

AALCO/60/NEW DELHI (HEADQUARTERS)/2022/SD/S3

For Official Use Only

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



THE STATUS AND TREATMENT OF REFUGEES

**The AALCO Secretariat
29-C, Rizal Marg,
Diplomatic Enclave, Chanakyapuri,
New Delhi – 110 021
(INDIA)**

THE STATUS AND TREATMENT OF REFUGEES

TABLE OF CONTENTS

	Page No.
I. Introduction	1
A. AALCO's Historic Engagement with the Topic 'Status and Treatment of Refugees'	1
B. Deliberations at the Fifty-Sixth Annual Session of AALCO (Nairobi, the Republic of Kenya, 1-5 May 2017)	2
C. Issues for focussed deliberations at the Sixtieth Annual Session	5
II. The International Legal Framework for the Protection of Refugees	5
A. The Refugee Convention, 1951	5
B. 1967 Protocol to the Refugee Convention, 1951	7
C. AALCO's Bangkok Principles on the Status and Treatment of Refugees, 1966	7
D. Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969	8
E. Cartagena Declaration on Refugees, 1984	9
F. Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World, 1992	10
G. Arab Convention on Regulating Status of Refugees in the Arab Countries, 1994	10

H. Ashgabat Declaration, 2012	10
I. New York Declaration for Refugees and Migrants, 2016	11
J. United Nations Global Compact on Refugees, 2018	11
K. Role of the UNHCR in the Protection of Refugees and AALCO's engagement with the UNHCR	15
 III. International Legal Principles for the Protection of Refugees	 16
A. <i>Non-Refoulement</i>	16
B. Non-Discrimination	17
C. Burden and Responsibility Sharing	18
D. The Right to Seek and Enjoy Asylum	18
E. Durable Solutions	19
 IV. The Responsibility of States for the Protection of Refugees	 20
A. General Framework	20
B. Protection of Vulnerable Refugees	22
i. Children	22
ii. Women	23
iii. Persons with Disabilities	24
 V. Observations and Comments of the AALCO Secretariat	 25

I. Introduction

A. AALCO's Historic Engagement with the topic 'Status and Treatment of Refugees'

1. The topic 'Status and Treatment of Refugees' has been one of the oldest topics on the agenda of AALCO. It was introduced in the agenda of AALCO in 1964 at the behest of the Arab Republic of Egypt. Since 1964, AALCO has been constructively engaging with the topic both independently and in collaboration with the United Nations High Commissioner for Refugees (UNHCR) with whom AALCO signed a Memorandum of Understanding (MoU) on 23 May 2002.

2. In 1966, AALCO adopted the "Principles Concerning the Treatment of Refugees" also known as the "Bangkok Principles" at the Eighth Annual Session. The Bangkok Principles were improved by the addition of two addenda, the first of which was adopted in 1970 at AALCO's Eleventh Annual Session held in Accra and contained an elaboration of the 'right to return' of any person who because of foreign domination, external aggression or occupation had to leave his habitual place of residence. The second addendum, which added 'Burden Sharing Principles' was adopted in 1987 at the Twenty-Sixth Annual Session held in Bangkok. In the year 2001, the revised text of the Bangkok Principles were adopted. Each of these landmark initiatives of AALCO was widely appreciated by the Afro-Asian legal community and beyond.

3. In addition to the Bangkok Principles, AALCO has also contributed to the conceptualization of important normative principles in the realm of refugee law. The 'Concept of Establishment of Safety Zones for Internally Displaced Persons' was a key area of focus for AALCO. In this regard, efforts in this direction culminated in the adoption of "A Framework for the Establishment of a Safety Zone for Displaced Persons in Their Country of Origin" in 1995. The framework incorporated around twenty principles that provide for numerous safety measures for internally displaced persons.

4. Additionally, AALCO has prepared a "Model Legislation on Refugees" in pursuance of the mandate received from the Thirty-First Annual Session held in Islamabad, Pakistan in 1992 for the benefit of the Member States so as to facilitate codification of laws in this regard

in their domestic setting. The Model Legislation was submitted to the Thirty-Fourth Annual Session held in Doha, the State of Qatar, in 1995.

5. In addition, a Special Study titled ‘The Problem of Statelessness: An Overview from the African Asian and Middle Eastern Perspective’ was prepared by AALCO in collaboration with the UNHCR. The Special Study was released at the Forty-Sixth Annual Session of AALCO held at Cape Town, the Republic of South Africa, in 2007.

6. Given AALCO’s historic thrust on this topic and the emergence of issues of contemporary relevance in the field, it was considered worthwhile to re-introduce the same as a substantive agenda item for the Sixtieth Annual Session. It may be noted that the topic was last deliberated at the Fifty-Sixth Annual Session of AALCO held in Nairobi, the Republic of Kenya in 2017 and this would be the first brief of the Secretariat prepared after the adoption of the Global Compact on Refugees (GCR) in December 2018. Against this backdrop, the topic assumes added significance.

B. Deliberations at the Fifty-Sixth Annual Session of AALCO (Nairobi, the Republic of Kenya, 1-5 May 2017)

7. The then **Secretary-General of AALCO, H.E. Prof. Dr. Kennedy Gastorn** delivered the introductory statement on the agenda item. In his statement, H.E. Prof. Dr. Kennedy Gastorn highlighted AALCO’s long-term engagement with the topic including the “Principles Concerning the Treatment of Refugees” also known as the Bangkok Principles adopted at the Eighth Annual Session of AALCO held in 1966. It was stated that the thrust of the brief prepared by the Secretariat focussed on the New York Declaration, which was adopted in 2016.

8. It was highlighted that the Declaration also proposed the creation of a “Comprehensive Refugee Response Framework” which made the deliberations at the Nairobi Annual Session particularly significant for AALCO Member States to identify and discuss issues and solutions against the backdrop of the then proposed 2018 GCR.

9. Prior to concluding his statement, H.E. Prof. Dr. Kennedy Gastorn stated that the adoption of the Burden Sharing Principles, as well as drafting the ‘Model Legislation on the Status and Treatment of Refugees’ placed AALCO and its Member States in a unique position

to provide a regional perspective to the development and implementation of the Global Compact and the Response Framework, and to offer insight into best practices, roadblocks, and the efficacy of these instruments.

10. The **Delegate of the Republic of Indonesia** in his statement pointed out that the issue of refugee protection is transnational in nature and no single country would be in a position to handle the problem on its own. In this regard, the importance of international cooperation was highlighted so as to collectively address the challenges of refugee protection as well as ensuring their safe return and repatriation.

11. The **Delegate of the Republic of India** in his statement highlighted the need to maintain a clear distinction between migrants, refugees and Internally Displaced Persons (IDPs), as they are governed by different international laws and norms. The country's general support to the principles of burden sharing and solidarity in respect of refugees was pointed out while noting that the United Nations should continue to play a central role in providing leadership and coordination to the efforts of the international community so as to strengthen response capacity in a cost-effective and timely manner.

12. The **Delegate of the Kingdom of Thailand** highlighted the transnational nature of the refugee problem while noting that the issue should be a shared responsibility of the international community. The delegate welcomed the adoption of the New York Declaration for Refugees and Migrants by the UN General Assembly and pointed out its significance for the international community as a step forward in the protection of refugees. The delegate in particular noted that the Comprehensive Refugee Response (CRR) Framework based on principles of international cooperation and burden sharing and highlighted the major role played by the Kingdom of Thailand for the protection of refugees. In the end, the delegate appreciated the work done by the Secretariat in reporting on the progress of the proposed 2018 Global Compact on refugees and migrants, as well as initiatives in collaboration with the UNHCR in organising a capacity building program for AALCO Member States.

13. The **Delegate from the People's Republic of China** highlighted the global nature of the refugee problem and its serious impact on regional peace and stability including economic growth of relevant States. The delegate appreciated the efforts and contributions made by AALCO to solve the problem of refugees, including the adoption of the Principle Concerning

the Treatment of Refugees in 1966, the Burden Sharing Principles in 1987 and A Model Legislation on the Status and Treatment of Refugees submitted by the Secretariat to the Thirty-Fourth Annual Session in 1995. The delegate highlighted the great importance that the country attaches to refugee protection and its active participation on this issue. The delegate welcomed the adoption of the New York Declaration for Refugees and Migrants stating that the country believed it would bring new momentum for global cooperation on the issue of refugees and migrants. In the end, the delegate noted that the Global Compact on Refugees is not a legal document and thus cannot impose extra obligation on States and should not seek to be a substitute for existing international legal instruments on refugee protection. The delegate appreciated the role played by Asian and African countries in refugee protection and stated that their voice and concerns should be given due attention during the negotiation of the Global Compact.

14. The **Delegate from the Republic of Korea** noted that his country was the first country in Asia to enact a Refugee Act, which entered into force in 2013 and highlighted various policy measures taken by the government to ameliorate the situation of refugees. The delegate highlighted the need to coordinate with the United Nations for tackling large-scale refugee movements.

15. The **Delegate of Japan** highlighted the role played by the country in human rights promotion while noting that ‘Human Security and Peace Building’ were key pillars of the country’s foreign policy. The delegate noted the importance of cooperation among humanitarian agencies, development agencies, donor countries and affected countries for the protection of refugees.

16. The **Delegate of Sudan** in his statement noted that the refugee crisis is an old one with no end in sight with Asian and African countries being the most effected in this regard. Noting that the country had an open door policy based on its religious and moral heritage, the delegate pointed out the appreciation it received from the United Nations and the international community at large for ensuring the protection of refugees. The delegate called for creating conditions that would help refugees return to their countries with safety and dignity while calling for the need to address the root causes of violence and armed conflict.

17. The **Delegate of the Islamic Republic of Iran** in his statement stressed the importance of international cooperation in dealing with the problem of refugees while noting that the development of international law in this regard is far from adequate. The delegate noted that utmost attention should be given to the role of “resettlement” as a durable solution for protracted refugee situations while highlighting the need for international responsibility of all members of the international community in the event of mass influx. On the 2016 New York Declaration for Refugees and Migrants, the delegate highlighted the importance of countering the root causes of the phenomenon and giving due consideration to the special needs of people in vulnerable situations.

C. Issues for focussed deliberations at the Sixtieth Annual Session

18. The current brief of the AALCO Secretariat will provide an overview of the international legal dimensions of refugee law with a special focus on legal treaties and soft law frameworks for refugee protection. The brief aims to encourage the Member States to deliberate on this topic in the backdrop of the recently adopted United Nations Global Compact on Refugees in 2018 with a renewed commitment and focus on refugee protection in light of the international legal framework and contemporary challenges.

II. The International Legal Framework for the Protection of Refugees

19. Obligations to safeguard refugees are clearly embedded in international law and they constitute the moral-legal edifice of the global community. This part of the brief seeks to provide an overview of the international legal framework for the protection of refugees.

A. The Refugee Convention, 1951

20. The Refugee Convention, adopted at a diplomatic conference in Geneva, in 1951 (also known as the Refugee Convention, 1951) is the most important global instrument for the protection of refugees¹. The Convention consolidated and replaced all prior agreements entered into by States between 1926 and 1943, which were concerned only with specific groups of

¹ The Refugee Convention was adopted by a Conference of Plenipotentiaries of the United Nations on 28 July 1951 and entered into force on 21 April 1954

refugees². The Convention was limited to protecting mainly European refugees in the aftermath of World War II. A protocol was adopted in 1966 to expand the scope of the Convention to a more universal scale³ (The Protocol entered into force in 1967, also called the 1967 Protocol). Thus, the Refugee Convention, 1951 and the 1967 Protocol have been rightly called the foundation of international refugee law⁴. The Refugee Convention, 1951 along with the 1967 Protocol currently have 149 State Parties to either or both and enshrine the definition of ‘refugee’ and the legal obligation of States towards them⁵.

21. The Refugee Convention, 1951 defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution. Only those coming within the purview of this definition are entitled to the benefits of refugee protection under the Refugee Convention, 1951. The most important aspect of the definition is the phrase “well-founded fear of being persecuted” which remains the universally accepted threshold of defining refugees.

22. As regards the legal status of a refugee under the Refugee Convention, 1951, it is stipulated that the law of the country of his /her domicile or residence shall govern the personal status of a refugee. Additionally, refugees are conferred with certain civil, economic, social and cultural rights like the freedom to practice religion (Article 4), the right of association (Article 15) and free access to courts (Article 16). However, the hallmark of the Convention is Article 33, which contains the guarantee against *non-refoulement*, wherein a contracting State is prohibited from expelling or returning a refugee in any manner such that the life or freedom of the refugee is threatened⁶.

² AALCC-UNHCR Workshop on International Refugee and Humanitarian Law (New Delhi 24 to 26 October, 1991) publication of AALCO, 98

³ UNHCR Website, <<https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>> accessed 30 June 2022

⁴ UNHCR Handbook on International Refugee Law, <<https://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>> accessed 30 June 2022, 13

⁵ UNHCR Website, <<https://www.unhcr.org/1951-refugee-convention.html>> accessed 30 June 2022

⁶ Article 33 of the Refugee Convention, 1951 provides that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”

23. It should be noted that refugees for the purposes of international law are different from migrants. While refugees are forced to move because of fear of persecution, migrants are those who leave a country for reasons other than persecution⁷.

B. 1967 Protocol to the Refugee Convention, 1951

24. As highlighted earlier, the Refugee Convention, 1951 limited the obligation of Member States to refugee situations existing at that time or those that could potentially arise from events that had already taken place. As time progressed, it was deemed appropriate that the provisions of the Refugee Convention, 1951 be made applicable to new refugee situations. As a result, the Protocol to the Refugee Convention, 1951 was adopted in 1966 and came into force on 4 October 1967. By acceding to the 1967 Protocol, States made applicable the provisions of the Refugee Convention, 1951 to refugees as defined in the Convention minus the 1951 deadline⁸. Thus, temporal and geographical limitations applicable to the Refugee Convention, 1951 were removed by the 1967 Protocol. A country that has ratified the 1967 Protocol but not the Refugee Convention, 1951 is also bound by the latter upon its acceptance of the protocol. Thus, the legal effect of the 1967 Protocol is to give universal application to the Refugee Convention, 1951.

C. AALCO's Bangkok Principles on the Status and Treatment of Refugees, 1966

25. In August 1966, AALCO adopted the "Principles Concerning Treatment of Refugees" also known as the Bangkok Principles. The definition of "refugee" stipulated in Article 1 of the Principles is closely based on the definition of refugees contained in the Refugee Convention, 1951.

26. The Bangkok Principles were given additional thrust by the addition of two addenda, the first of which was adopted in 1970 at AALCO's Eleventh Annual Session held in Accra, the Republic of Ghana, and contained an elaboration of the 'right to return' of any person who

⁷ UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?

<<https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>> accessed 01 August 2022

⁸ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, <<https://www.unhcr.org/4d93528a9.pdf>> accessed 06 July 2022, 14

because of foreign domination, external aggression or occupation had to leave his habitual place of residence. The second addendum, which added 'Burden Sharing Principles' was adopted in 1987 at the Twenty-Sixth Annual Session held in Bangkok, the Kingdom of Thailand. In the year 2001, the revised text of the Bangkok Principles was adopted.

27. The Bangkok Principles are recommendatory in nature and do not constitute binding law. However, despite the same, the principles have enjoyed considerable persuasive power because of its 'soft-law' nature and they constitute one of AALCO's greatest achievements in the field of international law.

D. Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

28. Since the Refugee Convention, 1951 was originated in the European context, its approach and focus had a distinct focus that reflected its European roots. In this background, there was a strong opinion in Africa that an instrument seeking to address the concerns of refugees in Africa was much needed to effectively address the issue of refugee protection. In pursuance to this sentiment, the Organization of African Unity (OAU) Refugee Commission met in Addis Ababa in 1968 to draft an African Refugee Convention. In September 1969, the Assembly of Heads of State and Governments of the Organization of African Unity adopted the OAU Convention governing the specific aspects of refugee problems in Africa⁹.

29. The OAU Convention differs from the Refugee Convention, 1951 on a few counts. While it is not tied down by temporal or geographical limitations unlike the Refugee Convention, 1951 the definition of refugee in the OAU Convention is broad enough to include additional grounds not contained in the Refugee Convention, 1951. In the OAU convention, a refugee is also a person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. Thus, individuals who are victims of armed conflicts or other catastrophic violent situations qualify as refugees unlike the case in

⁹ *Supra* n 2, 100

the Refugee Convention, 1951 where the categorization is limited to those fearing persecution¹⁰.

E. Cartagena Declaration on Refugees, 1984

30. Like the 1969 OAU Convention, the Cartagena Declaration of 1984 is a regional effort in framing a refugee protection framework grounded in legal principles in Latin America. The Declaration was adopted by the Colloquium on the International Protection of Refugees in Latin America, Mexico and Panama, held at Cartagena, Colombia from 19-22 November 1984¹¹. However, unlike the OAU Convention, the Cartagena Declaration is not a binding instrument. The lead for the Declaration was taken by the Colombian government and was aimed at creating a framework seeking to address the concern of refugees in Central America. One of the most significant aspects of the Declaration is the enlarged definition of refugees in addition to factors contained in the Refugee Convention, 1951 and the 1967 Protocol. The Declaration includes among refugees those persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order. Widely hailed as a successful framework, the Cartagena Declaration continues to remain an inspiring model for the international community for its outreach to vulnerable refugees.

¹⁰ 1. For the purposes of this Convention, the term “refugee” shall mean every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it

2. The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality

¹¹ Cartagena Declaration of Refugees, <<https://www.amerainternational.org/cartagena-declaration-refugees/>> accessed 08 July 2022

F. Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World, 1992

31. The Cairo Declaration was adopted in 1992 at the Sixty-Fifth Conference of the International Law Association held in Cairo from April 20-26, 1992¹². A number of legal rights including *non-refoulement*, freedom of movement and the right to enjoy protections under international human rights law are recognized under the declaration, which is a non-binding instrument.

G. Arab Convention on Regulating Status of Refugees in the Arab Countries, 1994

32. The Arab Convention on Regulating Status of Refugees in the Arab Countries, 1994 was a landmark initiative in creating a legal framework for refugee protection in the Arab world. Deeply rooted in the values and beliefs of Arab and Islamic history, the Convention seeks to create a robust framework for the protection of refugees fleeing persecution. Article 1 of the Convention defines Refugees as:

“Any person who is outside the country of his nationality or outside his habitual place of residence in case of not having a nationality and owing to well-grounded fear of being persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion, unable or unwilling to avail himself of the protection of or return to such country”¹³. However, the Convention is not in force and no Arab state has ratified it so far. Egypt is the only country to have signed the Convention till date¹⁴.

H. Ashgabat Declaration, 2012

33. The Organization of Islamic Cooperation (OIC) adopted the Ashgabat Declaration on 11-12 May 2012 at the International Ministerial Conference of the Organization of Islamic

¹² Luke T Lee, ‘The Cairo Declaration of Principles of International Law on Compensation to Refugees’ *The American Journal of International Law*, Vol. 87, No. 1 (Jan., 1993), pp. 157-159, 157

¹³ League of Arab States, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, 1994, available at: <https://www.refworld.org/docid/4dd5123f2.html> [accessed 8 July 2022]

¹⁴ Mervat Rishwami and Janeen Rashmawi, The League of Arab States and the Protection of migrants in Francesca Ippolito and Seline Trevisanut (eds) *Migration in the Mediterranean: Mechanisms of International Cooperation* (CUP 2016) 68-93, 75

Cooperation on Refugees in the Muslim World¹⁵. The Declaration reinforces the international legal framework for refugee protection and calls upon the international community, in cooperation with UNHCR and other relevant international organizations, to provide more resources to support and assist States, which host refugees in line with the principle of international solidarity, cooperation and burden sharing¹⁶.

I. New York Declaration for Refugees and Migrants, 2016

34. The United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants on 19 September 2016. The Declaration affirms and reiterates the significance of the international refugee framework and provides for commitments by States to bolster the same. Indeed, the Declaration facilitated the adoption of the Global Compact on Refugees in December 2018¹⁷. Along with the 1951 Refugee Convention and the 1967 Protocol, the New York Declaration constitutes a landmark in the domain of refugee protection for its strong commitment to all the major principles of refugee law, namely, *non-refoulement*, the right to seek asylum, human rights of refugees and burden and responsibility sharing, among others. The New York Declaration, *inter alia* seeks to address the root causes of large movements of refugees and migrants, including through increased efforts aimed at early prevention of crisis situations based on preventive diplomacy¹⁸.

J. United Nations Global Compact on Refugees, 2018

35. The United Nations General Assembly adopted the Global Compact on Refugees (GCR) on 17 December 2018 after intense deliberations among various international stakeholders. The GCR is a framework mechanism offering a sustainable refugee response solution on fair and equitable terms premised on the logic that international cooperation is a *sine qua non* for achieving the same. Rooted in the fundamental principles of humanity and international solidarity, the GCR seeks to operationalize the principles of burden- and

¹⁵ Regional Treaties, Agreements, Declarations and Related, *Ashgabat Declaration of the International Ministerial Conference of the Organization of Islamic Cooperation on Refugees in The Muslim World*, 12 May 2012, available at: <https://www.refworld.org/docid/595c95ba4.html> [accessed 8 July 2022]

¹⁶ Article 14 of the Ashgabat Declaration 2012

¹⁷ UNHCR India Website, <<https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html>> accessed 08 July 2022

¹⁸ Point 12, New York Declaration for Refugees and Migrants, Resolution adopted by the General Assembly on 19 September 2016, <<https://www.unhcr.org/57e39d987>> accessed 27 July 2022

responsibility-sharing to better protect and assist refugees and support host countries and communities¹⁹. The GCR is based on the premise that the responsibility of complying with the obligations of the Refugee Convention, 1951 and the 1967 Protocol has historically fallen mainly on middle and low-income countries that may be located in areas proximate to an armed conflict. In such a scenario, it was deemed necessary to create a global framework that encourages an equitable basis of burden and responsibility sharing while creating a more predictable framework for refugee protection in the best interests of all stakeholders. The GCR provides a moral edifice for all international stakeholders to ensure that host communities get the support they need and that refugees can lead meaningful and useful lives for their own benefit and for others²⁰. Thus, it underscores the crucial point that burden and responsibility sharing of refugees is not merely the responsibility of a few countries alone but of the global community as a whole and that too predicated on fair and equitable terms.

36. As stated above, the roots of the General Compact on Refugees (GCR) lie in the notion that all humanitarian problems are best resolved through international cooperation and solidarity between members of the international community. Article 1 (3) of the United Nations Charter, *inter alia*, argues that the purpose of the United Nations is “To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. This is further bolstered by Articles 55 and 56 of the UN Charter that require States to ‘take joint and separate action in co-operation’ with the UN in order to achieve stated goals and solve international problems.

37. The affirmation of the Global Compact on Refugees by the General Assembly represented the successful culmination of a two-year period of engagement and consultation with States and other relevant stakeholders, following the adoption of the New York Declaration for Refugees and Migrants in 2016²¹.

¹⁹ Global Compact on Refugees United Nations New York 2018, <<https://www.unhcr.org/5c658aed4.pdf>> accessed 1 August 2022, 2

²⁰ *Supra* n. 17

²¹ Global Compact on Refugees, <<https://www.unhcr.org/5c658aed4.pdf>> accessed 1 August 2022, iii

The four key objectives of the GCR are:

1. Ease the pressure on host countries
2. Enhance refugee self-reliance
3. Expand access to third-country solutions
4. Support conditions in countries of origin for return in safety and dignity²²

38. In order to realise and achieve the stated objectives of equitable and fair burden and responsibility sharing of refugees, the GCR has created the following mechanisms:

- a. **Global Refugee Forum:** A periodic Global Refugee Forum at ministerial level is proposed to be convened for all United Nations Member States, together with relevant stakeholders, to announce concrete pledges and contributions towards the objectives of the global compact²³.
- b. **National Arrangements:** The GCR encourages the creation of national arrangements may be established by relevant host countries to coordinate and facilitate the efforts of all stakeholders working to achieve a comprehensive response with the composition and working methods to be decided by the concerned host State²⁴.

i. Support Platforms

39. Vital for the success of the national arrangement are support platforms enable context-specific support for refugees and concerned host countries and communities. Support platforms are expected to serve the following functions:

- a. Galvanize political commitment and advocacy for prevention, protection, response and solutions;
- b. Mobilize financial, material and technical assistance, as well as resettlement and complementary pathways for admission to third countries, in support of the comprehensive plan

²² *Supra* n. 21, 4 para 7

²³ *Supra* n. 21, 7 para 17

²⁴ *Supra* n. 21, 9 paras. 20-21

- c. Facilitate coherent humanitarian and development responses, including through the early and sustained engagement of development actors in support of host communities and refugees;
- d. Support comprehensive policy initiatives to ease pressure on host countries, build resilience and self-reliance, and find solutions²⁵

ii. Regional and Subregional Approaches

40. The GCR recognizes that refugee movements have significant regional or sub regional dimensions. In this regard, regional and sub-regional groupings are expected to contribute to resolution of refugee situations in their respective regions, including by playing a key role in Support Platforms, solidarity conferences and other arrangements with the consent of concerned States²⁶.

iii. Key Tools for effecting Responsibility Sharing

41. The GCR recognizes the following as key tools for effecting burden and responsibility sharing:

- a. Funding and effective and efficient use of resources
- b. A multi-stakeholder and partnership approach
- c. Data and evidence²⁷

42. As regards **areas in need of support**, the GCR identifies the following areas and concerns:

- a. Reception and Admission
- b. Meeting Needs and Supporting Communities
- c. Education
- d. Jobs and livelihoods
- e. Health
- f. Women and girls
- g. Children, adolescents and youth

²⁵ *Supra* n. 21, 9-11, paras. 22-27

²⁶ *Supra* n. 21, 11-12, paras. 28-30

²⁷ *Supra* n. 21, 12-18 paras. 31-48

- h. Accommodation, energy, and natural resource management
- i. Food security and nutrition
- j. Civil registries
- k. Statelessness
- l. Fostering good relations and peaceful coexistence²⁸

43. As regards **solutions** for large scale refugee movements, the GCR offers the following:

- a. Support for countries of origin and voluntary repatriation
- b. Resettlement
- c. Complementary pathways for admission to third countries
- d. Local integration
- e. Other local solutions²⁹

iv. Follow-up and Review

44. Success under the GCR will be assessed in terms of progress towards the achievement of its four objectives with the international community as a whole doing its best to support the GCR³⁰.

K. Role of UNHCR in the Protection of Refugees and AALCO's engagement with the UNHCR

45. Established in 1950, the United Nations High Commissioner for Refugees (UNHCR) is a subsidiary organ of the UN General Assembly. Headquartered in Geneva, it began its operations in 1951³¹. It was established with the mandate to protect refugees. Legally, refugees refer to persons displaced who meet the specific criteria laid down in the Refugee Convention, 1951³². As one of the most significant humanitarian organizations in the world, the UNHCR has been at the forefront of safeguarding the rights and interests of individuals fleeing persecution. Its stellar role has been appreciated worldwide and it carefully coordinates its

²⁸ *Supra* n. 21, 18-33, paras. 49-84

²⁹ *Supra* n. 21, 33-40, paras. 85-100

³⁰ *Supra* n.21, 41-42 paras.101-107

³¹ Protecting Refugees and the Role of the UNCHR, <<https://www.unhcr.org/509a836e9.pdf>> accessed 11 June 2022

³² *Supra* n. 19

activities with States around the world. UNHCR won the Nobel Peace Prize in 1954 for its work in protecting refugees in Europe in 1954 and in 1981 UNHCR received a second Nobel Prize for their universal efforts in protecting refugees³³. UNHCR serves as the ‘guardian’ of the Refugee Convention, 1951 and the 1967 Protocol. States are expected to cooperate with the UNHCR to aid the protection of refugees³⁴.

46. AALCO has had a long and meaningful relationship with UNHCR. A Memorandum of Understanding between the two organizations was signed on 23 May 2002. Both organizations have organized numerous capacity building initiatives involving experts and stakeholders from the Afro-Asian region over the years helping the cause of Afro-Asian refugees. A joint seminar in hybrid format between the two organizations is planned in the last week of November 2022 to discuss the Global Compact of Refugees in the wake of its adoption in 2018. Prior to the pandemic, a joint seminar was organized by the two organizations on responding to large-scale refugee movements on 18 April 2018.

III. International Legal Principles for the Protection of Refugees

A. Non-Refoulement

47. The principle of *non-refoulement* is one of the most fundamental principles of international law. The principle prohibits States from transferring or removing refugees from their jurisdiction or effective control when there exist substantial grounds to believe that the individual would be at risk of irreparable harm, including persecution, torture, ill-treatment or other major human rights violation³⁵. While some scholars have argued that non-refoulement is a *jus cogens* norm, there is no consensus to this effect in the international community. Similar is the case with the principle being considered as a part of customary international law³⁶.

³³ The Refugee Convention, 1951, <<https://www.unhcr.org/1951-refugee-convention.html>> accessed 11 June 2022

³⁴ The Refugee Convention, 1951 <<https://www.unhcr.org/1951-refugee-convention.html>> accessed 11 June 2022

³⁵ The principle of non-refoulement under international human rights law, <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>> accessed 11 June 2022

³⁶ See Allain, J, ‘The *jus cogens* Nature of non-refoulement’ International Journal of Refugee Law, 13(4) (2001) 533–558

48. Article 33 of the Refugee Convention, 1951 contains the principle of *non-refoulement*. The article is also binding on States Party to the 1967 Protocol. It provides that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”

49. Similarly, Article 2(3) of the 1969 OAU Convention provides: “No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.”

50. However, the right to *non-refoulement* does not entail a positive right to get asylum. Thus, a State cannot be obliged to grant asylum to a refugee based on Article 33 of the Refugee Convention, 1951. However, in cases where the States are not ready to grant asylum, they must adopt a course of action that does not expose refugees to possible transfer to a territory where their lives or freedom will be jeopardised on account of their race, religion, nationality, membership of a particular social group or political opinion³⁷.

B. Non-Discrimination

51. The principle of non-discrimination is of special significance in the field of refugee law. Originally, laid down in Article 2 of the Universal Declaration of Human Rights, 1948, the principle states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

52. The preamble of the Refugee Convention, 1951 highlights the principle of non-discrimination, where it provides that “CONSIDERING that the Charter of the United Nations

³⁷ Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, <<https://www.unhcr.org/4d9486929.pdf>> accessed 11 June 2022 para 8, 3

and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms *without discrimination*.” (emphasis added)

C. Burden and Responsibility Sharing

53. The principle of burden and responsibility sharing remains one of the cornerstones of international refugee law. Recital 4 of the preamble of the 1951 Convention relating to the Status of Refugees (Refugee Convention, 1951) states: “Considering that the grant of asylum may place *unduly heavy burdens* on certain countries and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.”(emphasis added)

54. On similar lines, Article 2 (4) of the 1969 OAU Convention states that “Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to *lighten the burden* of the Member State granting asylum.” (emphasis added)

55. The principle of burden and responsibility sharing is based on the logic that the responsibility of hosting refugees cannot be disproportionately placed on one or a select few countries and all countries must do their best to ease the burden of the State/s that are hosting refugees by equitably and fairly hosting refugees. The New York Declaration adopted by the UN General Assembly in September 2016 and the Global Compact on Refugees adopted in December 2018, among other factors, was predicated on the desire to address large scale refugee movements in the wake of uneven and inequitable refugee sharing mechanisms and a strong global belief in the need to address questions of burden and responsibility sharing in an appropriate and just manner without prejudice to anyone.

D. The Right to Seek and Enjoy Asylum

56. The right to seek and enjoy asylum is recognized in Article 14 of the Universal Declaration of Human Rights, 1948. However, the right is not unqualified with the Article making it clear that asylum cannot be granted to avoid prosecution for “non-political crimes or

acts contrary to the purposes and principles of the United Nations.” The Article provides as follows:

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

57. It may be noted that the origins of the right to seek and enjoy asylum lay in the right of sovereign States to grant asylum and refuse extradition. With the evolution of international human rights law, it was considered that individuals have a right to seek asylum and the same remains consistent with the sovereign right of States to do so. However, there is nothing in positive international refugee law that mandates States to grant asylum to all applicants and as highlighted earlier, Article 33 which prohibits *non refoulement* cannot be read as an obligation on the part of States to grant asylum though in such cases, the host State is bound to adopt a course of action that safeguards the refugee from the possibility of being expelled to a territory where he or she faces danger to his or her life or liberty.

E. Durable Solutions

58. Durable solutions refer to approaches that may be adopted by States to help the refugees tide over the problem of displacement and help the refugees rebuild a life of dignity. Voluntary repatriation, local settlement/integration and resettlement in a third country are the most common durable solutions offered to refugees and universally recognized. The issue of durable solutions remains one of the most pressing challenges of international refugee law and while literature on the subject abounds, it may be noted that durable solutions do not exist as a matter of right for individual refugees to assert from host States. However, with the adoption of the Global Compact on Refugees, there is increasing thrust on the issue of durable solutions and the appropriate options being offered to refugees.

59. **Voluntary repatriation** remains the major durable solution that most stakeholders in the international refugee framework prefer. Under this solution, the refugee is offered the possibility of voluntarily returning to his country of origin once it is clear that the original threat of persecution has ceased to exist and it is safe for the refugee to return to his/her original

territory. While most individuals would prefer to move to their countries of origin because of cultural, social and geographical affinities, voluntary repatriation as a durable solution may not work if the conditions that necessitated the movement of individuals in the first place continues to exist in some form or the other. In any case, safety and security of the refugee remains the top priority when voluntary repatriation as a viable durable solution is being considered. Even after repatriation, it may take time for the refugees to settle back in their country and the process may be long-drawn.

60. **Local integration** is aimed at providing legal residency for the refugee in the host country and, thereby, integrating the refugee into the host country. While this may appear to be a solution driven by compulsion given the fact that safe return of the refugees may not be possible in their home countries, it is nonetheless an important durable solution given the fact that a refugee may have adapted considerably well in the host country during his or her stay and the same may be the only viable solution that exists. In addition, there is a distinct possibility of tensions arising between the refugees and native citizens of the host country if there are issues pertaining to distribution of scarce resources.

61. **Resettlement in a third country** is the third durable solution that is offered to refugees to help them rebuild their lives. Many countries have taken responsibility for assisting refugees to make a new home outside of their own country. Third country resettlement offers the possibility for refugees to start a new life in a third country and may be the preferred solution for many refugees. However, given the cost and expenses involved along with other considerations, in reality it may not be very easy to get entry into a third country and thus voluntary repatriation and local integration may be the solutions of choice in many cases.

IV. The Responsibility of States for the Protection of Refugees

A. General Framework

62. It is today universally accepted that States have a responsibility towards ensuring the safety of refugees and the same flows from international law. More fundamentally, in the realm of international law this implies the responsibility of States to prevent forced displacement. The observation of the International Court of Justice in the *Corfu Channel* (Merits) case that a State on whose territory or in whose waters an act contrary to international law has occurred,

may be called upon to give an explanation to this effect and is sometimes cited as establishing a primary framework of State Responsibility in the realm of international refugee law as well though there is no consensus on this point³⁸.

63. State Responsibility as a doctrine follows from the notion that States must be held responsible for the performance of international obligations flowing from customary, treaty or other sources of international law and a failure to discharge such obligations entails consequences for the concerned State³⁹. In this regard, Draft Article 1 of the Articles on State Responsibility states: “Every internationally wrongful act of a State entails the international responsibility of that State.”⁴⁰

64. Additionally, with the emergence of international human rights law, it is today accepted that the treatment by a State of its nationals within national frontiers is not exclusively a question of domestic jurisdiction but also a question of international law if universally accepted principles of justice and humanity are offended⁴¹. This has direct relevance in the field of refugee law where questions of responsibility are addressed in the context of corresponding human rights obligations that States have under international law.

65. While the exact contours of State Responsibility as applicable in the realm of international refugee law still remains imprecise and controversial owing to conflicting interpretations and divergent opinions, it is increasingly being accepted that some of the major principles of refugee law are being followed by States and there is a growing consensus in the international community that safeguarding and protecting refugees is a positive obligation on States today from which no derogation is permitted.

³⁸ See Beyani, C, State Responsibility for the Prevention and Resolution of Forced Population Displacements in International Law. *International Journal of Refugee Law*, 7 (Special Issue 1995) 130–147

³⁹ *Supra* n. 38

⁴⁰ Adopted by the Commission at its fifty-third session, in 2001,
<https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf> accessed 13 July 2022

⁴¹ *Supra* n. 38

B. Protection of Vulnerable Refugees

i. Children

66. It is believed that close to half of any refugee population comprises children and given the reality that children remain the most vulnerable in any scenario of forced displacement, they need special care and attention. In recognition of this fact, the UNHCR adopted a policy on refugee children, which was endorsed by the UNHCR Executive Committee in 1993. The policy recognizes that children have special needs and their concerns and needs should take precedence over others especially so in a scenario of forced displacements⁴². The Refugee Convention, 1951 and the 1967 Protocol make no distinction between children and adults when it comes to social welfare and legal rights. Specifically, Article 22 of the Convention states that refugees must receive the "same treatment" as nationals in primary education, and treatment at least as favourable as that given to non-refugee aliens in secondary education. Needless to mention, this provision has special relevance to refugee children. Similarly, the 1969 OAU Convention makes no distinction between children and adults and accords equal treatment to both as does the 1984 Cartagena Declaration.

67. It may be noted that the Refugee Convention, 1951 and the 1967 Protocol have to be read with the Convention on the Rights of the Child (CRC), which is the most comprehensive treaty framework according rights specifically to children. Specifically, the 'best interest of the child rule' is the cardinal principle emanating from the CRC (Article 3 of the CRC) and is to be given special attention in the context of protecting refugee children⁴³.

⁴² Refugee Children: Guidelines on Protection and Care, <<https://www.unhcr.org/3b84c6c67.pdf>> accessed 13 July 2022

⁴³ Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision

ii. Women

68. Like children, women face unique challenges in scenarios of forced displacement. Girls and women together constitute the majority of refugees and socially constructed factors may play a role in creating unsafe conditions for refugee women especially in the aftermath of an armed conflict⁴⁴. The United Nations recognizing the issue of sexual violence in armed conflict has created a strong support mechanism to address this challenge, which includes a series of UN Security Council (UNSC) resolutions and the creation of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (OSRSG-SVC)⁴⁵.

69. With the rise in the number of people fleeing armed conflicts worldwide there is an increased spotlight on the deteriorating standards at border detection camps and the vulnerabilities it causes to women refugees especially so when examined in the light of human trafficking concerns across international borders⁴⁶. It is increasingly being noted that many refugee and asylum-seeking women have been subjected to various forms of gender-based violence in their country of origin or in the host country all of which constitute a denial of the most basic human rights of women.

70. The international legal framework for safeguarding the human rights of women is the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979 by the UNGA. The most relevant articles of CEDAW in the context of protecting refugee women are as follows:

- a. Equality and non-discrimination on the basis of sex (Articles 1-5 of CEDAW)
- b. Trafficking and sexual and gender-based violence (Article 6)
- c. Protection and empowerment (Articles 10-14, 16)
- d. Equality before the law and Access to justice (Articles 1, 2(c), 3, and 15)⁴⁷

⁴⁴ It is believed that girls and women constitute half of the 21.3 million refugees worldwide, <<https://www.ohchr.org/en/2016/09/addressing-gender-dimensions-large-scale-movements-refugees-and-migrants>> accessed 07 July 2022

⁴⁵ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, <<https://www.un.org/sexualviolenceinconflict/>> accessed 13 July 2022

⁴⁶ Protecting Female Refugees against Sexual and Gender-based Violence in Camps, United Nations University (UNU), <<https://unu.edu/publications/articles/protecting-female-refugees-against-sexual-and-gender-based-violence-in-camps.html>> accessed 13 July 2022

⁴⁷ Examining the particular relevance of the Convention on the Elimination of All Forms of Discrimination Against Women to the protection of women of concern to UNHCR Joint seminar of CEDAW Committee and

iii. Persons with Disabilities

71. The protection of refugees with disabilities has assumed much needed significance in recent times with the realisation that displacement and disability are interconnected at many levels. While the international legal framework has recognized the human rights concerns of persons with disabilities, the complex interconnections between displacement and disability are still in the process of being fully appreciated.

72. The World Programme of Action Concerning Disabled Persons, 1982 highlights the condition of displaced persons calling for the elimination of physical and social barriers facing disabled refugees⁴⁸. On similar lines, the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, 1993 highlights the need to equalize opportunities of refugees with disabilities. The Convention on the Rights of the Persons with Disabilities (CPRD) in Article 18 urges State Parties to recognize the rights of persons with disabilities to liberty of movement⁴⁹.

UNHCR New York, 16-17 July 2009 Summary of proceedings, <<https://www.refworld.org/pdfid/4bac8e872.pdf>> accessed 06 July 2022

⁴⁸World Programme of Action Concerning Disabled Persons, 1982 "...Many of them are disabled physically and psychologically as a result of their sufferings from persecution, violence and hazards. Most are in third-world countries, where services and facilities are extremely limited. Being a refugee is in itself a handicap, and a disabled refugee is doubly handicapped." <<https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html>> accessed 13 July 2022

⁴⁹ 1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- a. Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- b. Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- c. Are free to leave any country, including their own;
- d. Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country

V. Observations and Comments of the AALCO Secretariat

73. AALCO's historic role in facilitating a deeper engagement with international refugee law remains a matter of pride for the Afro-Asian community. In the wake of large-scale refugee movements being witnessed over the last few years, AALCO will continue to play a major consultative role in bringing together the Member States in addressing contemporary challenges facing the issue of refugee protection. In this regard, the AALCO Secretariat is of the view that the 'Bangkok Principles' should continue to inspire and guide us in our collective efforts in addressing the human rights of refugees to the best extent possible. Likewise, it is important to read the 'Bangkok Principles' in light of the New York Declaration of 2016 and the Global Compact on Refugees adopted in 2018 and create a harmonized approach to refugee protection that places the values of Afro-Asian solidarity at the core of all refugee protection efforts.

74. The AALCO Secretariat calls upon the international community to appropriately give effect to the principles of burden and responsibility sharing in a fair and equitable manner as highlighted in the Global Compact on Refugees, 2018. The Secretariat is of the view that the burden and responsibility sharing belongs to the global community and all countries should shoulder the responsibility of refugee protection on terms that are just and equitable to all stakeholders. Fairness in this regard will bolster friendly and harmonious relations between States and will be in the best interest of all refugees.

75. The AALCO Secretariat is of the view that AALCO and UNHCR should continue their cooperation in facilitating engagement with contemporary challenges facing international refugee law through capacity building initiatives. It is believed that such initiatives would go a long way in bringing all relevant stakeholders together so that AALCO Member States may get an opportunity to put forth their views on the subject.