

# *THE REFUGEE IN INTERNATIONAL LAW*

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ONLINE RESOURCE CENTRE

## **Annexe 4**

### **UNHCR Executive Committee**

#### **Selected Conclusions on International Protection<sup>1</sup>**

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<sup>1</sup> The selected Conclusions in this Annexe are drawn from those adopted each year by the UNHCR Executive Committee, and published in its annual *Report* in the UN document series A/AC.96/\*\*; a citation for each of the Conclusions in the present Annexe is provided in the footnotes. The scheme of numbering is that determined by UNHCR, after each session, and applies to those conclusions considered relevant to international protection. The full set of Conclusions is also available in hard copy, updated from time to time by UNHCR: *Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme*, Geneva, 1979-to date. Since 1989, the previous October's conclusions have appeared regularly in the first issue each year of the *International Journal of Refugee Law*; and since 1995, all Executive Committee Conclusions have been available on-line at UNHCR's website: <http://www.unhcr.org> and in *RefWorld*, UNHCR's DVD/CD-ROM collection of databases.

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## No. 5 (XXVIII) – 1977 Asylum<sup>2</sup>

*The Executive Committee,*

- (a) *Noted* with satisfaction the report of the High Commissioner that States have generally continued to follow liberal asylum practices;
- (b) *Concerned*, however, that according to the report of the High Commissioner cases continue to occur in which asylum seekers have encountered serious difficulties in finding a country willing to grant them even temporary refuge and that refusal of permanent or temporary asylum has led in a number of cases to serious consequences for the persons concerned;
- (c) *Requested* the High Commissioner to draw the attention of Governments to the various international instruments existing in the field of asylum and reiterated the fundamental importance of these instruments from a humanitarian standpoint;
- (d) *Appealed* to Governments to follow, or continue to follow, liberal practices in granting permanent or at least temporary asylum to refugees who have come directly to their territory;
- (e) *Called* on Governments to co-operate, in a spirit of international solidarity, with the High Commissioner in the performance of his functions—especially with respect to asylum—in accordance with General Assembly Resolution 428(V) of 14 December 1950.

## No. 6 (XXVIII) – 1977 *Non-refoulement*<sup>3</sup>

*The Executive Committee,*

- (a) *Recalling* that the fundamental humanitarian principle of *non-refoulement* has found expression in various international instruments adopted at the universal and regional levels and is generally accepted by States;
- (b) *Expressed* deep concern at the information given by the High Commissioner that, while the principle of *non-refoulement* is in practice widely observed, this principle has in certain cases been disregarded;
- (c) *Reaffirms* the fundamental importance of the observance of the principle of *non-refoulement*—both at the border and within the territory of a State of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees.

## No. 7 (XXVIII) – 1977 Expulsion<sup>4</sup>

*The Executive Committee,*

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<sup>2</sup> *Report of the 28th Session: UN doc. A/AC.96/549, para. 53.3.*

<sup>3</sup> *Report of the 28th Session: UN doc. A/AC.96/549, para. 53.4.*

<sup>4</sup> *Report of the 28th Session: UN doc. A/AC.96/549, para. 53.5.*

- (a) *Recognized* that, according to the 1951 Convention, refugees lawfully in the territory of a Contracting State are generally protected against expulsion and that in accordance with Article 32 of the Convention expulsion of a refugee is only permitted in exceptional circumstances;
- (b) *Recognized* that a measure of expulsion may have very serious consequences for a refugee and his immediate family members residing with him;
- (c) *Recommended* that, in line with Article 32 of the 1951 Convention, expulsion measures against a refugee should only be taken in very exceptional cases and after due consideration of all the circumstances, including the possibility for the refugee to be admitted to a country other than his country of origin;
- (d) *Recommended* that, in cases where the implementation of an expulsion measure is impracticable, States should consider giving refugee delinquents the same treatment as national delinquents and that States examine the possibility of elaborating an international instrument giving effect to this principle;
- (e) *Recommended* that an expulsion order should only be combined with custody or detention if absolutely necessary for reasons of national security or public order and that such custody or detention should not be unduly prolonged.

#### No. 8 (XXVIII) – 1977 Determination of Refugee Status<sup>5</sup>

*The Executive Committee,*

- (a) *Noted* the report of the High Commissioner concerning the importance of procedures for determining refugee status;
- (b) *Noted* that only a limited number of States parties to the 1951 Convention and the 1967 Protocol had established procedures for the formal determination of refugee status under these instruments;
- (c) *Noted*, however, with satisfaction that the establishment of such procedures was under active consideration by a number of Governments;
- (d) *Expressed* the hope that all Governments parties to the 1951 Convention and the 1967 Protocol which had not yet done so would take steps to establish such procedures in the near future and give favourable consideration to UNHCR participation in such procedures in appropriate form;
- (e) *Recommended* that procedures for the determination of refugee status should satisfy the following basic requirements:
  - (i) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State, should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of *non-refoulement* and to refer such cases to a higher authority.
  - (ii) The applicant should receive the necessary guidance as to the procedure to be followed.

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<sup>5</sup> *Report of the 28th Session: UN doc. A/AC.96/549, para. 53.6.*

- (iii) There should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance.
  - (iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
  - (v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.
  - (vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.
  - (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.
- (f) *Requested* UNHCR to prepare, after due consideration of the opinions of States parties to the 1951 Convention and the 1967 Protocol, a detailed study on the question of the extra-territorial effect of determination of refugee status in order to enable the Committee to take a considered view on the matter at a subsequent session taking into account the opinion expressed by representatives that the acceptance by a Contracting State of refugee status as determined by other States parties to these instruments would be generally desirable;
- (g) *Requested* the Office to consider the possibility of issuing—for the guidance of Governments—a handbook relating to procedures and criteria for determining refugee status and circulating – with due regard to the confidential nature of individual requests and the particular situations involved – significant decisions on the determination of refugee status.

## No. 12 (XXIX) – 1978 Extraterritorial Effect of the Determination of Refugee Status<sup>6</sup>

*The Executive Committee,*

- (a) *Considered* that one of the essential aspects of refugee status, as defined by the 1951 Convention and the 1967 Protocol, is its international character;
- (b) *Recognized* the desirability for maintenance and continuity of refugee status once it has been determined by a Contracting State;
- (c) *Noted* that several provisions of the 1951 Convention enable a refugee residing in one Contracting State to exercise certain rights—as a refugee—in another Contracting State and that the exercise of such rights is not subject to a new determination of his refugee status;

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<sup>6</sup> *Report of the 29th Session: UN doc. A/AC.96/559, para. 68.2.*

- (d) *Noted* that persons considered as refugees under Article 1 A (1) of the Convention maintain their refugee status unless they fall under a cessation or exclusion clause;
- (e) *Noted* that refugees, holders of a Convention Travel Document issued by one Contracting State, are enabled to travel as refugees to other Contracting States;
- (f) *Considered* that the very purpose of the 1951 Convention and the 1967 Protocol implies that refugee status determined by one Contracting State will be recognized also by the other Contracting States;
- (g) *Recognized*, therefore, that refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases when it appears that the person manifestly does not fulfil the requirements of the Convention, e.g. if facts become known indicating that the statements initially made were fraudulent or showing that the person concerned falls within the terms of a cessation or exclusion provision of the 1951 Convention;
- (h) *Further* recognized that a decision by a Contracting State not to recognize refugee status does not preclude another Contracting State from examining a new request for refugee status made by the person concerned.

#### No. 13 (XXIX) – 1978 Travel Documents for Refugees<sup>7</sup>

##### *The Executive Committee,*

- (a) *Reaffirmed* the importance of the issue of travel documents to refugees for temporary travel outside their country of residence and for resettlement in other countries;
- (b) *Urged* all States parties to the 1951 Convention and/or the 1967 Protocol to issue to all refugees, lawfully staying in their territory and who wish to travel, travel documents as provided for in the 1951 Convention (article 28, schedule and annex);
- (c) *Recommended* that such Convention Travel Documents should have a wide validity, both geographically and in time, and should contain—as provided for in paragraph 13 of the schedule—a return clause with the same period of validity, in the absence of very special circumstances, as that of the travel document itself;
- (d) *Recommended* that in order to avoid unnecessary hardship a refugee requesting an extension of validity or renewal of his Convention Travel Document should not be required to return to the issuing country for that purpose and should be enabled to secure such extension of validity or renewal of the Convention Travel Document, also for periods beyond six months, by or through the diplomatic or consular representatives of the issuing State;
- (e) *Recommended* that, with a view to avoiding divergent interpretations of paragraphs 6 and 11 of the schedule and the resulting hardships to refugees, Contracting States make appropriate arrangements, including the adoption of bilateral or multilateral agreements, concerning the transfer of responsibility for the issue of Convention Travel Documents;

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<sup>7</sup> *Report of the 29th Session: UN doc. A/AC.96/559, para. 68.3.*

- (f) *Expressed* the hope that bilateral and multilateral arrangements, concluded with a view to facilitating travel by their nationals, e.g. as regards the simplification of visa formalities or the abolition of visa fees, be extended by Contracting States also to refugees lawfully residing in their respective territory;
- (g) *Expressed* the hope that States which are not parties to the 1951 Convention or the 1967 Protocol will issue to refugees lawfully residing in their territory appropriate travel documents under conditions as similar as possible to those attaching to the issue of 1951 Convention Travel Documents;
- (h) *Expressed* appreciation for the Note on Travel Documents for Refugees (EC/SCP/10) submitted by the High Commissioner, was in general agreement with its contents and recommended that, in an appropriate form and together with the above conclusions, it be communicated to Governments by the High Commissioner in support of his efforts to promote the issue of travel documents to refugees in accordance with internationally accepted standards.

## No. 15 (XXX) – 1979 Refugees without an Asylum Country<sup>8</sup>

*The Executive Committee,*

*Considered* that States should be guided by the following considerations:

### **General principles**

- (a) States should use their best endeavours to grant asylum to bona fide asylum seekers;
- (b) Action whereby a refugee is obliged to return or is sent to a country where he has reason to fear persecution constitutes a grave violation of the recognized principle of *non-refoulement*;
- (c) It is the humanitarian obligation of all coastal States to allow vessels in distress to seek haven in their waters and to grant asylum, or at least temporary refuge, to persons on board wishing to seek asylum;
- (d) Decisions by States with regard to the granting of asylum shall be made without discrimination as to race, religion, political opinion, nationality or country of origin;
- (e) In the interest of family reunification and for humanitarian reasons, States should facilitate the admission to their territory of at least the spouse and minor or dependent children of any person to whom temporary refuge or durable asylum has been granted;

### **Situations involving a large-scale influx of asylum seekers**

- (f) In cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge. States which because of their geographical situation, or otherwise, are faced with a large-scale influx should as necessary and at the request of the State concerned receive immediate assistance from other States in accordance with

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<sup>8</sup> *Report of the 30th Session: UN doc. A/AC.96/572, para. 72(2).*

the principle of equitable burden-sharing. Such States should consult with the Office of the United Nations High Commissioner for Refugees as soon as possible to ensure that the persons involved are fully protected, are given emergency assistance, and that durable solutions are sought;

(g) Other States should take appropriate measures individually, jointly or through the Office of the United Nations High Commissioner for Refugees or other international bodies to ensure that the burden of the first asylum country is equitably shared;

### **Situations involving individual asylum seekers**

(h) An effort should be made to resolve the problem of identifying the country responsible for examining an asylum request by the adoption of common criteria. In elaborating such criteria the following principles should be observed:

- (i) The criteria should make it possible to identify in a positive manner the country which is responsible for examining an asylum request and to whose authorities the asylum seeker should have the possibility of addressing himself;
  - (ii) The criteria should be of such a character as to avoid possible disagreement between States as to which of them should be responsible for examining an asylum request and should take into account the duration and nature of any sojourn of the asylum seeker in other countries;
  - (iii) The intentions of the asylum seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account;
  - (iv) Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another State. Where, however, it appears that a person, before requesting asylum, already has a connection or close links with another State, he may if it appears fair and reasonable be called upon first to request asylum from that State;
  - (v) The establishment of criteria should be accompanied by arrangements for regular consultation between concerned Governments for dealing with cases for which no solution has been found and for consultation with the Office of the United Nations High Commissioner for Refugees as appropriate;
  - (vi) Agreements providing for the return by States of persons who have entered their territory from another contracting State in an unlawful manner should be applied in respect of asylum seekers with due regard to their special situation.
- (i) While asylum seekers may be required to submit their asylum request within a certain time limit, failure to do so, or the non-fulfilment of other formal requirements, should not lead to an asylum request being excluded from consideration;
- (j) In line with the recommendation adopted by the Executive Committee at its twenty-eighth session (document A/AC.96/549, paragraph 53(6), (E) (i)), where an asylum seeker addresses himself in the first instance to a frontier authority the latter should not reject his application without reference to a central authority;
- (k) Where a refugee who has already been granted asylum in one country requests asylum in another country on the ground that he has compelling reasons for leaving his present asylum country due to fear of persecution or because his physical safety or

freedom are endangered, the authorities of the second country should give favourable consideration to his asylum request;

- (l) States should give favourable consideration to accepting, at the request of the Office of the United Nations High Commissioner for Refugees, a limited number of refugees who cannot find asylum in any country;
- (m) States should pay particular attention to the need for avoiding situations in which a refugee loses his right to reside in or to return to his country of asylum without having acquired the possibility of taking up residence in a country other than one where he may have reasons to fear persecution;
- (n) In line with the purpose of paragraphs 6 and 11 of the Schedule to the 1951 Convention, States should continue to extend the validity of or to renew refugee travel documents until the refugee has taken up lawful residence in the territory of another State. A similar practice should as far as possible also be applied in respect of refugees holding a travel document other than that provided for in the 1951 Convention.

#### No. 17 (XXXI) – 1980 Problems of Extradition affecting Refugees<sup>9</sup>

*The Executive Committee,*

- (a) *Considered* that cases in which the extradition of a refugee or of a person who may qualify as a refugee is requested may give rise to special problems;
- (b) *Reaffirmed* the fundamental character of the generally recognized principle of *non-refoulement*;
- (c) *Recognized* that refugees should be protected in regard to extradition to a country where they have well-founded reasons to fear persecution on the grounds enumerated in Article 1(A)(2) of the 1951 United Nations Convention relating to the Status of Refugees;
- (d) *Called* upon States to ensure that the principle of *non-refoulement* is duly taken into account in treaties relating to extradition and as appropriate in national legislation on the subject;
- (e) *Expressed* the hope that due regard be had to the principle of *non-refoulement* in the application of existing treaties relating to extradition;
- (f) *Stressed* that nothing in the present conclusions should be considered as affecting the necessity for States to ensure, on the basis of national legislation and international instruments, punishment for serious offences, such as the unlawful seizure of aircraft, the taking of hostages and murder;
- (g) *Stressed* that protection in regard to extradition applies to persons who fulfil the criteria of the refugee definition and who are not excluded from refugee status by virtue of Article 1(F)(b) of the 1951 United Nations Convention relating to the Status of Refugees.

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<sup>9</sup> Report of the 31st Session: UN doc. A/AC.96/588, para. 48(2).

No. 18 (XXXI) – 1980 Voluntary Repatriation<sup>10</sup>

*The Executive Committee,*

- (a) *Recognized* that voluntary repatriation constitutes generally, and in particular when a country accedes to independence, the most appropriate solution for refugee problems;
- (b) *Stressed* that the essentially voluntary character of repatriation should always be respected;
- (c) *Recognized* the desirability of appropriate arrangements to establish the voluntary character of repatriation, both as regards the repatriation of individual refugees and in the case of large-scale repatriation movements, and for UNHCR, whenever necessary, to be associated with such arrangements;
- (d) *Considered* that when refugees express the wish to repatriate, both the government of their country of origin and the government of their country of asylum should, within the framework of their national legislation and, whenever necessary, in co-operation with UNHCR take all requisite steps to assist them to do so;
- (e) *Recognized* the importance of refugees being provided with the necessary information regarding conditions in their country of origin in order to facilitate their decision to repatriate; recognized further that visits by individual refugees or refugee representatives to their country of origin to inform themselves of the situation there—without such visits automatically involving loss of refugee status—could also be of assistance in this regard;
- (f) *Called* upon governments of countries of origin to provide formal guarantees for the safety of returning refugees and stressed the importance of such guarantees being fully respected and of returning refugees not being penalized for having left their country of origin for reasons giving rise to refugee situations;
- (g) *Recommended* that arrangements be adopted in countries of asylum for ensuring that the terms of guarantees provided by countries of origin and relevant information regarding conditions prevailing there are duly communicated to refugees, that such arrangements could be facilitated by the authorities of countries of asylum and that UNHCR should as appropriate be associated with such arrangements;
- (h) *Considered* that UNHCR could appropriately be called upon—with the agreement of the parties concerned—to monitor the situation of returning refugees with particular regard to any guarantees provided by the governments of countries of origin;
- (i) *Called* upon the governments concerned to provide repatriating refugees with the necessary travel documents, visas, entry permits and transportation facilities and, if refugees have lost their nationality, to arrange for such nationality to be restored in accordance with national legislation;
- (j) *Recognized* that it may be necessary in certain situations to make appropriate arrangements in co-operation with UNHCR for the reception of returning refugees and/or to establish projects for their reintegration in their country of origin.

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<sup>10</sup> *Report of the 31st Session: UN doc. A/AC.96/588, para. 48(3).*

No. 19 (XXXI) – 1980 Temporary Refuge<sup>11</sup>

*The Executive Committee,*

- (a) *Reaffirmed* the essential need for the humanitarian legal principle of *non-refoulement* to be scrupulously observed in all situations of large-scale influx;
- (b) *Recalled* the conclusions on the question of temporary refuge adopted by the Executive Committee at its thirtieth session and, in particular:
  - (i) that in the case of large-scale influx, persons seeking asylum should always receive at least temporary refuge; and
  - (ii) that States which, because of their geographical situation or otherwise, are faced with a large-scale influx, should as necessary and at the request of the State concerned receive immediate assistance from other States in accordance with the principle of equitable burden-sharing;
- (c) *Took note* of the extensive practice of granting temporary refuge in situations involving a large-scale influx of refugees;
- (d) *Stressed* the fundamental importance of the provisions of the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol, and of the 1967 United Nations Declaration on Territorial Asylum and the need for constant advice by UNHCR on the practical application of these provisions by countries exposed to a large-scale influx of refugees;
- (e) *Stressed* the exceptional character of temporary refuge and the essential need for persons to whom temporary refuge has been granted to enjoy basic humanitarian standards of treatment;
- (f) *Recognized* the need to define the nature, function and implications of the grant of temporary refuge;
- (g) *Considered* that the practice of temporary refuge had not been sufficiently examined and should be further studied, particularly in regard to (i) procedures for the admission of refugees, (ii) their status pending a durable solution, (iii) the implications of temporary refuge for international solidarity, including burden sharing;
- (h) *Decided* to request the High Commissioner to convene as soon as possible a representative group of experts to examine temporary refuge in all its aspects within the framework of the problems raised by large-scale influx and to provide the group with all possible assistance.

No. 20 (XXXI) – 1980 Protection of Asylum Seekers at Sea<sup>12</sup>

*The Executive Committee,*

- (a) *Noted* with grave concern the continuing incidence of criminal attacks on refugees and asylum seekers in different areas of the world, including military attacks on refugee camps and on asylum seekers at sea;

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<sup>11</sup> *Report of the 31st Session: UN doc. A/AC.96/588, para. 48(4).*

<sup>12</sup> *Report of the 31st Session: UN doc. A/AC.96/588, para. 48(5).*

- (b) *Expressed* particular concern regarding criminal attacks on asylum seekers at sea in the South China Sea involving extreme violence and indescribable acts of physical and moral degradation, including rape, abduction and murder;
- (c) *Addressed* an urgent call to all interested Governments to take appropriate action to prevent such criminal attacks whether occurring on the high seas or in their territorial waters;
- (d) *Stressed* the desirability for the following measures to be taken by Governments with a view to preventing the recurrence of such criminal attacks:
  - (i) increased governmental action in the region to prevent attacks on boats carrying asylum seekers, including increased sea and air patrols over areas where such attacks occur;
  - (ii) adoption of all necessary measures to ensure that those responsible for such criminal attacks are severely punished;
  - (iii) increased efforts to detect land bases from which such attacks on asylum seekers originate and to identify persons known to have taken part in such attacks and to ensure that they are prosecuted;
  - (iv) establishment of procedures for the routine exchange of information concerning attacks on asylum seekers at sea and for the apprehension of those responsible, and co-operation between Governments for the regular exchange of general information on the matter;
- (e) *Called* upon Governments to give full effect to the rules of general international law—as expressed in the Geneva Convention on the High Seas of 1958—relating to the suppression of piracy;
- (f) *Urged* Governments to co-operate with each other and with UNHCR to ensure that all necessary assistance is provided to the victims of such criminal attacks;
- (g) *Called* upon the United Nations High Commissioner for Refugees in co-operation with the International Committee of the Red Cross and other interested organizations actively to seek the co-operation of the international community to intensify efforts aimed at protecting refugees who are victims of acts of violence, particularly those at sea.

No. 22 (XXXII) – 1981 Protection of Asylum Seekers in Situations of Large-scale Influx<sup>13</sup>

*The Executive Committee,*

*Noting with appreciation* the report of the Group of Experts on temporary refuge in situations of large-scale influx, which met in Geneva from 21-24 April 1981, adopted the following conclusions in regard to the protection of asylum seekers in situations of large-scale influx.

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<sup>13</sup> *Report of the 32nd Session: UN doc. A/AC.96/601, para. 57(2).*

## I. General

1. The refugee problem has become particularly acute due to the increasing number of large-scale influx situations in different areas of the world and especially in developing countries. The asylum seekers forming part of these large-scale influxes include persons who are refugees within the meaning of the 1951 United Nations Convention and the 1967 Protocol relating to the Status of Refugees or who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of, or the whole of their country of origin or nationality are compelled to seek refuge outside that country.
2. Asylum seekers forming part of such large-scale influx situations are often confronted with difficulties in finding durable solutions by way of voluntary repatriation, local settlement or resettlement in a third country. Large-scale influxes frequently create serious problems for States, with the result that certain States, although committed to obtaining durable solutions, have only found it possible to admit asylum seekers without undertaking at the time of admission to provide permanent settlement of such persons within their borders.
3. It is therefore imperative to ensure that asylum seekers are fully protected in large-scale influx situations, to reaffirm the basic minimum standards for their treatment pending arrangements for a durable solution, and to establish effective arrangements in the context of international solidarity and burden-sharing for assisting countries which receive large numbers of asylum seekers.

## II. Measures of protection

### A. Admission and non-refoulement

1. In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection according to the principles set out below. They should be admitted without any discrimination as to race, religion, political opinion, nationality, country of origin or physical incapacity.
2. In all cases the fundamental principle of *non-refoulement*—including non-rejection at the frontier—must be scrupulously observed.

### B. Treatment of asylum seekers who have been temporarily admitted to a country pending arrangements for a durable solution

1. Article 31 of the 1951 United Nations Convention relating to the Status of Refugees contains provisions regarding the treatment of refugees who have entered a country without authorization and whose situation in that country has not yet been regularized. The standards defined in this Article do not, however, cover all aspects of the treatment of asylum seekers in large-scale influx situations.
2. It is therefore essential that asylum seekers who have been temporarily admitted pending arrangements for a durable solution should be treated in accordance with the following minimum basic human standards:

- (a) they should not be penalized or exposed to any unfavourable treatment solely on the ground that their presence in the country is considered unlawful; they should not be subjected to restrictions on their movements other than those which are necessary in the interest of public health and public order;
- (b) they should enjoy the fundamental civil rights internationally recognized, in particular those set out in the Universal Declaration of Human Rights;
- (c) they should receive all necessary assistance and be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities; in this respect the international community should conform with the principles of international solidarity and burden-sharing;
- (d) they should be treated as persons whose tragic plight requires special understanding and sympathy. They should not be subjected to cruel, inhuman or degrading treatment;
- (e) there should be no discrimination on the grounds of race, religion, political opinion, nationality, country of origin or physical incapacity;
- (f) they are to be considered as persons before the law, enjoying free access to courts of law and other competent administrative authorities;
- (g) the location of asylum seekers should be determined by their safety and well-being as well as by the security needs of the receiving State. Asylum seekers should, as far as possible, be located at a reasonable distance from the frontier of their country of origin. They should not become involved in subversive activities against their country of origin or any other State;
- (h) family unity should be respected;
- (i) all possible assistance should be given for the tracing of relatives;
- (j) adequate provision should be made for the protection of minors and unaccompanied children;
- (k) the sending and receiving of mail should be allowed;
- (l) material assistance from friends or relatives should be permitted;
- (m) appropriate arrangements should be made, where possible, for the registration of births, deaths and marriages;
- (n) they should be granted all the necessary facilities to enable them to obtain a satisfactory durable solution;
- (o) they should be permitted to transfer assets which they have brought into a territory to the country where the durable solution is obtained; and
- (p) all steps should be taken to facilitate voluntary repatriation.

### **III. Co-operation with the Office of the United Nations High Commissioner for Refugees**

Asylum seekers shall be entitled to contact the Office of UNHCR. UNHCR shall be given access to asylum seekers. UNHCR shall also be given the possibility of exercising its function of international protection and shall be allowed to supervise the well-being of persons entering reception or other refugee centres.

#### IV. International solidarity, burden-sharing and duties of States

(1) A mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, international in scope and nature, cannot be achieved without international co-operation. States shall, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum seekers in large-scale influx situations.

(2) Such action should be taken bilaterally or multilaterally at the regional or at the universal levels and in co-operation with UNHCR, as appropriate. Primary consideration should be given to the possibility of finding suitable solutions within the regional context.

(3) Action with a view to burden-sharing should be directed towards facilitating voluntary repatriation, promoting local settlement in the receiving country, providing resettlement possibilities in third countries, as appropriate.

(4) The measures to be taken within the context of such burden-sharing arrangements should be adapted to the particular situation. They should include, as necessary, emergency, financial and technical assistance, assistance in kind and advance pledging of further financial or other assistance beyond the emergency phase until durable solutions are found, and where voluntary repatriation or local settlement cannot be envisaged, the provision for asylum seekers of resettlement possibilities in a cultural environment appropriate for their well-being.

(5) Consideration should be given to the strengthening of existing mechanisms and, if appropriate, the setting up of new arrangements, if possible on a permanent basis, to ensure that the necessary funds and other material and technical assistance are immediately made available.

(6) In a spirit of international solidarity, Governments should also seek to ensure that the causes leading to large-scale influxes of asylum seekers are as far as possible removed and, where such influxes have occurred, that conditions favourable to voluntary repatriation are established.

#### No. 23 (XXXII) – 1981 Problems related to the Rescue of Asylum Seekers in Distress at Sea<sup>14</sup>

*The Executive Committee,*

*Adopted* the following conclusions on problems related to the rescue of asylum seekers in distress at sea.

1. It is recalled that there is a fundamental obligation under international law for ships' masters to rescue any persons in distress at sea, including asylum seekers, and to render them all necessary assistance. Seafaring States should take all appropriate measures to ensure that masters of vessels observe this obligation strictly.

2. Rescue of asylum seekers in distress at sea has been facilitated by the willingness of the flag States of rescuing ships to provide guarantees of resettlement

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<sup>14</sup> Report of the 32nd Session: UN doc. A/AC.96/601, para. 57(3).

required by certain coastal States as a condition for disembarkation. It has also been facilitated by the agreement of these and other States to contribute to a pool of resettlement guarantees under the DISERO scheme which should be further encouraged. All countries should continue to provide durable solutions for asylum seekers rescued at sea.

3. In accordance with established international practice, supported by the relevant international instruments, persons rescued at sea should normally be disembarked at the next port of call. This practice should also be applied in the case of asylum seekers rescued at sea. In cases of large-scale influx, asylum seekers rescued at sea should always be admitted, at least on a temporary basis. States should assist in facilitating their disembarkation by acting in accordance with the principles of international solidarity and burden-sharing in granting resettlement opportunities.

4. As a result of concerted efforts by many countries, large numbers of resettlement opportunities have been, and continue to be, provided for boat people. In view of this development, the question arises as to whether the first port of call countries might wish to examine their present policy of requiring resettlement guarantees as a precondition for disembarkation. Pending a review of practice by coastal States, it is of course desirable that present arrangements for facilitating disembarkation be continued.

5. In view of the complexity of the problems arising from the rescue, disembarkation and resettlement of asylum seekers at sea, the High Commissioner is requested to convene at an early opportunity a working group comprising representatives of the maritime States and the coastal States most concerned, potential countries of resettlement, and representatives of international bodies competent in this field. The working group should study the various problems mentioned and elaborate principles and measures which would provide a solution and should submit a report on the matter to the Executive Committee at its thirty-third session.

## No. 24 (XXXII) – 1981 Family Reunification<sup>15</sup>

*The Executive Committee,*

*Adopted* the following conclusions on the reunification of separated refugee families.

1. In application of the principle of the unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of separated refugee families.

2. For this purpose it is desirable that countries of asylum and countries of origin support the efforts of the High Commissioner to ensure that the reunification of separated refugee families takes place with the least possible delay.

3. The generally positive trends in regard to the reunification of separated refugee families are greatly to be welcomed but a number of outstanding problems still need to be resolved.

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<sup>15</sup> *Report of the 32nd Session: UN doc. A/AC.96/601, para. 57(4).*

4. Given the recognized right of everyone to leave any country including his own, countries of origin should facilitate family reunification by granting exit permission to family members of refugees to enable them to join the refugee abroad.
5. It is hoped that countries of asylum will apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family.
6. When deciding on family reunification, the absence of documentary proof of the formal validity of a marriage or of the filiation of children should not *per se* be considered as an impediment.
7. The separation of refugee families has, in certain regions of the world, given rise to a number of particularly delicate problems relating to unaccompanied minors. Every effort should be made to trace the parents or other close relatives of unaccompanied minors before their resettlement. Efforts to clarify their family situation with sufficient certainty should also be continued after resettlement. Such efforts are of particular importance before an adoption—involving a severance of links with the natural family—is decided upon.
8. In order to promote the rapid integration of refugee families in the country of settlement, joining close family members should in principle be granted the same legal status and facilities as the head of the family who has been formally recognized as a refugee.
9. In appropriate cases family reunification should be facilitated by special measures of assistance to the head of family so that economic and housing difficulties in the country of asylum do not unduly delay the granting of permission for the entry of the family members.

No. 28 (XXXIII) – 1982 Follow-up on Earlier Conclusions of the Sub-Committee of the Whole on International Protection on the Determination of Refugee Status, *inter alia*, with Reference to the Role of UNHCR in National Refugee Status Determination Procedures<sup>16</sup>

*The Executive Committee,*

- (a) *Considered* the report of the High Commissioner on the progress made in regard to the determination of refugee status (EC/SCP/22/Rev.1);
- (b) *Noted* with satisfaction that since the twenty-eighth session of the Executive Committee procedures for the determination of refugee status have been established by a further significant number of States Parties to the 1951 Convention and the 1967 Protocol and that these procedures conform to the basic requirements recommended by the Executive Committee at its twenty-eighth session;

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<sup>16</sup> Report of the 33rd Session: UN doc. A/AC.96/614, para. 70(4).

- (c) *Reiterated* the importance of the establishment of procedures for determining refugee status and urged those States Parties to the 1951 Convention and the 1967 Protocol which had not yet done so to establish such procedures in the near future;
- (d) *Recognized* the need for measures to meet the problem of manifestly unfounded or abusive applications for refugee status. A decision that an application is manifestly unfounded or abusive should only be taken by or after reference to the authority competent to determine refugee status. Consideration should be given to the establishment of procedural safeguards to ensure that such decisions are taken only if the application is fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees. In view of its importance, the question of manifestly unfounded or abusive applications for refugee status should be further examined by the Sub-Committee at its next meeting, as a separate item on its agenda and on the basis of a study to be prepared by UNHCR;
- (e) *Noted* with satisfaction the participation in various forms of UNHCR in procedures for determining refugee status in a large number of countries and recognized the value of UNHCR thus being given a meaningful role in such procedures.

No. 30 (XXXIV) – 1983 The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum<sup>17</sup>

*The Executive Committee,*

- (a) *Recalled* Conclusion No. 8 (XXVIII) adopted at its twenty-eighth session on the Determination of Refugee Status and Conclusion No. 15 (XXX) adopted at its thirtieth session concerning Refugees without an Asylum Country;
- (b) *Recalled* Conclusion No. 28 (XXXIII) adopted at its thirty-third session in which the need for measures to meet the problem of manifestly unfounded or abusive applications for refugee status was recognized;
- (c) *Noted* that applications for refugee status by persons who clearly have no valid claim to be considered refugees under the relevant criteria constitute a serious problem in a number of States parties to the 1951 Convention and the 1967 Protocol. Such applications are burdensome to the affected countries and detrimental to the interests of those applicants who have good grounds for requesting recognition as refugees;
- (d) *Considered* that national procedures for the determination of refugee status may usefully include special provision for dealing in an expeditious manner with applications which are considered to be so obviously without foundation as not to merit full examination at every level of the procedure. Such applications have been termed either ‘clearly abusive’ or ‘manifestly unfounded’ and are to be defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum;

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<sup>17</sup> *Report of the 34th Session: UN doc. A/AC.96/631, para. 97(2).*

- (e) *Recognized* the substantive character of a decision that an application for refugee status is manifestly unfounded or abusive, the grave consequences of an erroneous determination for the applicant and the resulting need for such a decision to be accompanied by appropriate procedural guarantees and therefore recommended that:
- (i) as in the case of all requests for the determination of refugee status or the grant of asylum, the applicant should be given a complete personal interview by a fully qualified official and, whenever possible, by an official of the authority competent to determine refugee status;
  - (ii) the manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status;
  - (iii) an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory. Where arrangements for such a review do not exist, governments should give favourable consideration to their establishment. This review possibility can be more simplified than that available in the case of rejected applications which are not considered manifestly unfounded or abusive.
- (f) *Recognized* that while measures to deal with manifestly unfounded or abusive applications may not resolve the wider problem of large numbers of applications for refugee status, both problems can be mitigated by overall arrangements for speeding up refugee status determination procedures, for example by:
- (i) allocating sufficient personnel and resources to refugee status determination bodies so as to enable them to accomplish their task expeditiously, and
  - (ii) the introduction of measures that would reduce the time required for the completion of the appeals process.

#### No. 35 (XXXV) – 1984 Identity Documents for Refugees<sup>18</sup>

*The Executive Committee,*

- (a) *Recognized* the need for refugees to have documentation enabling them to establish their identity and noted that Article 27 of the 1951 United Nations Refugee Convention requires Contracting States to issue identity papers to any refugee in their territory who does not have a valid travel document;
- (b) *Recalled* that in a conclusion adopted at its twenty-eighth session (A/32/12/Add.1, para. 53 (6)(e)) the Executive Committee recommended that recognized refugees should be issued documentation certifying their refugee status;
- (c) *Noted* with approval the general practice of States to provide refugees with documents, in the form prescribed by their national legislation, enabling them to establish their identity and their refugee status, and recommended that States which have not yet done so should ensure that refugees are provided with such documentation;
- (d) *Recommended* that asylum applicants whose applications cannot be decided without delay be provided with provisional documentation sufficient to ensure that they

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<sup>18</sup> *Report of the 35th Session: UN doc. A/AC.96/651, para. 87(3).*

are protected against expulsion or *refoulement* until a decision has been taken by the competent authorities with regard to their application;

(e) *Noted* that in countries where there is no provision for the formal recognition of refugee status, it may be necessary for UNHCR, with the consent of the authorities of the asylum country, to certify that a person is considered a refugee within the UNHCR mandate; and

(f) *Recognized* the value of registering and issuing appropriate documentation to refugees in large-scale influx situations, and recommended that States which have not yet done so should undertake such registration and documentation programmes, where appropriate in co-operation with UNHCR.

### No. 39 (XXXVI) – 1985 Refugee Women and International Protection<sup>19</sup>

*The Executive Committee,*

(a) *Welcomed* the initiative of the Office in organizing the Round Table on Refugee Women in Geneva in April 1985;

(b) *Welcomed* further the recommendations regarding the situation of refugee and displaced women adopted by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women held in Nairobi (Kenya) in July 1985;

(c) *Noted* that refugee women and girls constitute the majority of the world refugee population and that many of them are exposed to special problems in the international protection field;

(d) *Recognized* that these problems result from their vulnerable situation which frequently exposes them to physical violence, sexual abuse, and discrimination;

(e) *Stressed* the need for such problems to receive the urgent attention of Governments and of UNHCR and for all appropriate measures to be taken to guarantee that refugee women and girls are protected from violence or threats to their physical safety or exposure to sexual abuse or harassment;

(f) *Noted* with satisfaction the measures already undertaken by UNHCR to address the protection problems of refugee women and to ensure that they are adequately protected;

(g) *Called* upon States to continue to support UNHCR programmes established with a view to securing protection for refugee women, and UNHCR assistance programmes for refugee women, especially those aimed at helping refugee women become self-sufficient through educational and income-generating projects;

(h) *Recommended* that States, individually, jointly and in co-operation with UNHCR, redefine and reorient existing programmes and, where necessary, establish new programmes to meet the specific problems of refugee women, in particular to ensure the safeguard of their physical integrity and safety, and their equality of treatment. Women refugees should participate in the formulation and implementation of such programmes;

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<sup>19</sup> *Report of the 36th Session: UN doc. A/AC.96/673, para. 115(4).*

- (i) *Stressed* the importance of a more detailed knowledge and understanding of the special needs and problems of refugee women in the international protection field and of gathering statistical, sociological and other data concerning refugee women and girls in order to identify and implement appropriate mechanisms to ensure their effective protection;
- (j) *Requested* the High Commissioner to report regularly to members of the Executive Committee on the needs of refugee women, and on existing and proposed programmes for their benefit;
- (k) *Recognized* that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group' within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention.

#### No. 40 (XXXVI) – 1985 Voluntary Repatriation<sup>20</sup>

*The Executive Committee,*

*Reaffirming* the significance of its 1980 conclusion on voluntary repatriation as reflecting basic principles of international law and practice, adopted the following further conclusions on this matter:

- (a) The basic rights of persons to return voluntarily to the country of origin is reaffirmed and it is urged that international co-operation be aimed at achieving this solution and should be further developed;
- (b) The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected;
- (c) The aspect of causes is critical to the issue of solution and international efforts should also be directed to the removal of the causes of refugee movements. Further attention should be given to the causes and prevention of such movements, including the co-ordination of efforts currently being pursued by the international community and in particular within the United Nations. An essential condition for the prevention of refugee flows is sufficient political will by the States directly concerned to address the causes which are at the origin of refugee movements;
- (d) The responsibilities of States towards their nationals and the obligations of other States to promote voluntary repatriation must be upheld by the international community. International action in favour of voluntary repatriation, whether at the universal or regional level, should receive the full support and co-operation of all States directly concerned. Promotion of voluntary repatriation as a solution to refugee problems similarly requires the political will of States directly concerned to create conditions conducive to this solution. This is the primary responsibility of States;

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<sup>20</sup> *Report of the 36th Session: UN doc. A/AC.96/673, para. 115(5).*

- (e) The existing mandate of the High Commissioner is sufficient to allow him to promote voluntary repatriation by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them, and by acting as an intermediary or channel of communication. It is important that he establishes, whenever possible, contact with all the main parties and acquaints himself with their points of view. From the outset of a refugee situation, the High Commissioner should at all times keep the possibility of voluntary repatriation for all or for part of a group under active review and the High Commissioner, whenever he deems that the prevailing circumstances are appropriate, should actively pursue the promotion of this solution;
- (f) The humanitarian concerns of the High Commissioner should be recognized and respected by all parties and he should receive full support in his efforts to carry out his humanitarian mandate in providing international protection to refugees and in seeking a solution to refugee problems;
- (g) On all occasions the High Commissioner should be fully involved from the outset in assessing the feasibility and, thereafter, in both the planning and implementation stages of repatriation;
- (h) The importance of spontaneous return to the country of origin is recognized and it is considered that action to promote organized voluntary repatriation should not create obstacles to the spontaneous return of refugees. Interested States should make all efforts, including the provision of assistance in the country of origin, to encourage this movement whenever it is deemed to be in the interests of the refugees concerned;
- (i) When, in the opinion of the High Commissioner, a serious problem exists in the promotion of voluntary repatriation of a particular refugee group, he may consider for that particular problem the establishment of an informal *ad hoc* consultative group which would be appointed by him in consultation with the Chairman and the other members of the Bureau of his Executive Committee. Such a group may, if necessary, include States which are not members of the Executive Committee and should in principle include the countries directly concerned. The High Commissioner may also consider invoking the assistance of other competent United Nations organs;
- (j) The practice of establishing tripartite commissions is well adapted to facilitate voluntary repatriation. The tripartite commission, which should consist of the countries of origin and of asylum and UNHCR, could concern itself with both the joint planning and the implementation of a repatriation programme. It is also an effective means of securing consultations between the main parties concerned on any problems that might subsequently arise;
- (k) International action to promote voluntary repatriation requires consideration of the situation within the country of origin as well as within the receiving country. Assistance for the reintegration of returnees provided by the international community in the country of origin is recognized as an important factor in promoting repatriation. To this end, UNHCR and other United Nations agencies as appropriate, should have funds readily available to assist returnees in the various stages of their integration and rehabilitation in their country of origin;
- (l) The High Commissioner should be recognized as having a legitimate concern for the consequences of return, particularly where such return has been brought about as a result of an amnesty or other form of guarantee. The High Commissioner must be regarded as entitled to insist on his legitimate concern over the outcome of any return that he has assisted. Within the framework of close consultations with the State

concerned, he should be given direct and unhindered access to returnees so that he is in a position to monitor fulfilment of the amnesties, guarantees or assurances on the basis of which the refugees have returned. This should be considered as inherent in his mandate;

(m) Consideration should be given to the further elaboration of an instrument reflecting all existing principles and guidelines relating to voluntary repatriation for acceptance by the international community as a whole.

No. 44 (XXXVII) – 1986      Detention of Refugees and Asylum Seekers<sup>21</sup>

*The Executive Committee,*

*Recalling* Article 31 of the 1951 Convention relating to the Status of Refugees, *Recalling* further its Conclusion No. 22 (XXXII) on the treatment of asylum seekers in situations of large-scale influx, as well as Conclusion No. 7 (XXVIII), paragraph (e), on the question of custody or detention in relation to the expulsion of refugees lawfully in a country, and Conclusion No. 8 (XXVIII), paragraph (e), on the determination of refugee status,

*Noting* that the term ‘refugee’ in the present Conclusions has the same meaning as that in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, and is without prejudice to wider definitions applicable in different regions,

- (a) *Noted* with deep concern that large numbers of refugees and asylum seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation;
- (b) *Expressed* the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;
- (c) *Recognized* the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum seekers from unjustified or unduly prolonged detention;
- (d) *Stressed* the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens;
- (e) *Recommended* that detention measures taken in respect of refugees and asylum seekers should be subject to judicial or administrative review;
- (f) *Stressed* that conditions of detention of refugees and asylum seekers must be humane. In particular, refugees and asylum seekers shall, whenever possible, not be

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<sup>21</sup> *Report of the 37th Session: UN doc. A/AC.96/688, para. 128.*

accommodated with persons detained as common criminals, and shall not be located in areas where their physical safety is endangered;

(g) *Recommended* that refugees and asylum seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the absence of such office, available national refugee assistance agencies;

(h) *Reaffirmed* that refugees and asylum seekers have duties to the country in which they find themselves, which require in particular that they conform to its laws and regulations as well as to measures taken for the maintenance of public order;

(i) *Reaffirmed* the fundamental importance of the observance of the principle of *non-refoulement* and in this context recalled the relevance of Conclusion No. 6 (XXVIII).

#### No. 47 (XXXVIII) – 1987      Refugee Children<sup>22</sup>

*The Executive Committee,*

(a) *Expressed* appreciation to the High Commissioner for his Report on Refugee Children (EC/SCP/46) and noted with serious concern the violations of their human rights in different areas of the world and their special needs and vulnerability within the broader refugee population;

(b) *Recognized* that refugee children constitute approximately one half of the world's refugee population and that the situation in which they live often gives rise to special protection and assistance problems as well as to problems in the area of durable solutions;

(c) *Reiterated* the widely-recognized principle that children must be among the first to receive protection and assistance;

(d) *Stressed* that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity;

(e) *Condemned* the exposure of refugee children to physical violence and other violations of their basic rights, including through sexual abuse, trade in children, acts of piracy, military or armed attacks, forced recruitment, political exploitation or arbitrary detention, and called for national and international action to prevent such violations and assist the victims;

(f) *Urged* States to take appropriate measures to register the births of refugee children born in countries of asylum;

(g) *Expressed* its concern over the increasing number of cases of statelessness among refugee children;

(h) *Recommended* that children who are accompanied by their parents should be treated as refugees if either of the parents is determined to be a refugee;

(i) *Underlined* the special situation of unaccompanied children and children separated from their parents, who are in the care of other families, including their needs as regards determination of their status, provision for their physical and emotional

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<sup>22</sup> Report of the 38th Session: UN doc. A/AC.96/702, para. 205.

support and efforts to trace parents or relatives; and in this connection, recalled the relevant paragraphs of Conclusion No. 24 (XXXII) on Family Reunification;

(j) *Called* upon the High Commissioner to ensure that individual assessments are conducted and adequate social histories prepared for unaccompanied children and children separated from their parents, who are in the care of other families, to facilitate provision for their immediate needs, the analysis of the long term as well as immediate viability of existing foster arrangements, and the planning and implementation of appropriate durable solutions;

(k) *Noted* that while the best durable solution for an unaccompanied refugee child will depend on the particular circumstances of the case, the possibility of voluntary repatriation should at all times be kept under review, keeping in mind the best interests of the child and the possible difficulties of determining the voluntary character of repatriation;

(l) *Stressed* the need for internationally and nationally supported programmes geared to preventive action, special assistance and rehabilitation for disabled refugee children and encouraged States to participate in the "Twenty or More" Plan providing for the resettlement of disabled refugee children;

(m) *Noted* with serious concern the detrimental effects that extended stays in camps have on the development of refugee children and called for international action to mitigate such effects and provide durable solutions as soon as possible;

(n) *Recognized* the importance of meeting the special psychological, religious, cultural and recreational needs of refugee children in order to ensure their emotional stability and development;

(o) *Reaffirmed* the fundamental right of refugee children to education and called upon all States, individually and collectively, to intensify their efforts, in co-operation with the High Commissioner, to ensure that all refugee children benefit from primary education of a satisfactory quality, that respects their cultural identity and is oriented towards an understanding of the country of asylum;

(p) *Recognized* the need of refugee children to pursue further levels of education and recommended that the High Commissioner consider the provision of post-primary education within the general programme of assistance;

(q) *Called* upon all States, in co-operation with UNHCR and concerned agencies, to develop and/or support programmes to address nutritional and health risks faced by refugee children, including programmes to ensure an adequate, well-balanced and safe diet, general immunization and primary health care;

(r) *Recommended* regular and timely assessment and review of the needs of refugee children, either on an individual basis or through sample surveys, prepared in co-operation with the country of asylum, taking into account all relevant factors such as age, sex, personality, family, religion, social and cultural background and the situation of the local population, and benefiting from the active involvement of the refugee community itself;

(s) *Reaffirmed* the need to promote continuing and expanded co-operation between UNHCR and other concerned agencies and bodies active in the fields of assistance to refugee children and protection, including through the development of legal and social standards;

(t) *Noted* the importance of further study of the needs of refugee children by UNHCR, other intergovernmental and non-governmental agencies and national

authorities, with a view to identification of additional support programmes and reorientation as necessary of existing ones;

(u) *Called* upon the High Commissioner to develop further, in consultation with concerned organizations, guidelines to promote co-operation between UNHCR and these organizations to improve the international protection, physical security, well-being and normal psychosocial development of refugee children;

(v) *Called* upon the High Commissioner to maintain the UNHCR Working Group on Refugee Children at Risk as his focal point on refugee children, to strengthen the Working Group and to inform the members of the Executive Committee, on a regular basis, of its work.

No. 48 (XXXVIII) – 1987      Military or Armed Attacks on Refugee  
Camps and Settlements<sup>23</sup>

*The Executive Committee,*

*Remained* gravely preoccupied with the continuing incidence of unlawful attacks on refugees and asylum seekers in different areas of the world, including military or armed attacks on refugee camps and settlements and, in view of the tragic and indiscriminate consequences of these attacks, resulting in untold human misery for the refugees and asylum seekers, believed it was necessary and timely at this session to express its humanitarian concern and condemnation in the strongest terms;

*Noted* with appreciation those Resolutions of the General Assembly of the United Nations, adopted by consensus, in particular General Assembly Resolution 39/140 (1984), which condemned all violations of the rights and safety of refugees and asylum seekers, in particular those perpetrated by military or armed attacks against refugee camps and settlements;

*Predicating* this Conclusion on the assumption, *inter alia*, that refugee camps and settlements have an exclusively civilian and humanitarian character and on the principle that the grant of asylum or refuge is a peaceful and humanitarian act that is not to be regarded as unfriendly by another State; hoping to assist in guaranteeing the safety of refugees and asylum seekers, as well as to reinforce their rights, obligations and responsibilities and those of States and international organizations pursuant to relevant rules and principles of international law; and underlining that the rights and responsibilities of States pursuant to the Charter of the United Nations and relevant rules and principles of international law, including international humanitarian law, remained unaltered;

1. *Condemns* all violations of the rights and safety of refugees and asylum seekers and in particular military or armed attacks on refugee camps and settlements.
2. *Strongly urges* States to abstain from these violations, which are against the principles of international law and, therefore, cannot be justified.
3. *Calls* upon States and competent international organizations, in accordance with the principle of international solidarity and in order to alleviate the burden of the

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<sup>23</sup> *Report of the 38th Session: UN doc. A/AC.96/702, para. 206.*

country of refuge, to provide, according to their means, all necessary assistance to relieve the plight of the victims of such military and armed attacks on refugee camps and settlements if ever they occur.

4. *Urges* States and other parties to be guided by the following considerations in promoting measures to enhance the protection of refugee camps and settlements;

(a) Refugees in camps and settlements have, together with the basic rights they enjoy, duties deriving from the refuge and protection granted or afforded to them by the country of refuge. In particular, they have duties to conform to the laws and regulations of the State of refuge including lawful measures taken for the maintenance of public order and to abstain from any activity likely to detract from the exclusively civilian and humanitarian character of the camps and settlements.

(b) It is essential that States of refuge do all within their capacity to ensure that the civilian and humanitarian character of such camps and settlements is maintained. All other States are called upon to assist them in this regard. To this end relevant organs of the United Nations, within their respective terms of reference, are also called upon to co-operate with all States in providing assistance whenever necessary.

(c) UNHCR and other concerned organs of the United Nations should make every effort, within their respective terms of reference and in keeping with the principles of the United Nations Charter, to promote conditions which ensure the safety of refugees in camps and settlements. For UNHCR this may include maintaining close contact with the Secretary-General of the United Nations and providing liaison, as appropriate, with all the parties concerned. It may also involve making appropriate arrangements with States of refuge on methods of protecting such refugee camps and settlements including, whenever possible, their location at a reasonable distance from the frontier of the country of origin.

(d) States have a duty to co-operate with the High Commissioner in the performance of his humanitarian protection and assistance functions, which can only be effectively accomplished if he has access to camps and settlements of his concern.

#### No. 52 (XXXIX) – 1988 International Solidarity and Refugee Protection<sup>24</sup>

*The Executive Committee,*

*Remaining deeply concerned* about the gravity and complexity of refugee problems throughout the world, the serious violations of human rights which accompany them and the dislocation and distress they cause for the millions of individuals involved;

*Reaffirming* that refugee problems are the concern of the international community and their resolution is dependent on the will and capacity of States to respond in concert and wholeheartedly, in a spirit of true humanitarianism and international solidarity;

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<sup>24</sup> *Report of the 39th Session: UN doc. A/AC.96/721, para. 24.*

*Noting* that States have obligations or responsibilities to accord protection and a basic standard of treatment to refugees and that these must be performed in good faith;

*Noting* also that the Office of the United Nations High Commissioner for Refugees was created in the context of an urgent need to provide protection to refugees and that it is this protection function which uniquely characterizes the Office;

1. *Underlined* that States, which have defined the protection role of the Office, have a responsibility to co-operate with it in the fulfilment of its mandate on the basis of the fundamental humanitarian principles which motivate its work;
2. *Noted* that States and UNHCR are joined in the common pursuit of solutions for refugee problems and the international protection of the fundamental rights of refugees;
3. *Stressed* that the principle of international solidarity has a fundamental role to play in encouraging a humanitarian approach to the grant of asylum and in the effective implementation of international protection in general;
4. *Recalled* that, in all circumstances, the respect for fundamental humanitarian principles is an obligation for all members of the international community, it being understood that the principle of international solidarity is of utmost importance to the satisfactory implementation of these principles;
5. *Invited* all States to continue actively to support the protection functions of the High Commissioner through all appropriate means, both bilateral and multilateral, as well as to abide by their own humanitarian responsibilities towards refugees, including, particularly, to safeguard the right to seek and enjoy asylum from persecution and to ensure full respect for the principle of *non-refoulement*.

#### No. 53 (XXXIX) – 1988 Stowaway Asylum-seekers<sup>25</sup>

*The Executive Committee,*

*Recognizing* that stowaway asylum-seekers often find themselves in a particularly vulnerable situation in need of international protection and durable solutions;

*Recalling* its Conclusion No. 15 (XXX) on Refugees without an Asylum Country adopted at the thirtieth session of the Executive Committee;

*Reaffirming* the necessity of giving proper attention to the needs of stowaway asylum seekers including arranging for their disembarkation, determining their refugee status and, whenever required, providing them with a durable solution;

*Noting* that there are at present no general and internationally recognized rules dealing specifically with stowaway asylum seekers and at the same time recognizing that asylum seekers should be given the special consideration that their situation demands;

*Recommended* that States and UNHCR take into account the following guidelines when dealing with actual cases of stowaway asylum seekers:

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<sup>25</sup> *Report of the 39th Session: UN doc. A/AC.96/721, para. 25.*

1. Like other asylum seekers, stowaway asylum seekers must be protected against forcible return to their country of origin.
2. Without prejudice to any responsibilities of the flag State, stowaway asylum seekers should, whenever possible, be allowed to disembark at the first port of call and given the opportunity of having their refugee status determined by the authorities, provided that this does not necessarily imply durable solution in the country of the port of disembarkation.
3. Normally UNHCR would be requested to assist in finding a durable solution for those found to be refugees, based on all relevant aspects of the case.

No. 58 (XL) – 1989      **The Problem of Refugees and Asylum Seekers who Move in an Irregular Manner from a Country in which they had already found Protection<sup>26</sup>**

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<sup>26</sup> The following ‘interpretative declarations or reservations’ were made with respect to Conclusion No. 58 (XL) – 1989. See *Report* of the 40th Session of the Executive Committee: UN doc. A/AC.96/737, part N, p.23: The delegation of Australia wishes it to be pointed out that its endorsement of the draft conclusions is subject to it being clearly understood that refugees and asylum seekers should not necessarily be afforded the same treatment. The delegation of China is of the view that paragraph (b) of the draft conclusions is not exhaustive in its listing of the reasons why persons feel impelled to leave when they have already found protection. The delegation of Turkey has requested that it be made clear that in the light of the discussions and the wording of the draft conclusions, and as the then Director of Protection made clear in 1985, these conclusions do not apply to refugees and asylum seekers who are merely in transit in another country. This interpretation is recorded in paragraph 68 of the Report of the Sub-Committee for 1985. The delegation of Italy wishes the following declaration recorded: ‘Without prejudicing in any way the application, in the context of bilateral agreements or multilateral ones within the European Community, of criteria other than those put forth hereunder, the Italian authorities consider that the present Conclusion is only applicable to refugees recognized as such according to the Geneva Convention of 1951 and its 1967 Protocol and in the sphere of application of said Geneva Convention and Protocol, as well as to asylum seekers who have already found protection in the first country of asylum on the basis of the principles of said Convention and Protocol’. The delegation of Tanzania has stated the following: ‘Regarding the issue of irregular movements, Tanzania’s responsibility to protect a refugee ceases the moment he voluntarily leaves Tanzania and Tanzania accepts no obligation to readmit such refugee either from his country of origin or from a third country.’

Thailand wishes it placed on record that in its view paragraph (d) cannot be understood as establishing any hierarchy amongst the durable solutions listed therein, in particular to give priority to local settlement before third country resettlement. As a country of temporary asylum Thailand, with areas of severe poverty, could not be expected to grant local settlement. Local integration may be allowed only where and when local situations permit, after other solutions have been exhausted. The delegation of the Federal Republic of Germany has the following interpretative declaration to make: ‘The Federal Republic of Germany understands that the wording “they are permitted to remain there” (see section (f)) does not prevent repatriation to the country of first asylum even if a formal residence permit is lacking. It interprets the term “recognized basic human standards” (see section (f)) in such a way that this notion does not extend beyond the scope of Article 42 of the Geneva Convention relating to the Status of Refugees. Finally, it interprets the term “physical safety” (see section (g)) in such a way that its scope does not extend beyond the definition of the term “refugee” contained in Article 1 A(2) of the Geneva Convention relating to the Status of Refugees.’ The delegation of Austria has stated that it shares the interpretative statement made by the Federal Republic of Germany.

The delegation of Greece has stated with respect to paragraph (b) that: ‘First asylum countries should bear the burden of refugees on an equitable basis, according to their economic or other potential’; with respect to paragraph (e) it has stated that: ‘The will of a refugee to choose freely the country of his

- (a) The phenomenon of refugees, whether they have been formally identified as such or not (asylum seekers), who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern. This concern results from the destabilizing effect which irregular movements of this kind have on structured international efforts to provide appropriate solutions for refugees. Such irregular movements involve entry into the territory of another country, without the prior consent of the national authorities or without an entry visa, or with no or insufficient documentation normally required for travel purposes, or with false or fraudulent documentation. Of similar concern is the growing phenomenon of refugees and asylum seekers who wilfully destroy or dispose of their documentation in order to mislead the authorities of the country of arrival;
- (b) Irregular movements of refugees and asylum seekers who have already found protection in a country are, to a large extent, composed of persons who feel impelled to leave, due to the absence of educational and employment possibilities and the non-availability of long-term durable solutions by way of voluntary repatriation, local integration and resettlement;
- (c) The phenomenon of such irregular movements can only be effectively met through concerted action by governments, in consultation with UNHCR, aimed at
- (i) identifying the causes and scope of irregular movements in any given refugee situation,
  - (ii) removing or mitigating the causes of such irregular movements through the granting and maintenance of asylum and the provision of necessary durable solutions or other appropriate assistance measures,
  - (iii) encouraging the establishment of appropriate arrangements for the identification of refugees in the countries concerned and,
  - (iv) ensuring humane treatment for refugees and asylum seekers who, because of the uncertain situation in which they find themselves, feel impelled to move from one country to another in an irregular manner;
- (d) Within this framework, governments, in close co-operation with UNHCR, should
- (i) seek to promote the establishment of appropriate measures for the care and support of refugees and asylum seekers in countries where they have found protection pending the identification of a durable solution and
  - (ii) promote appropriate durable solutions with particular emphasis firstly on voluntary repatriation and, when this is not possible, local integration and the provision of adequate resettlement opportunities;
- (e) Refugees and asylum seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country through action taken by governments and UNHCR as recommended in paragraphs (c) and (d) above;

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destination should not be overlooked, within the spirit of the Geneva Convention of 1951'; and with respect to paragraph (f) it has stated that: 'In all instances, sovereignty of the State and its rules and regulations under which entry is allowed cannot be ignored. Other considerations not to be overlooked are the status of the individual, whether he has applied for asylum or not, length of stay in a country when having moved from the first asylum country, etc.'

(f) Where refugees and asylum seekers nevertheless move in an irregular manner from a country where they have already found protection, they may be returned to that country if (i) they are protected there against *refoulement* and (ii) they are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them. Where such return is envisaged, UNHCR may be requested to assist in arrangements for the re-admission and reception of the persons concerned;

(g) It is recognized that there may be exceptional cases in which a refugee or asylum seeker may justifiably claim that he has reason to fear persecution or that his physical safety or freedom are endangered in a country where he previously found protection. Such cases should be given favourable consideration by the authorities of the State where he requests asylum;

(h) The problem of irregular movements is compounded by the use, by a growing number of refugees and asylum seekers, of fraudulent documentation and their practice of wilfully destroying or disposing of travel and/or other documents in order to mislead the authorities of their country of arrival. These practices complicate the personal identification of the person concerned and the determination of the country where he stayed prior to arrival, and the nature and duration of his stay in such a country. Practices of this kind are fraudulent and may weaken the case of the person concerned;

(i) It is recognized that circumstances may compel a refugee or asylum seeker to have recourse to fraudulent documentation when leaving a country in which his physical safety or freedom are endangered. Where no such compelling circumstances exist, the use of fraudulent documentation is unjustified;

(j) The wilful destruction or disposal of travel or other documents by refugees and asylum seekers upon arrival in their country of destination, in order to mislead the national authorities as to their previous stay in another country where they have protection, is unacceptable. Appropriate arrangements should be made by States, either individually or in co-operation with other States, to deal with this growing phenomenon.

## No. 59 (XL) – 1989      Refugee Children<sup>27</sup>

### *The Executive Committee,*

(a) *Expressed* appreciation for the Report on Refugee Children (A/AC.96/731), noted with concern the serious risks to their safety, immediate welfare and future development faced by many refugee children and recognized the efforts made by the Office of the High Commissioner to improve its effectiveness in responding to their special needs;

(b) *Reaffirmed* its Conclusion [No.47 (XXXVIII)] concerning refugee children and stressed the continuing nature of the guidance provided;

(c) *Commended* the High Commissioner and his Working Group on Refugee Children for the development and dissemination of the *Guidelines on Refugee Children* and for the implementation of a work plan concerning refugee children and called upon

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<sup>27</sup> Report of the 40th Session: UN doc. A/AC.96/737, para. 26.

UNHCR to seek the active co-operation and collaboration of governments, other United Nations bodies, among them UNICEF, non-governmental organizations and refugees themselves, in the implementation of the guidelines;

(d) *Requested* the High Commissioner to ensure that the needs of refugee children are given particular attention through regularly assessing resources and requirements in each refugee situation; collecting and using in programme planning relevant demographic, socio-economic and cultural information; and monitoring and evaluating the impact of his programmes on refugee children;

(e) *Noted* with serious concern the increasing incidence of nutritional deficiency diseases and malnutrition amongst refugee children dependent upon food aid and called upon UNHCR to initiate as a matter of urgency formal discussions with relevant United Nations bodies, donors and other humanitarian organizations to develop collaborative strategies for alleviating the nutritional problems of refugee children and to seek the incorporation into their programmes of appropriate provisions for such needs;

(f) *Recognized* the link between education and durable solutions and encouraged UNHCR to strengthen its efforts in assisting host country governments to ensure the access of refugee children to education, *inter alia*, through the involvement of new organizations and governmental and non-governmental donors, and where necessary through the incorporation of appropriate arrangements in its programmes of assistance;

(g) *Requested* the High Commissioner to continue to give special attention to the needs of unaccompanied minors and inform the Executive Committee at its next session of the details of existing programmes and any difficulties encountered in their implementation;

(h) *Called* upon UNHCR to promote the best possible legal protection of unaccompanied minors, particularly with regard to forced recruitment into armed forces and to the risks associated with irregular adoption;

(i) *Urged* UNHCR to intensify efforts to increase public awareness of the situation and needs of refugee children and of the impact of armed conflict and persecution on them;

(j) *Encouraged* UNHCR to develop training materials to improve the capacity and effectiveness of field personnel in identifying and addressing the protection and assistance needs of refugee children;

(k) *Recalled* its request in its Thirty-seventh Session in 1986 [No.41 (XXXVII)] for the High Commissioner to report regularly to the Executive Committee on the needs of refugee children, and on existing and proposed programmes for their benefit.

## No. 64 (XLI) – 1990      Refugee Women and International Protection<sup>28</sup>

*The Executive Committee,*

*Noting* with serious concern the widespread violations of the rights of refugee women and their specific needs;

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<sup>28</sup> *Report of the 41st Session: UN doc. A/AC.96/760, para. 23.*

*Underlining* the potential of refugee women and the need to ensure their full participation in analyzing their needs and in designing and implementing programmes which make appropriate use of their resources;

*Reaffirming* its Conclusion No.39 (XXXVI) on Refugee Women and International Protection;

*Stressing* that all action taken on behalf of women who are refugees must be guided by the relevant international instruments relating to the status of refugees as well as other applicable human rights instruments, in particular, for States parties thereto, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women;

*Recognizing* that ensuring equal treatment of refugee women and men may require specific action in favour of the former;

*Recalling* the special relevance of the Nairobi Forward-Looking Strategies on the Advancement of Women and the obligation of the United Nations System as a whole to give effect to its provisions;

*Reiterating* the importance of collecting data which allows for the monitoring of progress achieved in meeting the needs of refugee women,

(a) *Urges* States, relevant United Nations organizations, as well as non-governmental organizations, as appropriate, to ensure that the needs and resources of refugee women are fully understood and integrated, to the extent possible, into their activities and programmes and, to this end, to pursue, among others, the following aims in promoting measures for improving the international protection of refugee women:

- (i) Promote energetically the full and active participation of refugee women in the planning, implementation and evaluation/monitoring of all sectors of refugee programmes;
- (ii) Increase the representation of appropriately trained female staff across all levels of all organizations and entities which work in refugee programmes and ensure direct access of refugee women to such staff;
- (iii) Provide, wherever necessary, skilled female interviewers in procedures for the determination of refugee status and ensure appropriate access by women asylum seekers to such procedures, even when accompanied by male family members;
- (iv) Ensure that all refugees and the staff of relevant organizations and authorities are fully aware of, and support, the rights, needs and resources of refugee women and take appropriate specific actions;
- (v) Integrate considerations specific to the protection of refugee women into assistance activities from their inception, including when planning refugee camps and settlements, in order to be able to deter, detect and redress instances of physical and sexual abuse as well as other protection concerns at the earliest possible moment;
- (vi) Extend professional and culturally appropriate gender-based counselling as well as other related services to refugee women who are victims of abuse;
- (vii) Identify and prosecute persons who have committed crimes against refugee women and protect the victims of such crimes from reprisals;
- (viii) Issue individual identification and/or registration documents to all refugee women;

- (ix) Provide all refugee women and girls with effective and equitable access to basic services, including food, water and relief supplies, health and sanitation, education and skills training, and make wage-earning opportunities available to them;
  - (x) Provide for informed and active consent and participation of refugee women in individual decisions about durable solutions for them;
  - (xi) Ensure that resettlement programmes make special provisions for refugee women at risk.
- (b) *Invites* UNHCR to develop comprehensive guidelines on the protection of refugee women as a matter of urgency in order to give effect to its policy on refugee women as contained in document A/AC.96/754.

## No. 67 (XLII) – 1991 Resettlement as an Instrument of Protection<sup>29</sup>

*The Executive Committee,*

*Reaffirming* the link between international protection and resettlement as an instrument of protection and its important role as durable solution in specific circumstances,

- (a) *Calls* upon governments in a position to assist, to establish refugee admission ceilings, in the context of international burden-sharing;
- (b) *Requests* States when setting refugee admission ceilings to include an adequate contingency provision which could be available depending on need to address rapidly evolving situations;
- (c) *Recognizes* that rapidly evolving situations can result in fluctuating resettlement requirements from one year to another and that admission ceilings should be adaptable to such developments;
- (d) *Recognizes* the need for rapid and flexible response to UNHCR resettlement requirements in particular for vulnerable groups and emergency protection cases subject to refugee admission requirements of receiving States;
- (e) *Acknowledges* the utility of close consultation with UNHCR in the resettlement activities of the Office;
- (f) *Recognizes* that in reviewing UNHCR resettlement requests the protection element inherent in such requests should be taken into account;
- (g) *Emphasizes* that UNHCR pursues resettlement only as a last resort, when neither voluntary repatriation nor local integration is possible, when it is in the best interests of the refugees and where appropriate.

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<sup>29</sup> *Report of the 42nd Session: UN doc. A/AC.96/783, para. 23.*

No. 69 (XLIII) – 1992 Cessation of Status<sup>30</sup>

*The Executive Committee,*

*Recalling* Conclusion No. 65 (XLII) which, *inter alia*, underlined the possibility of use of the cessation clauses in Article IC (5) and (6) of the 1951 Convention in situations where a change of circumstances in a country is of such a profound and enduring nature that refugees from that country no longer require international protection, and can no longer continue to refuse to avail themselves of the protection of their country, provided that it is recognized that compelling reasons may, for certain individuals, support the continuation of refugee status,

*Taking into account* that the application of the cessation clause(s) in the 1951 Convention rests exclusively with the Contracting States, but that the High Commissioner should be appropriately involved, in keeping with the role of the High Commissioner in supervising the application of the provisions of the 1951 Convention as provided for in Article 35 of that Convention,

*Noting* that any declaration by the High Commissioner that the competence accorded to her by the Statute of her Office with regard to certain refugees shall cease to apply, may be useful to States in connection with the application of the cessation clauses as well as the 1951 Convention,

*Believing* that a careful approach to the application of the cessation clauses using clearly established procedures is necessary so as to provide refugees with the assurance that their status will not be subject to unnecessary review in the light of temporary changes, not of a fundamental character, in the situation prevailing in the country of origin,

- (a) *Stresses* that, in taking any decision on application of the cessation clauses based on ‘ceased circumstances’ (sic), States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist;
- (b) *Underlines* that an essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect, *inter alia*, from relevant specialized bodies, including particularly UNHCR;
- (c) *Emphasizes* that the ‘ceased circumstances’ (sic) cessation clauses shall not apply to refugees who continue to have a well-founded fear of persecution;
- (d) *Recognizes* therefore that all refugees affected by a group or class decision to apply these cessation clauses must have the possibility, upon request, to have such application in their cases reconsidered on grounds relevant to their individual case;
- (e) *Recommends*, so as to avoid hardship cases, that States seriously consider an appropriate status, preserving previously acquired rights, for persons who have compelling reasons arising out of previous persecution for refusing to re-avail

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<sup>30</sup> *Report of the 43rd Session: UN doc. A/AC.96/804, para. 22.*

themselves of the protection of their country and recommends also that appropriate arrangements, which would not put into jeopardy their established situation, be similarly considered by relevant authorities for those persons who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links there;

(f) *Recommends* that States, in giving effect to a decision to invoke the cessation clauses, should in all situations deal humanely with the consequences for the affected individuals or groups, and that countries of asylum and countries of origin should together facilitate the return, to assure that it takes place in a fair and dignified manner. Where appropriate, return and reintegration assistance should be made available to the returnees by the international community, including through relevant international agencies.

## No. 72 (XLIV) – 1993 Personal Security of Refugees<sup>31</sup>

*The Executive Committee,*

*Expressing* its deep concern over reports on the alarming frequency of incidents in which refugees and asylum seekers, including women and children, are subjected to violence and mistreatment including killing, torture, military or armed attacks, rape, beatings, intimidation, forced recruitment and arbitrary or inhumane conditions of detention,

*Reaffirming* the responsibility of States to respect and ensure the fundamental human rights of refugees and asylum seekers to life, liberty and security of person as well as to freedom from torture or other cruel, inhumane or degrading treatment or punishment,

*Recalling* previous conclusions dealing with the personal security of refugees, in particular, Conclusions No. 22 (XXXII) on the Protection of Asylum Seekers in Situations of Large-Scale Influx and No. 48 (XXXVIII) on Military or Armed Attacks on Refugee Camps and Settlements,

*Stressing* the duty of refugees and asylum seekers to conform to the laws and regulations of the country of asylum and abstain from any activity likely to detract from the exclusively civilian and humanitarian character of refugee camps and settlements,

*Reaffirming* the fundamental importance of the scrupulous observance of the principle of *non-refoulement* for the personal security of refugees,

(a) *Deplores* all violations of the right to personal security of refugees and asylum seekers, in particular organized attacks or the incitement to violence directed against them;

(b) *Urges* States to take all measures necessary to prevent or remove threats to the personal security of refugees and asylum seekers in border areas and elsewhere, including by affording UNHCR and, as appropriate, other organizations approved by the Governments concerned prompt and unhindered access to them, by situating refugee camps and settlements in secure locations, by ensuring the safety of vulnerable groups,

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<sup>31</sup> *Report of the 44th Session: UN doc. A/AC.96/821, para. 20.*

by facilitating the issuance of personal documentation, and by involving the refugee community, both women and men, in the organization and administration of their camps and settlements;

(c) *Calls* upon States vigorously to investigate violations of the personal security of refugees and asylum seekers, and where possible to institute criminal prosecution, and where applicable strict disciplinary measures, against all perpetrators of such violations;

(d) *Calls* upon States, in collaboration with UNHCR and, as appropriate, other organizations approved by the Governments concerned, to provide effective physical protection to asylum seekers and refugees and to ensure safe access for humanitarian assistance and relief workers, where necessary through the recruitment and training of personnel specifically assigned the task of protecting refugees and securing supply routes for humanitarian assistance;

(e) *Supports* the High Commissioner's activities to monitor the personal security of refugees and asylum seekers and to take appropriate action to prevent or redress violations thereof, including the expansion of training programmes aimed at enhancing the understanding of refugee protection among law enforcement officials, other concerned Government personnel, and non-governmental organizations;

(f) *Encourages* the High Commissioner to develop, share with the Executive Committee and disseminate widely guidelines containing practical measures that States, UNHCR as well as other international and non-governmental organizations can take to further strengthen the physical protection of refugees and asylum seekers.

## No. 73 (XLIV) – 1993 Refugee Protection and Sexual Violence<sup>32</sup>

*The Executive Committee,*

*Noting* with grave concern the widespread occurrence of sexual violence in violation of the fundamental right to personal security as recognized in international human rights and humanitarian law, which inflicts serious harm and injury to the victims, their families and communities, and which has been a cause of coerced displacement including refugee movements in some areas of the world,

*Noting* also distressing reports that refugees and asylum seekers, including children, in many instances have been subjected to rape or other forms of sexual violence during their flight or following their arrival in countries where they sought asylum, including sexual extortion in connection with the granting of basic necessities, personal documentation or refugee status,

*Recognizing* the need for concrete action to detect, deter and redress instances of sexual violence to effectively protect asylum seekers and refugees,

*Recognizing* further that the prevention of sexual violence can contribute to averting coerced displacement including refugee situations and to facilitating solutions,

*Stressing* the importance of international instruments relating to refugees, human rights and humanitarian law for the protection of asylum seekers, refugees and returnees against sexual violence,

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<sup>32</sup> *Report of the 44th Session: UN doc. A/AC.96/821, para. 21.*

*Bearing* in mind the draft Declaration on the Elimination of Violence against Women adopted by the Commission on the Status of Women as well as other measures being taken by the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women, the Commission on Human Rights, the Security Council and other bodies of the United Nations to prevent, investigate and, as appropriate, according to their mandates, punish sexual violence,

*Reaffirming* its Conclusions No. 39 (XXXVI), No. 54 (XXXIX), No. 60 (XL) and No. 64 (XLI) concerning refugee women,

- (a) *Strongly condemns* persecution through sexual violence, which not only constitutes a gross violation of human rights, as well as, when committed in the context of armed conflict, a grave breach of humanitarian law, but is also a particularly serious offence to human dignity;
- (b) *Urges* States to respect and ensure the fundamental right of all individuals within their territory to personal security, *inter alia* by enforcing relevant national laws in compliance with international legal standards and by adopting concrete measures to prevent and combat sexual violence, including:
  - (i) the development and implementation of training programmes aimed at promoting respect by law enforcement officers and members of military forces of the right of every individual, at all times and under all circumstances, to security of person, including protection from sexual violence,
  - (ii) implementation of effective, non-discriminatory legal remedies including the facilitation of the filing and investigation of complaints against sexual abuse, the prosecution of offenders, and timely and proportional disciplinary action in cases of abuse of power resulting in sexual violence,
  - (iii) arrangements facilitating prompt and unhindered access to all asylum seekers, refugees and returnees for UNHCR and, as appropriate, other organizations approved by the Governments concerned, and
  - (iv) activities aimed at promoting the rights of refugee women, including through the dissemination of the *Guidelines on the Protection of Refugee Women* and their implementation, in close co-operation with refugee women, in all sectors of refugee programmes;
- (c) *Calls* upon States and UNHCR to ensure the equal access of women and men to refugee status determination procedures and to all forms of personal documentation relevant to refugees' freedom of movement, welfare and civil status, and to encourage the participation of refugee women as well as men in decisions relating to their voluntary repatriation or other durable solutions;
- (d) *Supports* the recognition as refugees of persons whose claim to refugee status is based upon a well-founded fear of persecution, through sexual violence, for reasons of race, religion, nationality, membership of a particular social group or political opinion;
- (e) *Recommends* the development by States of appropriate guidelines on women asylum seekers, in recognition of the fact that women refugees often experience persecution differently from refugee men;
- (f) *Recommends* that refugee victims of sexual violence and their families be provided with adequate medical and psycho-social care, including culturally appropriate counselling facilities, and generally be considered as persons of special concern to States and to UNHCR with respect to assistance and the search for durable solutions;

- (g) *Recommends* that in procedures for the determination of refugee status, asylum seekers who may have suffered sexual violence be treated with particular sensitivity;
- (h) *Reiterates* the importance of ensuring the presence of female field staff in refugee programmes, including emergency operations, and the direct access of refugee women to them;
- (i) *Supports* the High Commissioner's efforts, in co-ordination with other intergovernmental and non-governmental organizations competent in this area, to develop and organize training courses for authorities, including camp officials, eligibility officers, and others dealing with refugees on practical protection measures for preventing and responding to sexual violence;
- (j) *Recommends* the establishment by States of training programmes designed to ensure that those involved in the refugee status determination process are adequately sensitized to issues of gender and culture;
- (k) *Encourages* the High Commissioner to pursue actively her efforts, in co-operation with bodies and organizations dealing with human rights, to increase awareness of the rights of refugees and the specific needs and abilities of refugee women and girls and to promote the full and effective implementation of the *Guidelines on the Protection of Refugee Women*;
- (l) *Calls* upon the High Commissioner to include the issue of sexual violence in future progress reports on the implementation of the *Guidelines on the Protection of Refugee Women*;
- (m) *Requests* the High Commissioner to issue as an Executive Committee document and disseminate widely the Note on Certain Aspects of Sexual Violence against Refugee Women.

#### No. 75 (XLV) – 1994 Internally Displaced Persons<sup>33</sup>

##### *The Executive Committee,*

- (a) *Recognizes* that the involuntary displacement of persons within their own countries is a problem of global dimensions, and that the plight of such internally displaced persons, whose numbers may exceed those of refugees, is a matter of grave humanitarian concern;
- (b) *Notes* that the many and varied underlying causes of involuntary internal displacement and of refugee movements are often similar, and that the problems of both refugees and the internally displaced often call for similar measures with respect to prevention, protection, humanitarian assistance, and solutions;
- (c) *Reiterates* the need for the international community to seek ways and means to avert involuntary displacements;
- (d) *Emphasizes* that since internally displaced persons remain within the territorial jurisdiction of their own countries, the primary responsibility for their welfare and protection lies with the State concerned;
- (e) *Urges* the Governments of States where there are internally displaced persons to fulfil their responsibility for their welfare and protection;

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<sup>33</sup> Report of the 45th Session: UN doc. A/AC.96/839, para. 20.

- (f) *Calls* upon the international community, in appropriate circumstances, to provide timely and speedy humanitarian assistance and support to countries affected by internal displacement to help them fulfil their responsibility towards the displaced;
- (g) *Notes* that, in many instances, the internally displaced are present alongside refugees, returnees, or a vulnerable local population, in situations where it is neither reasonable nor feasible to treat the categories differently in responding to their needs for assistance and protection;
- (h) *Recognizes* that actions by the international community, in consultation and co-ordination with the concerned State, on behalf of the internally displaced may contribute to the easing of tensions and the resolution of problems resulting in displacement, and constitute important components of a comprehensive approach to the prevention and solution of refugee problems;
- (i) *Calls* on the Governments concerned to ensure safe and timely humanitarian access to persons in need of protection and assistance, including the internally displaced and victims of armed conflict, as well as refugees within their territories;
- (j) *Recognizes* that resolution 48/116, adopted by the United Nations General Assembly on 20 December 1993, which reaffirmed support for the High Commissioner's efforts, 'on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations and with the consent of the concerned State, and taking into account the complementarities of mandates and expertise of other relevant organizations, in providing humanitarian assistance and protection to persons displaced within their own country in situations calling for the Office's particular expertise, especially where such efforts could contribute to the prevention or solution of refugee problems', continues to provide an appropriate framework for the involvement of the High Commissioner in situations of internal displacement;
- (k) *Encourages* the High Commissioner to continue the efforts of her Office to put into action its internal criteria and guidelines for UNHCR involvement in situations of internal displacement, as an important contribution towards a more concerted response by the international community to the needs of the internally displaced;
- (l) *Emphasizes* that activities on behalf of internally displaced persons must not undermine the institution of asylum, including the right to seek and enjoy in other countries asylum from persecution;
- (m) *Recognizes* that international human rights law, international humanitarian law, and, in many cases, national laws include norms providing for the security and protection of the internally displaced as well as those at risk of displacement, and expressed serious concern at the failure of parties involved to respect these norms;
- (n) *Acknowledges* the importance of the work of the Representative of the Secretary-General for Internally Displaced Persons and, in particular, his efforts to compile existing international standards in respect of the treatment of the internally displaced, and to develop a code of conduct comprising guiding principles in this regard;
- (o) *Calls* on UNHCR to continue its close co-operation with the Representative of the Secretary-General in the fulfilment of his mandate;
- (p) *Further* acknowledges the essential role of the International Committee of the Red Cross in disseminating international humanitarian law and in providing protection and humanitarian assistance to those displaced by armed conflict;

- (q) *Calls* for the strengthening of efforts in the training and dissemination of international human rights law and international humanitarian law and for the joint promotion, by organizations and agencies concerned, of the implementation of these international standards;
- (r) *Considers* that, in addressing the problem of internal displacement, the international community should seek to collaborate to the maximum possible extent with existing humanitarian organizations, including non-governmental organizations, with relevant expertise;
- (s) *Encourages* UNHCR to continue its efforts, under the leadership of the Emergency Relief Co-ordinator, and in co-operation with other agencies concerned, to reinforce and structure co-ordination through existing interagency mechanisms, notably the Interagency Standing Committee, in order to improve the response by the international community to the plight of the internally displaced, and stresses the importance in this connection of strengthening mechanisms for the sharing of information;
- (t) *Urges* that discussions on interagency aspects of internal displacement be pursued actively in other appropriate fora so as to ensure a comprehensive and coherent approach by the international community to the problem of internally displaced persons.

No. 78 (XLVI) – 1995      The Prevention and Reduction of Statelessness  
and the Protection of Stateless Persons<sup>34</sup>

*The Executive Committee,*

*Recognizing* the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality,

*Concerned* that statelessness, including the inability to establish one's nationality, may result in displacement,

*Stressing* that the prevention and reduction of statelessness and the protection of stateless persons are important in the prevention of potential refugee situations,

- (a) Acknowledges the responsibilities already entrusted to the High Commissioner for stateless refugees and with respect to the reduction of statelessness, and encourages UNHCR to continue its activities on behalf of stateless persons, as part of its statutory function of providing international protection and of seeking preventive action, as well as its responsibility entrusted by the General Assembly to undertake the functions foreseen under Article 11 of the 1961 Convention on the Reduction of Statelessness;
- (b) Calls upon States to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality, and by eliminating provisions which permit the renunciation of a nationality without the prior possession or acquisition of another nationality;
- (c) Requests UNHCR actively to promote accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of

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<sup>34</sup> Report of the 46th Session: UN doc. A/AC.96/860, para. 20.

Statelessness, in view of the limited number of States parties to these instruments, as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States;

(d) Further requests UNHCR actively to promote the prevention and reduction of statelessness through the dissemination of information, and the training of staff and government officials; and to enhance cooperation with other interested organizations;

(e) Invites UNHCR to provide it biennially, beginning at the forty-seventh session of the Executive Committee, with information on activities undertaken on behalf of stateless persons, particularly with regard to the implementation of international instruments and international principles relating to statelessness, and including the magnitude of the problem of statelessness.

### No. 82 (XLVIII) – 1997 Safeguarding Asylum<sup>35</sup>

*The Executive Committee,*

(a) *Recalls* the fundamental importance of the High Commissioner's international protection function;

(b) *Reaffirms* that the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14 (1) of the 1948 Universal Declaration of Human Rights, is among the most basic mechanisms for the international protection of refugees;

(c) *Notes* with concern that the growing complexity of refugee crises poses serious and novel challenges to the institution of asylum;

(d) *Reiterates*, in light of these challenges, the need for full respect to be accorded to the institution of asylum in general, and considers it timely to draw attention to the following particular aspects:

- (i) the principle of *non-refoulement*, which prohibits expulsion and return of refugees in any manner whatsoever to the frontiers of territories where their lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, whether or not they have been formally granted refugee status, or of persons in respect of whom there are substantial grounds for believing that they would be in danger of being subjected to torture, as set forth in the 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;
- (ii) access, consistent with the 1951 Convention and the 1967 Protocol, of asylum-seekers to fair and effective procedures for determining status and protection needs;
- (iii) the need to admit refugees into the territories of States, which includes no rejection at frontiers without fair and effective procedures for determining status and protection needs;
- (iv) the need for rapid, unimpeded and safe UNHCR access to persons of concern to the High Commissioner;

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<sup>35</sup> *Report of the 48th Session: UN doc. A/AC.96/895, 20 October 1997, para. 19.*

- (v) the need to apply scrupulously the exclusion clauses stipulated in Article 1F of the 1951 Convention and in other relevant international instruments, to ensure that the integrity of the asylum institution is not abused by the extension of protection to those who are not entitled to it;
  - (vi) the obligation to treat asylum-seekers and refugees in accordance with applicable human rights and refugee law standards as set out in relevant international instruments;
  - (vii) the responsibility of host States, working, where appropriate, with international organizations, to identify and separate any armed or military elements from refugee populations, and to settle refugees in secure locations at a reasonable distance, to the extent possible, from the frontier of the country of origin, with a view to safeguarding the peaceful nature of asylum;
  - (viii) the duty of refugees, and of asylum-seekers, to respect and abide by the laws of host States;
- (e) *Calls* upon all concerned parties to respect and comply with the precepts on which the institution of asylum is based, and to implement their obligations in a spirit of true humanitarianism, international solidarity and burden-sharing.

#### No. 84 (XLVIII) – 1997 Refugee Children and Adolescents<sup>36</sup>

*The Executive Committee,*

*Recognizing* that children and adolescents constitute the majority of refugees and other persons of concern to UNHCR,

*Conscious* of the human rights and dignity of all refugee children and adolescents, and that, due to their specific needs and vulnerability within the broader refugee population, they need to be among the first to receive protection and assistance in any refugee situation,

*Gravely concerned* that refugee children and adolescents continue to be exposed to family separation, physical violence and other violations of their human rights, including through sexual abuse and exploitation, and military or armed attacks,

*Recalling* the fundamental importance of the Convention on the Rights of the Child (CRC) to the legal framework for the protection of child and adolescent refugees and for promoting their best interests,

*Recalling* that the Convention on the Rights of the Child, in its preamble, states that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

*Welcoming* the United Nations Study on the Impact of Armed Conflict on Children ('the Machel Study'), and the appointment of a Special Representative of the Secretary-General on the Impact of Armed Conflict on Children,

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<sup>36</sup> *Report of the 48th Session: UN doc. A/AC.96/895, 20 October 1997, para. 21.*

*Taking note*, with interest, of UNHCR's strategy for follow-up to the Machel Study, and commending the establishment of operational performance objectives in respect of refugee children and adolescents,

*Reaffirming* its Conclusions No. 47 (XXXVIII) and No. 59 (XL) concerning refugee children and adolescents, and, stressing their continued validity,

- (a) *Calls upon* States and relevant parties to respect and observe rights and principles that are in accordance with international human rights and humanitarian law and that are of particular relevance to international refugee protection, especially to safeguarding child and adolescent refugees, including:
- (i) the principle of the best interests of the child and the role of the family as the fundamental group of society concerned with the protection and well-being of children and adolescents;
  - (ii) the fundamental right of children and adolescents to life, liberty, security of person, and freedom from torture and cruel, inhuman or degrading treatment or punishment;
  - (iii) the right of children and adolescents to education, adequate food, and the highest attainable standard of health;
  - (iv) the right of children affected by armed conflict to special protection and treatment, taking into account the particular vulnerability of refugee children to being forcibly exposed to the risks of injury, exploitation, and death in connection with armed conflict;
  - (v) the right of children to protection from harmful traditional practices and from all other forms of exploitation;
- (b) *Urges* States and concerned parties to take all possible measures to protect child and adolescent refugees, *inter alia*, by:
- (i) preventing separation of children and adolescent refugees from their families and promoting care, protection, tracing and family reunification for unaccompanied minors;
  - (ii) safeguarding the physical security of refugee children and adolescents, securing the location of camps and settlements at a reasonable distance from the frontiers of countries of origin, and taking steps to preserve the civilian character and humanitarian nature of refugee camps and settlements;
  - (iii) preventing sexual violence, exploitation, trafficking and abuse; addressing the needs and rights of child and adolescent victims through provision of appropriate legal and rehabilitative remedies; and by following up on the Plan of Action of the 1996 Stockholm World Congress on the Sexual Exploitation of Children;
  - (iv) providing appropriate training to military personnel and peacekeepers on human rights and humanitarian protections to which children and adolescents are entitled, and holding all parties accountable for violations of such rights and protections in refugee situations;
  - (v) ensuring access to education, and the right of the child to freedom of thought, conscience and religion;

- (vi) providing medical or other special care, including rehabilitation assistance, to assist the social reintegration of refugee children and adolescents, especially those who are unaccompanied or orphaned;
- (c) *Calls upon* UNHCR to continue to integrate fully the rights of the child into its policies and programmes; improve its operational methods for assessing the needs of child and adolescent refugees; train its staff and implementing partners accordingly; formulate preventive strategies; and strengthen collaboration with States, UNICEF, WFP, the Office of the High Commissioner for Human Rights, ICRC, non-governmental organizations, and other concerned actors;
- (d) *Calls upon* UNHCR to include on the work programme of the Standing Committee in 1998 a report on the implementation of its strategy for follow-up to the Machel Study, with special reference to the establishment of operational performance objectives in respect of refugee children and adolescents and the identification of improvements in staffing, training and budgeting to meet these objectives; and also to report on follow-up of its evaluation of UNHCR programming and protection efforts on behalf of refugee children and adolescents.
- (e) *Calls upon* all States to participate constructively in the negotiations on an optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts with the aim of an early agreement on the text.

#### No. 88 (L) – 1999 Protection of the Refugee’s Family<sup>37</sup>

##### *The Executive Committee,*

- (a) *Reaffirms* Conclusion No. 9 (XXVIII), Conclusion No. 24 (XXXII), Conclusion No. 84 (XLVIII), and Conclusion No. 85 (XLIX) paragraphs (u) to (x) on family reunion and family unity and on refugee children and adolescents; and *re-emphasizes* that the family is the natural and fundamental group unit of society and is entitled to protection by the society and the State;
- (b) *Underlines* the need for the unity of the refugee’s family to be protected, *inter alia* by:
  - (i) measures which ensure respect for the principle of family unity, including, those to reunify family members separated as a result of refugee flight;
  - (ii) the consideration of liberal criteria in identifying those family members who can be admitted, with a view to promoting a comprehensive reunification of the family;
  - (iii) provisions and/or practice allowing that when the principal applicant is recognized as a refugee, other members of the family unit should normally also be recognized as refugees, and by providing each family member with the possibility of separately submitting any refugee claims that he or she may have;
  - (iv) the prioritization of family unity issues at an early stage in all refugee operations; and

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<sup>37</sup> *Report of the 50th Session, UN doc. A/AC.96/928, 13 October 1999, para. 21.*

- (v) programmes to promote the self-sufficiency of adult family members so as to enhance their capacity to support dependent family members;
- (c) *Calls* upon States, UNHCR and other relevant actors to give particular attention to the needs of unaccompanied refugee children pending their reunification with their families; and *affirms*, in this regard, that adoption of refugee children should only be considered when all feasible steps for family tracing and reunification have been exhausted, and then only in the best interests of the child and in conformity with international standards.

## No. 91 (LII) – 2001      Registration of Refugees and Asylum-Seekers<sup>38</sup>

*The Executive Committee,*

*Recalling* its Conclusion No. 22 (XXXII) on the protection of asylum-seekers in situations of large-scale influx, Conclusion No. 35 (XXXV) on identity documents for refugees, Conclusion No. 39 (XXXVI) and Conclusion No. 64 (XLI) on refugee women and international protection, as well as Conclusion No. 73 (XLIV) on refugee protection and sexual violence;

*Noting also* that the 1951 Convention relating to the Status of Refugees in article 27, calls on States Parties to issue identity papers to refugees;

*Mindful* of the importance accorded to registration in the independent evaluation of UNHCR's emergency preparedness and response to the Kosovo crisis;

*Welcoming* the discussion which took place on registration in the context of the Global Consultations on International Protection;

(a) *Acknowledges* the importance of registration as a tool of protection, including protection against *refoulement*, protection against forcible recruitment, protection of access to basic rights, family reunification of refugees and identification of those in need of special assistance, and as a means to enable the quantification and assessment of needs and to implement appropriate durable solutions;

(b) *Recommends* that the registration of refugees and asylum-seekers should be guided by the following basic considerations:

- (i) Registration should be a continuing process to record essential information at the time of initial displacement, as well as any subsequent demographic and other changes in the refugee population (such as births, deaths, new arrivals, departures, cessation, naturalization, etc.);
- (ii) The registration process should abide by the fundamental principles of confidentiality;
- (iii) The registration process should to the extent possible be easily accessible, and take place in a safe and secure location;
- (iv) Registration should be conducted in a non-intimidating, non-threatening and impartial manner, with due respect for the safety and dignity of refugees;
- (v) Personnel conducting the registration, including, where necessary, refugees and asylum-seekers, should be adequately trained, should include a sufficient number of female staff and should have clear instructions on the procedures and

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<sup>38</sup> *Report of the 52nd Session, UN doc. A/AC.96/959, 5 October 2001, para. 23.*

- requirements for registration, including the need for confidentiality of information collected; special measures should be taken to ensure the integrity of the registration process;
- (vi) In principle, refugees should be registered on an individual basis with the following basic information being recorded: identity document and number, photograph, name, sex, date of birth (or age), marital status, special protection and assistance needs, level of education, occupation (skills), household (family) size and composition, date of arrival, current location and place of origin;
- (c) *Encourages* States and UNHCR, on the basis of existing expertise, to develop further and implement registration guidelines to ensure the quality and comparability of registered data, especially regarding special needs, occupational skills and level of education;
- (d) *Also encourages* States and UNHCR to introduce new techniques and tools to enhance the identification and documentation of refugees and asylum-seekers, including biometrics features, and to share these with a view towards developing a more standardized worldwide registration system;
- (e) *Acknowledges* the importance to the international community, particularly States, UNHCR and other relevant organizations, of sharing statistical data;
- (f) *Recognizes* the confidential nature of personal data and the need to continue to protect confidentiality; also recognizes that the appropriate sharing of some personal data in line with data protection principles can assist States to combat fraud, to address irregular movements of refugees and asylum-seekers, and to identify those not entitled to international protection under the 1951 Convention and/or 1967 Protocol;
- (g) *Requests* States, which have not yet done so, to take all necessary measures to register and document refugees and asylum-seekers on their territory as quickly as possible upon their arrival, bearing in mind the resources available, and where appropriate to seek the support and co-operation of UNHCR;
- (h) *Emphasizes* the critical role of material, financial, technical and human resources in assisting host countries in registering and documenting refugees and asylum-seekers, particularly developing countries confronted with large-scale influxes and protracted refugee situations.

No. 93 (LIII) – 2002      Reception of asylum-seekers in the context of individual asylum systems<sup>39</sup>

*The Executive Committee,*

*Recalling* its Conclusion No. 22 (XXXII) on protection of asylum-seekers in situations of large-scale influx, Conclusion No. 44 (XXXVII) on detention of refugees and asylum-seekers, Conclusion No. 47 (XXXVIII) on refugee children, Conclusion No. 64 (XLI) on refugee women and international protection, Conclusion No. 73 (XLIV) on refugee protection and sexual violence, Conclusion No. 82 (XLVIII) on safeguarding asylum, Conclusion No. 84 (XLVIII) on refugee children and adolescents, as well as Conclusion No. 91 (LII) on registration of refugees and asylum-seekers,

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<sup>39</sup> *Report of the 53rd Session, UN doc. A/AC.96/973, 8 October 2002, para. 22.*

*Welcoming* the discussion which took place on reception of asylum-seekers in individual asylum systems in the context of the Global Consultations on International Protection,

*Acknowledging* the centrality of applicable international human rights law and standards in the development and implementation of reception policies,

*Bearing in mind* the need to provide a safe and dignified environment for asylum-seekers as well as discourage misuse of asylum systems,

*Acknowledging* that asylum systems are different, entailing assistance in kind or financial assistance, or a combination of both, as well as involving both governmental and non-governmental actors,

*Recognizing* that many asylum-seekers are capable of attaining a certain degree of self-reliance if provided with an opportunity to do so,

- (a) *Recognizes* the need to establish and apply fair and expeditious asylum procedures, so as to identify promptly those in need of international protection and those who are not, which will avoid protracted periods of uncertainty for the asylum-seeker, discourage misuse of the asylum system and decrease the overall demands on the reception system;
- (b) *Recommends* that the reception of asylum-seekers should be guided by the following general considerations:
  - (i) While there is scope for flexibility in the choice of reception arrangements to be put in place, it is important that the various reception measures respect human dignity and applicable international human rights law and standards;
  - (ii) Asylum-seekers should have access to the appropriate governmental and non-governmental entities when they require assistance so that their basic support needs, including food, clothing, accommodation, and medical care, as well as respect for their privacy, are met;
  - (iii) Gender and age-sensitivity should be reflected in reception arrangements, these should address in particular the educational, psychological, recreational and other special needs of children, especially unaccompanied and separated children. They should also take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture, as well as of other vulnerable groups;
  - (iv) Reception arrangements should allow for the unity of the family as present within the territory, particularly in the context of reception centres;
  - (v) For the purpose, *inter alia*, of protection against *refoulement*, as well as access to reception arrangements, both male and female asylum-seekers should be registered and be issued appropriate documentation reflecting their status as asylum-seeker, which should remain valid until the final decision is taken on the asylum application;
  - (vi) The range and scope of relevant social and economic benefits may vary, depending on the nature of the asylum procedure, and the type of reception arrangements in place;
  - (vii) Reception arrangements can be mutually beneficial where they are premised on the understanding that many asylum-seekers can attain a

- certain degree of self-reliance, if provided with the requisite opportunities;
- (viii) In the context of facilitating cooperation between States and UNHCR, and in accordance with data protection and confidentiality principles, UNHCR should be given access to asylum-seekers in order to exercise its function of international protection, taking into account the well-being of persons entering reception or other refugee centres; and asylum-seekers are entitled to have access to UNHCR;
  - (ix) Key to the effective operation of any reception arrangement are public opinion favourable to asylum-seekers and refugees and confidence and trust in the asylum system, the promotion of both is an important responsibility to be pursued in tandem with the arrangements themselves;
- (c) *Stresses* that responsibility and burden-sharing and the availability of durable solutions promote and strengthen the capacity of host States with limited resources to receive asylum-seekers and to provide adequate reception arrangements, under the supervision of UNHCR;
- (d) *Urges* States and UNHCR, in collaboration with other relevant actors, to combat acts of racism, racial discrimination, xenophobia, and related intolerance directed against asylum-seekers and to take appropriate measures to create or enhance harmonious relationships with the local communities, *inter alia*, by promoting respect for asylum-seekers and refugees, by creating awareness of their needs, as well as promoting respect for the local culture, customs and religions among asylum-seekers.

No. 94 (LIII) – 2002      Civilian and humanitarian character of asylum<sup>40</sup>

*The Executive Committee,*

*Remaining* seriously concerned by the continuing occurrence of military or armed attacks and other threats to the security of refugees, including the infiltration and presence of armed elements in refugee camps and settlements,<sup>41</sup>

*Recalling* the relevant provisions of international refugee law, international human rights law and international humanitarian law,

*Recalling* its Conclusion No. 27 (XXXIII) and Conclusion No. 32 (XXXIV) on military attacks on refugee camps and settlements in Southern Africa and elsewhere; Conclusion 72 (XLIV) on personal security of refugees; Conclusion No. 48 (XXXVIII) on military or armed attacks on refugee camps and settlements; Conclusion No. 47

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<sup>40</sup> *Report* of the 53rd Session, UN doc. A/AC.96/973, 8 October 2002, para. 23 (the following footnotes are from the original document). [At various places in the text, the punctuation is either unclear or misleading (for example, para. (c)(vii)); no attempt has been made to correct or clarify the meaning, and what follows is reproduced from the original UN document – GSGG]

<sup>41</sup> For the purpose of this Conclusion, the term ‘armed elements’ is used as a generic term in a refugee context that refers to combatants as well as civilians carrying weapons. Similarly, for the purpose of this Conclusion, the term ‘combatants’ covers persons taking active part in hostilities in both international and non-international armed conflict who have entered a country of asylum.

(XXXVIII) and Conclusion No. 84 (XLVII), on refugee children and adolescents, as well as Conclusion No. 64 (XLI) on refugee women and international protection,

*Recalling* also United Nations Security Council resolution S/RES/1208 (1998) and S/RES/1296 (2000), and the two reports of the United Nations Secretary-General on the Protection of Civilians in Armed Conflict,<sup>42</sup> noting in particular the recommendations made therein with respect to enhancing the security of refugee camps and settlements,

*Welcoming* the discussion which took place on the civilian character of asylum in the context of the Global Consultations on International Protection,<sup>43</sup>

*Noting* that several international meetings have recently been held, aimed at identifying effective operational strategies for maintaining the civilian and humanitarian character of asylum,<sup>44</sup>

*Reiterating* that refugee camps and settlements should have an exclusively civilian and humanitarian character, that the grant of asylum is a peaceful and humanitarian act which should not be regarded as unfriendly by another State, as stated in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and a number of Executive Committee conclusions, and that all actors, including refugees themselves, have the obligation to cooperate in ensuring the peaceful and humanitarian character of refugee camps and settlements,

*Recognizing* that the presence of armed elements in refugee camps or settlements; recruitment and training by government armed forces or organized armed groups; the use of such camps, intended to accommodate refugee populations on purely humanitarian grounds, for the internment of prisoners of war; as well as other forms of exploitation of refugee situations for the purpose of promoting military objectives are likely to expose refugees, particularly women and children, to serious physical danger, inhibit the realization of durable solutions, in particular voluntary repatriation, but also local integration, jeopardize the civilian and humanitarian character of asylum and may threaten the national security of States, as well as inter-State relations,

*Recognizing* the special protection needs of refugee children and adolescents who, especially when living in camps where refugees are mixed with armed elements, are particularly vulnerable to recruitment by government armed forces or organized armed groups,

*Reaffirming* the importance of States, UNHCR and other relevant actors, integrating safety and security concerns from the outset of a refugee emergency into refugee camp management in a holistic manner,

(a) *Acknowledges* that host States have the primary responsibility to ensure the civilian and humanitarian character of asylum by, *inter alia*, making all efforts to locate refugee camps and settlements at a reasonable distance from the border, maintaining

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<sup>42</sup> S/1999/957; S/2001/331.

<sup>43</sup> EC/GC/01/8/Rev.1.

<sup>44</sup> Workshop on the Potential of International Police in Refugee Camp Security (Ottawa, Canada, March 2001); Regional Symposium on Maintaining the Civilian and Humanitarian Character of Refugee Status, Camps and other locations (Pretoria, South Africa, February 2001); International Seminar on Exploring the Role of the Military in Refugee Camp Security (Oxford, UK, July 2001).

law and order, curtailing the flow of arms into refugee camps and settlements, preventing their use for the internment of prisoners of war, as well as through the disarmament of armed elements and the identification, separation and internment of combatants;

(b) *Urges* refugee-hosting States to respect the civilian and humanitarian character of refugee camps by preventing their use for purposes which are incompatible with their civilian character;

(c) *Recommends* that action taken by States to ensure respect for the civilian and humanitarian character of asylum be guided, *inter alia*, by the following principles;

- (i) Respect for the right to seek asylum, and for the fundamental principle of *non-refoulement*, should be maintained at all times;
- (ii) Measures for the disarmament of armed elements and the identification, separation and internment of combatants should be taken as early as possible, preferably at the point of entry or at the first reception/transit centres for new arrivals;
- (iii) To facilitate early identification and separation of combatants, registration of new arrivals should be conducted by means of a careful screening process;
- (iv) Refugee camps and settlements should benefit from adequate security arrangements to deter infiltration by armed elements and the strengthening of law and order;
- (v) Once identified, disarmed and separated from the refugee population, combatants should be interned at a safe location from the border;
- (vi) Where the granting of refugee status is based on group determination, civilian family members of combatants should be treated as refugees and should not be interned together with them;
- (vii) Combatants should not be considered as asylum-seekers until the authorities have established within a reasonable timeframe that they have genuinely and permanently renounced military activities, once this has been established, special procedures should be put in place for individual refugee status determination, to ensure that those seeking asylum fulfil the criteria for the recognition of refugee status, during the refugee status determination process, utmost attention should be paid to article 1F of the 1951 Convention, in order to avoid abuse of the asylum system by those who do not deserve international protection;
- (viii) Former child soldiers should benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation;
- (ix) Where necessary, host States should develop, with assistance from UNHCR, operational guidelines in the context of group determination to exclude those individuals who are not deserving of international refugee protection;

(d) *Further* to para (c)(ii) above, *calls upon* UNHCR to convene a meeting of experts in support of the elaboration of measures for the disarmament of armed elements and the identification, separation, and internment of combatants, including the clarification of relevant procedures and standards, in consultation with States, United

Nations Secretariat entities and agencies, and interested organizations, such as the ICRC, and report back to the Executive Committee on progress achieved;

(e) *Calls* upon States to ensure that measures are taken to prevent the recruitment of refugees by government armed forces or organized armed groups, in particular of children, taking into account also that unaccompanied and separated children are even more vulnerable to recruitment than other children;

(f) *Calls* upon the relevant United Nations organs and regional organizations, in pursuance of their respective mandates, as well as the international community at large, to mobilize adequate resources to support and assist host States in maintaining the civilian and humanitarian character of asylum, in line with the principles of international solidarity, co-operation, burden and responsibility sharing;

(g) *Calls* upon UNHCR and the Department of Peacekeeping Operations of the United Nations Secretariat to enhance collaboration on all aspects of this complex matter, and as appropriate, to deploy, with the consent of host States, multi-disciplinary assessment teams to an emerging crisis area in order to clarify the situation on the ground, evaluate security threats for refugee populations and consider appropriate practical responses;

(h) *Calls* upon UNHCR to explore how it may develop, in consultation with relevant partners, its own institutional capacity to address insecurity in refugee camps, *inter alia* by assisting States to ensure the physical safety and dignity of refugees, building, as appropriate, upon its protection and operational expertise.

No. 96 (LIV) – 2003      The return of persons found not to be in need of international protection<sup>45</sup>

*The Executive Committee,*

*Expressing* appreciation for the timely and useful discussion which took place on the return of persons found not to be in need of international protection, in the context of the Global Consultations on International Protection, and which led to Goal 2, objective 7 of the Agenda for Protection;

*Bearing in mind* that the efficient and expeditious return of persons found not to be in need of international protection is key to the international protection system as a whole, as well as to the control of irregular migration and prevention of smuggling and trafficking of such persons;

*Concerned* by the difficulties experienced by many countries of asylum in different parts of the world in effecting the return of persons found not to be in need of international protection, which have served to undermine the integrity of individual asylum systems;

*Recalling* the obligation of States to receive back their own nationals, as well as the right of States, under international law, to expel aliens while respecting obligations under international refugee and human rights law;

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<sup>45</sup> *Report* of the 54th Session, UN doc. A/AC.96/987, 10 October 2003, para. 21 (original footnotes omitted).

*Recalling* also that the 2000 United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air sets out the obligation of States parties to facilitate and accept, without undue or unreasonable delay, the return of a person who has been smuggled and who is its national or who has the right of permanent residence in its territory at the time of return;

*Observing* that, for the purposes of this Conclusion, the term ‘persons found not to be in need of international protection’ is understood to mean persons who have sought international protection and who after due consideration of their claims in fair procedures, are found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention, nor to be in need of international protection in accordance with other international obligations or national law;

(a) *Reaffirms* the right of everyone to leave any country, including his or her own, and to return to his or her own country as well as the obligation of States to receive back their own nationals, including the facilitation thereof, and remains seriously concerned, as regards the return of persons found not to be in need of international protection, that some countries continue to restrict the return of their own nationals, either outright or through laws and practices which effectively block expeditious return;

(b) *Emphasizes* that the credibility of individual asylum systems is seriously affected by the lack of prompt return of those who are found not to be in need of international protection;

(c) *Reiterates* that return of persons found not to be in need of international protection should be undertaken in a humane manner, in full respect for human rights and dignity and, that force, should it be necessary, be proportional and undertaken in a manner consistent with human rights law; and emphasizes that in all actions concerning children, the best interests of the child shall be a primary consideration;

(d) *Recognizes* the importance that persons found not to be in need of international protection cooperate with return arrangements;

(e) *Calls on* States to cooperate regarding the efficient and expeditious return of persons found not to be in need of international protection, to their countries of origin, other countries of nationality or countries with an obligation to receive them back, notably by;

(i) cooperating actively, including through their diplomatic and consular offices, in establishing the identity of persons presumed to have a right to return, as well as determining their nationality, where there is no evidence of nationality in the form of genuine travel or other relevant identity documents for the person concerned;

(ii) finding practical solutions for the issuance of appropriate documentation to persons who are not or no longer in possession of a genuine travel document;

(f) *Calls upon* States parties to the 1951 Convention and the 1967 Protocol to facilitate the return of persons found not to be in need of international protection by providing facilities for the transit of such persons taking into account, where applicable, agreements concerning the mutual recognition of asylum determination decisions;

(g) *Recalls* further that Annex 9 to the 1944 Convention on International Civil Aviation requires that States, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time, and not

more than 30 days after such a request is made, either by issuing a travel document or by satisfying the requesting State that the person concerned is not one of its nationals;

(h) *Refers* to its Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons, and urges States to take steps to avoid cases of statelessness as well as to adopt measures leading to the grant of a legal status to stateless persons;

(i) *Welcomes* the expertise developed by IOM in the assisted voluntary return of persons found not to be in need of international protection and notes UNHCR's cooperation with IOM in this area;

(j) *Recommends*, depending on the situation, that UNHCR complement the efforts of States in the return of persons found not to be in need of international protection by:

(i) Promoting with States those principles which bear on their responsibility to accept back their nationals, as well as principles on the reduction of statelessness;

(ii) Taking clear public positions on the acceptability of return of persons found not to be in need of international protection,

(iii) Continuing its dialogue with States to review their citizenship legislation, particularly if it allows renunciation of nationality without at the same time ensuring that the person in question has acquired another nationality and could be used to stop or delay the return of a person to a country of nationality;

(k) *Takes note of* UNHCR's readiness, on a good offices basis, to support States, upon their request, in their endeavours to return persons found not to be in need of international protection, in particular where obstacles to return are encountered and provided that the involvement of the Office is not inconsistent with its humanitarian mandate to provide international protection to refugees;

(l) *Stresses* the importance of ensuring the sustainability of returns and of avoiding further displacements in countries emerging from conflict, and notes that phasing returns of persons found not to be in need of international protection can contribute to this; while *also recognizing* that once a person found not to be in need of international protection has made an informed decision to return voluntarily, this should take place promptly;

(m) *Notes* the value of State data on return of persons found not to be in need of international protection to assist in analysing the rate of return and the scope of the problem of achieving returns.

No. 97 (LIV) – 2003 Protection Safeguards in Interception Measures<sup>46</sup>

*The Executive Committee,*

*Noting* the discussions which took place on interception measures at the Standing Committee<sup>47</sup> as well as in the context of the Global Consultations on International Protection;<sup>48</sup>

*Concerned* about the many complex features of the evolving environment in which refugee protection has to be provided, including the persistence of armed conflict, the complexity of current forms of persecution, ongoing security challenges, mixed population flows, the high costs that may be connected with hosting asylum-seekers and refugees and of maintaining individual asylum systems, the growth in trafficking and smuggling of persons, the problems of safeguarding asylum systems against abuse and of excluding those not entitled to refugee protection, as well as the lack of resolution of long-standing refugee situations;

*Recognizing* that States have a legitimate interest in controlling irregular migration, as well as ensuring the safety and security of air and maritime transportation, and a right to do so through various measures;

*Recalling* the emerging legal framework<sup>49</sup> for combating criminal and organized smuggling and trafficking of persons, in particular the Protocol Against the Smuggling of Migrants by Land, Sea and Air, which, *inter alia*, contemplates the interception of vessels enjoying freedom of navigation in accordance with international law, on the basis of consultations between the flag State and the intercepting State in accordance with international maritime law, provided that there are reasonable grounds to suspect that the vessel is engaged in the smuggling of migrants by sea;

*Noting* the saving clauses contained in each of the Protocols<sup>50</sup> and the reference to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and the principle of *non-refoulement*;

*Recalling* also the duty of States and shipmasters to ensure the safety of life at sea and to come to the aid of those in distress or in danger of being lost at sea, as contained in numerous instruments of the codified system of international maritime law;<sup>51</sup> *recalling also* Conclusions of the Executive Committee of relevance to the

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<sup>46</sup> Report of the 54th Session, UN doc. A/AC.96/987, 10 October 2003, para. 22 (following footnotes from the original document).

<sup>47</sup> EC/50/SC/CRP17, 9 June 2000.

<sup>48</sup> EC/GC/O1/13, 31 May 2001, Regional Workshops in Ottawa, Canada and in Macau.

<sup>49</sup> The United Nations Convention Against Transnational Organized Crime, 2000 and its Supplementary Protocols Against the Smuggling of Migrants by Land, Sea and Air; and to Suppress and Punish Trafficking in Persons, Especially Women and Children.

<sup>50</sup> Article 19 of the Smuggling Protocol and Article 14 of the Trafficking Protocol.

<sup>51</sup> Including *inter alia* the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, 1974, as amended and the International Convention on Maritime Search and Rescue, 1979, as amended.

particular needs of asylum-seekers and refugees in distress at sea<sup>52</sup> and *affirming* that when vessels respond to persons in distress at sea, they are not engaged in interception;

*Recognizing also* that States have international obligations regarding the security of civilian air transportation and that persons whose identities are unknown represent a potential threat to the security of air transportation as contained in numerous instruments of the codified system on international aviation law;<sup>53</sup>

*Understanding* that for the purposes of this conclusion, and without prejudice to international law, particularly international human rights law and refugee law, with a view to providing protection safeguards to intercepted persons, interception is one of the measures employed by States to:

- (i) prevent embarkation of persons on an international journey;
- (ii) prevent further onward international travel by persons who have commenced their journey; or
- (iii) assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law;

where, in relation to the above, the person or persons do not have the required documentation or valid permission to enter; and that such measures also serve to protect the lives and security of the travelling public as well as persons being smuggled or transported in an irregular manner;

(a) *Recommends* that interception measures be guided by the following considerations in order to ensure the adequate treatment of asylum-seekers and refugees amongst those intercepted;

- (i) The State within whose sovereign territory, or territorial waters, interception takes place has the primary responsibility for addressing any protection needs of intercepted persons;
- (ii) All intercepted persons should be treated, at all times, in a humane manner respectful of their human rights. State authorities and agents acting on behalf of the intercepting State should take, consistent with their obligations under international law, all appropriate steps in the implementation of interception measures to preserve and protect the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment of persons intercepted;
- (iii) Interception measures should take into account the fundamental difference, under international law, between those who seek and are in need of international protection, and those who can resort to the protection of their country of nationality or of another country;

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<sup>52</sup> In particular No. 15(XXX), No. 20(XXXI), No. 23(XXXII), No. 26 (XXXIII), No. 31 (XXXIV), No. 34 (XXXV) and No. 38 (XXXVI).

<sup>53</sup> Including, *inter alia*, the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.

- (iv) Interception measures should not result in asylum-seekers and refugees being denied access to international protection, or result in those in need of international protection being returned, directly or indirectly, to the frontiers of territories where their life or freedom would be threatened on account of a Convention ground, or where the person has other grounds for protection based on international law. Intercepted persons found to be in need of international protection should have access to durable solutions;
  - (v) The special needs of women and children and those who are otherwise vulnerable should be considered as a matter of priority;
  - (vi) Intercepted asylum-seekers and refugees should not become liable to criminal prosecution under the Protocol Against the Smuggling of Migrants by Land, Sea or Air for the fact of having been the object of conduct set forth in article 6 of the Protocol; nor should any intercepted person incur any penalty for illegal entry or presence in a State in cases where the terms of Article 31 of the 1951 Convention are met;
  - (vii) Intercepted persons who do not seek or who are determined not to be in need of international protection should be returned swiftly to their respective countries of origin or other country of nationality or habitual residence and States are encouraged to cooperate in facilitating this process;<sup>54</sup>
  - (viii) All persons, including officials of a State, and employees of a commercial entity, implementing interception measures should receive specialized training, including available means to direct intercepted persons expressing international protection needs to the appropriate authorities in the State where the interception has taken place, or, where appropriate, to UNHCR;
- (b) *Encourages* States to generate and share more detailed information on interception, including numbers, nationalities, gender and numbers of minors intercepted, as well as information on State practice, having due consideration for security and data protection concerns subject to the domestic laws and international obligations of those States;
- (c) *Encourages* States to further study interception measures, including their impact on other States, with a view to ensuring that these do not interfere with obligations under international law.

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<sup>54</sup> See Conclusion on the return of persons found not to be in need of international protection. (A/AC.96/987, para. 21); above, \*\*

No. 98 (LIV) – 2003 Protection from Sexual Abuse and Exploitation<sup>55</sup>

*The Executive Committee,*

*Reaffirming* its Conclusions No. 39 (XXXVI), No. 47 (XXXVIII), No. 54 (XXXIX), No. 60 (XL), No. 64 (XLI), No. 68 (XLIII), No. 73 (XLIV), No. 74 (XLVI), No. 79 (XLVII), No. 84 (XLVIII), No. 85 (XLIX), No. 87 (L), No. 91 (LII) and No. 94 (LIII) and in particular the need to combat sexual and gender-based violence in refugee situations; and recalling also in this context the relevant goals and objectives of the Agenda for Protection;

*Recalling* the international community's efforts to strengthen the international legal framework for combating sexual abuse and exploitation;

*Recalling* also the report of the United Nations Office of the Internal Oversight Services on the investigation into sexual exploitation of refugees by aid workers in West Africa,<sup>56</sup> and resolution A/RES/57/306;

*Noting* distressing reports over the last few years that refugees and asylum-seekers, in particular women and children, have been victims of sexual abuse and exploitation during flight or upon arrival in their country of asylum, and deeply concerned that this has negatively impacted their access to basic protection and assistance, including health care and education, the issuance of personal documentation or granting of refugee status;

*Recognizing* that sexual abuse and exploitation are a consequence of unequal power relationships, a dynamic that is often exacerbated during humanitarian crises characterized by widespread violence, mass displacement, and the breakdown in family structures, social and value systems; and noting with distress, the involvement of humanitarian workers, officials and other persons working closely with refugee populations;

*Acknowledging* that inadequate protection or inappropriate assistance, particularly the quantity and quality of food and other material assistance, increases the vulnerability of refugees and asylum-seekers to sexual abuse and exploitation;

*Recognizing* the importance of effective mechanisms to prevent and respond to the occurrence of sexual abuse and exploitation in all phases of the refugee experience;

*Recognizing* that the best interest of the child shall be a primary consideration in the design and implementation of all prevention and response measures, to ensure the protection of children from all forms of abuse, neglect, exploitation and violence, including sexual abuse and exploitation;

*Welcoming* the June 2002 Report of the Inter-Agency Standing Committee Task-Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises and its plan of action to address the problem of sexual abuse and exploitation;

*Recalling* previous UNHCR policies and guidelines intended to address violence against refugees, including the 1989 Policy and 1991 *Guidelines on the Protection of Refugee Women*; the 1993 *Policy on Refugee Children* and 1994 *Refugee*

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<sup>55</sup> Report of the 54th Session, UN doc. A/AC.96/987, 10 October 2003, para. 23 (footnotes from the original).

<sup>56</sup> UN doc. A/57/465, 11 Oct. 2002.

*Children: Guidelines on Protection and Care, the 1995 Sexual Violence against Refugees: Guidelines on Prevention and Response, as updated in 2003; and the High Commissioner's 2001 Five Commitments to Refugee Women;*

Noting the issuance in May 2003 of UNHCR's revised *Guidelines on Sexual and Gender-Based Violence in Refugee, Returnee and Displaced Situations*, as well as the UNHCR *Guidelines on International Protection, Gender-Related Persecution*, of May 2002, and noting UNHCR's endeavours to address the problem of sexual and gender-based violence in the field and the various training initiatives undertaken to date to provide staff with the practical skills necessary to meet the protection needs of victims of sexual abuse and exploitation;

Welcoming UNHCR's efforts to address the problem through the promulgation and implementation of a Code of Conduct for UNHCR staff, in accordance with the plan of action of the Inter-Agency Standing Committee's Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises; and the amendment of its programme implementation sub-agreements to include a requirement for implementing partners to have similar Codes of Conduct and for these to be implemented fully;

(a) *Calls upon* States, UNHCR and its implementing and operational partners to ensure that appropriate systems to prevent and respond to sexual and gender-based violence, including sexual abuse and exploitation, are in place, ensuring the needs of women and children, as well those of vulnerable persons, are addressed at all times; and recommends that measures to combat sexual abuse and exploitation of refugees and asylum-seekers be guided by the importance of:

- (i) Ensuring explicit reference in codes of conduct and other relevant policies to the responsibilities of relevant personnel to prevent and respond appropriately to sexual and gender-based violence, including sexual abuse and exploitation;
- (ii) Ensuring the prompt investigation of allegations of sexual abuse and exploitation;
- (iii) Ensuring that actions undertaken on behalf of refugees and asylum-seekers, including women, children and vulnerable persons, enhance their meaningful participation in decision-making processes; that they are provided with sufficient information to form their opinions, and channels for communicating their concerns to humanitarian agencies, and are provided with full information about refugee protection and available assistance;
- (iv) Ensuring that needs assessments, evaluations and reports, identify vulnerabilities to sexual exploitation and abuse and provide a basis for improved programme planning that minimizes risks and opportunities for sexual abuse and exploitation, and that protection and assistance processes, taking into account the quantity and quality of assistance and distribution methods, including supervision, are designed and implemented in a manner that reduces the risk of sexual abuse and exploitation;
- (v) Ensuring that camp governance is conducted in an equitable manner that empowers women, children and vulnerable groups and that the physical

- layout of camps is designed in such a way as to make such individuals less vulnerable to sexual abuse and exploitation;
- (vi) Ensuring that easily accessible and confidential complaint and redress mechanisms are in place for victims of sexual abuse and exploitation, and that they appropriately apply sanctions to perpetrators and ensure that such mechanisms respect due process rights of the accused, and safeguard the security and rights of the victim or witnesses;
  - (vii) Ensuring the existence of adequate remedial measures in order to appropriately care for victims of sexual abuse and exploitation;
  - (viii) Conducting training and capacity building on the prevention and response to sexual abuse and exploitation;
- (b) *Calls upon* UNHCR to continue to pursue its ongoing activities taken in the area of sexual abuse and exploitation with particular attention to:
- (i) Ensuring full implementation of respective policies, codes of conduct, the guidelines on sexual and gender-based violence in refugee, returnee and internally displaced situations, as well as the UNHCR guidelines on gender-related persecution;
  - (ii) Implementing the relevant recommendations from the evaluations of UNHCR's activities in the area of refugee women, refugee children and community services;
  - (iii) Ensuring adequate levels of monitoring and supervision of programmes for prevention and protection from sexual abuse and exploitation, including through physical presence, and to support staff at field level to implement concrete programmes of action;
  - (iv) Developing mechanisms to ensure accountability, including at senior levels, in the implementation of all protection and assistance activities to prevent sexual and gender-based violence;
  - (v) Promoting gender balance in staff at all levels, both at headquarters and in the field, as well as expert and specialist competence, while having regard to merit selection principles;
- (c) *Urges* all States, consistent with applicable international refugee, human rights and humanitarian law:
- (i) to protect refugees and asylum-seekers, especially children, from all forms of abuse, neglect, exploitation and violence; and
  - (ii) to cooperate in eliminating all forms of discrimination, sexual exploitation and violence against female refugees and asylum-seekers, and to promote their active involvement in decisions affecting their lives and communities;
- (d) *Urges* States to respect and ensure the right of all individuals within their territory and subject to their jurisdiction, to security of person, *inter alia* by enforcing relevant national laws, consistent with international law, and by adopting concrete measures, where they do not exist, to prevent and combat sexual abuse and exploitation including through:
- (i) The development and implementation of training programmes, guidelines and other practical measures aimed at promoting respect by all government officials, as well as persons acting on behalf of the State, who have contact with refugee populations, for the right of every

- individual to security of person and at promoting protection from sexual abuse and exploitation;
- (ii) Appropriate follow-up action in response to allegations of sexual violence and exploitation including, where necessary, by implementation of remedies, such as facilitating the filing and investigation of complaints of sexual violence and exploitation, the prosecution of offenders, and timely and proportional disciplinary sanctions in cases of abuse of power or gross negligence resulting in sexual exploitation;
  - (iii) Complaint and redress mechanisms, where appropriate, which are easily accessible, do not compromise the security of the survivors or other informants, and give due regard to confidentiality. Such complaint mechanisms should, where feasible, provide victims and witnesses with referrals to support services with appropriately trained personnel, including in particular female counsellors;
- (e) *Calls on* States to ensure that all humanitarian agencies funded by them and working with refugees integrate and promote policies consistent with the core principles of the plan of action of the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises;
- (f) *Calls on* UNHCR to support its internal investigation capacity within the Inspector General's Office to ensure that the Office is able to react swiftly and effectively to ascertain the veracity of any allegations of sexual abuse or exploitation by UNHCR or implementing partner staff;
- (g) *Calls upon* the international community in cooperation with UNHCR and other international organisations to mobilize the resources necessary to ensure the provision of protection and material assistance in support of host countries, based on international solidarity, cooperation, burden and responsibility-sharing, since inadequate protection, or inadequate, inappropriate or poorly distributed assistance can increase the vulnerability of refugees and asylum-seekers to sexual abuse and exploitation;
- (h) *Calls upon* UNHCR to continue its cooperation with other actors to ensure protection from exploitation and abuse of refugees and asylum-seekers, including through participation in the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, and other coordination mechanisms;
- (i) *Calls upon* UNHCR to continue to report on a regular basis on progress made in the implementation of measures to combat sexual abuse and exploitation.

No. 101 (LV) – 2004      Legal Safety Issues in the Context of Voluntary Repatriation of Refugees<sup>57</sup>

*The Executive Committee,*

*Recalling* its Conclusion No. 18 (XXXI) and Conclusion No. 40 (XXXVI) on voluntary repatriation, as well as Conclusion No. 74 (XLV) paragraphs (y), (z) and (aa),

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<sup>57</sup> *Report of the 55<sup>th</sup> Session, UN doc. A/AC.96/1003, 987, 12 October 2004, para. 23 (footnotes omitted).*

*Recalling* its Conclusion No. 96 and *noting* that the present Conclusion does not apply to persons found not to be in need of international protection,

*Noting* the relevance for voluntary repatriation of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women,

*Expressing* appreciation for the useful discussions on voluntary repatriation, which took place in the context of the third track of the Global Consultations on International Protection; and agreeing with the importance of working towards improved conditions for voluntary repatriation and of strengthening cooperation to make such repatriation sustainable in line with Goal 5, Objectives 2 and 3 of the Agenda for Protection which resulted from those discussions,

*Reaffirming* that voluntary repatriation, local integration and resettlement are the traditional solutions for refugees, and that all remain viable and important responses to refugee situations; *reiterating* that voluntary repatriation, where and when feasible, remains the preferred solution in the majority of refugee situations; and *noting* that a combination of solutions, taking into account the specific circumstances of each refugee situation, can help achieve lasting solutions,

*Reaffirming* the voluntary character of refugee repatriation, which involves the individual making a free and informed choice through, *inter alia*, the availability of complete, accurate and objective information on the situation in the country of origin; and *stressing* the need for voluntary repatriation to occur in and to conditions of safety and dignity,

*Recognizing* in the context of voluntary repatriation the importance of resolute efforts in the country of origin to create conditions that foster the voluntary and safe return of refugees and to ensure the restoration of national protection,

*Recognizing* the complexities of large-scale voluntary repatriation and the difficulties which the country of origin may face in seeking to follow the guidance provided in this Conclusion,

*Noting* the value of countries of origin addressing issues which are of a legal or administrative nature as a means of building confidence, facilitating decisions to return and ensuring sustainable reintegration,

*Emphasizing* that some legal or administrative issues may only be addressed over time; and *recognizing* that voluntary repatriation can and does take place without all of the legal and administrative issues addressed in this Conclusion having first been resolved,

*Recognizing* the usefulness of States, as countries of asylum or countries of origin, and UNHCR concluding, where appropriate, tripartite agreements to facilitate voluntary repatriation efforts, thereby setting out the core elements and modalities of voluntary repatriation, the respective roles and responsibilities of the relevant actors involved, and the obligations of States with respect to returning refugees, while also noting that, under certain circumstances, voluntary repatriation may take place without such agreements,

*Recognizing* also the importance of spontaneous voluntary repatriation of refugees and that actions to promote organized voluntary repatriation should not create obstacles to the spontaneous return of refugees,

*Noting* the desirability of incorporating appropriate legal protections for returning refugees in peace agreements, whenever possible, as a measure to build confidence and in support of their promotion in practice,

*Acknowledging* the importance of promoting an age- and gender-sensitive approach in all aspects of refugee return processes; and, in this regard, *encouraging* UNHCR to develop appropriate standards and indicators that account for such factors in repatriation and reintegration programmes,

*Underlining* the need for strengthened cooperation among countries of origin, host countries, UNHCR and other international organizations and the international community, to ensure that voluntary repatriation will be sustainable,

*Noting* that reconciliation in post-conflict situations is a key challenge and that addressing this from the outset, where necessary through transitional justice mechanisms, and involving communities, may contribute to creating conditions conducive to voluntary repatriation and sustainable reintegration,

- (a) *Invites* countries of origin, in cooperation with UNHCR, other States and other concerned actors, as necessary and appropriate, to address, at an early stage, issues of a legal and administrative nature which are likely to hinder voluntary repatriation in safety and dignity, by taking into consideration, *inter alia*, the guidance included in the operative paragraphs that follow;
- (b) *Reaffirms* that refugees have the right to return to their own country and that States have the obligation to receive back their own nationals and should facilitate such return; *urges* States to issue necessary travel documents, if required, to facilitate such return; *calls* upon transit countries to assist in the facilitation of return; and also *notes* that refugees may be required to be subject to brief interviews at the relevant border entry point by the authorities of the country of origin for purposes of identification;
- (c) *Recognizes* that refugees, in exercising their right to return to their own country, should, in principle, have the possibility to return to their place of origin, or to a place of residence of their choice, subject only to restrictions as permitted by international human rights law; and, in this context, *notes* the importance of efforts that seek to mitigate the likelihood that returning refugees could become internally displaced;
- (d) *Emphasizing* that in the context of voluntary repatriation countries of asylum have the responsibility to protect refugees from threats and harassment, including from any groups or individuals who may impede their access to information on the situation in the country of origin or may impede the exercise of their free will regarding the right to return;
- (e) *Reaffirms* that voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin in order not to impede the exercise of the refugees' right to return; and *recognizes* that the voluntary repatriation and reintegration process is normally guided by the conditions in the country of origin;
- (f) *Strongly urges* countries of origin to ensure that returning refugees do not face a risk of persecution, discrimination or detention due to their departure from the country

or on account of their status as refugees, or their political opinion, race, ethnic origin, religious belief or membership of a particular social group;

(g) *Recognizes* the utility of amnesties in encouraging voluntary repatriation and *recommends* that countries of origin issue amnesty declarations granting returning refugees immunity from prosecution for having left or remaining outside the country of origin; and further *recognizes*, however, that amnesties should not be extended to returning refugees charged with, *inter alia*, a serious violation of international humanitarian law, or genocide, or a crime against humanity, or a crime constituting a serious violation of human rights, or a serious common crime involving death or serious bodily harm, committed prior to or during exile;

(h) *Recognizes* that, in principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile; *notes*, therefore, the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees' property; and also *notes* that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin;

(i) *Stresses* the desirability of ensuring that any restitution and compensation framework takes account of the situation of returning refugee women, in particular, where women, especially female heads of households, are prevented from securing property rights in accordance with inheritance laws or where inheritance procedures prevent them from recovering their property within a reasonable period of time;

(j) *Encourages* countries of origin to provide homeless returning refugees, as appropriate, with access to land and/or adequate housing, comparable to local standards;

(k) *Notes* the importance of ensuring nationality; and *urges* countries of origin to ensure that there is no exclusion of returning refugees from nationality and that statelessness is thus avoided; and *recalls* in this context Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and the protection of stateless persons;

(l) *Notes* also the importance of providing under national law for the recognition of the civil status of returning refugees and changes thereto, including as a result of births, deaths, adoptions, marriage and divorce, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere, taking into account the special situation of returning refugee women who may not have documentation proving their civil status or who may face difficulties securing recognition of documentation issued by the authorities of the country of asylum;

(m) *Calls on* countries of origin and countries of habitual residence to accept back refugees who are non-nationals but have been habitually resident in that country, including those who were previously stateless there;

(n) *Stresses* the importance of family unity during and following voluntary repatriation; and *calls upon* States, where necessary, to assist spouses and family members of different nationalities to remain together as families;

(o) *Notes* the importance of skills of returning refugees for self-reliance and, in this context, *calls upon* countries of origin to ensure non-discriminatory access for returning refugees to processes, where they exist, to recognize the equivalency of academic, professional and vocational diplomas, certificates and degrees acquired by returning

refugees while abroad; and *encourages* countries of origin to recognize the equivalency of primary and secondary education received abroad by returning refugees;

(p) *Recommends* that in consultation with refugee communities consideration be given to addressing the specific needs of returning refugees – including women, children, older people and other persons with special concerns – in order to ensure that they receive adequate protection, assistance and care throughout the repatriation and initial reintegration process; and *stresses* in this context that particular attention needs to be given to ensure that unaccompanied or separated children are not returned prior to successful tracing of family members or without specific and adequate reception and care arrangements having been put in place in the country of origin;

(q) *Reiterates* that UNHCR, in line with its mandate responsibility, be given free and unhindered access to returning refugees, as needed, in particular, so as to monitor the latter's proper treatment in accordance with international standards, including as regards the fulfilment of amnesties, guarantees or assurances on the basis of which refugees have returned;

(r) *Encourages* the country of origin, host countries and UNHCR in cooperation with other relevant actors to provide refugees with complete, objective and accurate information, including on physical, material and legal safety issues, prior to their voluntary repatriation to and reintegration in the country of origin;

(s) *Encourages* UNHCR to collaborate with other United Nations entities, international and non-governmental organizations, in particular those with mandates and expertise in rule of law, development and peacekeeping as well as peace-building, with a view to removing legal, administrative and other barriers to return in countries of origin, and, in doing so, contributing more generally to promoting the rule of law and respect for human rights and fundamental freedoms;

(t) *Encourages* the international community at large to mobilize adequate and sustained support to countries of origin, particularly those emerging from conflict, to assist them to restore national protection to, including respect for the human rights of, their citizens and former habitual residents, including returning refugees.

## No. 103 (LVI) – 2005      The Provision of International Protection including through Complementary Forms of Protection<sup>58</sup>

*The Executive Committee,*

*Reaffirming* that the 1951 Convention relating to the Status of Refugees together with its 1967 Protocol continue to serve as the cornerstone of the international refugee protection regime; and *noting in this regard* the fundamental importance of their full application by State Parties, including that of the fundamental principle of *non-refoulement*,

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<sup>58</sup> *Report of the 56th Session, UN doc. A/AC.96/1021, 7 Oct. 2005, para. 21. This Conclusion addresses only the situation of persons who fall under the mandate of UNHCR.*

*Recognizing* that, in different contexts, there may be a need for international protection in cases not addressed by the 1951 Convention and its 1967 Protocol; and *recalling in this regard* paragraph (l) of its Conclusion No. 74 (XLV),

*Reaffirming* the principle that all human beings shall enjoy human rights and fundamental freedoms without discrimination, including the right to seek and enjoy asylum,

*Underlining* the value of regional instruments, as and where applicable, including notably the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, as well as the 1984 Cartagena Declaration on Refugees, which include among refugees 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 the European Union, which recognizes certain international protection needs beyond the 1951 Convention and its 1967 Protocol,

*Recalling* that international and regional instruments to address the problem of statelessness, such as the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, where applicable, are important tools for State Parties to use, in particular to avoid and resolve situations of statelessness and, where necessary, to further the protection of stateless persons,

*Acknowledging* that in many countries a number of administrative or legislative mechanisms are in place for regularizing, on a variety of grounds, the stay of persons, including those who may not be eligible for refugee protection but who may be in need of international protection,

*Noting* the value of establishing general principles upon which complementary forms of protection for those in need of international protection may be based, on the persons who might benefit from it, and on the compatibility of these forms of protection with the 1951 Convention and its 1967 Protocol and other relevant international and regional instruments,

- (a) *Urges* State Parties to implement their obligations under the 1951 Convention and/or its 1967 Protocol fully and effectively in accordance with the object and purpose of these instruments;
- (b) *Calls upon* State Parties to interpret the criteria for refugee status in the 1951 Convention and/or its 1967 Protocol in such a manner that all persons who fulfil these criteria are duly recognized and protected under those instruments, rather than being accorded a complementary form of protection;
- (c) *Recognizes* that refugee law is a dynamic body of law based on the obligations of State Parties to the 1951 Convention and its 1967 Protocol and, where applicable, on regional refugee protection instruments, and which is informed by the object and purpose of these instruments and by developments in related areas of international law, such as human rights and international humanitarian law bearing directly on refugee protection;
- (d) *Reiterates* the need to ensure that the integrity of the asylum system is not abused by the extension of 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;

- (e) *Calls on* the State Parties to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness to apply these instruments in good faith, bearing in mind their protection objectives; and *requests* UNHCR actively to promote accession to these instruments;
- (f) *Calls on* States to make maximum use of existing protection instruments when addressing international protection needs; and *encourages* States that have not already done so to consider accession to the 1951 Convention and the 1967 Protocol and to relevant, applicable regional instruments and/or to consider lifting existing limitations or withdrawing reservations in order to ensure the widest possible application of the protection principles they contain;
- (g) *Calls upon* all State Parties, as applicable, to adopt the necessary national legislation or procedures to give effect to regional refugee instruments;
- (h) *Acknowledges* that complementary forms of protection provided by States to ensure that persons in need of international protection actually receive it are a positive way of responding pragmatically to certain international protection needs;
- (i) *Encourages* the use of complementary forms of protection for individuals in need of international protection who do not meet the refugee definition under the 1951 Convention or the 1967 Protocol;
- (j) *Realizes* that States may decide to allow prolonged stay for compassionate or practical reasons; and recognizes that such cases must be clearly distinguished from cases where there are international protection needs;
- (k) *Affirms* that measures to provide complementary protection should be implemented in a manner that strengthens, rather than undermines, the existing international refugee protection regime;
- (l) *Notes* that temporary protection, without formally according refugee status, as a specific provisional protection response to situations of mass influx providing immediate emergency protection from refoulement, should be clearly distinguished from other forms of international protection;
- (m) *Affirms* that relevant international treaty obligations, where applicable, prohibiting *refoulement* represent important protection tools to address the protection needs of persons who are outside their country of origin and who may be of concern to UNHCR but who may not fulfil the refugee definition under the 1951 Convention and/or its 1967 Protocol; and *calls upon* States to respect the fundamental principle of *non-refoulement*;
- (n) *Encourages* 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;
- (o) *Recommends* that, where it is appropriate to consider the ending of complementary forms of protection, States adopt criteria which are objective and clearly and publicly enunciated; and *notes* that the doctrine and procedural standards developed in relation to the cessation clauses of Article 1C of the 1951 Convention may offer helpful guidance in this regard;
- (p) *Notes* that States may choose to consult with UNHCR, if appropriate, in view of its particular expertise and mandate, when they are considering granting or ending a

form of complementary protection to persons who fall within the competence of the Office;

- (q) *Encourages* States to consider whether it may be appropriate to establish a comprehensive procedure before a central expert authority making a single decision which allows the assessment of refugee status followed by other international protection needs, as a means of assessing all international protection needs without undermining refugee protection and while recognizing the need for a flexible approach to the procedures applied;
- (r) *Notes* that, where applicable, in considering a comprehensive procedure, the applicable procedure should be fair and efficient;
- (s) *Underlines* the importance of applying and developing the international refugee protection system in a way which avoids protection gaps and enables all those in need of international protection to find and enjoy it.

#### No. 104 (LVI) – 2005 Local Integration<sup>59</sup>

*The Executive Committee,*

*Reaffirming* that voluntary repatriation, local integration and resettlement are the traditional durable solutions, and that all remain viable and important responses to refugee situations; *reiterating* that voluntary repatriation, in safety and dignity, where and when feasible, remains the most preferred solution in the majority of refugee situations; *noting* that a combination of solutions, taking into account the specific circumstances of each refugee situation, can help achieve lasting solutions; and *agreeing* that local integration is a sovereign decision and an option to be exercised by States guided by their treaty obligations and human rights principles, and that the provisions of this Conclusion are for the guidance of States and UNHCR when local integration is to be considered,

*Recalling* the Agenda for Protection Goal 5, Objective 4 requesting the Executive Committee to set out framework considerations for implementing the solution of local integration in the form of a Conclusion; and *noting* that the provisions of this Conclusion are intended to guide States in their consideration of whether local integration, taking into account the specific circumstances of each refugee situation, may be an appropriate durable solution for persons accepted as refugees in their territory pursuant to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, or under the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, or the 1984 Cartagena Declaration on Refugees, or under domestic law, as applicable, as well as when implementing it,

*Recalling* that the ultimate goal of international protection is to achieve durable solutions for refugees; and *noting* that a solutions orientation is inherent in General Assembly Resolution 428 (V) of 14 December 1950 adopting the Statute of the Office of the United Nations High Commissioner for Refugees, in the Statute itself, and in the 1951 Convention through its provisions on cessation, integration and naturalization,

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<sup>59</sup> Report of the 56<sup>th</sup> Session, UN doc. A/AC.96/1021, 7 October 2005, para. 22.

*Considering* that refugee situations are international in scope and nature and therefore *reiterating* its strong commitment to international solidarity and burden and responsibility sharing; and *reaffirming* UNHCR's catalytic role in assisting and supporting countries receiving refugees, particularly developing countries and countries with economies in transition, and in mobilizing financial assistance and other forms of support, including development assistance from the international community to address the impact of large-scale refugee populations,

*Acknowledging* that the global refugee situation represents an international challenge requiring international burden and responsibility sharing to be addressed effectively; and, *recognizing* that allowing for local integration, where applicable, is an act of States which is a durable solution for refugees that contributes to that burden and responsibility sharing, without prejudice to the specific situation of certain developing countries facing mass influxes,

*Reiterating* that coordinated national and international efforts aimed at addressing the factors that lead to the flow of refugees should continue,

*Expressing* appreciation for the efforts made in recent years to redouble the search for durable solutions in the context of the Global Consultations on International Protection and of the Agenda for Protection, which fostered, *inter alia*, the Convention Plus initiative and the Framework for Durable Solutions,

*Recognizing* that some countries of asylum carry a heavy burden, in particular developing countries, countries with economies in transition and least developed countries which host large numbers of refugees and asylum-seekers, especially when they have arrived as part of a mass influx and have remained for a long period of time,

*Noting* that local integration in the refugee context is a dynamic and multifaceted two-way process, which requires efforts by all parties concerned, including a preparedness on the part of refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and to meet the needs of a diverse population,

*Recognizing* that local integration needs to be undertaken in a manner that sustains the viability of local communities affected by the presence of refugees and that a failure to do so may result in an unreasonable burden being placed on host countries,

*Affirming* the value of strengthening capacities in host countries as well as of initiatives enhancing the ability of refugee communities to become self-reliant, as and when appropriate, with adequate support from the international community for the host country and the refugees living there,

*Recognizing* that promoting the self-reliance of refugees from the outset will contribute towards enhancing their protection and dignity, help refugees manage their time spent in exile effectively and constructively, decrease dependency and enhance the sustainability of any future durable solution,

*Recognizing* the positive contributions, including economic benefits, which refugees who integrate locally or who are allowed to become self-reliant could make to host countries and communities,

*Recalling* Executive Committee Conclusion No. 15, 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 a particular social group, nationality or

country of origin; and *acknowledging* in this context that integration potential should not be a criterion for granting asylum,

- (a) *Recognizes* that the provisions of this Conclusion are intended to guide States in their consideration of whether local integration may be an appropriate durable solution for persons accepted as refugees in their territory pursuant to the 1951 Convention and its 1967 Protocol, or under the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, or the 1984 Cartagena Declaration on Refugees, or under domestic law, as applicable, as well as when implementing it;
- (b) *Acknowledges* the importance of comprehensive approaches especially for the resolution of protracted and large-scale refugee situations, which incorporate, as appropriate and given the specifics of each refugee situation, voluntary repatriation, local integration and resettlement;
- (c) *Encourages* States, UNHCR and other relevant actors to engage in consultations to develop, as early on as possible in a refugee situation, comprehensive arrangements that draw upon appropriate solutions, including through a combination of solutions, and which recognize the challenges involved with the timing and sequencing of solutions; and *emphasizes* the important place which local integration can have in such comprehensive arrangements;
- (d) *Notes* that the 1951 Convention and its 1967 Protocol set out rights and minimum standards for the treatment of refugees that are geared towards the process of integration; recognizes the need for State Parties to implement their obligations under these instruments fully and effectively; and therefore *encourages* State Parties maintaining reservations to consider withdrawing them; and *calls on* States to facilitate, as appropriate, the integration of refugees, including, as far as possible, through facilitating their naturalization;
- (e) *Encourages* States, UNHCR and other relevant actors when preparing comprehensive arrangements to consider the characteristics of individuals and groups of refugees within a broader refugee population who could benefit from voluntary repatriation, local integration or resettlement;
- (f) *Urges* States and UNHCR to continue working proactively on local integration where appropriate and feasible and in a manner that takes into account the needs and views of both refugees and their hosting communities;
- (g) *Notes* that the criteria for identifying refugees who could benefit from local integration should be clear and objective and be applied in a non-discriminatory manner;
- (h) *Reaffirms* the importance, in this respect, of registration, or ad hoc surveys where these take place, as a means of facilitating the implementation of appropriate durable solutions; and *encourages* States and UNHCR to utilize the registration data of refugees in this process, in a manner that fully respects international norms and standards regarding the protection of personal data;
- (i) *Notes* that characteristics which may assist in determining circumstances in which local integration can be an appropriate durable solution could include, subject to States' consideration:
  - (i) refugees born in asylum countries who might otherwise become stateless; and/or

- (ii) refugees who, due to their personal circumstances including the reasons prompting their flight, are unlikely to be able to repatriate to their country of origin in the foreseeable future; and/or
  - (iii) refugees who have established close family, social, cultural and economic links with their country of asylum, including those who already have, or have the capacity to attain, a considerable degree of socio-economic integration.
- (j) *Welcomes* the practice in States with developed asylum systems of allowing refugees to integrate locally; and calls on these States to continue supporting refugees' ability to attain this durable solution through the timely grant of a secure legal status and residency rights, and/or to facilitate naturalization;
- (k) *Acknowledges* that the process of local integration is complex and gradual, comprising three distinct but inter-related legal, economic, and social and cultural dimensions, all of which are important for refugees' ability to integrate successfully as fully included members of society; and notes that refugees' understanding of these dimensions may need to be facilitated through proper counselling and advice;
- (l) *Affirms* the particular importance of the legal dimension of integration, which entails the host State granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalizing, and in this respect:
- (i) *recognizes* the relevance of the 1951 Convention and its 1967 Protocol and relevant human rights instruments as providing a useful legal framework for guiding the local integration process;
  - (ii) *recognizes* further that in support of the legal process, host countries may need technical and financial support to adapt and revise their national legal and administrative frameworks to allow refugees equal enjoyment of rights, services and programmes without discrimination;
- (m) *Notes* the important part, subject to States' consideration, self-reliance plays in the economic dimension of local integration of refugees whereby individuals, households and communities are enabled increasingly to become self-sufficient and can contribute to the local economy, and in this respect:
- (i) *recognizes* 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;
  - (ii) *encourages* all States hosting refugees to consider ways in which refugee employment and active participation in the economic life of the host country can be facilitated, *inter alia*, through education and skills development, and to examine their laws and practices, with a view to identifying and to removing, to the extent possible, existing obstacles to refugee employment; and in this regard, affirms the relevance of the 1951 Convention in providing a framework for the creation of conditions conducive to the self-reliance of refugees;
  - (iii) *encourages* States, wherever possible, to recognize the equivalency of academic, professional and vocational diplomas, certificates and degrees acquired by refugees prior to entry into the host country;

- (iv) *notes* that facilitating refugees' access to agricultural land in rural areas where appropriate and when feasible is a positive contribution by all States, which can help foster opportunities for self-reliance and enhance the food security of refugees and the local population;
- (n) *Emphasizes* that the social and cultural dimension of local integration requires refugees to make conscientious efforts to adapt to the local environment and respect and understand new cultures and lifestyles, taking into consideration the values of the local population, and requires the host community to accept refugees into its socio-cultural fabric, both processes being underpinned by values of diversity, non-discrimination and tolerance, and in this respect:
  - (i) *encourages* the implementation of anti-discrimination policies and awareness-raising activities aimed at combating institutionalized discrimination and at promoting the positive aspects of a diverse society and interaction between refugees, the local population, civil society and refugee organizations;
  - (ii) *urges* States and all relevant actors to combat intolerance, racism and xenophobia, including obstacles faced by refugee women, and to foster empathy and understanding through public statements, appropriate legislation and social policies, especially with regard to the special situation of refugees with the aim of allowing refugees to participate actively in the civic, economic, and social and cultural life of the host country;
  - (iii) *recognizes* the link between education and durable solutions; and *calls on* States, UNHCR and relevant actors to strengthen their efforts to assist host countries in ensuring refugee children's access to education;
  - (iv) *reaffirms* the importance of family unity and reunification as referred to in its Conclusions Nos. 9, 24, 84, and 88; and *recognizes* that family members can reinforce the social support system of refugees, and in so doing, promote the smoother and more rapid integration of refugee families;
- (o) *Emphasizes* that age and gender sensitive approaches, and attention to participatory and community development processes should permeate all activities aimed at enhancing the capacities of refugees to integrate locally, recognizing changes in gender roles following displacement and the need for different strategies and support to boost the integration capacity of various groups with special needs, such as refugee women, refugee children and older refugees;
- (p) *Encourages* UNHCR to develop and apply appropriate standards and indicators that account for age and gender considerations in local integration and self-reliance programmes;
- (q) *Acknowledges* that, regardless of whether local integration takes place in an industrialized or a developing State, it requires the host State to take the lead role, as well as the sustained commitment of all stakeholders of the necessary time and resources; and *recognizes* the important role which members of civil society, including non-governmental organizations, can play in fostering an environment conducive to local integration;
- (r) *Recognizes* the importance, in the interest of burden and responsibility sharing, of international cooperation and assistance for building the capacity of developing

countries and countries with economies in transition with limited resources so as to assist these States in integrating refugees locally, where appropriate and feasible; and *recommends* that the planning, design and implementation of local integration programmes include elements aimed at strengthening the capacity of host State institutions, local communities, and civil society, including non-governmental organizations, refugees and their communities;

(s) *Stresses* the importance of including refugee hosting areas in national development plans and strategies of the host country for sustainable funding; notes the relevance, in this respect, of the common country assessments (CCA) and United Nations Development Assistance Frameworks (UNDAF), as well as Poverty Reduction Strategy Papers (PRSP); and notes the value of the Development through Local Integration (DLI) integrated programming approach as a methodology for partnerships with donor countries, financial institutions and with United Nations and other development agencies.

#### No. 105 (LVII) – 2006 Conclusion on Women and Girls at Risk<sup>60</sup>

*The Executive Committee,*

*Recalling* its Conclusions Nos. 39 (XXXVI), 54 (XXXIX), 60 (XL) and 64 (XLI) on refugee women; Nos. 47 (XXXVIII), 59 (XL) and 84 (XLVIII) on refugee children and/or adolescents; Nos. 73 (XLIV) and 98 (LIV) on refugee protection and sexual violence and protection from sexual abuse and exploitation respectively, and No. 94 (LIII) on the civilian and humanitarian character of asylum,

*Recalling* that Security Council resolution 1325 (2000) on women and peace and security and the subsequent Action Plan (S/2005/636) provide an integrated framework for a consolidated international and UN-wide response to this challenge, that Security Council resolution 1261 (1999) and five subsequent resolutions on children and armed conflict, call on governments, parties to a conflict and other organizations, including UN bodies, to take wide-ranging action to protect children in armed conflict and afterwards, and that Security Council resolutions 1265 (1999), 1296 (2000) and 1674 (2006), similarly call on parties to armed conflict to ensure the protection of affected civilians, including women and children,

*Acknowledging* that, while forcibly displaced men and boys also face protection problems, women and girls can be exposed to particular protection problems related to their gender, their cultural and socio-economic position, and their legal status, which mean they may be less likely than men and boys to be able to exercise their rights and therefore that specific action in favour of women and girls may be necessary to ensure they can enjoy protection and assistance on an equal basis with men and boys,

*Recalling* that the protection of women and girls is primarily the responsibility of States, whose full and effective cooperation, action and political resolve are required to enable UNHCR to fulfil its mandated functions; and that all action on behalf of women and girls must be guided by obligations under relevant international law,

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<sup>60</sup> *Report of the 57<sup>th</sup> Session*, UN doc. A/AC.96/1035, 10 October 2006, para. 17 (footnotes and hyperlinks from the original).

including, as applicable, international refugee law, international human rights law and international humanitarian law,

*Bearing in mind* Conclusion No. 75 (XLV) on internally displaced persons and *noting* that the protection challenges for internally displaced persons (IDPs) and refugees may differ, that the normative legal frameworks for their protection are different, that humanitarian access to internally displaced persons can be more difficult, that internally displaced women and girls are more likely to be caught in armed conflict and may face specific protection risks as a result and that the responses and solutions available to refugee and internally displaced women and girls may be different,

*Recognizing* that, while women and girls may be exposed to certain risks, such as trafficking, in any location, the different nature of camp and urban environments can expose women and girls to different protection risks and that in camps, for example, their freedom of movement and capacity to earn a livelihood may be more restricted and they may be more exposed there to sexual and gender-based violence (SGBV), whereas in urban situations, they may be less able to exercise their rights effectively, to access protection and services or reach UNHCR or implementing partner offices,

*Acknowledging* that the challenges involved in securing the protection of women and girls at risk must be addressed in a holistic manner and that protection partnerships with governments, UNHCR, other UN agencies, other international organizations and non-governmental organizations, together with displaced and host communities, are integral to effective identification, responses, monitoring and solutions,

*Acknowledging* that each community is different and that an in-depth understanding of religious and cultural beliefs and practices is required to address the protection risks women and girls face in a sensitive manner while bearing in mind obligations under international refugee, human rights and humanitarian law,

*Reaffirming* its call to the international community, in cooperation with UNHCR and other international organizations, to mobilize the financial and other resources necessary, including in support of host communities, to ensure the provision of protection and material assistance, and of durable solutions, based on international solidarity, cooperation, burden and responsibility sharing and the understanding that inadequate protection, or inadequate, inappropriate or poorly distributed assistance can increase the risks women and girls face,

*Acknowledging* that forced displacement tends to expose individuals to particular risks, *recognizing* the specific needs of women and girls, *noting* that this Conclusion applies to women and girls who are refugees, asylum-seekers or IDPs assisted and protected by UNHCR, who find themselves in situations of heightened risk, and *further* that it could also be applied, as appropriate, to returnees of concern to UNHCR,

(a) *Adopts* this Conclusion regarding the identification of women and girls at risk, prevention strategies and individual responses and solutions and *recommends* that UNHCR include a more detailed elaboration of these issues in the UNHCR Handbook on the Protection of Women and Girls.

### **Identification of women and girls at risk**

- (b) Forced displacement can expose women and girls to a range of factors which may put them at risk of further violations of their rights. These can be present in the wider protection environment and/or be the result of the individual's particular circumstances, as outlined below.
- (c) Identification and analysis of the presence and severity of these different factors help determine which women and girls are at heightened risk and enable targeted responses to be devised and implemented. Identification can present particular challenges because women and girls are often less visible in displaced populations than men and boys, they may not be or feel able to report protection incidents, particularly if these occur in the private domain. It is therefore important to ensure an enabling environment which supports continuing identification and analysis of the situation.
- (d) In certain cases, the presence of one factor or incident may alone be sufficient to require an urgent protection intervention. In others, the presence of a combination of individual and wider protection environment factors will expose women and girls to heightened risk. In still others, if women and girls have been subjected, for instance, to SGBV in the area of origin or during flight, this may leave them at heightened risk in the place of displacement. Continuing assessment is required to monitor threat levels, as they may change over time.
- (e) Risk factors in the wider protection environment can arise as a result of and after flight for women and girls and may include problems resulting from insecurity and armed conflict threatening or exposing them to SGBV or other forms of violence; inadequate or unequal access to and enjoyment of assistance and services; lack of access to livelihoods; lack of understanding of women's and men's roles, responsibilities and needs in relation to reproductive healthcare, and lack of understanding of the consequences of SGBV on women's and girls' health; the position of women and girls in the displaced or host community which can result in their marginalization and in discrimination against them; legal systems, which do not adequately uphold the rights of women and girls under international human rights law, including those relating to property; those informal justice practices which violate the human rights of women and girls; asylum systems which are not sensitive to the needs and claims of female asylum-seekers; and mechanisms for delivering protection which do not adequately monitor and reinforce women's and girls' rights.
- (f) These factors related to the wider protection environment may be combined with individual risk factors which increase the risks for these women and girls. Individual risk factors can be grouped non-exhaustively under factors relating to their individual civil status or situation in society; their having already been subject to SGBV and/or their risk of exposure to SGBV or other forms of violence; and their need for specific health and/or other support services, including in the case of women and girls with disabilities.
- (g) Responding more effectively to protection problems faced by women and girls at risk requires a holistic approach that combines preventive strategies and individual responses and solutions. It involves collaboration between, and the involvement of, all relevant actors, including men and boys, to enhance understanding and promote respect for women's and girls' rights.

## Preventive strategies

(h) Recommended preventive strategies to be adopted by States, UNHCR, other relevant agencies and partners may include the identification, assessment and monitoring of risks.

(i) Identification, assessment and monitoring of risks faced by women and girls in the wider protection environment are to be strengthened by partnerships and actions to:

- (i) provide disaggregated data by sex and age; ensure registration on an individual and ongoing basis for refugees, recognizing the need to protect the confidential nature of personal data, and promote mechanisms to identify the internally displaced; strengthen protection monitoring of individuals by working with the community; monitor access to and enjoyment of protection, assistance and services by women and girls;
- (ii) incorporate gender issues into early warning mechanisms, alerts and contingency plans, conduct a rapid situation analysis at the start of a new emergency and integrate gender-based risk analysis into inter-agency assessments;
- (iii) mobilize women, men, girls and boys of all ages and diverse backgrounds as equal partners together with all relevant actors in participatory assessments to ensure their protection concerns, priorities, capacities and proposed solutions are understood and form the basis of protection strategies and solutions;
- (iv) mainstream age, gender and diversity analysis into all programmes, policies and operations to ensure all can benefit equally from activities and inequality is not perpetuated;
- (v) promote gender balance in staff recruitment and take active measures to increase the number of female professionals working in the field;
- (vi) identify and prevent SGBV and strengthen the capacity of national and local authorities to carry out their protection functions more effectively.

(j) Secure environments are to be established and strengthened, including by partnerships and actions to:

- (i) prevent and respond to SGBV in accordance with international standards set out in UNHCR and other relevant guidelines,<sup>61</sup> including through provision of quality health services to address the specific needs of women and girls at risk;
- (ii) maintain the civilian and humanitarian character of asylum, which is a primary responsibility of host States;

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<sup>61</sup> See for example UNHCR, [Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response](#), 2003; Inter-Agency Standing Committee (IASC), [Guidelines for Gender-based Violence Interventions in Humanitarian Settings](#), 2005.

- (iii) ensure the individual documentation of refugee women and separated and unaccompanied refugee girls and register births, marriages and divorces in a timely manner;
  - (iv) strengthen dispute resolution skills in the displaced community and take measures to assure confidentiality, so as to enable women and girls at risk to remain safely in their community and build relations between host and displaced communities to create a safe and non-exploitative environment;
  - (v) strengthen justice systems to uphold the rights of women and girls and bring perpetrators of SGBV to justice, combat trafficking and protect victims; and
  - (vi) establish and/or implement codes of conduct, including on the elimination of sexual exploitation and abuse, for all humanitarian staff, including those working in the delivery of services and for other staff in authority, such as border guards, and ensure that confidential and accessible complaints systems are in place which include investigation and follow-up, so as to encourage the reporting of abuse and exploitation where codes of conduct are breached.
- (k) The empowerment of displaced women and girls is to be enhanced including by partnerships and actions to:
- (i) strengthen women's leadership, including by enhancing their representation and meaningful participation in displaced community and camp management committees, in decision making, and in dispute resolution systems, by enhancing their access to and control over services and resources, promoting their rights and leadership skills and supporting implementation of UNHCR's Five Commitments to Refugee Women;
  - (ii) strengthen women's and girls' capacities, including by enabling their access to quality education, including secondary education, in safe school environments and by enhancing food security, livelihood opportunities, freedom of movement and economic independence, including where appropriate through access to labour markets; and
  - (iii) work with the displaced community, including men and boys, to rebuild family and community support systems undermined by conflict and flight and to raise awareness of the rights of women and girls and understanding of gender roles.
- (l) Financial and other necessary resources should also be mobilized, as appropriate, including by action to ensure the provision of protection and material assistance and timely durable solutions based on international solidarity, cooperation and burden and responsibility sharing.

### **Individual responses and solutions**

(m) Recommended actions by States, UNHCR, other relevant agencies and partners to respond to the situation of individual women and girls at risk are listed non-exhaustively below.

(n) Ensuring early identification and immediate response involves partnerships and actions to:

- (i) establish mechanisms, based on an analysis of the risk factors outlined above, to identify individual women and girls at risk, determine and implement appropriate immediate responses and subsequent solutions;
- (ii) provide women and girls at risk with information, counselling, medical and psychosocial care, as well as access to safe houses if they face domestic violence and abuse or attack by other members of the community, especially where there are no mechanisms to remove perpetrators; provide emergency voluntary relocation, e.g. to another town or camp, or emergency resettlement;
- (iii) determine the best interests of girls at risk, provide alternative accommodation, physical protection and interim foster care as required, as well as initiate family tracing and ensure family unity wherever possible and in their best interests; and
- (iv) ensure that refugee status determination procedures provide female asylum-seekers with effective access to gender-sensitive procedures and recognize that gender-related forms of persecution in the context of Article 1A (2) of the 1951 Convention relating to the Status of Refugees may constitute grounds for refugee status.

(o) Developing medium-term responses for individuals includes partnerships and actions to:

- (i) monitor on an ongoing basis initiatives taken with regard to individual safety, well-being and needs and ensure accountability for actions taken;
- (ii) help secure the access of women and girls at risk to justice and reduce impunity, including by advising, accompanying and supporting them through initiatives such as women's legal clinics, local women's associations, witness relocation programmes and mobile courts in remote areas; and
- (iii) strengthen identified individuals' access to education, vocational training and recreational programmes with childcare and promote community-based livelihood strategies which target women and girls at risk, especially in prolonged displacement situations.

(p) Recommended longer-term responses and solutions include partnerships and actions to:

- (i) promote respect for women's and girls' equal rights to make a free and informed choice to return voluntarily and to their equal access to land and property in the country of origin, and incorporate measures to ensure

- adequate ongoing assistance and support in the country of origin for those at risk into tripartite voluntary repatriation agreements;
- (ii) strengthen the use of resettlement as a protection and durable solutions tool for refugee women and girls at risk; enhance identification of refugee women and girls at risk for resettlement, including through training; streamline processing further, including by establishing measures to enable the speedier departure of refugee women at risk and their dependants;
  - (iii) consider using special evacuation programmes for internally displaced women and girls at risk, if necessary, given that resettlement is very rarely available to them;
  - (iv) establish mechanisms, where voluntary repatriation for individual refugee women and girls at risk is not a safe option and resettlement is not available, to enable them, where appropriate, to integrate locally and safely in the country of asylum, including by examining possibilities for voluntary relocation elsewhere in the country; for internally displaced women and girls at risk, examine possibilities for allowing them to relocate elsewhere in their own country if they wish and if their safety cannot be ensured where they are; and
  - (v) ensure support, such as medical and psychosocial care, is available to women and girls at risk to facilitate their recovery and integration, whether this be in the context of local integration, return, resettlement or other humanitarian programmes.
- (q) Efforts to ensure the progressive implementation of the above-mentioned mechanisms and standards can benefit greatly from partnerships and the development of relevant public policies, supported as appropriate by the international community.

No. 106 (LVII) – 2006 Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons<sup>62</sup>

*The Executive Committee,*

*Remaining* deeply concerned with the persistence of statelessness problems in various regions of the world and the emergence of new situations of statelessness,

*Recognizing* the right of States to establish laws governing the acquisition, renunciation or loss of nationality and noting that the issue of statelessness is already under consideration by the United Nations General Assembly within the broad issue of State succession,<sup>63</sup>

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<sup>62</sup> Report of the 57<sup>th</sup> Session, UN doc. A/AC.96/1035, 10 October 2006, para. 18 (footnote and hyperlink from the original).

<sup>63</sup> UNGA resolution 55/153, 23 December 2000, [Nationality of natural persons in relation to the succession of States](#).

*Expressing concern* at the serious and precarious conditions faced by many stateless persons, which can include the absence of a legal identity and non-enjoyment of civil, political, economic, social and cultural rights as a result of non-access to education; limited freedom of movement; situations of prolonged detention; inability to seek employment; non-access to property ownership; non-access to basic health care,

*Noting* that despite some progress, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness have only been ratified or acceded to by a limited number of States, sixty and thirty-two States respectively,

*Recalling* the right of every person to a nationality and the right not to be arbitrarily deprived of one's nationality as enunciated by the Universal Declaration of Human Rights and referenced in human rights instruments such as the Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child,

*Recalling* that all human beings are born free and equal in dignity and they are entitled to the rights and freedoms enshrined in the Universal Declaration of Human Rights, without distinction of any kind,

*Reaffirming* the responsibilities given to the High Commissioner by the United Nations General Assembly to contribute to the prevention and reduction of statelessness and to further the protection of stateless persons,

*Recalling* its Conclusion No 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons as well as Conclusions 90 (LII), 95 (LIV), 96 (LIV), and Conclusions 99 (LV) and 102 (LVI) with regard to solving protracted statelessness situations,

(a) *Urges* UNHCR, in cooperation with governments, other United Nations and international as well as relevant regional and non-governmental organizations, to strengthen its efforts in this domain by pursuing targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons;

### **Identification of Statelessness**

(b) *Calls on* UNHCR to continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality residing in their territory, in cooperation with other United Nations agencies, in particular UNICEF and UNFPA as well as DPA, OHCHR and UNDP within the framework of national programmes, which may include, as appropriate, processes linked to birth registration and updating of population data;

(c) *Encourages* UNHCR to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem;

- (d) *Encourages* those States which are in possession of statistics on stateless persons or individuals with undetermined nationality to share those statistics with UNHCR and *calls on* UNHCR to establish a more formal, systematic methodology for information gathering, updating, and sharing;
- (e) *Encourages* UNHCR to include in its biennial reports on activities related to stateless persons to the Executive Committee, statistics provided by States and research undertaken by academic institutions and experts, civil society and its own staff in the field on the magnitude of statelessness;
- (f) *Encourages* UNHCR to continue to provide technical advice and operational support to States, and to promote an understanding of the problem of statelessness, also serving to facilitate the dialogue between interested States at the global and regional levels;
- (g) *Takes note* of the cooperation established with the Inter-Parliamentary Union (IPU) in the field of nationality and statelessness, and *notes further* the 2005 *Nationality and Statelessness Handbook for Parliamentarians* which is being used in national and regional parliaments to raise awareness and build capacity among State administrations and civil society;

### **Prevention of Statelessness**

- (h) *Calls on* States to facilitate birth registration and issuance of birth or other appropriate certificates as a means to providing an identity to children and where necessary and when relevant, to do so with the assistance of UNHCR, UNICEF, and UNFPA;
- (i) *Encourages* States to consider examining their nationality laws and other relevant legislation with a view to adopting and implementing safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality; and *requests* UNHCR to continue to provide technical advice in this regard;
- (j) *Notes* that statelessness may arise as a result of restrictions applied to parents in passing on nationality to their children; denial of a woman's ability to pass on nationality; renunciation without having secured another nationality; automatic loss of citizenship from prolonged residence abroad; deprivation of nationality owing to failure to perform military or alternative civil service; loss of nationality due to a person's marriage to an alien or due to a change in nationality of a spouse during marriage; and deprivation of nationality resulting from discriminatory practices; and *requests* UNHCR to continue to provide technical advice in this regard;
- (k) *Stresses* that in the event of State succession, the concerned States put in place appropriate measures to prevent statelessness situations from arising as a result and take action to address such situations;
- (l) *Encourages* States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status, while fully respecting the international human rights of these individuals as well as relevant national laws;
- (m) *Calls upon* States Parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the

Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, to respect their obligation to assist in verifying the nationality of the persons referred to them who have been smuggled or trafficked with a view to issuing travel and identity documents and facilitating the return of such persons; and, *encourages* other States to provide similar assistance;

### **Reduction of Statelessness**

- (n) *Encourages* States to give consideration to acceding to the 1961 Convention on the Reduction of Statelessness and, in regard to States Parties, to consider lifting reservations;
- (o) *Encourages* UNHCR to reinforce its cooperation with other relevant United Nations agencies to assist States to reduce statelessness, particularly in protracted statelessness situations;
- (p) *Encourages* States, where appropriate and while taking note of the United Nations General Assembly Resolution 60/129 of 2005, to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies;
- (q) *Encourages* States to safeguard the right of every child to acquire a nationality, particularly where the child might otherwise be stateless, bearing in mind Article 7 of the Convention on the Rights of the Child (CRC), and *further encourages* UNHCR to cooperate with UNICEF and UNFPA to provide technical and operational support to this end;
- (r) *Encourages* States to actively disseminate information regarding access to citizenship, including naturalization procedures, through the organization of citizenship information campaigns with the support of UNHCR, as appropriate;

### **Protection of Stateless Persons**

- (s) *Encourages* States to give consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons and, in regard to States Parties, to consider lifting reservations;
- (t) *Requests* UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons;
- (u) *Encourages* States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons to treat stateless persons lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation;
- (v) *Encourages* UNHCR to implement programmes, at the request of concerned States, which contribute to protecting and assisting stateless persons, in particular by assisting stateless persons to access legal remedies to redress their stateless situation and in this context, to work with NGOs in providing legal counselling and other assistance as appropriate;

(w) *Calls on* States not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law and also *calls on* States Parties to the 1954 Convention relating to the Status of Stateless Persons to fully implement its provisions;

(x) *Requests* UNHCR to further improve the training of its own staff and those of other United Nations agencies on issues relating to statelessness to enable UNHCR to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions.