

I. INTRODUCTION

1. The personal security of refugees is an essential element of international protection. Unless the fundamental rights of refugees as human beings (to life, liberty and security of person, to freedom from torture, from cruel, inhuman or degrading treatment or punishment, from slavery, etc.) are safeguarded, other rights and benefits guaranteed by international instruments and legal principles, as well as by municipal law, are of little use. Ensuring the safety of refugees and asylum-seekers when they are threatened with harm has consequently been a major preoccupation of UNHCR and an important component of the Office's field activities.

2. This constant concern with the personal security of refugees and asylum-seekers has regularly been reflected in UNHCR reports to the Executive Committee and to the United Nations General Assembly through the Economic and Social Council (ECOSOC). The Executive Committee has adopted some 40 conclusions on various aspects of personal security or related issues. In addition to expressing serious concern regarding violence against or threats to the safety of refugees and asylum-seekers, these conclusions have addressed the issue of personal security in connection with specific situations, such as military attacks on refugees in distress at sea, or particular categories of refugees, notably women and children.¹ Since 1975, and with increasing specificity since 1977, the General Assembly has repeatedly referred to threats to the safety of refugees in its annual resolution on the report of the High Commissioner. In 1984, for example, the Assembly:

Condemn[ed] all violations of the rights and safety of refugees and asylum-seekers, in particular those perpetrated through military or armed attacks against refugee camps and settlements and other forms of brutality and by the failure to rescue asylum-seekers in distress at sea; ...(and)

Urge[d] all States, in co-operation with the Office of the High Commissioner and other competent international bodies, to take all measures necessary to ensure the safety of refugees and asylum-seekers.²

In 1992 the General Assembly again expressed concern that the protection of refugees continued to be seriously jeopardized as a result, inter alia, of "threats to their physical security, dignity and well-being, and lack of respect for fundamental freedoms and human rights".³

3. Taken together, these conclusions and resolutions illustrate the serious concern with which violations of the physical integrity of refugees and asylum-seekers have been viewed by the international community. They also provide guidance to States, UNHCR and other concerned parties on their responsibilities in preventing violations of the rights and safety of refugees and asylum-seekers. Numerous incidents continue to occur, however, in every region, in which refugees are subjected to violence and mistreatment, including killing, military and armed attacks, rape and other forms of sexual abuse, beatings, intimidation, abduction, involuntary servitude, robbery, forced recruitment, and arbitrary or inhumane detention. This is the case, despite near universal consensus on the duty of States, in cooperation with UNHCR, to respect and to ensure to refugees the enjoyment of their fundamental rights as human beings. Because threats to and violations of the personal security of refugees continue to be a matter of grave concern, the Office considers it useful at this juncture to place the subject of the protection of the personal security of refugees and asylum-seekers before the Executive Committee.

II. CONCEPTUAL FRAMEWORK

4. As threats to the personal security of refugees are, unfortunately, manifold, it will not be possible to treat them exhaustively in the present note. This analysis focuses only on the safety of refugees on their way to, at the borders of, and within countries of asylum. Neither violence and human rights violations in countries of origin as a cause of, or obstacle to, refugee flight, nor the personal security of refugees upon their return to their home country are dealt with. The threat to the life or freedom of refugees that may result from their involuntary return to their country of origin, i.e. refoulement, is also outside the purview of this note.

5. Two comments are in order with regard to terminology. First, it is common to refer to this subject as the "physical protection" of refugees. Threats to the well-being of refugees are indeed physical. However, since the effects of insecurity affect the whole person and the entire community of which he or she is a member, in this discussion the terms "personal security" or "safety" are employed. Secondly, and more substantively, a refugee is a person in need of international protection whatever his or her legal status in the country of refuge and whether or not refugee status has been recognized formally. Protecting refugees requires protecting persons who may be refugees, including asylum-seekers, at least until their refugee status can be determined. The term "refugee" is therefore to be understood to include asylum-seekers whose claims to refugee status have not yet been definitively evaluated.

6. Threats to personal security are not unique to refugees, but are manifestations of the problems of violence, criminality, abuse of power and intolerance that afflict all human societies. In the case of refugees, these threats are aggravated by the refugee's own vulnerability as an uprooted foreigner, usually with few material resources, often without documentation, who does not enjoy the protection of his or her own Government. The traditional structures of family, clan and community have often been disrupted. Already obliged to flee violence or human rights abuses in their own countries, many refugees face further danger en route to a country of asylum, at its borders and even after obtaining admission and being granted asylum. Threats to personal security may come from a variety of agents, both within and outside the country of asylum, including bandits, the military or irregular forces, guards and officials, elements of the local population and other refugees. The following paragraphs, present some examples of the kinds of violations of personal security that have been inflicted on refugees of concern to UNHCR in the recent past and are drawn from reports and the experiences of UNHCR staff in the field. They provide the context for the discussion in the latter part of this note of the legal bases for action and concrete measures that have been or could be taken to protect refugees against these threats.

III. EXAMPLES OF THREATS TO THE SAFETY OF REFUGEES

A. En route to and at the frontiers of countries of asylum

7. For many persons who are forced to seek refuge outside their country of origin, the journey to safety is fraught with peril and may begin by evading security checks at the point of departure, crossing front lines in armed conflicts, or entrusting themselves to unscrupulous smugglers to avoid summary rejection at border posts. Until recently, asylum-seekers crossing the South China Sea risked the appalling brutality of pirates, as well as the indifference of passing ships whose masters neglected their duty to rescue persons in distress. Those crossing no-man's lands in regions affected by civil war or anarchy continue to be attacked by bandits and risk falling into enemy hands or stepping on land-mines.

8. Upon arrival at borders of countries of asylum, most refugees fortunately find a hospitable reception, or at least correct treatment in accordance with international norms, including admission to asylum procedures. In a minority of countries, however, they face rejection, physical abuse and threats to life. Perhaps the most flagrant recent example involves a border which includes an electrified wire fence as well as mines. Tens of thousands of persons fleeing a murderous civil war in their own country have been forcibly returned from the same country as illegal aliens. According to field reports some asylum-seekers, in their efforts to avoid apprehension, have been victims of extortion and, in some cases, have accepted virtual enslavement rather than risking refoulement. In the recent past, push-offs of asylum-seekers arriving by boat have been numerous, as have robbery and sexual abuse of refugees arriving both by sea and at remote land frontiers. Physical attacks, including rape and other forms of sexual abuse, have reportedly been committed by immigration police against asylum-seekers arriving at certain international airports.

9. The problem of abusive detention is closely associated with border-control practices. In some countries, asylum-seekers are treated as illegal aliens and not admitted to procedures for the determination of refugee status. In others, certain categories of asylum-seekers are routinely subject to detention for long periods while their applications are pending. The conditions of detention in certain countries, particularly of children, are often incompatible with international standards.

B. In countries of asylum

1. Banditry

10. One of the most difficult new protection situations confronting UNHCR involves refugee camps and settlements in remote and practically lawless areas of one country of asylum, where the refugees are prey to marauding bands of armed men not only from that country but also from the refugees' country of origin and from nearby border areas of other countries. The situation is aggravated by the proliferation of weapons that are the fallout of civil war and anarchy in the refugees' country of origin, which pose a threat to the refugees, UNHCR and NGO staff, as well as to local officials. On another continent a somewhat similar situation was resolved only when the refugees fled the area, losing access to assistance in the process. In some cases refugees have also been victims of violence by security forces attempting to impose law and order or to retaliate against attacks from bandits allegedly hiding in refugee camps. Attacks by armed elements or bandits have sometimes prevented the distribution of food and other vital supplies to refugee settlements.

2. Zones of conflict and changes of regime

11. Refugees have often found themselves in the crossfire of civil wars in the country of asylum, sometimes being directly attacked by one party to a conflict, particularly if they are perceived as being allied politically or even having ethnic ties with the other side. In the worst cases, refugees may be driven to seek asylum in a third country, or to return to the country that they had fled,

opting for the lesser danger. The overthrow of a previous Government in the asylum country has precipitated the forced departure of large groups of refugees supported by the previous regime, and in other situations has created serious security problems in the country of asylum for refugees who were unable to leave safely.

3. Threats to safety from Government personnel

12. Some of the most intractable problems affecting the personal security of refugees involve violence, intimidation or abuse of power on the part of military, police, guards or other Government personnel of the country of refuge itself. Such problems frequently arise when refugees are perceived as threats to the security or public order of the country concerned, and their presence, though tolerated, is viewed with misgivings or even hostility. In some cases vigorous enforcement of "closed camp" policies have led to the shooting and killing of refugees at the camp perimeters. In other cases refugee settlements have been subject to periodic raids by the military looking for arms or political opponents. A somewhat different kind of threat to the personal security of refugees involves the frequent abuse of power by camp guards, whose mistreatment of refugees, including women and girls, does not reflect Government policy but their own illicit self-interest.

4. Threats to safety emanating from the refugees' home country

13. In 1987 the Executive Committee adopted a conclusion on the problem of military and armed attacks on refugee camps and settlements, after extensive discussion.⁴ Such attacks have since occurred in several countries, most frequently involving rebel forces from the country of origin, but in some cases involving attacks, including aerial bombardment, by Government forces against refugee settlements seen as allied with guerrilla groups based in the country of asylum. Some cross-border raids have involved abduction of refugees, including minors, for forced recruitment. On the individual level, there have been assassinations of politically prominent refugees under circumstances which point to the involvement of the Government of their country of origin.

5. Security problems resulting from the association of refugees with armed resistance fighters

14. The close association - either real or alleged - between certain refugee groups and armed resistance movements in several regions of the world presents a range of complex protection problems. Failure to maintain the exclusively civilian and humanitarian character of refugee camps and settlements⁵ not only violates international norms and exposes the camps and settlements to the possibility of armed attack or sabotage emanating from within the country of origin, but also subjects refugees to the dangers resulting from the proliferation of arms in the hands of different factions, often with competing ideologies and political loyalties that they are prepared to impose by force. In some cases these groups have become a state within a state, imposing their own law and justice, including executions, torture and arbitrary detention. Refugees working in humanitarian assistance programmes and who were perceived as deviating from a "party line" have been assassinated. Women whose employment in education or health projects was thought to violate particular social norms have been threatened and, in some cases, abducted and have disappeared. Refugees wishing to repatriate voluntarily have been subjected to intimidation or physical attack. In other cases there have been threats and attempts against the lives of United Nations and relief agency personnel.

6. Other threats to personal security from fellow refugees

15. The disruption and breakdown of social order that is commonly associated with coerced displacement can lead to violence of various kinds between refugees. This situation is aggravated when refugees are confined in closed camps. Problems with gangs have been reported, as well as rape and sexual exploitation of unaccompanied women and girls. Camp disciplinary committees have engaged in physical abuse in the guise of punishment, and intra-familial violence connected with the frustrations of camp life has also been a serious problem. Clashes between refugee groups of different national, ethnic, political or religious backgrounds have also occurred.

16. Governments have sometimes adopted the policy of not interfering in intra-refugee conflicts with the result that refugee settlements acquire a sort of extra-territorial status, with no enforcement of municipal law. In some countries, the Government in practice allows the refugees to apply their own law in conflicts, except where a non-refugee is involved. While UNHCR supports measures that allow the refugee community to assume greater responsibility for matters affecting its members, in certain cases non-interference in criminal matters has left refugees, particularly minorities or those out of favour with the leadership, with no effective protection against violations of their basic rights.

7. Other threats to the safety of refugees emanating from the host community

17. In certain regions, primarily in industrialized countries, xenophobic attacks on foreigners, including asylum applicants and recognized refugees, have adversely affected the reception of asylum-seekers and refugees, putting their safety in jeopardy. In other regions as well, refugees have been the object of resentment and ill-treatment from the local population.

18. Refugees living in urban areas also may face serious problems of personal security, particularly when they do not have proper documentation or when their presence is not officially authorized by the authorities. In such situations, refugees run the risk of arrest, detention, mistreatment or extortion by the police, but also by criminal elements in the local population (including other foreigners) who know and take advantage of their vulnerable position.

8. The security of refugee women and children

19. In refugee situations, women and children are particularly vulnerable to violence, including sexual abuse, especially if they are unaccompanied. An extensive discussion of the problem of sexual violence against refugee women and girls is being presented to the Sub-Committee of the Whole on International Protection.⁶ It is directly relevant to the issues discussed in the present note, and should be read in conjunction with it. The particular problems of refugee children, including their personal security, have been discussed in previous notes such as the Note on Refugee Children (EC/SCP/46) and the Report on Refugee Children (A/AC.96/731), and will once again be addressed in a UNHCR policy statement to be presented to the forty-fourth session of the Executive Committee.

C. Protection of personal security in voluntary repatriation

20. The safety of refugees is a concern also in situations of voluntary repatriation and arises in several different ways. First, the voluntary nature of the decision to repatriate requires protection from intimidation either for or against repatriation. Refugees have been threatened and/or attacked, either to induce them to repatriate or to prevent from doing so. They have also been subject to threats concerning their choice of destination following repatriation. An informed decision on repatriation requires accurate information on the security situation along the route of return and at the destination in the country of origin. The journey home may present practical security problems with respect to the safety of the route from bandits, military attack, or mines. (The safety of returnees following repatriation is not within the scope of this paper.)

IV. LEGAL BASES FOR THE PROTECTION OF THE PERSONAL SECURITY OF REFUGEES

21. The international protection of refugees is based not only upon the elaboration and the acceptance by States, of principles and norms for the benefit of refugees, but also, upon the effective implementation of those principles and norms by States, in cooperation with UNHCR and the international community. Respect for refugees' fundamental rights as human beings is the first principle of international protection. The 1951 Convention relating to the Status of Refugees is expressly premised upon the principle that "human beings shall enjoy fundamental rights and freedoms without discrimination" and on the United Nations' endeavours "to assure refugees the widest possible exercise of these fundamental rights and freedoms."⁷

22. An individual's fundamental rights to life, liberty, security of person, to freedom from slavery or servitude, from torture or cruel, inhuman or degrading treatment or punishment, and from arbitrary arrest and detention are proclaimed in the Universal Declaration of Human Rights and codified in the International Covenant on Civil and Political Rights and numerous other international and regional conventions.⁸ In article 2 of the International Covenant on Civil and Political Rights, each State Party undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized therein, without distinction of any kind. These provisions make clear not only the basic rights of each individual in international human rights law, but also the universally recognized responsibility of the State to respect and secure those rights for all individuals within its jurisdiction, including refugees.

23. Safeguarding the personal security of refugees is implicit in the High Commissioner's mandate of "providing international protection." Apart from the strong affirmation of the human rights of refugees in the Preamble of the 1951 Convention, its drafters did not deem it necessary to include specific provisions on the subject. It may be assumed that article seven's guarantee to refugees of at least "the same treatment as is accorded to aliens generally" could not mean less than ensuring respect for basic rights. Concern for the refugee's actual safety, as well as formal legal rights and status, is also evident in the 1951 Convention's most basic provisions: the definition of the refugee as a person with a well-founded fear of being persecuted (art. 1A(2)) and the prohibition against returning a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened..." (art. 33(1)). States Parties to the 1951 Convention and the 1967 Protocol undertake "to cooperate with the Office of the United Nations High Commissioner for Refugees ... in the exercise of its functions" (articles 35(1) and II(1), respectively). Since providing international protection is the first of these functions, this provision is relevant to UNHCR's efforts to ensure the personal security of refugees.

24. In areas of armed conflict, whether international or internal, international humanitarian law prohibits violence to the life and person of civilians, including refugees⁹. The provisions of the Fourth Geneva Convention of 1949 and the two Additional Protocols of 1977 are particularly relevant to the issue of military or other armed attacks on refugee camps or settlements.

25. Like the 1951 Convention, the 1969 Organization of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa does not contain distinct provisions with respect to the personal security of refugees in the country of asylum, apart from prescribing that, insofar as possible, refugees should be settled "for reasons of security" at a reasonable distance from the frontier of their country of origin (art. 11(6)). The OAU Convention does include provisions underlining the peaceful and humanitarian character of asylum (art. 11(2)) and the duty of refugees to conform to the laws and regulations of the country of asylum and to abstain from subversive activities against Member States of the OAU (art. III(I)), and requires States Parties to prohibit refugees from attacking other OAU Member States (art. 111(2)). The 1984 Cartagena Declaration, whose importance has repeatedly been underscored by the General Assembly of the Organization of American States (OAS), contains analogous provisions¹⁰ and also refers to the need to establish a minimum standard of treatment for refugees based on the 1951 Convention, the 1967 Protocol and the American Convention on Human Rights.¹¹

26. Inasmuch as the country of asylum has the primary responsibility for ensuring the personal security of refugees in its territory, the laws of each State provide the basic legal protection for the security of refugees. All codes of criminal law prohibit violations of personal security, and virtually all legal systems also offer civil and administrative remedies to victims.

27. As has already been mentioned, some 40 Conclusions of the Executive Committee refer to various aspects of the personal security of refugees. A list is provided in annex. Several of these conclusions provide guidance that is especially relevant to the personal security of refugees in countries of asylum. Conclusions No. 22(XXXII) (1981) (paras. II B(2)(a-g)) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx and No. 48 (XXXVIII) (1987) on Military or Armed Attacks on Refugee Camps and Settlements deserve special mention in this regard.

V. MEASURES TO PROTECT AND CONSTRAINTS AFFECTING THE SECURITY OF REFUGEES

28. In response to threats to the safety of refugees, and in accordance with the legal principles and norms just described, countries of asylum and UNHCR, together with other members of the international community, have developed and put into effect a variety of measures, both legal and practical, to improve the personal security of refugees. These measures have often been elaborated in the field as ad hoc approaches to concrete problems affecting the welfare of refugees in one country or region, and later, if appropriate, given more general application. Although several promising approaches have been implemented, they have not been wholly successful in removing threats to refugee security. This section reviews some of the measures adopted and the constraints that must still be faced in efforts to ensure the safety of refugees.

A. Institutional preparedness

29. One of the tasks UNHCR has undertaken, in this as in other domains, has been to gather information on the different strategies adopted in specific situations to meet particular refugee problems, to formulate guidelines incorporating the lessons learned, and to disseminate them to UNHCR staff and implementing partners throughout the world. This dissemination has taken the form of training programmes, field directives, workshops and programming missions. Improved reporting from the field on practical protection problems such as those of refugee women has been important to this process and to the development of appropriate protection strategies in specific situations. Although no single set of guidelines has addressed the issue of personal security, practical guidance for protecting refugees against threats to their safety has been provided in relevant sections of the UNHCR Handbook for Emergencies (1982), the 1988 Guidelines on Refugee Children (IOM No. 91/88 FOM 85/88 of 3 August) and the 1991 Guidelines on the Protection of Refugee Women (EC/SCP/67). The issue of personal security is also addressed in UNHCR's People Oriented Planning (POP) training courses. The Guidelines on Refugee Children and on the Protection of Refugee Women address the problems of two categories of persons that together constitute the great majority of refugees, and much of the advice they contain with respect to safety is relevant to the protection of refugees generally.

B. UNHCR access and presence

30. An important measure to ensure the safety of refugees is the presence of staff of UNHCR (or other relevant organizations) where the refugees are. In various regions, UNHCR staff referred to as "roving protection officers", "border", or "corridor monitors" have been instrumental in helping refugees to cross international frontiers in safety (and in both directions), in close liaison with the local authorities concerned. Prompt access of UNHCR and/or implementing agency staff to refugee arrival points, whether beaches, land borders or airport arrival areas, and to holding or screening centres, has been crucial in preventing incidents of mistreatment. The presence of UNHCR as well as, where appropriate, NGO staff in refugee camps and settlements can be of critical importance to the security of refugees, by placing those present in a position rapidly to alert the authorities to problems, facilitate preventive action by the refugees themselves and serving to deter attacks.

C. Guidance and training of Government personnel

31. Clear Government policies and directives regarding the reception and treatment of asylum applicants and refugees are of vital importance in ensuring their safety. Such directives must reach and be implemented by Government personnel in direct contact with refugees, including border guards, immigration officials, police, the military and camp administrators. Periodic visits by UNHCR and Government officials, preferably jointly, to border points and camps can help raise awareness of the issues involved and uncover problems with implementation.

32. UNHCR has organized numerous training programmes, seminars and workshops which included Government officials and implementing agency staff at various levels, covering practical questions relating to the personal security of refugees in addition to basic issues of refugee and human rights law. The Office intends to continue and expand these training activities.

D. Improved law enforcement

33. When threats to the security of refugees are in the form of banditry or other criminal activity, improved law enforcement by the authorities of the asylum country may be required. Measures adopted in various situations have included reinforced security patrols at the perimeter of refugee camps; more vigorous investigation and criminal prosecution of attacks on refugees; recruiting and training security personnel specifically for the task of protecting refugees; and, in the case of pirate attacks in the South China Sea, multilateral support for coast guard patrols to apprehend offenders and deter attacks, systematic programmes of criminal prosecution, and protection and assistance for victims and witnesses.

34. In cases where the security of refugees is violated by Government personnel, such as camp guards, deterrence through improved law enforcement is more effective if it includes criminal prosecution as well as internal disciplinary procedures. A serious problem encountered by UNHCR in virtually every region is the reluctance of the authorities to punish the abuse of refugees by Government personnel. While questions are often raised about the reliability of the refugees' complaints, substantiated incidents of violence to refugees, including murder and rape, have resulted only in administrative transfers and reprimands. Strong leadership and political will is required to enforce the law in such cases.

35. In areas of widespread lawlessness and violence such as the situation referred to in paragraph 11, a multifaceted approach has been proposed. It would include increased UNHCR presence, enlarged and improved police patrols of both refugee areas and supply routes, reorganized housing arrangements in camps to reduce the exposure of women to attacks, the mobilization of the refugees themselves for self-defence, and improved liaison between the refugee* leadership and the police. Improved security for UNHCR and implementing agency staff is also envisaged. International presence is not feasible unless serious attention is paid to the safety of staff members as well as refugees.

E. Improvements in refugee camp location. design and administration

36. As the various proposals described above illustrate, there are many practical measures which have been, and can be, implemented at the camp level to improve the security of refugees. A measure already implemented has been to supply refugee section leaders with police whistles to call for help in case of attack. In other regions, lighting public areas at night has had a beneficial impact on refugee safety. Locating camps in safer areas or more defensible sites is a measure that should be considered by the authorities in consultation with UNHCR, preferably before expense is incurred in building a refugee camp in an unsafe location. As the Guidelines on the Protection of Refugee Women point out, matters such as the location of water sources and latrines can have an impact on the safety of refugees, particularly women and girls. The involvement of the refugee community, particularly women, in the organization and administration of refugee camps and settlements is important for security as well as for other reasons. The recruitment, training and supervision of camp and refugee programme administrators, particularly those with responsibilities relating to security, can have a crucial impact on refugee safety. Organizing special accommodation and programmes for refugees who may in certain situations be vulnerable to attack, such as unaccompanied women and girls, has become a normal component of UNHCR's programme in many regions. The best solution to the security problems inherent in closed camps is to avoid them, but where this is impossible, special attention is required to the psychological and social environment resulting from confinement. Non-governmental organizations have played an exceptionally valuable role in such situations.

F. Maintaining the civilian and humanitarian character of refugee settlements

37. The presence of armed resistance fighters in or near refugee camps or settlements involves not only serious security problems but also, in most cases, problems of a political nature. If their presence is against the will of the country of asylum, the problem remains difficult but is at least straightforward: how can armed elements be induced to leave in a way that does not harm the refugees? In many cases, however, resistance movements have had the support, tacit or overt, of the host country and other members of the international community or of the refugees themselves. From the standpoint of refugee protection, the key issue is not whether people have a right to take up arms to oppose an oppressive regime in their own country, or whether neighbouring Governments may legally lend them support, but whether a resistance movement should be conducted from a refugee camp or its vicinity. It has usually been possible for UNHCR to obtain formal agreement for a clear separation between fighters and refugees, as well as for banning weapons from refugee camps and settlements. In certain cases involving large numbers

of refugees, however, it has been difficult to implement these agreements on the ground. Although the exclusively civilian and humanitarian character of refugee camps and settlements is widely accepted in principle¹² the political will to uphold it in practice has not always been apparent. In a number of recent cases the problem has been practically resolved by the repatriation of the refugees and the resistance fighters.

G. Resolving security threats from the refugees' country of origin

38. Attacks on refugees across international borders also pose complex political problems and require a comprehensive approach, which may begin with preventive diplomacy. Where organized armed forces are involved, such attacks may be seen as a threat to international peace and security calling for the involvement of the political organs of the United Nations or relevant regional bodies. Military attacks directed at refugees are violations of international humanitarian law. Even in cases where essentially criminal elements are involved, attacks across borders nonetheless engage the responsibility of the country of origin for the maintenance of law and order within its boundaries. Depending on the size and nature of the threat, the most practical remedy may be reinforced border patrols by the country of asylum. It may also be necessary to ensure that refugees or persons associated with them do not provoke such attacks through their own cross-border activities. One way to accomplish this is to comply with the prescriptions in the OAU Convention that refugee camps should be located at a reasonable distance from the frontier, and that refugees must not engage in subversive activities towards their country of origin. Where attacks on individual refugees are involved, the appropriate responses may be diplomatic and legal. In many cases there is a link between threats to refugees from their own country and the underlying causes of refugee flight. The possibility of resolving those causes and thereby permitting a solution to the refugee problem through voluntary repatriation is kept under constant review by the High Commissioner, and will normally be a part of any comprehensive strategy adopted.

H. Special situations

39. When a change of regime or the hostility of the host Government puts individual refugees at risk, the High Commissioner's function of providing international protection may face a difficult challenge. In many cases the Office is required to seek an alternative country of asylum, often through emergency resettlement. In the interim, the refugee may have to be relocated within the country to escape danger. In certain situations where a change of Government has been accompanied by civil disorder, the Office has had to find safe accommodation for refugees within the country until order was restored and an alternative solution could be negotiated. In other situations, the threat to a refugee comes from his or her fellow nationals in the country of asylum. In one country where such threats have occurred, the Office has arranged, with financial support from a third country, for emergency relocation within the asylum country. In other cases resettlement abroad has been the only practical way of ensuring security.

I. Public information and other activities to combat xenophobia

40. The attacks on foreigners, including refugees, that have recently occurred in industrialized countries present a different sort of threat which must be met less in the criminal courts - although these have their role -- than in the court of public opinion and through the democratic process. Proceeding on the basis that xenophobic and racist attacks on foreigners including refugees stem in part from ignorance and misunderstanding on the part of sections of the public, UNHCR field offices have been involved in activities intended to raise public awareness of the realities of the refugee phenomenon. These have included participation with NGOs, trade unions, etc., in public meetings and seminars, exhibitions, and film shows. Strong public reaction in some countries against violence directed against refugees and other aliens is believed to have helped reduce the frequency of such incidents. One practical measure that appears to be helpful in countering xenophobic movements has been the publication of outspoken statements by popularly respected public figures in some of the affected countries. The Office has also sought to inform the public in countries of origin of the difficulties facing would-be migrants.

VI. THE RESPONSIBILITIES OF REFUGEES

41. Since this note discusses the safety of refugees primarily in countries of asylum, the main focus is on measures that can be taken by that country, in cooperation with UNHCR, to ensure their security. The discussion would be incomplete, however, if it did not also underline the responsibilities of the refugees themselves. Refugees are liable for acts of violence, whether perpetrated upon nationals or fellow refugees, under the laws of the host country. Article 2 of the 1951 Convention states that: "Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order." The 1969 OAU Convention, in article III(l), reiterates this provision and adds that refugees should abstain from subversive activities against any OAU Member State.

42. Maintaining the purely civilian and humanitarian character of refugee camps and settlements is essential for the effective protection of refugees, including safeguarding their personal security. Refugees have a responsibility to cooperate with measures to this end and "to abstain from any activity likely to detract from the exclusively civilian and humanitarian character of the camps and settlements"¹³. Given the understanding that "the grant of asylum to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act" that is not to be regarded as unfriendly by any State¹⁴, and in view of the entirely non-political and humanitarian character of the High Commissioner's mandate¹⁵ persons who otherwise qualify as refugees cannot expect international protection or assistance as refugees while they continue to bear arms or participate in military or armed activity. Refugees should be educated on their duties to the host community and other refugees, in particular to refrain from military or other activities likely to jeopardize the safety of the refugee community or the host country, while they enjoy asylum.

VII. CONCLUSION

43. Safeguarding the basic human rights of refugees, including their personal security, is fundamental to international protection. Since all States have the duty to respect and ensure the rights of individuals within their territory or subject to their jurisdiction, responsibility for ensuring the safety of refugees is entrusted first of all to the Governments of countries of asylum, in cooperation with UNHCR and other relevant organizations. The security of refugees also requires respect by countries of origin for the peaceful and humanitarian character of the grant of asylum and for the territorial integrity of the country of asylum. To discharge their responsibilities for ensuring the safety of refugees, countries of asylum require the support of the international community and the cooperation of the refugees themselves.

44. The present note describes a number of measures that States, UNHCR and other relevant organizations have taken and can take in the future to overcome threats.. to the personal security of refugees. UNHCR would welcome the observations, advice and support that the members of the Executive Committee could provide concerning these and other measures that could be adopted, as well as further action that could be taken by the international community to ensure the safety and well-being of refugees.

List of Conclusions of the Executive Committee relating to the personal security of refugees

1975

No. 1(XXVI): Establishment of the Sub-Committee and General, para. (a).

1976

No. 2(XXVII): Functioning of the Sub-Committee and General, paras. (a), (f), (g) and (h).

1977

No. 3(XXVIII): General, paras. (a) and (b).

1979

No. 14(XXX): General, paras. (c), (d) and (e).

No. 15(XXX): Refugees without an Asylum Country, para. (k).

1980

No. 16(XXXI): General, paras. (e), (f) and (j).

No. 18(XXXI): Voluntary Repatriation, paras. (f) and (h).

No. 20(XXXI): Protection of Asylum-Seekers at Sea.

1981

No. 21(XXXIII): General, paras. (f), (g) and (h).

No. 22(XXXII): Protection of Asylum-Seekers in situations of Large-Scale Influx, in particular, para. II (B)(2)(g).

No. 23(XXXII): Problems related to the Rescue of Asylum-Seekers in Distress at Sea.

1982

No. 25(XXXIII): General, paras. (c) and (l).

No. 26(XXXIII): Report of the Working Group on Problems related to the Rescue of Asylum-Seekers in Distress at Sea.

No. 27(XXXIII): Military Attacks on Refugees Camps and Settlements in Southern Africa and elsewhere.

1983

No. 29(XXXIV) General, N.B. paras. (b), (d) and (j).

No. 31(XXXIV): Rescue of Asylum-Seekers in Distress at Sea.

No. 32(XXXIV): Military Attacks on Refugee Camps and Settlements in Southern Africa and Elsewhere.

1984

No. 33(XXXV): General, para. (e).

No. 34(XXXV): Problems related to the Rescue of Asylum-Seekers in Distress at Sea.

1985

No. 36(XXXVI): General, paras. (f), (g) and (h).

No. 38(XXXVI): Rescue of Asylum-Seekers in Distress at Sea.

No. 39(XXXVI): Refugee Women and International Protection, paras. (d), (e), (f) and (h).

No. 40(XXXVI): Voluntary Repatriation, paras (b) and (l).

1986

No. 41 (XXXVII) General, paras. (i) and (k).

No. 44(XXXVII): Detention of Refugees and Asylum-Seekers.

No. 45(XXXVII): Military and Armed Attacks on Refugee Camps and Settlements.

1987

No. 46(XXXVIII): General, para. (f).

No. 47(XXXVIII): Refugee Children, paras. (e) and (u).

Annex

No. 48(XXXVIII): Military or Armed Attacks on Refugee Camps and Settlements, N.B. paras. (1) and (4)(a)-(d).

1988

No. 50(XXXIX): General, paras. (h) and (i).

No. 54(XXXIX): Refugee Women.

1989

No. 55(XL) General, paras. (c), (h) and (i).

No. 58(XL): Problem of Refugees and Asylum-Seekers who move in an irregular Manner from a Country in which they had already found Protection, paras. (g) and (i).

No. 59(XL): Refugee Children, paras. (h) and (i).

No. 60(XL): Refugee Women, paras. (b) and (c).

1990

No. 61(XLI): General, paras. (c) and (d).

No. 64(XLI): Refugee Women and International Protection, para (a)(v), (a)(vi) and (a)(vii).

1991

No. 65(XLII): General, paras. (c), (i) and (t).

1992

A/AC.96/804, paras. 21 (e), 21 (s) and 21 (w).

A/AC.96/804, para. 30 (i)

¹ The specific circumstances dealt with by those Conclusions, sometimes on a recurrent basis, are: asylum-seekers in distress at sea (e.g., Conclusions No. 20(XXXI) of 1980, No. 26(XXXIII) of 1982 and No. 31(XXXIV) of 1983); asylum-seekers in situations of large-scale influx, (Conclusion No. 22(XXXII) of 1981); irregular movements of asylum-seekers and refugees (Conclusion No. 58(XL) of 1989); military or armed attacks on refugee camps or settlements (Conclusions No. 27(XXXIII) of 1982, No. 45(XXXVII) of 1986 and No. 48(XXXVIII) of 1987; the protection of refugee women and

children (e.g., Conclusions No. 47(XXXVIII) of 1987, No. 54(XXXIX) of 1988 and No. 64(XLI) of 1990; detention (Conclusion No. 44(XXXVII) of 1986 and in the context of voluntary repatriation (Conclusions No. 18(XXXI) of 1980 and No. 40(XXXVI) of 1985.

2 United Nations General Assembly resolution 47/105 on the Office of the United Nations High Commissioner for Refugees, paras. 3 and 4.

3 United Nations General Assembly resolution 47/105 on the Office of the United Nations High Commissioner for Refugees, 16 December 1992.

4 See Conclusion No. 48 (XXXVIII) (1987).

5 Ibid.

6 See Note on Certain Aspects of Sexual Violence against Refugee Women, EC/1993/SCP/CRP.2.

7 See Preamble, 1951 Convention relating to the Status of Refugees, first and second paragraphs.

8 Universal Declaration of Human Rights (UDHR), General Assembly resolution 217A(III), article 3, 4, 5 and 9; International Covenant on Civil and Political Rights (ICCPR), General Assembly res. 2200A(XXI), article 6, 7, 8, 9 and 10. See also, inter alia, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly res. 39/46; African charter of Human and Peoples' Rights (African Charter), Eighteenth Assembly of Heads of State and government, June 1981, (Nairobi, Kenya), articles 4, 5 and 6; American Convention on Human Rights (ACHR), OEA/SER.K/XXVI/1.1, article 4, 5, 6 and 7; European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), Council of Europe Treaty Series N.5, articles 2, 3, 4 and 5.

9 See article 3 common to the four Geneva Conventions of August 12, 1949; Fourth Geneva Convention (relative to the Protection of Civilian Persons in Times of War); articles 27, 29, 32 and 33; Additional Protocol I (relating to the Protection of Victims of International Armed Conflicts), articles 51, 73 and 75-77; Additional Protocol II (relating to the Protection of victims of Non-International Armed Conflicts), art. 4.

10 Cartagena Declaration on Refugees, 22 November 1984, paras. III(4) III(6), III(7) and III(8).

11 Ibid.

12 See e.g., Executive Committee Conclusion No.48 (XXXVIII) (1987), Military or Armed Attacks on Refugee Camps and Settlements, third preambular paragraph.

13 Executive Committee Conclusion NO.48(XXXVIII) (1987) on Military or Armed Attacks on Refugee Camps and Settlement, para. 4(a).

14 Declaration on Territorial Asylum, adopted by the United Nations General Assembly on 14 December 1967 (resolution 2312(XXII), fourth preambular paragraph. See also 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa, (United Nations Treaty Series No. 14 691), Article II(2). Cf. Executive Committee Conclusion No. 48 (XXXVIII) (1987) on Military or Armed Attacks on Refugee Camps and Settlements, third preambular paragraph.

15 Statute of the Office of the United Nations High Commissioner for Refugees, United Nations General Assembly resolution 428(V) of 14 December 1950, Annex, para. 2.

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