

1 The seeking of solutions is a mandatory function of the Office of the United Nations High Commissioner for Refugees. Various aspects of the subject have been considered on several occasions over the last decade by the Executive Committee, particularly while reviewing developments in UNHCR activities related to durable solutions; and the Sub-Committee of the Whole on International Protection has also examined various aspects of solutions from the perspective of protection, especially voluntary repatriation. The subject as a whole, however, has never been examined. Last year, a proposal was made in the Executive Committee that the subject of solutions should now be examined in all its aspects, particularly in relation to protection.

2 After consultations with governments, the High Commissioner decided that the subject "Solutions to the Refugee Problem and the Protection of Refugees" should be put to study and preliminary deliberations held. The examination of this subject would take into account the past and contemporary reality of the refugee problem and the current trend to approach the problem and its related aspect of solution from a broad legal perspective, including recent developments in the field of human rights thinking and of inter-State co-operation.

3 In the light of past practice and in order to facilitate the consideration of this important subject, the High Commissioner decided to have an informal and preliminary discussion and organized a round table which was held in San Remo, Italy, from 12 to 14 July 1989. The meeting, which was convened by UNHCR and arranged with the assistance of the International Institute of Humanitarian Law in San Remo, was attended by a group of experts, both governmental and non-governmental, representing all regions of the world. They participated informally in a personal capacity.

4 The participants in the round table considered an extensive study prepared as a background for the meeting by a senior expert at the request of UNHCR. They discussed the subject broadly and identified certain tentative conclusions for further study and consideration. They included:

- (A) the general relationship of solution to protection, having regard particularly to basic principles of protection;
- (B) the general development of a broad and modern human rights approach to the refugee problem, particularly in relation to the nature of the problem and the required related solution;
- (C) the detailed elaboration of a concept of solution which was consistent with general protection concerns in regard to its various aspects, i.e. prevention, voluntary repatriation, local settlement and resettlement; and
- (D) the progressive development of international law, policy and action in relation to solution, especially practical measures for seeking and obtaining solutions.

5 The report of this meeting and the tentative conclusions referred to above are annexed herewith and submitted in connection with the item on "Durable Solutions and Refugee Protection" at the fortieth session of the Executive Committee.

6 It is hoped that this report will be found useful by the Sub-Committee in its consideration of this important subject and in drawing up any conclusions.

## **ANNEX - REPORT OF THE ROUND TABLE ON SOLUTIONS TO THE PROBLEM OF REFUGEES AND THE PROTECTION OF REFUGEES SAN REMO, ITALY (12 - 14 JULY 1989)**

1 A Round Table on Solutions to the Problem of Refugees and the Protection of Refugees was held in San Remo from 12 - 14 July 1989. It was convened by the Office of the United Nations High Commissioner for Refugees with the assistance of the International Institute of Humanitarian Law. The purpose of the Round Table was to consider how law, policy and action could be developed progressively in regard to solutions in a manner which was in accord with the purposes and principles of protection.

2 The Round Table was attended by a group of experts drawn from various areas of responsibility in international and national life. The participants attended in their personal capacities and the discussion was on an unofficial and non-attributable basis.

3. The Round Table was chaired by the UNHCR Director of Refugee Law and Doctrine, Mr. Ghassan Arnaout, in the presence of the United Nations High Commissioner for Refugees, Mr. Jean-Pierre Hocke.

4 In his opening address, Mr. Arnaout said that the subject of the Round Table was both important and timely. Various aspects had been dealt with separately but there had never been a comprehensive look at the subject. Such an examination had become imperative as the international community was increasingly dealing with protection problems not separately but in the overall context of solutions. He underlined that the role of UNHCR should always remain non-political and humanitarian. However, the refugee problem should be seen as a whole and any international efforts in this regard should take into account all aspects of the problem, including the causes of refugee flows, the interim protection requirements and solution.

5 The meeting considered a background study for the Round Table prepared at the request of the Director of Refugee Law and Doctrine by Mr. G.J.L. Coles who also served as rapporteur of the meeting. The study was found to be a valuable document for the basis of further discussions.

6 The Report of the Round Table covers a summary presentation of the Rapporteur's background study, as well as the views expressed by the participants. It also includes a set of tentative conclusions for further study and consideration. In respect to these conclusions, it was felt that for the purposes of this Round Table it might be useful to address the refugee problem as a whole, i.e. in relation to all its relevant aspects, without prejudice to the question of the individual competence of particular international bodies. It would be helpful to consider what the international community as a whole could do to respond to this problem.

7 A list of participants and the agenda of the Round Table are attached.

## **I. INTRODUCTORY REMARKS MADE BY RAPPORTEUR**

### **(A) GENERAL OBSERVATIONS**

8 Over the years, the Rapporteur stated, there had been significant changes in interests and concerns where the refugee problem was involved and there was now an urgent need to take account of these changes by supplementing the traditional principles of law and doctrine with complementary new principles. The renewed emphasis on solutions was timely. The particular conditions of the fifties mainly within Europe, had produced law and doctrine which were oriented principally towards external settlement. In response to new conditions in the sixties, mainly in Africa, the prevailing international approach could be seen initially to have placed the emphasis on emergency relief. But problems in obtaining solutions and the resulting political, security and economic difficulties led then to a new emphasis on solutions. In turn, this led in the seventies to growing emphasis on voluntary repatriation; a solution which was increasingly related in the context of self-determination to the right to return in safety and dignity. The period of the eighties could be characterized as one where, for the first time, the emphasis had been placed upon approaching the refugee problem in relation to a broad and general concept of its solution, including prevention, and, accordingly, the problem had been evaluated increasingly in a general context of human rights and of inter-state principles which had subsumed in a larger context the traditional principles of refugee law and co-operation.

9 The trend of developments tended to suggest that the international community might be moving to a new period where greater attention would be paid to prevention. A major question, therefore, would be how prevention was to be understood from a broad protection perspective. What were the positive aspects of prevention which should be developed, and, conversely, what were the negative aspects which should be avoided? This largely unexplored facet of solution was now a matter of concern in the development of protection thinking.

10 The terminology relating to "solution" had varied from time to time. The term "solution" had either been unqualified or it had been qualified by different adjectives such as "radical", "permanent" and "durable". In view of the differing meanings of the various qualifying adjectives, it was probably preferable to employ the simple term "solution".

11 For the purposes of the study, the Rapporteur stated, the term "refugee" would be given a broad meaning to include all persons who might be deemed to have been compelled to leave their country and/or stay in another country. This was also the approach followed by the United Nations General Assembly Group of Governmental Experts when studying the question of international co-operation to avert further mass flows of refugees. However, the adoption of this broad meaning was without prejudice to the question of the correct meaning to be given to the term "refugee" within any particular legal context for the purposes of determining the applicability of particular rules or of institutional mandates.

12 It would be useful to examine the role and responsibility of every relevant party, including the individuals concerned, the receiving country, the country of origin, other States and international bodies, whether universal or regional. It would not be helpful to consider the subject from the perspective of only one of the parties and, consequently, in regard only or mainly to the role and responsibility of that party.

### **(B) THE RELATIONSHIP OF SOLUTION TO PROTECTION**

13 Solution should not be seen, the Rapporteur stated, as an aspect independent and separate from protection. On the contrary, solution should be seen in a general context of human rights and as the final purpose of protection, and protection was to be seen as governing the entire process towards solution and as determining what was or what was not a solution. Furthermore, solution was a process over time and it was achieved by action which, throughout its process, was consistent with basic principles of protection. Therefore, the principles of non-refoulement and asylum as well as the other basic rights of the refugee should be considered integral elements of any process towards solution.

### **(C) THE NATURE OF THE PROBLEM REQUIRING SOLUTION**

14 In defining "solution", the Rapporteur said, a first step should be to determine the problem that required solving. Ideas about solution would depend on how the problem was to be perceived. Both aspects should be examined in the context of those principles of law which were known as human rights.

15 In broad terms, it was suggested that the problem was, basically, that of:

The denial of freedom of movement to the individual as a result of conditions in the country of nationality which compel departure from that country or stay abroad; and the inability or unwillingness of that individual to avail himself of the protection of the country of nationality.

In this definition of the problem, the denial of freedom of movement which was referred to was not of freedom of movement generally but only of the freedom in the limited sense outlined above i.e. in relation to the country of nationality. It concerned either the freedom to remain in one's country or, if outside it, to return to it. Freedom of movement implied not only the liberty to move but also the liberty to stay put. Hereafter, therefore, the use of the phrase "freedom of movement" in the context of the background study was in that limited sense, for the sake of convenient abbreviation, and it should be understood only in that limited sense.

16 In general terms, the basic problem of the refugee was that of conditions within the country of nationality which caused the exile and the de facto or de jure statelessness of the individual. It was the denial of "freedom of movement" that required that the refugee situation be considered a "Problem", for the element of compulsion could not be considered normal or unobjectionable. The refugee situation should not be confused with normal migration. Exile was generally an evil. Today there was a strong presumption against the legality of such measures taken against human beings, especially en masse, as expulsion, denationalisation and the denial of return. While it was true that a denial of "freedom of movement" in relation to the country of nationality might be indirect or unintentional, as in the case of war, it was likewise hard to conceive of a case where, sooner or later, the capability of the authorities of the country of origin would not exist to bring the exile to an end and where, consequently, a continuing state of exile was not finally deliberately intended.

17 Furthermore, the refugee problem was to be considered as being constituted not only by an actual denial of "freedom of movement" but also by the mere possibility of such a denial. Concern over the future could affect action taken in the present. The approach, if it were to be comprehensive or balanced, must be in relation to the future as well as to the present and past. Since the approach in relation to the future must address a situation prior to a transfrontier movement, it must necessarily address a situation in a potential country of origin. Prevention, therefore, should not be seen as an aspect apart from solution but as an integral part of it.

18 Concern over a refugee movement might require not only preventive action in regard to a situation in a country of origin but also remedial action in relation to that country. In some situations, the action might be both preventive and remedial, where the movement was in course of taking place and where it was desired to prevent a further movement and to obtain conditions which would permit the return of those who had already left.

## **(D) THE CONCEPT OF SOLUTION IN RELATION TO THE PROBLEM OF THE REFUGEE**

19 In the light of the foregoing, the Rapporteur stated, "solution" could be defined as either the prevention of conditions arising within the country of nationality which compelled a national to depart or remain outside the country of nationality so that national was without national protection or the remedying of such conditions having that effect. (This could be called "the basic solution".) It was only in the eventuality that the basic problem of denial of "freedom of movement" could not be solved that the solution to the resulting problem (but not to the basic problem) became the enablement of the refugee to settle in another country. (This would be called the "contingent solution"). This concept of solution, including the two orders of solution, had important implications for law, policy and action. It was clearly incorrect, in the light of this definition, to treat the three traditional "solutions" of voluntary repatriation, local settlement or resettlement as of equal order, since voluntary repatriation was the basic or primordial solution. Moreover, the aspect of prevention should not be overlooked in any comprehensive concept of solution.

20 This could be said without undermining in any way the principles of the interim protection of the refugee or the case for providing, where necessary, the solution of external settlement. It was only to say that, in principle, the solution to the problem of the violation of a human right involved respect for that right.

21 The entire concept of solution should be linked integrally with the rights of the individual, whether they be in relation to the country of nationality or to the world outside. Essentially, solution should be seen as the preservation or the restoration of the rights of the individual.

22 The notion of the basic solution should be understood as encompassing the preservation or restoration of the enjoyment of the normal rights of nationality or settlement. In regard to the restoration of such rights, it was clearly insufficient, from the perspective of solution, to consider mere physical re-entry as a solution regardless of the subsequent consequences to the individual. There must occur an actual possession or enjoyment of all normal rights. Likewise, the notion of the contingent solution must be understood as encompassing not only physical settlement but also the possession or enjoyment of all the normal rights of settlement, including, finally, those in relation to nationality.

23 While the enjoyment of the rights of nationality in a country of eventual settlement might be a difficult goal to achieve in some cases, since a State could not be compelled to grant its nationality, it remained, nonetheless, a persistent goal for achievement by virtue of the consideration that a state of de facto or de jure statelessness was abnormal and should not be regarded as permanent.

24 The acquisition of a community by means of the enjoyment of normal national protection was not aptly described by a phrase such as "economic integration" or "self-sufficiency". Economic integration or self-sufficiency was only a part of human well-being; for the longer term, the refugee who had decided to settle outside the country of nationality usually desired to belong to another national community, participating fully in its political, social, economic and cultural activities as a matter of right. Without a community, the individual was isolated, deprived and vulnerable.

25 For this reason, "economic integration", not including legal integration, and "self-sufficiency" should not be considered a "solution", whether called a "durable solution" or otherwise, except in relation to a problem other than that of the refugee, which

remained essentially that of de facto or de jure statelessness.

26 Finally, a concept of solution that related only to the problem to the refugee of the loss of national protection and did not include also the problem of the circumstances surrounding and qualifying that loss was inadequate. Action for solution should be addressed, therefore, to the full nature of the problem of the refugee, including such aspects as family reunification, compensation and restitution. This was an aspect of solution deserving more attention.

## II. SUMMARY OF THE DISCUSSION

27 A number of speakers congratulated UNHCR for its timely initiative and for undertaking the preparation of the study and the holding of the Round Table as a preliminary step for the preparation and facilitation of the discussion of the subject by the UNHCR Executive Committee. It was said that the historical treatment of the study was very helpful, particularly in tracing the role of the High Commissioner in seeking solutions.

28 In the general discussion following the presentation of the background study, it was said that the nature and extent of the modern problem of exile was one that had still not received adequate attention. The study had brought out that many refugee situations had remained without solution for a long time. The actual suffering of the millions of traumatised and deprived persons who had been forced to leave their homes was not always sufficiently recognized. By itself, asylum did not necessarily constitute a solution.

29 It was considered that the individual should be at the heart of the concern of law and policy in relation to the refugee problem and that the basic point of departure for the legal or policy approach to the solution of the refugee problem should be the actual situation of the individual, taking into account that the refugee had not only immediate needs but also an identity formed by his past and aspirations for the future.

30 It was stated that prevention and remedy gained immediate practical significance from the fact that as the refugee problem was basically one of abnormality, often, indeed, one of disorder and violence on a large scale, solutions could not usually be found satisfactorily in an approach which was confined to a post factum response which was passive and not reactive to the conditions in the country of origin.

31 Experience showed, it was said, that disorder and violence could attain such a dimension and possess such a character that the persons affected, even if they could find refuge abroad, might find themselves in circumstances that were precarious, difficult and even dangerous. In today's reality, refuge abroad was not always assured to all, nor was refuge abroad necessarily an improvement for all the persons concerned, let alone any kind of solution. Today, many were denied refuge, and the conditions of exile for the great majority of the world's refugees were harsh. Many had been denied any kind of solution for many years, even decades.

32 It was said that international law should reflect the realities of the times and should, therefore, be developed to meet current problems. Mass expulsions, in particular, were unacceptable. Inter-State principles needed to be developed further as well as the law on State responsibility. It was said that through the General Assembly the High Commissioner could request the advisory opinion of the International Court of Justice on any matter of interpretation of any relevant international legal instrument on refugees. It was also said that not only the law but also the political will and mechanisms for dealing with the refugee problem should be developed.

33 In the development of law and doctrine, it was stated that recourse should now be had to human rights as a primary source. It was also said that regard should be had to the right of States as well. The former rights, it was said, were not only civil and political but were also economic, social and cultural and were applicable directly and generally to the refugee problem, in relation to causes and to the interim aspects of protection as well as to the question of solution. The refugee should enjoy the human rights set out in such instruments as the Universal Declaration and the International Covenants on Human Rights of 1966. It was said that these rights could be violated not only in the country of origin but also in receiving countries through the denial of the rights of the refugees. It was important to safeguard the principle of asylum as an essential need of the refugee.

34 It was said that today's refugee problem was caught up in the problem of development. In the refugee context, development is both a cure and a prevention. It was said that aid and development should be oriented to the refugee problem. Development projects could ensure that refugee solutions did not unravel, and that a refugee who returned home because he no longer feared violence or persecution was not forced to leave again because he could not face poverty and starvation. It was said also that aid and development was an important aspect of prevention.

35 It was stated that solutions to the problem of refugees, particularly those which involved cases of large-scale influx, could not be conceived without international co-operation and solidarity. Both regional and international efforts were needed to contribute to the solution of the problem of refugees in accordance with the obligations provided for by relevant international instruments in the field of refugee law.

36 A practical step, it was said, would be to develop further the general and complementary principles of inter-state relations so as to extend the agreed principles concerning international co-operation to avert new flows, which were largely confined to cases where a flow had yet to take place, to cover measures to be taken after a refugee flow had taken place. This should be seen as consolidating and taking forward the significant work already accomplished within the United Nations General Assembly.

37 Another practical step, it was said, might be the orientation of policy thinking and of the presentation of the refugee problem towards emphasizing more the significance of the values of reconciliation and voluntary return.

38 It was considered that the protection of the refugee required as a matter of human rights that the aspect of the role and responsibility of the country of origin or of the countries in relation to that country should be developed further. Likewise, the complementary principles of friendly relations between States required that international co-operation and the law of State responsibility be developed to engage more satisfactorily the role and responsibility of the country of origin and of other countries in relation to that country. In this connection, it was recalled that the Friendly Relations Declaration contained a provision that States had the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the promotion of universal respect for, and observance of, human rights and freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerances. This duty was the more compelling where human rights violations led to refugee outflows and their adverse consequences for other countries.

39 It was said that emphasis on prevention and return and on the obligations of the country of origin must not detract attention in any way from, or undermine, the humanitarian obligations of receiving countries and the importance of measures taken to improve the protection of refugees, including the means of providing, where necessary, the solution of external settlements. The principles of non refoulement and asylum would need to be constantly reaffirmed as basic elements of the entire process towards solution.

40 At the same time, it was stated that there were also other principles related to solution and which were complementary to the principles of non refoulement and of asylum which needed to be developed.

41 The view was expressed that more weight should be given to the notion of social attachment and related rights.

42 It was suggested that a useful step might be to study further the causes of large-scale exoduses.

43 On the question of the causes of refugee movements, it was stated that the element of compulsion distinguished refugee movements from migratory ones and that armed conflicts and serious internal disturbances were producing refugee movements as well as human rights violations. It was also said that a root cause of these conflicts and disturbances was the disparities of rich and poor countries with all their manifold consequences. It was maintained that the present day situation of refugees called for a recognition of the needs of the people in the larger category (i.e.: victims of violence and of serious internal disturbances) which had been taken into account in regional conventions on refugees and other instruments (e.g. Cartagena Declaration), which had contributed significantly to the development of refugee law. On the other hand, it was also stated that in international law or usage the only definition of a "refugee" which was accepted generally was that of the 1951 Convention.

44 It was stated that the prevention of situations arising which would lead to refugee flows should be considered the most effective solution, although it was also said that in practice the deterioration of some situations could be irreversible. It was said that the aspect of causes could be seen from both a "micro" or a "macro" dimension. From a "macro" perspective, refugee situations were a malfunction of the World Order, which involved broad political, economic and social issues and included a large human rights component. While these larger issues were for resolution by the international community, the High Commissioner could help by deploying his specialised expertise and perspective in identifying issues to be addressed by the international community in remedying these situations. It was also stated that in the context of a global strategy for the implementation of human rights, the High Commissioner had a significant contribution to make. It was said that there was a need for more concerted and effective action within the United Nations system. No one body could solve the refugee problem by itself. Too much responsibility should not be placed on UNHCR as the responsibility in relation to solution was often larger than UNHCR's mandate.

45 It was stated that the thinking within UNHCR concerning the role and responsibility of the country of origin should continue to evolve. The possibilities of pre-emptive diplomacy should be explored. The High Commissioner should never hesitate to deal with the country of origin if this would help in his function of providing protection and seeking solutions. In seeking solutions, the High Commissioner could deal with the aspect of prevention within the scope of his mandate. While fulfilling his task of providing protection to refugees, looking for solutions or working for prevention, the High Commissioner, it was said, should be entitled to remain in contact with the country of origin and the country of refuge in application of Article 33 of the United Nations Charter.

46 It was said that the existing mandate of the High Commissioner was sufficient to allow him to seek actively solutions by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them and by acting as an intermediary or channel of communication. He had an important role in helping to depoliticise situations. By promoting and implementing solutions, the High Commissioner contributed to prevention. It was important that he establish, whenever possible, contact with all the main parties and acquaint himself with their points of view.

47 It was said that the development of early warning systems was an important contribution although limited to preventive and remedial concerns. The Office for Research and Collection of Information (ORCI) should be made more operational, including giving policy guidance and identifying policy options. Co-ordination among the interested parties of the UN system should be strengthened, especially that concerning ORCI, the UNHCR and the UN Human Rights Centre. The role of NGO's should also be enhanced in this regard.

48 Among the factors which might need to be considered further in promoting solutions, it was said, were the necessity, in cases of mass exodus, of the planning process being oriented, right from the beginning, towards solution; the importance of greater recourse to the main organs of the United Nations and of respect for the basic rules and principles of international law and co-operation; the need for active exploration, whenever appropriate, of the possibilities of preventive action and of the promotion of safe and voluntary return; the harmonization of assistance to receiving countries and countries of origin in the light of an identified solution; the need to move beyond palliatives to solutions; and the significance of the link between development and aid.

49 More extensive regional co-operation, it was said, should be considered, particularly in those situations where the combined political and economic resources of a region could bear significantly on a refugee problem and its solution. In recent years there had been a marked trend globally towards greater regional co-operation in responding to refugee problems. It might be that a greater utilisation of the capacity for regional action would significantly help to solve the problem of the limitations on action at the global level, particularly in promoting a more complete approach which addressed in a humane and effective manner the aspects of causes and of prevention and voluntary return as well as care and maintenance and external settlement. It was said that the need for the involvement of UNHCR in deliberations at the regional level, particularly in view of its important protection function, was an issue which should also be taken into account.

50 It was said that the right to return in freedom and safety should be constantly affirmed today. Concern was expressed that the report and draft Declaration recently prepared within the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities on the subject of the right of everyone to leave any country, including his own, and to return to his country took inadequate account of the refugee problem and of its solution. It was agreed that consideration should be given to reflecting in the final documentation of the Sub-Committee the protection concerns in regard to the refugee problem and to amending the draft Declaration in such a way as to ensure that the right to return was satisfactorily developed in it.

51 It was said that consideration should be given to the strengthening of safeguards in the promotion of voluntary repatriation of refugees. The monitoring of the respect for, and fulfillment of, amnesties and other guarantees was particularly important. It was said that the principle of the legitimate interest of the High Commissioner in the consequences to refugees of return, even in the case of spontaneous returns, could be stressed, as well as his right to be given direct and unhindered access to returnees. His interest should be considered as extending beyond the immediate moment of return and as extending for as long as was reasonably necessary to conclude that return would be a lasting solution.

52 It was said that amnesties should be without time limits or any conditions which amounted to pressure on the refugees to return. As far as possible voluntary repatriation which was assisted or organized internationally should be under the terms and conditions of a written international agreement which was made available publicly. However, it was also said that this requirement might not always be desirable.

53 It was stated that it was inappropriate in the context of solution to stress the significance of free will only in relation to conditions in the receiving country. In the refugee situation, the free will of the refugee was relevant principally in relation to the conditions in the country of origin. As long as the refugee was unable to return, the refugee was not free to make any meaningful choice between returning or staying; his free will was denied. For the refugee to be able to make an unforced act of will in choosing between returning or staying, there must be, firstly, a fundamental change in the circumstances within the country of origin. Consequently, the possibility of such a fundamental change of circumstances and the question of what action could be taken to bring it about should be the first concern of the approach to the question of solution.

54 It was said that the question of international co-operation on the voluntary repatriation of rejected asylum-seekers was an important and actual question which should be put to further consideration. Some participants, however, felt that this question would not fall within the competence of UNHCR.

55 In considering temporary arrangements for dealing with refugees, either by permitting them only to stay temporarily or by according them "tolerance" status, the positive aspects in some situations of such arrangements were acknowledged but their underlying nature as temporary expedients which were not solutions was also recognized. It was pointed out that situations of "tolerance" were often quite unstructured and there was no formal provision for the protection of refugees: they were left in a legal "limbo". It was said that conditions of temporary stay or "tolerance" which fell short of the basic requirements of a solution could only be acceptable for a limited period of time and that it was unjust to deprive a human being of a community for many years, especially where the person lived under a continuing threat of expulsion. It was said that "self-sufficiency" was not by itself a solution since it was not necessarily settlement. Without a community, it was said, a human being was deprived and vulnerable.

56 It was said that an important purpose of refugee law was to eliminate statelessness, whether de facto or de jure and that the refugee situation should not be regarded as normal or permanent. It was also said that a reference to assimilation in Article 34 of the 1951 Convention should not be considered an intention to identify a precondition (i.e. assimilation) for naturalization. There was no obligation to grant naturalization to a refugee; and, furthermore, a refugee might not wish to assimilate or take a new nationality.

57 It was stated that the widespread practice of temporary asylum (or refuge) underlined the necessity for continuing to stress the importance of the solution of local settlement or resettlement where there was no possibility of voluntary return in a reasonable period of time. While the refugee should not be forced to accept either solution, it was only just or humane in such circumstances to extend the possibility of either one or both of those solutions to the refugee. It was stated, also, that resettlement had an important role to play in underpinning generous asylum policies and the principle of international solidarity in burden-sharing, including regional burden-sharing, should continue to be stressed.

58 Finally, it was said in regard generally to the seeking of solutions today that what was required basically was a broad range of measures commanding general support and relating to the causes of such movements as well as the response to them when they occur. The measures should relate to prevention and return as well as to external settlement. The purpose of these measures should be primarily to contribute to the establishment of conditions which were such that, by and large, movement would become voluntary, of a "regular" character and the conditions of residence generally would be just and humane. Indispensable for the success of these measures was a growing commitment to the purposes and principles of the United Nations Charter, including the peaceful settlement of disputes, international solidarity in development, disarmament and respect for human rights.

59 At the conclusion of the discussions, appreciation was expressed for the initiative of the High Commissioner in convening the meeting on such an important and topical subject and appreciation was also expressed for the assistance of the International Institute of Humanitarian Law and of its President.

## **Tentative Conclusions for Further Study and Consideration**

1 Solution should not be seen as an aspect independent and separate from protection. It should be seen as the final purpose of protection, and protection should be seen as governing the entire process towards solution and as determining what was or what was not a solution.

2 In broad terms, the problem of the refugee was basically that of the denial of "freedom of movement" to the individual by reason of conditions in the country of nationality which compelled departure from that country or stay abroad and the inability or unwillingness of that individual to avail himself of the protection of the country of nationality.

3 Solution, therefore, was either the prevention of conditions occurring within the country of nationality which compelled a national to depart or remain outside the country of nationality so that national was without national protection or the remedying of such conditions having that effect (i.e. the "basic" solution). It was only in the eventuality that the basic problem of denial of "freedom of movement" could not be solved that the solution of the resulting problem (but not the basic problem) became the enablement of the refugee to settle in another country (i.e. the "contingent solution").

4 This concept of solution, including the two orders of solution, had important implications for law, policy and action. It was clearly impossible, in the light of this definition of solution, to treat the three traditional "solutions" of voluntary repatriation, local settlement or resettlement as of equal order. voluntary repatriation was the basic or primordial solution. Moreover, prevention was a further aspect of solution which should not be ignored in an approach which was comprehensive and balanced.

5 The emphasis on prevention and return and on the obligations of the country of origin or of other countries in relation to the country of origin should not detract in any way from, or undermine, the responsibility of the receiving country and the importance of measures taken to secure the protection of refugees, including by way of prohibiting refoulement, of providing asylum and, where necessary, the solution of external settlement.

6 In the refugee context, developmental aid had both the aspects of cure and prevention. Developmental aid could be needed to ensure that refugee solutions did not unravel and that a refugee who returned home because he no longer feared violence or persecution was not forced to leave again because he could not face poverty and starvation. In many situations solutions to the problem of refugees, particularly those which involved cases of large-scale influx, could not be conceived without international co-operation and solidarity. Both international and regional efforts were needed to contribute to the solution of the problem of refugees in accordance with the obligations provided for by relevant international instruments in the field of refugee law.

7 In regard to the solution of voluntary return, solution was achieved by more than mere entry into the country of nationality but was a process of return which terminated only with the accomplishment of a normal and apparently, durable re-insertion into the original community.

8 The acquisition of a community by means of the enjoyment of normal national protection was not aptly described by a phrase such as "economic integration" or "self-sufficiency". Economic integration, not including legal integration, and "self-sufficiency" should not be considered a "solution", whether called a "durable solution" or otherwise, except in relation to a problem other than that of a refugee, which was that of de facto or de jure statelessness.

9 While sometimes a temporary arrangement may have to last a considerable time before a solution could be found, it would be unjust for a temporary arrangement to last for too long, so that refugees were denied any normal life in a community or, worse still, were forced against their will to live indefinitely in uncertain, harsh or dangerous circumstances.

10 An adequate notion of solution should also take into account such principles as family reunification and compensation, which were elementary considerations of humanity and justice.

11 The individual should be at the heart of the concern of law and policy in relation to the refugee problem and the basic point of departure for the legal or policy approach in the solution of the refugee problem should be the actual situation of the refugee, taking into account that the refugee had not only immediate needs but also an identity formed by his past and aspirations for the future.

12 International law relating to the refugee problem needs to be further developed to meet current difficulties. In particular, the law relating to State responsibility should be developed as well as the general principles of inter-State co-operation to avert new flows of refugees so as to cover international co-operation after a flow had begun or had taken place as well as before.

13 In the development of law and doctrine, recourse should be had to human rights as a primary source. These rights were not only civil and political but also economic, social and cultural and they were directly relevant to the refugee problem, in relation to causes and to the interim aspects of protection as well as to the question of solution. These rights could be violated in the country of origin and in receiving countries through the denial of the human rights of refugees.

14 The existing mandate of the High Commissioner was sufficient to allow him to actively seek solutions by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them and by acting as an

intermediary or channel of communication. It was important that he establish, whenever possible, contact with all the main parties and acquaint himself with their points of view. In seeking solutions, the High Commissioner could deal with the aspect of prevention within the scope of his mandate.

15 The United Nations Office for Research and Collection of Information (ORCI) should be made more operational, including giving policy guidance and identifying policy options. Co-ordination among the interested parties of the United Nations system should be strengthened especially that concerning ORCI, UNHCR and the United Nations Human Rights Centre. The role of non-governmental organizations should also be enhanced in this respect.

16 The right to return in freedom and safety should be constantly affirmed.

17 Consideration should be given to the strengthening of safeguards in the promotion of voluntary repatriation. For example, the principle of the legitimate interest of the High Commissioner in the consequences to refugees of return, even in the case of spontaneous returns, could be stressed, as well as his right to be given direct and unhindered access to returnees. His interest should be considered as extending beyond the immediate moment of return and as extending for as long as was reasonably necessary to conclude that return would be a lasting solution. Amnesties should be without time limits or any conditions which amounted to pressure on the refugees to return. As far as possible voluntary repatriation which was assisted or organized internationally should be under the terms and conditions of a written international agreement which was made available publicly.

18 The importance of the solution of local settlement or resettlement should continue to be accepted where there was no possibility of voluntary return in a reasonable period of time. In such a case it was only just or humane to extend finally to the refugee the possibility of either one or both of these solutions.

19 Resettlement had an important role to play in underpinning generous asylum policies and the principle of international solidarity in burden sharing, including regional burden sharing, should continue to be stressed.

20 In relation to the problem of the refugee, the single term "solution" was preferable to the term qualified by the various adjectives, such as "radical", "permanent" or "durable", which have been employed at one time or another. None of these adjectives were satisfactory and had associations with the thinking at particular times and in relation to particular circumstances. The simple term "solution" might be quite adequate in itself.

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