

STATUS AND TREATMENT OF REFUGEES

I. Introduction

1. The item entitled “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 had been considered at its several annual sessions and inter-sessional meetings. From the very beginning, AALCO has been working closely with the UNHCR. One of the fruitful outcome 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 had no binding force, it reflected the practice followed by the Asian and African States in dealing with the matters concerning refugees.

2. 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 35th Session held in Manila in 1996 a proposal put forward by the 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. AALCO at its New Delhi Session in 2001, adopted the Revised Text of the Bangkok Principles on Status and Treatment of Refugees.

3. Apart from the adoption of the Bangkok Principles, two other important initiatives of AALCO related to refugee item were the preparation of a model legislation on Refugees and the concept of Safety Zone. 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 formalize 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.

4. At the AALCO’s 41st Session held in Abuja in 2002, the Resolution adopted on this item welcomed the conclusion of the MOU and directed the Secretariat to undertake research and preparation of studies on the item on refugees with the assistance of the UNHCR and to explore the possibility of convening a workshop in co-operation with UNHCR for in-depth consideration of related issues (Res/41/3).

5. The Secretary-General, during his visit to Geneva in August 2002, held consultations with the officials of the UNHCR and followed it up with the UNHCR office in New Delhi. It was tentatively agreed that a workshop could be organized jointly by both the Organizations in New Delhi prior to 42nd session, scheduled in Seoul in June

2003. However, because of certain practical difficulties, it was not feasible and now plans are to hold it in September 2003.

6. Against this background, the Secretariat document contains a brief note highlighting UNHCR's recent initiatives and suggests areas in which AALCO and UNHCR could undertake joint initiatives to strengthen their co-operation.

II. International Protection

7. “International Protection” has been the primary function of the UNHCR under the Umbrella of its Statutes and the 1951 Convention Relating to Status of Refugees. Over the years, several international and regional instruments have been adopted to further expand and strengthen this function. Pursuant to its mandate among the wide range of activities undertaken by UNHCR to promote measures of international protection include: assessing the needs and monitoring the treatment of refugees and asylum seekers, physical security of refugees and other persons of concern; identifying vulnerable groups such as women, children and elderly refugees and ensuring their particular protection; promoting and implementing durable solutions through voluntary repatriation, reintegration and resettlement and promoting refugee law, guidelines, national legislation, institutions and capacity building.

(i) Global Consultations

8. As a 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, non-governmental organizations and experts and focused attention on the 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. The consultations proceeded on three track approach:

- (a) The “first track” sought to strengthen the commitment of States to respect the centrality of the 1951 Convention and its 1967 Protocol in the international refugee protection system.
- (b) The “second track, Expert Meetings” provided a forum to take stock of developments in refugee law and to examine a number of emerging issues through a series of expert discussions on specific aspects of the interpretation of the 1951 Convention and 1967 Protocol.
- (c) The “third track” was structured around a number of protection policy matters, including issues not adequately covered by the 1951 Convention.

(ii) Ministerial Meeting

9. After a series of regional meetings held in Pretoria, Ottawa, Macau, Budapest, San Jose, Cairo and Oslo, a Ministerial Meeting, as an integral part of the Global Consultations was jointly convened by the Government of Switzerland and the UNHCR in Geneva on 12 and 13 December 2001. In the course of deliberations in the Meetings views were expressed affirming continuing and strong support for the 1951 Convention as the cornerstone and foundation of international refugee protection. With a view to improve implementation of the 1951 Convention, the need to strengthen protection capacities in all countries was stressed. While highlighting the series of challenges faced by States Parties in their efforts to meet their obligations under the Convention, it was observed that the nexus between asylum and various other forms of migration raised

difficult issues, such as the rise in human trafficking, smuggling and the mass influx situations. The need for effective international cooperation, as well as responsibility and burden sharing were particularly emphasized. The 11th September event brought into focus the issues of terrorism and national security. It was stressed that national security concerns were paramount and required scrupulous application of the Convention's exclusion clauses. There was consensus on promoting and finding durable solutions for refugees. In this context, it was stressed that voluntary repatriation remains the most appropriate durable solution and must be fully supported with the necessary funds to achieve peace building, stability and re-integration. Several delegations highlighted their concerns for vulnerable groups, urging that the special needs of refugee women, children and the elderly be adequately attended to.

10. The former United Nations High Commissioner for Human Rights, Excellency Mary Robinson recognized the link between refugee protection, human rights and humanitarian law, and stressed in particular the human rights dimension of the 1951 Convention and the need to implement it fully.

11. The Ministerial Meeting adopted a Declaration, which inter alia recognized the importance of the 1951 Convention, as the primary refugee protection instrument. It took note of complex features of the evolving environment in which refugee protection has to be provided, including the nature of armed conflict, ongoing violations of human rights and international humanitarian law, current patterns of displacement, mixed population flows, the high costs of hosting large numbers of refugees and asylum-seekers, trafficking and smuggling of persons, the problems of safeguarding asylum systems against abuse and of excluding and returning those not entitled to or in need of international protection. It reaffirmed that the 1951 Convention, as amended by the 1967 Protocol, has a central place in the international refugee protection regime, and that regime should be developed further, as appropriate, in a way that complements and strengthens the 1951 Convention and its Protocol.

(iii) Decision of the Executive Committee of UNHCR

12. The Executive Committee of the UNHCR held its 53rd Session in Geneva from 30 September to 4 October 2002. The High Commissioner of UNHCR in his opening statement stated that the Ministerial Declaration and the Agenda for protection were the most important outcomes of the Global Consultation Process. He said that the Agenda was a Synthesis of UNHCR's protection mandate, carefully defined in relation to the specific challenges of today's world. He highlighted the three themes of the Agenda which included the need for better protection, more durable solutions and improved burden sharing.

13. The Executive Committee, in its decision endorsed the General Conclusion on International Protection, which inter alia, recognized that "the Agenda for protection is a statement of goals and objectives and an important inventory of recommended actions to reinforce the international protection of refugees, and is intended to guide action by

States and UNHCR, together with other United Nations Organizations, and other inter-governmental as well as non-governmental organizations.”

III. UNHCR Programme of Action

14. The Programme of Action, as suggested in the Ministerial Declaration outlines six goals which are as follows:

1. Strengthening implementation of the 1951 Convention and 1967 Protocol;
2. Protecting refugees within broader migration movements;
3. Sharing of burdens and responsibilities more equitably and building of capacities to receive and protect refugees;
4. Addressing security-related concerns more effectively;
5. Redoubling the search for durable solutions; and
6. Meeting the protection needs of refugee women and refugee children.

15. It is envisaged that the UNHCR would carry out a survey of the difficulties which the non-signatories to the 1951 Convention have in acceding to or implementing the provisions of the Convention. It has been suggested that a new approach aimed at supplementing the Convention in areas that it does not cover, would be explored. UNHCR has established a “forum” consisting of a group of experts which would consider developing special agreements to encourage wider acceptance of the 1951 Convention. Other areas under consideration include agreements on secondary movements Mass Influx situation and improved burden sharing.

16. UNHCR has also established an Action Group on Asylum and Migration (AGAMI) in November 2001 to consider the nexus between asylum and migration and to develop policies and programs on asylum and migration in co-operation with interested States and the International Organization for Migration (IOM). As regards measures to improve the protection of women and children, UNHCR is considering revision of its 1991 Guidelines on the Protection of Refugee Women, taking into account the recent developments and other issues of concern.

IV. AALCO’s Work Programme

17. UNHCR’s foregoing programmes provide useful guidelines to develop AALCO’s programme on refugee matters. It is a matter of satisfaction that during the last two years there has been marked decrease in the number of refugees around the world. The improvement in situations in some regions, has encouraged UNHCR to phase out its activities and lessen its responsibilities. UNHCR’s recent initiatives to strengthen its protection functions and to follow an integrated approach, which the High Commissioner of UNHCR calls the “4.Rs”- Repatriation, Reintegration, Rehabilitation and Reconstruction, has been welcomed. In addition, UNHCR is giving increasing attention to its work in partnership with the United Nations Agencies as well as regional

Organizations. It's focused attention to the New Partnership for Africa's Development (NEPAD) and the African Union would offer opportunities to deal with refugee problems in the African region in a pragmatic manner. Similarly, its co-operation with the League of Arab States would help UNHCR to find durable solutions in that region. In the light of these developments, AALCO should also consider strengthening its co-operation with UNHCR. The MOU provides a solid basis to elaborate such co-operative arrangements. The first initiative could be to seek observer status at the UNHCR's Executive Committee, that would also facilitate AALCO's participation in UNHCR's Expert Group and other Meetings and facilitate the preparation of studies on mutually agreed topics jointly by UNHCR and AALCO. Tentative suggestions in this context are as follows:

18. The Ministerial Declaration adopted on the occasion of the commemoration of the fiftieth Anniversary of the 1951 Convention and its Protocol of 1977 reaffirmed their importance and urged all States to consider ways and means to strengthen their implementation. It has been suggested that UNHCR should carry out a survey of the difficulties States face in acceding to and in the implementation of above instruments. AALCO and UNHCR could jointly establish such a programme. Among the AALCO Member States, while the Convention and its Protocol have been widely accepted by the African Member States, the number of Asian States is not very encouraging.

19. In this context, UNHCR's "Convention Plus" initiative to supplement the 1951 Convention and the establishment of a forum to discuss the areas of special agreements such as misuse of asylum procedures, trafficking, secondary movements and burden sharing are of great interest to AALCO. Over the years, AALCO has accumulated a good deal of experience in promoting wider adherence to the international conventions in the Asian and African regions. It has already prepared a model legislation on refugees. It would be useful to examine UNHCR's "Convention Plus" approach from AALCO's perspective.

20. UNHCR's Agenda for Protection is an action oriented programme to meet various protection challenges. It addresses the security concerns of refugees and asylum seekers in the host state as well as the responsibility of host state to ensure the civilian and humanitarian character of asylum. It envisages preparation of comprehensive plans of action for specific, irregular and secondary movement situations. It recognizes the complex nature of mixed flows of refugees, asylum seekers and migrants and the threat posed by smuggling and trafficking. It addresses the root causes of displacement and refugee situations and recognizes the importance of equitable burden sharing and responsibilities, taking into account capacities and resources of states. It stresses the need for a comprehensive approach, whenever feasible by integrating voluntary repatriation, local integration and resettlement to find durable solutions to refugee problems.

21. It may be mentioned that the adoption of AALCO's Revised Bangkok Principles at its 40th session held in New Delhi in 2001 has been considered as a historic achievement. Although, these Principles are declaratory and non-binding in character, however they provide useful guidance to enact national legislation and to deal with refugee problems. UNHCR's 'Agenda for Protection' is similar in legal character. There

are many common elements in both the documents which could provide a basis for research and preparation of studies jointly by AALCO and UNHCR.

22. In the last three years, AALCO has increased its focus on humanitarian law matters. It has on its current agenda besides refugees matters, other issues such as human rights, legal protection of migrant workers, trafficking in women and children, and international terrorism. It has concluded formal co-operation agreements with the Office of the United Nations High Commissioner for Human Rights, United Nations University, International Committee for Red Cross, International Organization for Migration as well as UNHCR. These co-operative arrangements have given impetus to AALCO's initiative to hold Special Meetings and Seminars for in-depth consideration of humanitarian law matters. The holding of Special Meeting during AALCO's 40th Session on "Some Legal Aspects of Migration" jointly with IOM and the Special Meeting on Human Rights and Combating Terrorism, in co-operation with the Office of the United Nations High Commissioner for Human Rights during AALCO's 41st Session in 2002 illustrate success of AALCO's initiatives. The Special Meeting scheduled for AALCO's 42nd Session in Seoul in co-operation with ICRC is another example. Thus, AALCO's Work Programme offers a huge canvass and great opportunities for developing an integrated approach to deal with refugee problems along with other relevant issues of humanitarian character in co-operation with various United Nations and other International Organizations with whom it has privilege to work closely.

23. The MOU signed between AALCO and UNHCR, while recognizing the long established relationship spread over a period of four decades, is a forward looking document. With a view to implement the objectives of the MOU, it would therefore be desirable to draw a practical programme for co-operation between the two Organizations. AALCO-UNHCR joint meeting to be held in September 2003, would provide such an opportunity.

ANNEXURES

RES/41/3
19 July 2002

THE STATUS AND TREATMENT OF REFUGEES

The Asian-African Legal Consultative Organization at its forty-first session,

Having considered the Secretariat Document No. AALCO/XLI/ ABUJA /2002/S.3 on Status and Treatment of Refugees,

Having heard with appreciation the statements of the Deputy Secretary-General and the Representative of the UNHCR,

Reconfirming the declaratory and non-binding character of the Revised Bangkok Principles and its objective to guide and inform Member States on relevant principles and general practices relating to the status and treatment of refugees in the Asian and African regions,

1. **Expresses** great satisfaction over the completion of the work on the revision of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees and the adoption of its Revised Text at its Fortieth Session in New Delhi on 24 June 2001;
2. **Welcomes** the signing of the Memorandum of Understanding between the Asian African Legal Consultative Organization and the Office of the United Nations High Commissioner for Refugees on 23 May, 2002, which formalized the long established relationship of the two Organizations;
3. **Urges** the Secretariat to prepare studies and researches on this item with the assistance of UNHCR;
4. **Directs** the Secretariat to explore the possibility of convening a workshop in co-operation with UNHCR for in-depth consideration of related issues;
5. **Decides** to place the item "Status and Treatment of Refugees" on the agenda of its forty-second session.