

THE REFUGEE IN INTERNATIONAL LAW

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ONLINE RESOURCE CENTRE

Annexe 5

Miscellaneous Texts

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1. 1977 Draft UN Convention on Territorial Asylum

Articles considered at the United Nations Conference on Territorial Asylum, Geneva,
10 January-4 February 1977¹

Text: Report of the United Nations Conference on Territorial Asylum: UN doc.
A/CONF.78/12 (21 April 1977).

Article 1 Grant of Asylum

Each Contracting State, acting in the exercise of its sovereignty, shall endeavour in a humanitarian spirit to grant asylum in its territory to any person eligible for the benefits of this Convention.

Additional paragraph

Asylum should not be refused by a Contracting State solely on the ground that it could be sought from another State. However, where it appears that a person requesting asylum from a Contracting State already has a connection or close links with another State, the Contracting State may, if it appears fair and reasonable, require him first to request asylum from that State.

Article 2

1. Each Contracting State may grant the benefits of this Convention to a person seeking asylum, if he, being faced with a definite possibility of:

- (a) Persecution for reasons of race, colour, national or ethnic origin, religion, nationality, kinship, membership of a particular social group or political opinion, including the struggle against colonialism and *apartheid*, foreign occupation, alien domination and all forms of racism; or
- (b) Prosecution or punishment for reasons directly related to the persecution set forth in (a);

is unable or unwilling to return to the country of his nationality, or, if he has no nationality, the country of his former domicile or habitual residence.

2. The provisions of paragraph 1 of this article shall not apply to any person with respect to whom there are serious reasons for considering that he is still liable to prosecution or punishment for:

- (a) A crime against peace, a war crime, or crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes; or
- (a *bis*) Other grave crimes as defined in multilateral conventions to which a Contracting State in which he is seeking asylum is a party; or

¹ The Committee of the Whole approved and referred to the Drafting Committee, Article 1, Article 2, Article 3, a new Article on the Question of Family Reunion and a new Article on the Question of Activities of Asylees. The Drafting Committee only completed its examination of draft Article 1. None of the draft Articles was referred back to the Committee of the Whole for reconsideration. They were not approved by the Conference in Plenary Session.

(b) An offence which would be a serious criminal offence if committed in the Contracting State from which asylum is requested;

(c) Acts contrary to the Purposes and Principles of the United Nations.

3. The provisions of paragraph 1 of this article shall also not apply to any person requesting territorial asylum for purely economic reasons.

3 *bis*. The provisions of paragraph 1 of this article shall not apply to any person whom there are serious reasons for regarding as a threat or danger to the security of the country in which he is seeking asylum.

Article 3

1. No person eligible for the benefits of this Convention in accordance with article 2, paragraph 1, subparagraphs (a) and (b), who is at the frontier seeking asylum or in the territory of a Contracting State shall be subjected by such Contracting State to measures such as rejection at the frontier, return or expulsion, which would compel him to remain in or return to a territory with respect to which he has a well-founded fear of persecution, prosecution or punishment for any of the reasons stated in Article 2.

2. The benefit of the present provision, however, may not be claimed by a person whom there are reasons for regarding as a danger to the security of the country in which he is, or who, being still liable to prosecution or punishment for, or having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community in that country or in exceptional cases, by a great number of persons whose massive influx may constitute a serious problem to the security of a Contracting State.

3. Where a Contracting State decides that an exception should be made on the basis of the preceding paragraph, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity of going to another State.

New Article on the Question of Activities of Asylees

1. A person enjoying the benefits of this Convention shall comply with the laws and regulations of the country granting asylum.

2. To the extent to which it is possible under their law, Contracting States granting asylum shall not permit persons enjoying the benefits of this Convention to engage in activities contrary to the Purposes and Principles of the United Nations as set forth in the Charter.

New Article on the Question of Family Reunion

1. Each Contracting State shall, in the interest of family reunification and for humanitarian reasons, facilitate the admission to its territory of the spouse and minor or dependent children of any person to whom it has granted the benefits of this Convention.

2. These members of the family should, save in exceptional circumstances, be given the same benefits under this Convention as that persons.

2. International Co-operation to Avert new Flows of Refugees UN General Assembly Resolution 41/70, 3 December 1986

The General Assembly,

Recalling its resolutions 35/124 of 11 December 1980, 36/148 of 16 December 1981, 37/121 of 16 December 1982, 38/84 of 15 December 1983, 39/100 of 14 December 1984 and 40/166 of 16 December 1985 on international co-operation to avert new flows of refugees,

Having considered the report of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees,

1. Commends the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees for the work it has accomplished by consensus, as reflected in its report;
2. Endorses the conclusions and recommendations contained in the report;
3. Calls upon Member States to respect, for the purpose of improving international co-operation to avert new massive flows of refugees, the recommendations and, in particular, to comply with those contained in paragraphs 66, 67 and 69 of the report;
4. Urges the main organs of the United Nations to make fuller use of their respective competences under the Charter of the United Nations for the prevention of new massive flows of refugees, as envisaged in paragraph 68 of the report;
5. Requests the Secretary-General to take the necessary steps to discharge the functions and responsibilities described in paragraphs 70 and 71 of the report;
6. Further requests the Secretary-General to bring the report to the attention of Member States and, in view of paragraph 72 of the report, of all the relevant organizations, organs and programmes of the United Nations system.

3. Report of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees, 1986 – Extracts Text: Note by the Secretary-General. UN doc. A/41/324, 13 May 1986

A. CONCLUSIONS

63. The analysis of causes and factors showed that the emergence of massive flows of refugees is the result of a number of complex and often interrelated political, economic and social problems related to, and influenced by, the overall international situation. It may affect the political and social stability, as well as the economic development, of the receiving States, and also carry adverse consequences for the economies of the countries of origin and entire regions, thus endangering international peace and security. Moreover, in view of its complex nature and magnitude, as well as its potentially destabilizing effects, averting massive flows of refugees is a matter of serious concern to the international community as a whole. In the first instance, dealing with this problem is the responsibility of the States directly concerned. Given the character of the problem, the task of averting massive flows of refugees requires improved international co-operation at all levels, in particular in the framework of the United Nations, in full

observance of the principle of non-intervention in the internal affairs of sovereign States.

64. The Group felt that measures aimed at the strengthening of international security, the development of good-neighbourly relations and the creation of an atmosphere of confidence would contribute to improving international co-operation to avert massive flows of refugees. In order to be appropriate and effective, this co-operation must address all the complex political, economic and social causes and factors of massive flows of refugees with a view to eliminating them, and it must, while this is being undertaken, contribute to the solution of those problems which are the direct cause of such flows...

65. For these purposes, the Group presents the following recommendations.

B. RECOMMENDATIONS

66. The General Assembly should call upon Member States, for the purposes of averting new massive flows of refugees, to respect in particular the following obligations:

(a) States should respect the principles contained in the Charter of the United Nations and, in particular, refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other matter inconsistent with the purposes of the United Nations, and from intervention in matters within the domestic jurisdiction of any State, in accordance with the Charter, since the violation of the aforementioned principles is particularly prone to cause new massive flows of refugees;

(b) States should use peaceful means to resolve international disputes in such a manner that international peace and security as well as justice are not jeopardized and thus improve situations that suggest a danger of future flows of refugees, in accordance with the provisions of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;

(c) In view of their responsibilities under the Charter of the United Nations and consistent with their obligations under the existing international instruments in the field of human rights, States, in the exercise of their sovereignty, should do all within their means to prevent new massive flows of refugees. Accordingly, States should refrain from creating or contributing by their policies to causes and factors which generally lead to massive flows of refugees;

(d) States should promote civil, political, economic, social and cultural rights and accordingly refrain from denying them to, and discriminating against, groups of their population because of their nationality, ethnicity, race, religion or language, thus directly or indirectly forcing them to leave their country;

(e) States should co-operate with one another in order to prevent future massive flows of refugees. They should promote international co-operation in all its aspects, in particular at the regional and subregional levels, as an appropriate and important means to avert such flows;

(f) States should, wherever new massive flows of refugees occur, respect the existing generally recognized norms and principles of international law governing the rights and obligations of States and refugees directly concerned, including those

pertaining to the rights of refugees to be facilitated in returning voluntarily and safely to their homes in their homelands and to receive adequate compensation therefrom, where so established, in cases of those who do not wish to return;

(g) States, individually and collectively, should make provisions and take appropriate measures to avert new flows of refugees which may be caused by natural disasters, as appropriate with the support of the relevant international organizations. In the event these natural disasters or other similar situations occur, States should assist the States concerned to the best of their abilities in order to alleviate the situation, as well as to avert new massive flows of refugees.

67. Taking into account the foregoing, the General Assembly should call upon Member States to co-operate with one another and with the Security Council, the Secretariat and other relevant organs of the United Nations in a fuller and more timely manner for the prevention of new massive flows of refugees and to turn to these organs at the earliest possible stage of the development of such situations.

68. The main organs of the United Nations are urged to make fuller use of their respective competences under the Charter for the prevention of new massive flows of refugees, with a view to considering at the earliest possible stage situations and problems which could give rise to massive flows of refugees.

69. Furthermore, the General Assembly should consider calling upon Member States to comply vigorously with the decisions of the Security Council and to respect the decisions and recommendations of the General Assembly, the Economic and Social Council and other organs pertaining to the prevention of massive flows of refugees.

70. With a view to improving international co-operation for the prevention of new massive flows of refugees, the General Assembly should encourage the Secretary-General to make full use of his competences. To this effect, he should, in particular, in accordance with the Charter of the United Nations, as well as the relevant mandates of the competent United Nations organs:

(a) Give continuing attention to the question of averting new massive flows of refugees;

(b) Ensure that timely and fuller information relevant to the matter is available within the Secretariat;

(c) Improve co-ordination within the Secretariat for analyzing the information, so as to obtain an early assessment on the situations which might give rise to new massive flows of refugees, and to make the necessary information available to the competent United Nations organs in consultation with the States directly concerned;

(d) Help improve the co-ordination, within the Secretariat, of the efforts of United Nations organs and specialized agencies and of Member States concerned for timely and more effective action;

(e) Consider taking such measures as are necessary for the purposes enumerated in this paragraph.

71. In the fulfilment of his mandate in the area of international co-operation to avert new massive flows of refugees, the Secretary-General should act within the limits of financial and personnel resources available to the Secretariat. In doing so, he should bear in mind the ongoing efforts to improve the efficiency of the administrative and financial functioning of the United Nations and, without prejudice to his administration competences and functions, should refrain from creating new divisions or posts for this purpose.

72. In the selection of projects, the relevant economic assistance agencies and other bodies of the United Nations should consider, in consultation with the States directly concerned, giving greater support to those projects that directly or indirectly could help avert new massive refugee flows resulting from the impact of social and economic factors or natural causes in a given region.

4. 1989 UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions – Extracts
Economic and Social Council Resolution 1989/65, 24 May 1989, Annex (endorsed by General Assembly resolution 44/162, paragraph 2, 15 December 1989)

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.

...

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

5. 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance – Extracts

UN General Assembly Resolution 47/133, 18 December 1992

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal

Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

...

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

6. Council of Europe – Committee of Ministers Resolution on Asylum to Persons in Danger of Persecution (1967)

Resolution (67) 14 adopted by the Committee of Ministers on 29 June 1967

The Committee of Ministers,

Considering Recommendation 293 (1961) of the Assembly on the right of asylum and Recommendation 434 (1965) of the Assembly on the granting of the right of asylum to European refugees;

Aware of the liberal practice based on humanitarian considerations already followed in regard to asylum by the Governments of member States;

Considering, moreover, that Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that no one shall be subjected to inhuman treatment;

Desirous that member Governments should, in a humanitarian spirit, do all that is possible, individually and collectively, to assure to persons in danger of persecution the security and protection of which they stand in need;

Recognizing the need for member Governments to take account both of their obligations under existing international treaties and of the necessity of safeguarding national security and of protecting the community from serious danger,

Recommends that member Governments should be guided by the following principles:

Article 1

They should act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory;

Article 2

They should, in the same spirit, ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;

Article 3

If, in order to safeguard national security or protect the community from serious danger, a member Government contemplates taking measures which might entail such consequences, it should, as far as possible and under such conditions as it may consider appropriate, accord to the individual concerned the opportunity of going to a country other than that where he would be in danger of persecution;

Article 4

Where difficulties arise for a member State in consequence of its action in accordance with the above recommendations, Governments of other member States should, in a spirit of European solidarity and of common responsibility in this field, consider individually, or in co-operation, particularly in the framework of the Council of Europe, appropriate measures in order to overcome such difficulties.

7. Council of Europe—Committee of Ministers Declaration on Territorial Asylum (1977)

Adopted by the Committee of Ministers on 18 November 1977, at the 278th Meeting of the Ministers' Deputies: CE Doc. B(77)81 (1977)

The Committee of Ministers of the Council of Europe,

Having examined the present situation in the field of territorial asylum;

Taking into account the principles contained in particular in the United Nations Charter, in the Universal Declaration of Human Rights and in the United Nations Declaration on Territorial Asylum of 1967;

Acting in pursuance of the objectives contained in the Statute of the Council of Europe;

Bearing in mind the European Convention on Human Rights,

Having regard to Resolution (67) 14 of 29 June 1967;
Wishing to underline the practice which is common to the member States of the Council of Europe in the field of territorial asylum,
Declares:

Article 1

In fulfilling their humanitarian duties, the member States of the Council of Europe reaffirm their intention to maintain, in particular on the basis of the principles set out in Resolution (67) 14, their liberal attitude with regard to persons seeking asylum on their territory;

Article 2

The member States of the Council of Europe, parties to the 1951 Convention relating to the Status of Refugees, reaffirm their right to grant asylum to any person who, having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, also fulfils the other conditions of eligibility for the benefits of that convention, as well as to any other person they consider worthy of receiving asylum for humanitarian reasons;

Article 3

The member States of the Council of Europe reaffirm that the grant of territorial asylum is a peaceful and humanitarian act and shall not be regarded as an act unfriendly to any other state and shall be respected by all States.

8. Council of Europe – Committee of Ministers Recommendation on Guidelines regarding the Arrival of Asylum Seekers at European Airports (1994)

Recommendation No. R(94)5, adopted by the Committee of Ministers on 21 June 1994 at the 515th Meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling the liberal and humanitarian attitude of member States of the Council of Europe with regard to asylum seekers;

Having regard to Recommendation 1163 (1991) of the Parliamentary Assembly on the arrival of asylum seekers at European airports;

Considering that the member States of the Council of Europe since the mid-1980s, as a whole, have been unceasingly confronted by a very large number of asylum requests;

Taking into account that the particular position of asylum seekers at the airports may entail specific difficulties, linked to the reception itself as well as the handling of their requests;

Considering that, without prejudice to other principles applicable in this field, guidelines based on the fundamental principles in the field of human rights should inspire the practices of member States with regard to the protection of asylum seekers at airports, and contribute to the development of legislation and the establishment of an administrative infra-structure concerning the reception of asylum seekers in new host countries,

Recommends that the governments of member States apply the following guidelines:

I

Fundamental principles

1. Member States reaffirm their obligations under the Geneva Convention of 28 July 1951 and the New York Protocol of 31 January 1967 relating to the Status of Refugees, and also the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1850.

II

Asylum requests

2. The examination of all asylum requests presented at the airport shall be assured, in compliance with the rule of law, on the basis of domestic law and the international obligations of each State.

3. Moreover, each State preserves the possibility of sending an asylum seekers to a third country, subject to respect to (sic) the provisions of the Geneva Convention relating to the Status of Refugees, in particular its Article 33, and with respect to the European Convention on Human Rights, in particular its Article 3.

4. States should also further develop their co-operation with regard to the treatment of asylum requests.

5. The request shall be examined with all diligence required in order not to prolong the stay of the applicant at the airport beyond a period strictly necessary for the handling of such a request.

6. The authorities entrusted with the receipt of applications at the border shall receive training adapted to the specific situation of people seeking asylum. Such authorities should, moreover, have precise instructions on the procedures to be followed.

7. The examination of such requests, including the interview with the applicant, shall be reserved to authorities competent in matters of asylum and appointed for the task.

8. The whole procedure shall be under the supervision of the competent authorities with a view to ensuring compliance with the principles mentioned above.

III

Asylum seekers

9. When the asylum seekers has to stay at the border pending a decision, he or she shall be received and accommodated in an appropriate place, whenever possible provided to that effect.
10. The asylum seeker can be held in such a place only under the conditions and for the maximum duration provided for by law.
11. When the request is received, the asylum seeker shall be informed about the procedure to be followed, and about his or her rights and obligations. This information shall be provided orally or in the form of a written document and, if necessary, with the assistance of an interpreter.
12. The asylum seeker has a right to the assistance of a qualified and impartial interpreter during the interview with the competent authority.
13. The competent authority shall draw the attention of the asylum seeker to the confidential nature of the interview and of the information contained in his or her file.
14. A representative of the United Nations High Commissioner for Refugees shall be allowed to contact the asylum seeker in the airports, according to the procedures of each member State.
15. After the first interview with the competent authorities, the asylum seeker shall be allowed to contact a legal counsellor or lawyer.
16. The reception of the asylum seeker at the border shall be under the best possible conditions.
17. The responsible authority shall provide sufficient accommodation and food and, to the extent possible in case of a prolonged stay, recreational facilities.
18. Medical and social assistance shall be provided.
19. According to the procedures fixed by each member State, the asylum seeker can ask to meet with, among others, a representative of a religion, a lawyer and a representative of the United Nations High Commissioner for Refugees. To that effect, they shall all be allowed access to the place of accommodation.
20. The persons in charge of the reception of asylum seekers shall receive appropriate training to fulfil this task.

9. Asian-African Legal Consultative Committee – Principles Concerning Treatment of Refugees (1966)

Adopted by the Asian-African Legal Consultative Committee (AALCC) at its Eighth Session, Bangkok 1966

Text: AALCC, *The Rights of Refugees: Report of the Committee and Background Materials*, New Delhi, 1966, 207-19

Article 1

Definition of the term 'Refugee'

A refugee is a person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, political belief or membership of a particular social group:

- (a) leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or,
 (b) being outside such State or Country, is unable or unwilling to return to it or to avail himself of its protection.

Exceptions

- (1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or Country of which he is a national.
 (2) A person who prior to his admission into the Country of refuge, has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purposes and principles of the United Nations shall not be a refugee.

Explanation

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

Explanation

The expression 'leaves' includes voluntary as well as involuntary leaving.

Notes

- (i) The Delegation of Ghana reserved its position on this Article.
 (ii) The Delegations of Iraq, Pakistan and the United Arab Republic expressed the view that, in their opinion, the definition of the term 'Refugee' includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to occupying the State.
 (iii) The Delegations of Ceylon and Japan expressed the view that in their opinion the expression 'persecution' means something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilized nations.
 (iv) The Delegations of Japan and Thailand expressed the view that the word 'and' should be substituted for the word 'or' in the last line of paragraph (a).
 (v) In Exception (2) the words 'prior to his admission into the Country of refuge' were inserted by way of amendment to the original text of the Draft Articles on the proposal of the Delegation of Ceylon and accepted by the Delegations of India, Indonesia, Japan and Pakistan. The Delegations of Iraq and Thailand did not accept the amendment.
 (vi) The Delegation of Japan proposed insertion of the following additional paragraph in the Article in relation to proposal under note (iv):

'A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State or the Country of which he is a habitual resident, at the time of the events which caused him to have a well-founded

fear of above-mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered a refugee.’

The Delegations of Ceylon, India, Indonesia, Iraq and Pakistan were of the view that this additional paragraph was unnecessary. The Delegation of Thailand reserved its position on this paragraph.

Article 2

Loss of Status as Refugee

1. A refugee shall lose his status as refugee if:

- (i) he voluntarily returns permanently to the State of which he was a national or the Country of his nationality, to the State or the Country of which he was a habitual resident; or
- (ii) he has voluntarily re-availed himself of the protection of the State or Country of his nationality; or
- (iii) he voluntarily acquires the nationality of another State or Country and is entitled to the protection of that State or Country.

2. A refugee shall lose his status as a refugee if he does not return to the State of which he is a national, or to the Country of his nationality, or, if he has no nationality, to the State or Country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or Country after the circumstances in which he became a refugee have ceased to exist.

Explanation

It would be for the State of asylum of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist.

Notes

- (i) The Delegations of Iraq and the United Arab Republic reserved their position on paragraph I (iii).
- (ii) The Delegation of Thailand wished it to be recorded that the loss of status as a refugee under paragraph 1(ii) will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality because the right of protection was that of his country and not that of the individual.

Article 3

Asylum to a Refugee

- 1. A State has the sovereign right to grant or refuse asylum in its territory to a refugee.
- 2. The exercise of the right to grant such asylum to a refugee shall be respected by all other States and shall not be regarded as an unfriendly act.
- 3. No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in

compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

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

Article 4
Right of Return

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

Article 5
Right to compensation

1. A refugee shall have the right to receive compensation from the State or the Country which he left or to which he was unable to return.
2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependants of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authorities of the State or Country, public officials or mob violence.

Notes

- (i) The Delegations of Pakistan and the United Arab Republic were of the view that the word 'also' should be inserted before the words 'such loss' in paragraph 2.
- (ii) The Delegations of India and Japan expressed the view that the words 'deprivation of personal liberty in denial of human rights', should be omitted.
- (iii) The Delegations of Ceylon, Japan and Thailand suggested that the words 'in the circumstances in which the State would incur State responsibility for such treatment to aliens under international law' should be added at the end of paragraph 2.
- (iv) The Delegations of Ceylon, Japan, Pakistan and Thailand expressed the view that compensation should be payable also in respect of the denial of the refugee's right to return to the State of which he is a national.
- (v) The Delegation of Ceylon was opposed to the inclusion of the words 'or country' in this Article.
- (vi) The Delegations of Ceylon, Ghana, India and Indonesia were of the view that in order to clarify the position, the words 'arising out of events which gave rise to the refugee leaving such State or Country' should be added to paragraph 2 of this Article after the words 'mob violence'.

Article 6
Minimum Standard of Treatment

1. A State shall accord to refugees treatment in no way less favourable than that generally accorded to aliens in similar circumstances.
2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the status of aliens, annexed to these principles, to the extent that they are applicable to refugees.
3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.
4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.

Notes

- (i) The Delegations of Iraq and Pakistan were of the view that a refugee should generally be granted the standard of treatment applicable to the nationals of the country of asylum.
- (ii) The Delegation of Indonesia reserved its position on paragraph 3 of the Article.
- (iii) The Delegations of Indonesia and Thailand reserved their position on paragraph 4 of the Article.

Article 7
Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations.

Notes

- (i) The Delegations of India, Japan and Thailand were of the view that the words 'or any other country' should be added after the words 'the country of refuge' in this Article. The other Delegations were of the view that such addition was not necessary.
- (ii) The Delegation of Iraq was of the view that the inclusion of the words 'or in activities inconsistent with or against the principles and purposes of the United Nations' was inappropriate as in this Article what was being dealt with was the right and obligation of the refugee and not that of the State.

Article 8
Expulsion and Deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary.

3. A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

Notes

(i) The Delegations of Ceylon, Ghana and Japan did not accept the text of paragraph 1. In the view of these Delegations the text of this paragraph should read as follows: 'A State shall not expel or deport a refugee save on ground of national security or public order, or a violation of any of the vital or fundamental conditions of asylum.'

(ii) The Delegations of Ceylon and Ghana were of the view that in paragraph 2 the words 'as generally applicable to aliens under such circumstances' should be added at the end of the paragraph after the word 'necessary'.

Article 9

Nothing in these Articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

10. Asian-African Legal Consultative Committee – Addendum to Principles Concerning Treatment of Refugees (1970)

Adopted by the Asian-African Legal Consultative Committee at its Eleventh Session, Accra, 1970

Text: AALCC, *Report of the Eleventh Session, Accra (Ghana), 1970*, New Delhi, 1970, 171-86

Whereas it appears to the Committee on further consideration that the principles adopted at its Session held in Bangkok in 1966 mainly contemplate the status of what may be called political refugees who have been deprived of the protection of their own Government and do not provide adequately for the case of other refugees or displaced persons;

And whereas the Committee considers that such other refugees or displaced persons should enjoy the benefit of protection of the nature afforded by Articles IV and V of those principles;

Now therefore, the Committee at its Eleventh Session held in Accra between 19th and 20th January, 1970 resolves as follows:

1. Any person who because of foreign domination, external aggression or occupation has left his habitual place of residence, or being outside such place, desires to return thereto by is prevented from so doing by the Government or authorities in control of such place of his habitual residence shall be entitled to return to the place of his habitual residence from which he was displaced.

2. It shall accordingly be the duty of the Government or authorities in control of such place of habitual residence to facilitate by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them.
3. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependants of all such persons as are referred to in paragraph 1 above.
4. Where such person does not desire to return, he shall be entitled to prompt and full compensation by the Government or the authorities in control of such place of habitual residence as determined, in the absence of agreement by the parties concerned, by an international body designated or constituted for the purpose by the Secretary-General of the United Nations at the request of either party.
5. If the status of such a person is disputed by the Government or authorities in control of such place of habitual residence, or if any other dispute arises, such matter shall also be determined, in the absence of agreement by the parties concerned, by an international body designated or constituted as specified in paragraph 4 above.

11. Proposal for an Additional Protocol to the European Convention on Human Rights

The present proposal, first drafted by the Guy S. Goodwin-Gill in February 1990, was revised on the basis of comments received and subsequent developments and presented to an ECRE Seminar on Asylum in Europe in April 1992. Explanatory notes follow the draft articles.

The Governments signatory hereto, being Members of the Council of Europe,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November, 1950 (hereinafter referred to as 'the Convention'), or in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20 March 1952, Articles 1 to 4 of the Fourth Protocol to the Convention, signed at Strasbourg on 16 September 1963, Articles 1 - 2 of the Sixth Protocol to the Convention, signed at Strasbourg on 28 April 1983, or Articles 1 to 5 of the Seventh Protocol, signed at Strasbourg on 22 November 1984,

Have agreed as follows:

Article 1

1. Everyone has the right to seek asylum within the territory of a State.
2. The High Contracting Parties undertake to use their best endeavours, individually and in co-operation with Members of the Council of Europe, to provide permanent or temporary asylum to refugees who satisfy the criteria of article 1 of the 1951 Convention/1967 Protocol relating to the Status of Refugees, and to other refugees who have valid reasons for not being required to return to their country of origin.

Article 2

1. No one who seeks asylum at the border or in the territory of a State shall be rejected at the frontier, or expelled or returned in any manner whatsoever to any country in which he or she may be tortured or subjected to inhuman, cruel or degrading treatment or punishment, or in which his or her life or freedom may be endangered for reasons of race, ethnic origin, religion, nationality, membership of a particular social group, association with a national minority, sex, language, political or other opinion, birth or other status.
2. The provisions of paragraph 1 shall not prevent the removal or return of an individual who seeks asylum to the territory of a High Contracting Party, other than the State of such person's nationality, which has undertaken to determine the claim in accordance with applicable international agreements.
3. The provisions of paragraph 1 shall not prevent the removal or expulsion of an individual whose claim to asylum has been denied following appeal or review, or whose expulsion is necessary in the interests of public order or is based on reasons of national security.

Article 3

1. Everyone who seeks asylum shall have access to a fair and expeditious procedure before an independent and impartial authority, shall be allowed to submit reasons in support of the application, and shall have the right to be represented for that purpose before the competent authority, and to be assisted by an interpreter where necessary.
2. Decisions on claims to asylum shall be rendered promptly and negative decisions shall be accompanied by reasons. Everyone whose claim to asylum is rejected shall have the possibility to appeal or to have his or her case reviewed, and shall be permitted to remain in the territory of the State pending final determination of the case.
3. A State may by law limit the right of appeal or review in cases that have been determined by the authority described in paragraph 1 to be manifestly unsupported by objective evidence or an abuse of the right of asylum.
4. An applicant whose case is being appealed or is under review pursuant to paragraph 2 may be expelled before a final determination is made when such expulsion is necessary in the interests of public order or is based on reasons of national security.
5. Asylum proceedings shall be held *in camera* and the personal details of applicants shall not be published unless the applicant consents thereto, or if such publication is in accordance with law, is unlikely to endanger the applicant or members of his or her family, and is reasonably necessary in a democratic society.
6. Nothing in the present Article shall prevent a State from granting asylum in accordance with Article 4 on a group or category basis.

Article 4

1. Everyone whose claim to asylum is accepted shall be permitted to remain in the State temporarily or permanently according to law, until such time as he or she is able

to return without serious risk to their country of origin, or until a regional solution is found pursuant to Article 1(2).

2. Everyone who is allowed to remain in a State pursuant to paragraph 1 shall enjoy the rights set forth in Articles 2 and 4 of the Fourth Protocol to the Convention.

Article 5

1. Everyone lawfully in the territory of a State has the right to be united with family members who are not nationals of the State and who are seeking to join him or her. For the purposes of the present article, family members shall include the spouse, dependent children under eighteen and dependent parents. States shall also give favourable consideration to admitting members of extended families, taking account of relations of affinity and dependence recognized in the culture of minority communities within their territory.

2. This right may be limited or restricted in the case of persons who are admitted to State territory for short periods not exceeding three months, or who are awaiting determination of their status pursuant to Article 3 of the present Protocol, or who are under final order of expulsion, removal or extradition.

Article 6

1. Everyone who seeks to be united with family members pursuant to Article 5 has the right to have his or her application determined fairly and expeditiously. A person whose application is refused shall be informed of the reasons for the decision and shall have the right to have the decision reviewed by higher authority. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. The right to be united with family members shall not be denied on any ground such as sex, age, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 7

The High Contracting Parties undertake to adopt the necessary measures to ensure:

- a. that the rights and freedoms guaranteed in the present Convention are not exercised by any individual or group for the purpose of promoting or encouraging intolerance, hatred or violence towards any other individual or group;
- b. that all members of society enjoy effective protection against discrimination on grounds such as sex, age, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- c. the creation and maintenance of the conditions within which individuals and groups, in reciprocity and mutual respect, may develop and support their integrity and dignity.

Explanatory Notes

Article 1

1. The principle of asylum has been consistently endorsed by Member States of the Council of Europe, in recommendations of the Committee of Ministers, in their practice, and in their ratification and implementation of international instruments, such as the 1951 Convention and 1967 Protocol relating to the Status of Refugees. Article 1 recalls the provisions of Article 14 of the 1948 Universal Declaration of Human Rights: ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution.’

2. *Asylum* is not defined in Article 1, in view of the different perceptions prevailing among States. The general notion is therefore left to be developed by States in their municipal law, while the core content—the protection against the exercise of jurisdiction by another State that may be accorded to an individual—is given a specific meaning in Article 2. At the same time, the emphasis on the right to *seek* asylum is called for not only by recent State practice, but also by the necessity and the desirability of promoting and ensuring access to determination procedures consonant with the general scheme of values entrenched in the European Convention.

3. Article 1(2) recognizes that States, including Member States of the Council of Europe, continue to hesitate to accord due recognition to the right *to be granted asylum*. Among the many reasons for this hesitancy may be included apprehensions about numbers, particularly for countries of first refuge. This paragraph therefore places the responsibility for solidarity, co-operation and solutions, clearly within the regional context offered by the Council of Europe.

4. Article 1(2) also consolidates European practice into formal recognition of the protection needs, not only of refugees falling within Article 1 of the 1951 Convention/1967 Protocol relating to the Status of Refugees, but also of those who are recognized in European State practice as having other *valid reasons* for not being required to return to their country of origin. Such reasons in the past have included reasonable fear of prejudice or discrimination in the exercise of fundamental rights, war and resistance to war, and serious disturbances of public order.

Article 2

5. Member States of the Council of Europe acknowledge the normative effect of the principle of *non-refoulement*, that is, the prohibition prescribed by article 33 of the 1951 Convention relating to the Status of Refugees, on the return in any manner whatsoever of a refugee to a country in which his or her life or freedom may be threatened for reasons of race, religion, nationality, membership of a particular social group, or political opinion. The European Commission and the European Court of Human Rights have extended analogous protection, sometimes indirectly, in accordance with the terms of Article 3 of the European Convention.

6. Article 2(1) confirms and clarifies the obligations of States party to the European Convention and to the 1951 Convention, and further invokes the standard of non-discrimination endorsed in article 14 of the European Convention. In requiring a first degree of protection for all asylum-seekers, ‘at the border or within the territory of

a State’, it recalls the fundamental obligation in Article 1 of the European Convention, under which States, ‘shall secure to everyone within their jurisdiction the rights and freedoms defined...’

7. Article 2(2) is intended to take account of agreements between States on the responsibility to determine claims to asylum, while emphasising the controlling context of international obligations, including the present Protocol.

8. Article 2(3) recognizes that States’ sovereign powers over the residence and removal of foreign nationals apply with respect to those whose claims to asylum are determined to be without foundation.

Article 3

9. The right to seek asylum, and indeed, the right to benefit from the principle of *non-refoulement*, is largely meaningless unless an applicant is able to present his or her case for determination by an independent, impartial authority. Minimum standards for asylum procedures have been recommended by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees in 1977, and by the Committee of Ministers in 1981 (Recommendation No. R (81) 16).

10. Article 3(1) therefore reiterates the *minimum* procedural requirements, which may be expected to be developed by States in their implementation, in the light of standards laid down for other decision-making processes by the European Commission and the European Court. In particular, it may be anticipated that fair and expeditious procedures will be staffed by trained decision-makers, and that the asylum process will be configured around the best available information sources.

11. Article 3(2) briefly develops the principle of due process, drawing upon Committee of Ministers Recommendation No. R (80) 2 concerning the exercise of discretionary powers by administrative authorities, the general practice of States with respect to review of administrative decisions, and the developing jurisprudence of the European Court of Human Rights with respect to effective remedies, as required by Article 13 of the Convention.

12. Article 3(3) acknowledges that, provided minimum standards of procedural due process and impartiality are satisfied, the integrity of the asylum procedure may require the expeditious disposal of abusive applications or claims that are manifestly unsupported by objective evidence. Although the phrase ‘manifestly ill-founded’ is used in Article 27(2) of the Convention, the present wording is preferred in order to stress again the importance of accurate information, especially country of origin information, in the assessment of claims.

13. Article 3(4) restates the common exception in favour of the State, where the interests of public order (*ordre public*) or national security prevail.

14. Article 3(5) proposes a basic principle of confidentiality of asylum proceedings, as an exception to the general rule which favours public process. It is considered that *in camera* proceedings are better able to protect both the interests of the State, for example, by reducing the risk of creating claims *sur place*; and those of the applicant, for example, by minimizing the risks to family members or friends remaining in the home country.

15. Finally, Article 3(6) recognizes that the general principle of individual petition and hearing may require to yield in favour of a groups and categories approach to the

grant of refuge and protection, particularly where significant numbers of asylum seekers arrive from countries manifestly in turmoil. The cross-reference to Article 4 is intended to establish the basic parameters of refuge, while implicitly acknowledging that the content of refuge can be tailored to specific needs.

Article 4

16. The present text takes account of the fact that many individual States remain reluctant to accept a formal, legal obligation to accord asylum (in the sense of a durable or lasting solution on their territory), even to those who are recognized as refugees. Article 4(1) recognizes nonetheless that certain legal implications follow from the principle of *refuge through time*, and that a temporary solution at least is due to those with a well-founded claim to asylum, until they are able to return without serious risk to their country of origin; or until a regional solution is found, further to Article 1(2). Such regional solution might entail local settlement, that is, permanent residence, in the country of first refuge, or resettlement in another State.

17. Article 4(2) reiterates the applicability of the general principles of freedom of movement, choice of residence, and freedom to leave any country found in the Fourth Protocol to the European Convention, as well as the prohibition of the collective expulsion of aliens.

Article 5

18. Article 5 builds on the jurisprudence of the European Commission and the European Court of Human Rights, which has recognized that the right in Article 8 of the Convention to respect for family life may entail certain limitations of States' traditional powers to control entry into their territory. It implicitly acknowledges that most Member States of the Council of Europe are in effect multi-cultural, multi-racial communities. Some minorities present on their territory have ancient roots; others are the result of more recent migrations. Many of the latter retain close ties with family members outside the community of Europe, but the due recognition of such ties is often subordinated to rigid immigration criteria, including 'traditional' conceptions of the family itself, or national economic interests.

19. Article 5 therefore accords positive recognition to the principle that the family is the fundamental group unit of society and thereby entitled to protection by the society and the State (Article 23(1), 1966 International Covenant on Civil and Political Rights; Article 10, 1966 International Covenant on Economic and Social Rights; Article 16, 1961 European Social Charter; Articles 9 and 10, 1989 United Nations Convention on the Rights of the Child). At the same time, it recognizes that certain limitations on the principle of family unity may be permissible with respect to persons admitted only temporarily to State territory.

Article 6

20. Article 6 maintains the general principle described briefly above in paragraph 10, namely, that individuals seeking to exercise a right are entitled to prompt and reasoned decisions, and that every exercise of discretionary power by administrative

authority should be subject to review. (See also Article 10, 1989 United Nations Convention on the Rights of the Child). Article 6(2) ensures the application of the general principle of non-discrimination in this sensitive field, and adds the additional ground of age to the list of impermissible bases for denial of the right to family unity.

Article 7

21. European institutions and European nations are founded on certain shared values, including principles of tolerance and mutual respect. For many in society, however, the reality is often very different. Article 7 therefore aims to go beyond mere passive endorsement of the principle of non-discrimination and to accentuate the active dimensions of tolerance, which include *creating* the conditions within which the individuals and groups within Europe's disparate communities may be enabled, on a basis of reciprocity and mutual respect to pursue and fulfil their needs and plans. To this end, it also echoes Article 17, which provides that 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein...' The essentially programmatic, though no less urgent, objectives of this Article may make it appropriate for regular overview by the Secretary General of the Council of Europe, acting under Article 57 of the Convention.