several million stateless persons across the globe. The Universal Declaration of Human Rights declares, "Everyone has a right to a nationality". Following a global consultation with Governments and vastly improved data provided by 74 States, the number of stateless people rose sharply in 2004. The study on the topic of Statelessness being jointly undertaken by the UNHCR and AALCO is thus a very timely initiative. It is pertinent to note here that the Secretary-General of AALCO met the Senior Legal Officer (Statelessness) of UNHCR in Geneva on 26 July 2005, and *inter alia* discussed with him the modalities of conducting the study on "Statelessness: An over view from the Asian African and Middle Eastern Perspective". He emphasized that the purpose of the study was to elucidate upon the concept of "Statelessness" in Asia and Africa and place it in the right perspective before the Member States of AALCO.

56. The proposed study on statelessness: which is being taken up jointly by AALCO and UNHCR would be a step forward in strengthening the long standing ties between both the organization which got a further boost from the MOU signed on 23 May 2002. It needs to be reiterated that the MOU provides a solid basis to elaborate such cooperative arrangements.

57. The coming Forty-Fifth Session of AALCO to be held in the Headquarters at New Delhi in 2006 will devote one full day to the Special Meeting to be held jointly with the UNHCR on the subject of "Statelessness". This event shall also coincide with the release of the joint AALCO- UNHCR study on "Statelessness: An Overview from the African, Asian and Middle East Perspective". The study is currently under way and it is hoped that the task would be accomplished within the stipulated time frame.

Annex I

OUTLINE OF THE PROPOSED STUDY ON “STATELESSNESS: AN OVERVIEW FROM THE AFRICAN, ASIAN AND MIDDLE EASTERN PERSPECTIVE”

Introduction

- Forward with introductory comments from AALCO and UNHCR
- Introduction to the problem of statelessness and an outline of the object and purpose of the study.

Chapter I: Sample Overview of Nationality Laws and Best Practices.

- Nationality Laws, which define statelessness.
- Nationality laws with provisions to avoid statelessness.
- Provisions to secure nationality for children.
- Special provisions to avoid statelessness for women.
- Procedural guarantees to prevent inadvertent loss of nationality.
- Provisions, which reduce statelessness through access to naturalization.

Chapter II: Regional Approaches and Comparative Analysis: Throughout AALCO Regions

- *Jus soli, jus sanguinis*, and combined approaches to acquisition.
- Approaches to nationality in the context of marriage or changes in civil status.
- Perspectives on multiple nationalities.
- Approaches to changes in nationality through naturalization.
- Nationality determination and its impact on migration.

CHAPTER III; Trafficking in Persons and the Problem of Statelessness.

- Risk of statelessness in the context of trafficking.
- Various mechanisms States use to promote nationality determination- Legal customary approaches.
- Particular problems faced by women and children.
- Re-establishing legal identity.
- Regional approaches to trafficking addressing statelessness.

CHAPTER IV: Statelessness and displacement.

- Case Study: The Great Lakes.

CHAPTER V: Nationality, Statelessness and Migration

- Case Study: South Asia.

CHAPTER VI: Statelessness and Refugee Flows

- Case Study: South East Asia.

CHAPTER VII: SUMMARY

- Observation of Best Practices.
- Regional Themes.
- Gaps in Approaches
- Recommendations for Follow-up.

Annex II

II. States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol

Date of entry into force:
22 April 1954 (Convention)
4 October 1967 (Protocol)

As of 1 December 2005

Total number of States Parties to the 1951 Convention:	143
Total number of States Parties to the 1967 Protocol:	143
States Parties to both the Convention and Protocol:	140
States Parties to one or both of these instruments:	146

States Parties to the 1951 Convention only:

Madagascar, Monaco, Saint Kitts and Nevis

States Parties to the 1967 Protocol only:

Cape Verde, United States of America, Venezuela

The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V)¹, adopted by the General Assembly of the United Nations on 14 December 1950.

The dates indicated are the dates of deposit of the instrument of ratification or accession by the respective States Parties with the Secretary-General of the United Nations in New York. In accordance with article 43(2), the Convention enters into force on the ninetieth day after the date of deposit. The Protocol enters into force on the date of deposit (article VIII (2)). Exceptions are indicated below.

Most recent ratification:

Afghanistan	30 Aug 2005	a	30 Aug 2005	a
Saint Vincent and the Grenadines	03 Nov 1993	a	03 Nov 2003	a

Country	Convention	Protocol
Albania	18 Aug 1992 a	18 Aug 1992 a
Algeria	21 Feb 1963 s	08 Nov 1967 a
Angola	23 Jun 1981 a	23 Jun 1981 a
Antigua and Barbuda	07 Sep 1995 a	07 Sep 1995 a
Argentina	15 Nov 1961 a	06 Dec 1967 a
Armenia	06 Jul 1993 a	06 Jul 1993 a
Australia	22 Jan 1954 a	13 Dec 1973 a
Austria	01 Nov 1954 r	05 Sep 1973 a
Azerbaijan	12 Feb 1993 a	12 Feb 1993 a

Bahamas	15 Sep 1993	a	15 Sep 1993	a
Belarus	23 Aug 2001	a	23 Aug 2001	a
Belgium	22 Jul 1953	r	08 Apr 1969	a
Belize	27 Jun 1990	a	27 Jun 1990	a
Benin	04 Apr 1962	s	06 Jul 1970	a
Bolivia	09 Feb 1982	a	09 Feb 1982	a
Bosnia and Herzegovina	01 Sep 1993	s	01 Sep 1993	s
Botswana	06 Jan 1969	a	06 Jan 1969	a
Brazil	16 Nov 1960	r	07 Apr 1972	a
Bulgaria	12 May 1993	a	12 May 1993	a
Burkina Faso	18 Jun 1980	a	18 Jun 1980	a
Burundi	19 Jul 1963	a	15 Mar 1971	a
Cambodia	15 Oct 1992	a	15 Oct 1992	a
Cameroon	23 Oct 1961	s	19 Sep 1967	a
Canada	04 Jun 1969	a	04 Jun 1969	a
Cape Verde (P)			09 Jul 1987	a
Central African Republic	04 Sep 1962	s	30 Aug 1967	a
Chad	19 Aug 1981	a	19 Aug 1981	a
Chile	28 Jan 1972	a	27 Apr 1972	a
China	24 Sep 1982	a	24 Sep 1982	a
Colombia	10 Oct 1961	r	04 Mar 1980	a
Congo	15 Oct 1962	s	10 Jul 1970	a
Congo, Democratic Republic of	19 July 1965	a	13 Jan 1975	a
Costa Rica	28 Mar 1978	a	28 Mar 1978	a
Côte d'Ivoire	08 Dec 1961	s	16 Feb 1970	a
Croatia	12 Oct 1992	s	12 Oct 1992	s
Cyprus	16 May 1963	s	09 Jul 1968	a
Czech Republic	11 May 1993	s	11 May 1993	s
Denmark	04 Dec 1952	r	29 Jan 1968	a
Djibouti	09 Aug 1977	s	09 Aug 1977	s
Dominica	17 Feb 1994	a	17 Feb 1994	a
Dominican Republic	04 Jan 1978	a	04 Jan 1978	a
Ecuador	17 Aug 1955	a	06 Mar 1969	a
Egypt	22 May 1981	a	22 May 1981	a
El Salvador	28 Apr 1983	a	28 Apr 1983	a
Equatorial Guinea	07 Feb 1986	a	07 Feb 1986	a
Estonia	10 Apr 1997	a	10 Apr 1997	a
Ethiopia	10 Nov 1969	a	10.Nov 1969	a
Fiji	12 Jun 1972	s	12 Jun 1972	s
Finland	10 Oct 1968	a	10 Oct 1968	a
France	23 Jun 1954	r	03 Feb 1971	a
Gabon	27 Apr 1964	a	28 Aug 1973	a
Gambia	07 Sep 1966	s	29 Sep 1967	a
Georgia	09 Aug 1999	a	09 Aug 1999	a
Germany	01 Dec 1953	r	05 Nov 1969	a
Ghana	18 Mar 1963	a	30 Aug 1968	a

Greece	05 Apr 1960	r	07 Aug 1968	a
Guatemala	22 Sep 1983	a	22 Sep 1983	a
Guinea	28 Dec 1965	s	16 May 1968	a
Guinea-Bissau	11 Feb 1976	a	11 Feb 1976	a
Haiti	25 Sep 1984	a	25 Sep 1984	a
Holy See	15 Mar 1956	r	08 Jun 1967	a
Honduras	23 Mar 1992	a	23 Mar 1992	a
Hungary	14 Mar 1989	a	14 Mar 1989	a
Iceland	30 Nov 1955	a	26 Apr 1968	a
Iran, Islamic Republic of	28 Jul 1976	a	28 Jul 1976	a
Ireland	29 Nov 1956	a	06 Nov 1968	a
Israel	01 Oct 1954	r	14 Jun 1968	a
Italy	15 Nov 1954	r	26 Jan 1972	a
Jamaica	30 Jul 1964	s	30 Oct 1980	a
Japan	03 Oct 1981	a	01 Jan 1982	a
Kazakhstan	15 Jan 1999	a	15 Jan 1999	a
Kenya	16 May 1966	a	13 Nov 1981	a
Kyrgyzstan	08 Oct 1996	a	08 Oct 1996	a
Korea, Republic of	03 Dec 1992	a	03 Dec 1992	a
Latvia	31 Jul 1997	a	31 Jul 1997	a
Lesotho	14 May 1981	a	14 May 1981	a
Liberia	15 Oct 1964	a	27 Feb 1980	a
Liechtenstein	08 Mar 1957	r	20 May 1968	a
Lithuania	28 Apr 1997	a	28 Apr 1997	a
Luxembourg	23 Jul 1953	r	22 Apr 1971	a
Macedonia, The Former Yugoslav Republic of	18 Jan 1994	s	18 Jan 1994	s
Madagascar (C)	18 Dec 1967	a		
Malawi	10 Dec 1987	a	10 Dec 1987	a
Mali	02 Feb 1973	s	02 Feb 1973	a
Malta	17 Jun 1971	a	15 Sep 1971	a
Mauritania	05 May 1987	a	05 May 1987	a
Mexico	07 June 2000	a	07 June 2000	a
Moldova, Republic of	31 Jan 2002	a	31 Jan 2002	a
Monaco (C)	18 May 1954	a		
Morocco	07 Nov 1956	s	20 Apr 1971	a
Mozambique	16 Dec 1983	a	01 May 1989	a
Namibia	17 Feb 1995	a	17 Feb 1995	a
Netherlands	03 May 1956	r	29 Nov 1968	a
New Zealand	30 Jun 1960	a	06 Aug 1973	a
Nicaragua	28 Mar 1980	a	28 Mar 1980	a
Niger	25 Aug 1961	s	02 Feb 1970	a
Nigeria	23 Oct 1967	a	02 May 1968	a
Norway	23 Mar 1953	r	28 Nov 1967	a
Panama	02 Aug 1978	a	02 Aug 1978	a
Papua New Guinea	17 Jul 1986	a	17 Jul 1986	a
Paraguay	01 Apr 1970	a	01 Apr 1970	a

Peru	21 Dec 1964	a	15 Sep 1983	a
Philippines	22 Jul 1981	a	22 Jul 1981	a
Poland	27 Sep 1991	a	27 Sep 1991	a
Portugal	22 Dec 1960	a	13 Jul 1976	a
Romania	07 Aug 1991	a	07 Aug 1991	a
Russian Federation	02 Feb 1993	a	02 Feb 1993	a
Rwanda	03 Jan 1980	a	03 Jan 1980	a
Saint Kitts and Nevis (C)	01 Feb 2002	a		
Saint Vincent and the Grenadines	03 Nov 1993	a	03 Nov 2003	a
Samoa	21 Sep 1988	a	29 Nov 1994	a
Sao Tome and Principe	01 Feb 1978	a	01 Feb 1978	a
Senegal	02 May 1963	s	03 Oct 1967	a
Serbia and Montenegro ***	12 Mar 2001	s	12 Mar 2001	s
Seychelles	23 Apr 1980	a	23 Apr 1980	a
Sierra Leone	22 May 1981	a	22 May 1981	a
Slovakia	04 Feb 1993	s	04 Feb 1993	s
Slovenia	06 Jul 1992	s	06 Jul 1992	s
Solomon Islands	28 Feb 1995	a	12 Apr 1995	a
Somalia	10 Oct 1978	a	10 Oct 1978	a
South Africa	12 Jan 1996	a	12 Jan 1996	a
Spain	14 Aug 1978	a	14 Aug 1978	a
Sudan	22 Feb 1974	a	23 May 1974	a
Suriname	29 Nov 1978	s	29 Nov 1978	s
Swaziland	14 Feb 2000	a	28 Jan 1969	a
Sweden	26 Oct 1954	r	04 Oct 1967	a
Switzerland	21 Jan 1955	r	20 May 1968	a
Tajikistan	07 Dec 1993	a	07 Dec 1993	a
Tanzania, United Republic of	12 May 1964	a	04 Sep 1968	a
Timor-Leste	07 May 2003	a	07 May 2003	a
Togo	27 Feb 1962	s	01 Dec 1969	a
Trinidad and Tobago	10 Nov 2000	a	10 Nov 2000	a
Tunisia	24 Oct 1957	s	16 Oct 1968	a
Turkey	30 Mar 1962	r	31 Jul 1968	a
Turkmenistan	02 Mar 1998	a	2 Mar 1998	a
Tuvalu	07 Mar 1986	s	07 Mar 1986	s
Uganda	27 Sep 1976	a	27 Sep 1976	a
Ukraine	10 Jun 2002	a	04 Apr 2002	a
United Kingdom of Great Britain and Northern Ireland	11 Mar 1954	r	04 Sep 1968	a
United States of America (P)			01 Nov 1968	a
Uruguay	22 Sep 1970	a	22 Sep 1970	a
Venezuela (P)			19 Sep 1986	a
Yemen	18 Jan 1980	a	18 Jan 1980	a
Zambia	24 Sep 1969	s	24 Sep 1969	a
Zimbabwe	25 Aug 1981	a	25 Aug 1981	a

Limitations:

Article 1 B(1) of the 1951 Convention provides: “For the purposes of this Convention, the words ‘events occurring before 1 January 1951’ in article 1, Section A, shall be understood to mean either (a) ‘events occurring in Europe before 1 January 1951’; or (b) ‘events occurring in Europe or elsewhere before 1 January 1951’, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purposes of its obligations under this Convention.”

The following States adopted alternative (a), the geographical limitation: Congo, Madagascar, Monaco, Turkey. Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol. Madagascar and Monaco have not yet adhered to the Protocol.

All other States Parties ratified, acceded or succeeded to the Convention without a geographical limitation by selecting option (b), ‘events occurring in Europe or elsewhere before 1 January 1951’.

Notes:

* Ratification (r), Accession (a), Succession (s)

** (C) denotes States Parties to the 1951 Convention only; (P) denotes States Parties to the 1967 Protocol only.

*** As of 4 February 2003, following the adoption and promulgation of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia, the official name of “The Federal Republic of Yugoslavia” has been changed to “Serbia and Montenegro”.

Annex III

AALCO Member States parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol

Country	1951 Convention	1967 Protocol
Botswana	06 Jan 1969 a	06 Jan 1969 a
China	24 Sep 1982 a	24 Sep 1982 a
Cyprus	16 May 1963 s	09 Jul 1968 a
Egypt, Arab Republic of	22 May 1981 a	22 May 1981 a
Gambia	07 Sep 1966 s	29 Sep 1967 a
Ghana	18 Mar 1963 a	30 Aug 1968 a
Iran, Islamic Republic of	28 Jul 1976 a	28 Jul 1976 a
Japan	03 Oct 1981 a	01 Jan 1982 a
Kenya	16 May 1966 a	13 Nov 1981 a
Nigeria	23 Oct 1967 a	02 May 1968 a
Philippines	22 Jul 1981 a	22 Jul 1981 a
Senegal	02 May 1963 s	03 Oct 1967 a
Sierra Leone	22 May 1981 a	22 May 1981 a
Somalia	10 Oct 1978 a	10 Oct 1978 a
South Africa	12 Jan 1996 a	12 Jan 1996 a
Sudan	22 Feb 1974 a	23 May 1974 a
Tanzania, United Republic of	12 May 1964 a	04 Sep 1968 a
Turkey	30 Mar 1962 r	31 Jul 1968 a
Uganda	27 Sep 1976 a	27 Sep 1976 a
Yemen	18 Jan 1980 a	18 Jan 1980 a