



**INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW  
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES**

**25<sup>th</sup> ROUND TABLE ON CURRENT PROBLEMS OF  
INTERNATIONAL HUMANITARIAN LAW**

**“REFUGEES:  
A CONTINUING CHALLENGE”**

*Contributions to International Refugee Law:  
Joint Activities of the International Institute of Humanitarian Law and the United  
Nations High Commission for Refugees  
1973 – 2000*

**A Collection of Selected Documents prepared by the  
IIHL on the occasion of the 50<sup>th</sup> Anniversary of the  
1951 Refugee Convention**

*San Remo, 6 – 8 September 2001*

## TABLE OF CONTENTS

<b>I. International Institute of Humanitarian Law/ United Nations High Commissioner for Refugees: Special meetings of Experts and Working Groups on Refugee Problems Since 1973</b>	
<b>Round Table on the Reuniting of Dispersed Families: Resolution</b> <i>San Remo, Italy, 28 – 30 June 1973</i> .....	2
<b>The Reuniting of Dispersed Families</b> <i>San Remo, Italy, 13 – 16 June 1974</i> .....	3
<b>Round Table on Refugees in Orbit</b> <i>Florence, Italy, 4-6 June 1979</i> .....	6
<b>Round Table on the Problems Arising from Large Numbers of Asylum Seekers</b> <i>San Remo, Italy, 22-25 June 1981</i> .....	8
<b>Round Table on Pre-Flow Aspects of the Refugee Phenomenon</b> <i>San Remo, Italy, 27-30 April 1982</i> .....	11
<b>Working Group on Mass Expulsion</b> <i>San Remo, Italy, 16-18 April 1983</i> .....	14
<b>Round Table on the Movements of People</b> <i>Florence, Italy, 14-18 June 1983</i> .....	18
<b>Seminar on Current Problems in International Humanitarian Law</b> <i>Florence, Italy, 20 – 22 August, 1985</i> .....	22
<b>Conclusions on Family Reunification</b> <i>Florence, Italy, 4 – 6 December, 1986</i> .....	24
<b>Meeting of Experts on Reinforcement of International Cooperation for Solving Refugee Problems</b> <i>San Remo, Italy, 25 – 27 April, 1991</i> .....	26
<b>Meeting of Experts on Prevention</b> <i>San Remo, Italy, 18 – 20 June 1992</i> .....	29
<b>Conflict Prevention – The Humanitarian Perspective</b> <i>New York, United States, 15 – 16 April 1994</i> .....	37
<b>Meeting of European Government Experts on Current Refugee Issues</b> <i>Zurich, Switzerland, 22 – 24 March 1996</i> .....	40

## II. International Institute of Humanitarian Law/ United Nations High Commissioner for Refugees: Regional Meetings on Refugee Issues

<b>Round Table of Asian Experts on Current Problems in the International Protection of Refugees and Displaced Persons</b> <i>Manila, Philippines, 14 – 18 April 1980</i> .....	44
<b>Round Table on Humanitarian Assistance to Indo-China Refugees and Displaced Persons</b> <i>San Remo, Italy, 28 – 30 May 1980</i> .....	46
<b>Asian Working Group on the International Protection of Refugees and Displaced Persons</b> <i>San Remo, Italy, 28 – 30 May 1980</i> .....	49
<b>Seminar on the Rights of Asylum and the Rights of Refugees in Arab Countries</b> <i>San Remo, Italy, 16 – 19 January 1984</i> .....	53
<b>International Humanitarian Law in the Contemporary World: New Trends in Humanitarian Issues</b> <i>San Remo, Italy, 5 – 7 July 1984</i> .....	55
<b>4<sup>th</sup> Seminar on International Humanitarian Law in the Contemporary World</b> <i>Moscow, Russia, 4 – 6 June 1987</i> .....	56
<b>2<sup>nd</sup> Seminar of Arab Experts on the Asylum and Rights of Refugees</b> <i>Tunisia, 15 – 18 May 1989</i> .....	58
<b>6<sup>th</sup> Seminar on International Humanitarian Law in the Contemporary World</b> <i>Warsaw, Poland, 20 – 22 June 1989</i> .....	60
<b>7<sup>th</sup> Seminar on International Humanitarian Law in the Contemporary World</b> <i>East Berlin, Germany, 6-7 June 1990</i> <i>West Berlin, Germany, 8-9 June 1990</i> .....	64
<b>8<sup>th</sup> Seminar for European Countries on Contemporary International Humanitarian Law and Current Human Rights Issues in Europe</b> <i>Bucharest, Romania, 27 – 30 June 1991</i> .....	69
<b>3<sup>rd</sup> Seminar of Arab Experts on “Asylum and Refugee Law”</b> <i>Amman, Jordan, 2-4 November 1991</i> .....	73
<b>Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World</b> <i>Cairo, Egypt, 16 – 19 November 1992</i> .....	76
<b>Central and Eastern Europe: The Challenge of Becoming Refugee Receiving Countries</b>	

<i>Prague, Czech Republic, 6 – 8 April 1993</i> .....	79
<b>International Symposium on The Protection of Refugees</b> <i>Sofia, Bulgaria, 21 – 23 June 1994</i> .....	82
<b>13<sup>th</sup> European Dialogue on Current Humanitarian Issues: The Right to Return to One’s Own Country</b> <i>Bucharest, Romania, 17 – 19 June 1996</i> .....	84
<b>III. International Institute of Humanitarian Law/ United Nations High Commissioner for Refugees: Excerpts from Conclusions and Recommendations of Round Tables and Congresses</b>	
<b>Reunion of Families</b> <i>San Remo, Italy, 6 – 9 September 1978</i> .....	87
<b>Congress on International Solidarity and Humanitarian Actions</b> <i>San Remo, Italy, September 1980</i> .....	88
<b>Round Table on the Protection of Refugees in Armed Conflicts and Internal Disturbances</b> <i>San Remo, Italy, 8 – 11 September 1982</i> .....	100
<b>9<sup>th</sup> Round Table on Current Problems of International Humanitarian Law: Physical Safety, the Activities of Refugees, and National Security</b> <i>San Remo, Italy, 7 – 10 September 1983</i> .....	102
<b>10<sup>th</sup> Round Table on Current Problems in International Humanitarian Law: The Treatment of Refugees, with Particular Reference to the Problem of Detention</b> <i>San Remo, Italy, 17 – 20 September 1984</i> .....	104
<b>13<sup>th</sup> Round Table on Current Problems in International Humanitarian Law: Family Reunification</b> <i>San Remo, Italy, 6 – 10 September 1988</i> .....	106
<b>14<sup>th</sup> Round Table on Current Problems in International Humanitarian Law: Declaration on the Protection of Refugees, Asylum Seekers and Displaced Persons</b> <i>San Remo, Italy, 12 – 16 September 1989</i> .....	108
<b>15<sup>th</sup> Round Table on Current Problems in International Humanitarian Law: Refugee Day</b> <i>San Remo, Italy, 4 – 6 September 1990</i> .....	109
<b>17<sup>th</sup> Round Table on Issues of International Humanitarian law</b> <i>San Remo, Italy, 2 – 4 September 1992</i> .....	111

**22<sup>nd</sup> Round Table on Current Problems in International Humanitarian Law:  
Impact of Humanitarian Assistance and the Mass Media on the Evolution of  
Conflict Situations**  
*San Remo, Italy 3 – 6 September 1997.....*121

**Congress on Humanitarian Action and State Sovereignty**  
*San Remo, 31 August – 2 September 2000.....*128

International Institute of Humanitarian Law/  
United Nations High Commissioner for Refugees: Special  
meetings of Experts and Working Groups on Refugee  
Problems Since 1973

**Round Table on the Reuniting of Dispersed Families: Resolution**  
*San Remo, Italy, 28 – 30 June 1973*

The Round Table on the “REUNITING OF DISPERSED FAMILIES”, organised at San Remo by the International Institute of Humanitarian Law from 28 to 30 June, 1973,

Referring to the basic principles of human rights and of international humanitarian law,

Recalling the resolutions adopted by the United Nations and International Conferences of the Red Cross in the field of the respect for and the effective application of basic human rights and of rules of humanitarian law,

Recalling the rules of existing international instruments concerning the protection of the human person in all circumstances,

Considering that those rules have retained their full value in spite of obstacles preventing their full application,

Recognising the significance of the heartening results obtained in the field of the reuniting of families in several countries,

Recognising the significance of the efforts undertaken by international and national institutions in the field of the reuniting of families, in particular by the United Nations High Commissioner for Refugees, by the International Committee of the Red Cross and National Red Cross Societies, and by the International Union for Child Welfare,

Considering that the teaching of knowledge of human rights and of international humanitarian law should form an integral part of education at all levels of the population as only a full and clear understanding of those rights can widen the scope of the possibilities of their employment and effective application,

NOTES that, in accordance with article 16 of the Universal Declaration of Human Rights, “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”; that, in accordance with principle 8 of the Declaration of the Rights of the Child, “the child shall in all circumstances be among the first to receive protection and relief”; that, as a result of armed conflicts, disturbances and other critical situations occurring in different parts of the world, large numbers of families are dispersed and the reuniting of their members is hindered by major obstacles, and that no one should remain indifferent to the ensuing suffering; and, that it is indispensable that existing humanitarian rules be strengthened and developed in order to ensure more effective protection by specifying:

- Categories of protected persons in their widest possible sense,
- Humanitarian and social criteria by which it might be possible to establish ways and means for the reuniting of families.

REQUESTS Governments to take all possible measures for facilitating the reuniting of families and for granting intergovernmental, non-governmental and voluntary international organisations, as well as their appropriate national organisations, all possible assistance in their efforts to promote the reuniting of families.

SUGGESTS that a conference of experts contribute towards the drafting of effective solutions to be brought to the problems of the reuniting of dispersed families.

## **The Reuniting of Dispersed Families** *San Remo, Italy, 13 – 16 June 1974*

From June 13 to 16, a Conference of experts on the reuniting of families dispersed by armed conflicts or as a consequence of migration was held in Florence at the initiative of the International Institute of Humanitarian Law of San Remo with the co-operation of the Italian Red Cross.

The Round Table continued the discussion that began the year before at a round table held in San Remo, where experts from fifteen countries (Austria, Korea, France, Great Britain, Iran, Israel, Italy, Jordan, Monaco, Netherlands, Pakistan, Spain, Sweden, Syria, United States), representing their respective governments or national Red Cross Societies, the Holy See and the Sovereign Order of Malta, as well as the delegation of sixteen international organisations including the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and the Council of Europe, attended the Conference.

At the conclusion of the discussions which had taken place in plenary sessions or in committees on the two fundamental aspects of the problem, that is armed conflicts and migration, four resolutions were adopted, the first one, of a general character, the second one referring specifically to the dispersal of families resulting from armed conflicts, the third one relating to the status of migrant workers, and the fourth one on the reuniting of families in Korea.

The International Institute of Humanitarian Law hopes that the principles expressed in these resolutions will receive serious consideration by the governments and the international organisations interested in the problem of the reuniting of dispersed families, to this end, responding to the appeal made by Mr. Giuseppe Vedovato, the President of the Consultative Assembly of the Council of Europe, in his speech closing the meeting, the International Institute of Humanitarian Law has decided to make them more widely known by means of this publication.

### RESOLUTIONS

#### I

The conference of experts on the Reuniting of Dispersed Families held in Florence from June 13 to 16, 1974,

RECOGNIZING that the family is the basic unity of society and that the right to live together is a fundamental right of each individual.

REALIZING that the notion of the reuniting of families is often transferred from the domain of fundamental rights recognised in international law to that of administrative practices adopted by different States, which reduce their scope by discretionary interpretations.

RECALLING that in the Final Act of the Interparliamentary Conference on European Cooperation and Security, which took place in Helsinki in January, 1973, the Parliaments were invited to “put into practice in a humanitarian spirit negotiations at a governmental level in view of eliminating problems posed by the separations of members of families who wish to reunite.”

RECOMMENDS THAT THE STATES:

1. Recognise the right of the different members of a family to common life, even in case of political tensions;
2. Respect and accept in this connection all the other human rights established in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, in particular, the right to leave any country, including his own, and to return to this country in order to join the other members of the family;
3. Respect and accept the right of persons with dual or multiple nationalities to decide by their own free will in which of the States they are nationals they want to establish permanent residence, in particular, if the reunion of separated members of the family is intended;

4. Observe in practice, in order to facilitate the reunion of separated members of a family, the provisions of the Charter of the United Nations, committing its members to universal respect and observance of human rights and fundamental freedoms for all without distinction as well as the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and
5. Adopt, if they have not done it already, the human rights established in the instruments mentioned above in their own legislation and also put them into effect in their administrative practice.

## II

The Conference of Experts on the Reuniting of Dispersed Families held in Florence from June 13 to 16, 1974,

BASING its deliberations on the broad considerations contained in the Resolution of the Round Table on the same topic held by the International Institute of Humanitarian Law in San Remo, June 28-30, 1973, as well as on the basic principles, texts, and practices of humanitarian law resulting from international conventions, conferences, and activities of persons and organisations concerned with the reunion of dispersed families;

MINDFUL of the humanitarian activities of international organisations active in this field, particularly of the International Committee of the Red Cross and the United Nations High Commissioner for Refugees, which have been reported in part to the Conference;

CONSIDERING the texts of Article 26 of the Fourth Geneva Convention of 1949 and of Articles 32 and 69 of the Draft Additional Protocols submitted to the Diplomatic Conference in Geneva in 1974;

RECOGNISING that the problems of dispersed families continue to be of paramount humanitarian concern to the international community;

1. RESOLVES that the following text be recommended for adoption:
  - a) The High Contracting Parties recognise that the reunion of dispersed families constitutes a grave problem that should be solved through concerted humanitarian efforts.
  - b) Parties to the conflict shall take all measures at their disposal with a view to keeping the family unit intact in the course of hostilities.
  - c) High Contracting Parties, whether or not parties to the conflict, shall facilitate the reunion of families dispersed before, during or after hostilities, due regard being given to the expressed desire of individual members of the family as to the reunion and its place.
  - d) In case of disagreement between High Contracting Parties as to the implementation of these paragraphs, the good offices of the International Committee of the Red Cross or any other impartial humanitarian organisations should be solicited and utilised.
2. COMMENDS the text to the attention of the International Committee of the Red Cross, as well as other international humanitarian organisations and national Red Cross Societies.
3. REQUESTS the International Committee of the Red Cross to circulate the text to all Contracting Parties of the 1949 Geneva Conventions.
4. PROPOSE that the text be inserted in both Additional Protocols to the Geneva Conventions of 1949.

## III

The Conference of Experts on the Reuniting of Dispersed Families held in Florence from June 13 to 16, 1974,

TAKING NOTE of the importance assumed by emigration into European countries, particularly those of Western Europe, where more than ten million emigrant workers live;

OBSERVING with regret that a high percentage of workers find themselves obliged to live away from their families, often for long periods of time, because of rules of the country of immigration that are drawn from restrictions more responsive to private interests than to rational objectivity;

CONSIDERING that such a situation constitutes a violation of fundamental human rights proclaimed and recognised in all modern and democratic societies, but in fact ignored by regulations, as well as by public officials and private individuals;

AFFIRMS the right of each emigrant worker to live in the midst of the family circle that constitutes the natural basic cell of society;

HOPES that all countries receiving emigrant workers, coping with the restrictions presently existing, will proceed to a revision of their legislative texts for the purpose of permitting each emigrant worker to bring his family to him within the briefest delay and according to accelerated procedures;

EMPHASIZES that the rights mentioned above should not be restricted except as provided by law necessary for the protection of national security, public order, health, or morality, or the rights and liberties of others;

EXPRESSES THE WISH that the term "family" be applied not only to the wife and children of the emigrant worker but also to their ascendants who live with them in their country of origin;

HOPES that every State may follow policy investments suitable to the erection of living quarters, to the creation of institutions of education and health, in order to permit the worker a normal family life and to facilitate his installation in the country concerned;

UNDERLINES the necessity of instituting special teaching, which may permit children of the emigrant worker to know the language and culture of their country of origin in order to facilitate family life and the possible return to their country;

RECALLS that in order to effectuate the installation of the emigrant in the life of the receiving country, it is not sufficient merely to affirm the principle of equality of treatment, but it is important also to develop positive action in favour of it for legislative and economic purposes.

#### IV

The Conference of Experts of the Reuniting of Dispersed Families held in Florence from June 13 to 16, 1974,

NOTING with deep satisfaction that the Red Cross Societies of the Republic of Korea and the Democratic People's Republic of Korea since August, 1971, are engaged in talks and have agreed to discuss the questions of tracing, and notifying thereof, the whereabouts and fate of members of dispersed families and relatives in the South and North, of facilitating free visits, free meetings and free exchange of correspondence between them, and of reunion of members of dispersed families in the South and North according to their free will, and other humanitarian matters to be settled;

VALUING highly the endeavours of the said Red Cross Societies, which put into practice the idea of the resolutions adopted by the Round Table on the "Reuniting of Dispersed Families" organised in San Remo by the International Institute of Humanitarian Law from 28 to 30 June, 1973;

EXPRESSES its sincere wish that substantial progress will soon be achieved;

URGES that the parties be guided in their talks by the Red Cross basic principles, and by the relevant resolution on dispersed families adopted by the XVIIIth, XIXth, and XXth International Conferences of the Red Cross (Resolution number 20 of 1952, number 20 of 1957, and number 19 of 1965, respectively), as well as by the basic principles of human rights and of international humanitarian law.

**Round Table on Refugees in Orbit**  
*Florence, Italy, 4-6 June 1979*

Draft Body of Principles for Procedures on the Reunification of Families  
by Professor J. Patrógic

The introductory report of this subject was presented by Professor J. Patrógic, president of the Institute. He explained the background concerning the elaboration of the Draft Body of Principles by the Institute's Academic Committee on the Protection of Refugees. The first version of the draft text was considered by the Fifth Round Table on Current Problems of International Humanitarian Law held in September 1978. On the recommendation of that Round Table the draft text was communicated to the members of the Institute and other experts for their observations or suggestions. About 40 persons made various suggestions which were very useful and the new proposals were arranged in the form of a comparative analysis presented to the present Round Table. Taking these suggestions into account a new version of the text was prepared by a group of members of the Academic Committee on the Protection of Refugees. The new version was also presented to the present Round Table so as give to five participants the opportunity of comparing the two versions.

It is evident that the most important principle of this draft is Principle Number 1 that seeks to reconcile the different viewpoints concerning the various situations in which the problem of reunification of families arose. Having regard to these different viewpoints which demand new reflections it was very difficult for the Round Table to reach a final conclusion on the matter. It would therefore be useful to hold further consultations bearing in mind the proposals and remarks made during the discussions at the present Round Table.

Finally, Prof. Patrógic stressed the great importance of the Draft Body of Principles which would certainly contribute to improving the situation of dispersed families and to establishing some procedural rules at the international level which could reinforce some of the basic humanitarian principles concerning family reunification.

A great number of participants expressed their satisfaction that a Draft Body of Principles was being prepared by the Institute and congratulated the Institute on this important initiative. Some of the participants believed that the elaboration of such principles gave rise to the delicate problems in view of the political considerations involved. For this reason it was necessary to find more widely acceptable formulations, in particular for Principle Number 1. Some of the participants considered that the Preamble should only be based on international rules which were already accepted, such as those figuring in the Human Rights and Humanitarian Law Conventions. The participants considered that the Institute should continue its consultations and its study of the problem, but at the same time unanimously recognised the importance of elaborating an international instrument dealing with the reunification of families.

With the agreement of the Round Table Prof. Patrógic summed up in a broad outline the discussions concerning the future work of the Institute on a Draft Body of Principles for the Procedures on the Reunion of Families:

The participants in the Round Table on Refugees in Orbit held in Florence from 4-6 June organised by the International Institute of Humanitarian Law were in unanimous agreement as to the necessity and importance of an international instrument defining procedures for the reunion of families. The establishment of certain principles in this regard would facilitate the reunion of families and would also reinforce existing international rules on the unity of the family and the reunion of dispersed families.

The participants agreed that Principle Number 1, which was the most important principle, should be modified in order to clarify in particular two main situations in which the problem of the reunion of families arose: the right of family members to leave their country of origin or habitual residence in order to be reunited with other members of their families residing in another country; and the right of such family members to enter other countries in which members of their families already reside.

The participants would also send to the Institute as soon as possible written suggestions and comments in order that the new version of the text could be elaborated for the Round Table on Current Problems of International Humanitarian Law to be held in September 1979.

The participants expressed the hope that the Institute would send this new version before 1 August to all participants at the present Round Table.

Body of Principles for the Procedures on the Reunion of Families [As elaborated by the Academic Committee on the International Protection of Refugees (July 1979) which took into account written remarks and suggestions made by participants at the Florence Round Table (May 1979) and will be submitted to the 6<sup>th</sup> Round Table on Current Problems of International Humanitarian Law (San Remo, September 1979)].

#### **Preamble**

1. RECOGNISING that everyone has the right to freedom of movement and to leave any country, including his own, and to return to his country (Article 13 of the Universal Declaration of Human Rights);
2. RECOGNISING that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State (Article 16, paragraph 3 of the Universal Declaration of Human Rights);
3. CONSIDERING that the minimum concept of the family should be the spouse, dependant children, and dependant parents as well as that consideration should however be given to widening this concept where the social custom recognises a more extended family unit;
4. RECOMMENDS the following principles be observed as regards the reunion of separate families:

#### **Principle 1: Reunion of Families**

The government concerned shall, for humanitarian reasons, take all possible measures to enable reunion of families to take place whether within or outside their territories. They shall in particular facilitate the exchange of news and the tracing of separated family members.

#### **Principle 2: Status of Family Members**

Family members who have been admitted to a country for reunion of family, shall enjoy a status not less favourable than that of a family member with whom they have been reunited.

#### **Principle 3: Procedures**

Procedures for the reunion of families shall be carried out without undue delay. Fees or taxes for travel documents, visas, or any other necessary document shall, whenever possible, be as low as possible.

#### **Principle 4: Fiscal and other Charges**

In the interests of the reunion of families, no special taxes or charges of any kind shall be imposed upon a person who requests permission to be reunited with his family.

#### **Principle 5: International Cooperation**

In the interests of reunion of families the work of international humanitarian organisations shall be facilitated and encouraged. They shall be permitted to assist any person in this regard and shall be granted all necessary facilities.

#### **Principle 6: Family Visits**

The governments concerned shall facilitate visits between family members who reside in different countries. For such family members passport and visa fees shall be as low as possible. In cases of emergency passports and visas shall be issued as a matter of priority.

**Round Table on the Problems Arising from Large Numbers of Asylum Seekers**  
*San Remo, Italy, 22-25 June 1981*

1. The Round Table on the Problems Arising from Large Numbers of Asylum-Seekers, organised by the International Institute of Humanitarian Law, was held in San Remo from 22 to 25 June 1981.
2. The International Institute of Humanitarian Law decided to convene the Round Table in order to provide an opportunity for an international study of the current situation of large and growing numbers of requests for asylum, identifying the main problems arising in this situation and ascertaining the ways by which the international community could respond as satisfactorily as possible to these problems.
3. The Round Table suggested that its report should be made available to the Executive Committee of the High Commissioner's Programme.
4. The Round Table was of the opinion that the mass displacements of people was one of the most difficult and serious issues facing the international community at the present time.
5. Deep concern was being expressed in the international community about the causes and the consequences of these mass movements. As regards the causes of mass exodus, they were being examined by the international community in their manifold aspects, particularly with a view to determining the measures necessary to avert such tragic occurrences. As to their consequences, an international system of protection of and assistance to refugees had been in existence for some 60 years and had been generally able to provide solutions for refugee problems. In recent years this international system, which included international legal instruments, intergovernmental organisations, governments and non-governmental organisations, had met with increasing difficulties in endeavouring to solve the problems arising from large numbers of asylum-seekers.
6. The Round Table believed that it was one of great importance to provide for an effective overall and comprehensive international response to the phenomenon of mass flows. This required the coordination of the various simultaneous approaches to the casual and remedial aspects of mass movements of asylum-seekers.
7. In view of the complex nature of many large-scale influx situations, particularly those arising from armed conflicts, the Round Table considered that the definition of a "refugee", which should serve as a basis for dealing adequately with large numbers of asylum-seekers for the purposes of protection and assistance, should be that found in the present mandate of the United Nations General Assembly and should therefore be interpreted to include every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality was compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.
8. The first act of protection which the asylum-seekers needed was admission in the territory of the State of arrival, in accordance with the generally recognised principle of non-refoulement and therefore, of non-rejection at the border.
9. In cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge. When the asylum-seekers requested asylum – in the sense of a durable solution – in the country of refuge, that country should use its best endeavours to grant asylum. It should not refuse asylum solely on the grounds that it could be sought from another State.
10. In any event, persons requiring protection in large-scale influx situations should always be protected fully by the principle of non-refoulement in relation not only to admission but also to subsequent expulsion or return.
11. The Round Table recognised that in large-scale influx situations there was nothing objectionable about group determination, if it conferred refugee status on all members of the group. If the determination in respect of a group were unfavourable, procedures or arrangements should be available to enable any member of the group to have his particular

- case considered on its individual merits. Persons whose refugee status was not recognised should continue to be treated in accordance with humanitarian principles.
12. The Round Table considered that persons admitted on a temporary basis should be protected by basic minimum standards of treatment. The Round Table noted the basic minimum standards which had been adopted by the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia<sup>1</sup> and by the Group of Experts on Temporary Refuge in Situations of Large-Scale Influxes<sup>2</sup> and believed that these standards should be examined by the Executive Committee of the High Commissioner's Programme. It further noted that these were basic minimum standards only; they were without prejudice to any other rights enjoyed under international law or the law of the country of refuge and should not prevent a State from granting any other rights and benefits which were possible and conducive to the well-being of the persons concerned.
  13. The Round Table also noted the work being done by the International Red Cross to further develop humanitarian principles for the protection of the victims of disasters, man-made or otherwise.
  14. The Round Table considered that it was particularly important in large-scale influx situations that the country of refuge should be regarded as acting on behalf of the international community and that the grant of protection should be considered as a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State. International solidarity and cooperation should extend to both protection and assistance. It should be expressed at every appropriate level, whether bilateral, regional or world wide.
  15. The Round Table stressed that solidarity must be manifested at regional as well as at universal level. There were forms of support and assistance that only countries in the region where mass flows occurred could provide.
  16. In accordance with the principle of international solidarity, states which were experiencing a large-scale influx were entitled to receive directly or through appropriate organisations, particularly UNHCR, active cooperation from other states in the provision of assistance and in the obtaining of durable solutions, whether voluntary repatriation, settlement in the country of refuge or resettlement elsewhere.
  17. The Round Table stressed the importance of the coordination and most effective deployment of international humanitarian assistance.
  18. The Round Table took note of the initiatives which have been developed within the framework of the UN Commission on Human Rights as well as of the UN General Assembly with a view to examining the causes of mass exodus and to averting flows of refugees. The Round Table believed that comprehensive global action with regard to the problems of large numbers of asylum-seekers required several simultaneous approaches at international level.
  19. The present endeavours should be continued with a view to:
    - Identifying the causes of mass exodus;
    - Developing a set of guidelines for the conduct of states in order to avert flows of refugees;
    - Keeping the international community informed – through existing bodies and, if need be, through additional mechanisms – of situations which may result in flows of refugees, to enable them to take timely preventive or remedial action.

---

<sup>1</sup> See Report of the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia. International Institute of Humanitarian Law (San Remo, Italy, 19-22 January 1981), pages 10-12.

<sup>2</sup> See Report of the Meeting of the Expert Group of Temporary Refuge in Situations of Large-Scale Influx (Geneva, 21-24 April 1981) to the Executive Committee of the High Commissioner's Programme, Sub-Committee of the Whole on International Protection, pages 13-15.

20. It was essential that guidelines and methods developed to avert mass movements should fully respect the recognised international principles on human rights, including specifically the principles governing asylum and refugee status, as well as the right of a person to leave any country, including his own, and to return to his country, as embodied in the relevant international instruments.
21. It was equally important that while the efforts to identify causes of mass exodus and to avert flows of refugees were being continued, such efforts should neither impair nor delay appropriate action by the international community with respect to the protection of and assistance to asylum-seekers.
22. The participants expressed their satisfaction that the Institute had taken the initiative in convening the Round Table and underlined the value of such gatherings where experts with various backgrounds were able to come together informally and exchange views on humanitarian matters of particular concern to the international community.
23. The participants expressed the hope that the Institute would continue to provide further opportunities for an exchange of views and that it would continue to receive the support of governments, international organisations, the academic community and voluntary bodies.

**Round Table on Pre-Flow Aspects of the Refugee Phenomenon**  
*San Remo, Italy, 27-30 April 1982*

A Round Table on the Pre-Flow Aspects of the Refugee Phenomenon was held in San Remo from 27-30 April 1982.

The Round Table was attended by experts in refugee matters, including officials of governments, intergovernmental and non-governmental organisations together with academic jurists. The participants attended in their personal capacity and the discussion was on an unofficial and non-attributable basis. Essentially, the meeting was a forum for an open and friendly discussion on matters of particular importance and interest.

The Round Table was opened by the President of the Institute, Professor J. Patmogic, and chaired by Mr. Michel Moussalli, President of the Refugee Law Committee of the Institute.

A background paper was submitted to the Round Table by Mr. G.J.L. Coles, a member of the Refugee Law Committee of the Institute.

\* \* \* \* \*

The Round Table agreed that the scope of its deliberations should be the examination of circumstances which were recognised as leading to massive displacements of people and as compelling persons in large numbers to leave their country and to enter another country. The examination would also be in relation to the identification of these circumstances and their root causes, the question of what measures could be taken, wherever possible, to prevent conditions arising and so producing massive flows, the question of the status of the persons involved, measures to alleviate suffering and the question generally of the initial response and solutions once a flow had commenced.

It was agreed that the adoption of this scope of the enquiry was without prejudice to the question of appropriate legal terminology and applicable legal rules and organisational competences in regard to this broad category of persons.

It was agreed that it was necessary to distinguish between those cases where the dual elements of compulsion to leave and the corresponding constraint on non-voluntary return existed and those cases where those elements did not exist. This fundamental distinction should be maintained as there were few areas where States were less willing to surrender their sovereignty than the entry and residence of aliens in their territory. It was decided that migration in the sense of movements that were not affected by the dual elements of compulsion and constraint should be outside the scope of the Round Table's enquiry, nor was it felt that normal migration should be linked with coerced movements as this could lead to the erosion of the legal principles or of the moral or humanitarian considerations that had long been recognised as applying to special categories of particularly vulnerable groups of persons.

It was agreed that it was desirable to study the pre-flow aspects so as to ascertain what measures could be taken to prevent conditions arising which would produce flows and to understand the inter-relationship of the pre-, actual, and post-flow aspects as aspects of a single continuum and the significance of that inter-relationship after a flow had commenced in relation to immediate response and eventual solution.

In recognising the seriousness and complexity of the present situation of continuing mass flows – in terms particularly of the human suffering involved and the grave problems for States – the Round Table stressed the reality of the inter-dependence of the modern world and the importance of international solidarity in preventing the conditions arising which would produce mass flows and, in the case where a flow had occurred, in responding to and obtaining the appropriate or necessary solutions.

\* \* \* \* \*

For methodological purposes, the Round Table decided to look at the phenomenon of the massive transfrontier flows of people in a general time framework, with the aim of examining the phenomenon as a whole and the inter-relationship of its basic elements.

The time framework adopted consisted of four phases:

1. the initial, or early phase, where conditions existed or were emerging which could give rise eventually to transfrontier flows;
2. the phase where a flow appeared to be an imminent possibility;
3. the phase during which an actual flow was taking place; and
4. the phase after a flow had taken place and where solutions were required, in particular the solution of return.

\* \* \* \* \*

The Round Table considered that flagrant violations of human rights, armed conflict situations and foreign occupation were among the principal causes of coerced transfrontier movements. In some circumstances, extreme socio-economic conditions could be contributory factors. It was agreed, therefore, that the promotion and implementation of human rights and humanitarian law, the more effective prohibition of the wrongful use of force and greater co-operation and assistance in development to relieve economic hardship were among the factors which could contribute significantly to reducing the risk of further massive and uncontrolled movements of people.

\* \* \* \* \*

In regard to phase (1), it was considered that while the examination of the root causes was necessary for a proper understanding of a flow situation once it had occurred, particularly in regard to the questions of response and solution, this phase did not lend itself to preventive action solely in the specific context of measures to avoid transfrontier flows, but should be approached mainly in the wider context of international law and organisation generally and international cooperation and assistance.

\* \* \* \* \*

In regard to phase (2), the Round Table stressed that the aim of measures to avert flows must not be to prevent people who might be compelled to leave their country from doing so, since such measures would be contrary to inter-national law and humanity, but should be to prevent conditions arising where people would be compelled to leave their country.

It was agreed that principles of international law existed relating to the obligations of States in regard to avoiding the creation in their own territories or elsewhere of conditions recognised as leading to mass flows, these principles could be found among the general principles of law embodied in such instruments as the Charter of the United Nations and the Declaration on Friendly Relations, in treaties such as those on human rights and humanitarian law (especially the 1949 Geneva Conventions and the 1977 Protocols) and the practice of States. It was considered desirable to reaffirm and develop principles specifically in the context of obligations to prevent transfrontier flows. It was agreed that in any efforts to have such a reaffirmation, great care should be exercised to ensure that the relevant existing principles were not weakened in any way.

It was agreed that the existing international structure was adequate and could be used to remedy or alleviate situations which gave rise to the imminent possibility of a transfrontier flow. It was considered, however, that appropriate mechanisms should be established within the framework of the existing structure so as to enable the international community to respond more rapidly and effectively to situations which gave rise to the possibility of an imminent flow.

\* \* \* \* \*

In regard to phase (3), the Round Table agreed that, in the context of coerced movements, the principle of non-refoulement, including the aspect of non-rejection at the frontier, was of central importance and should be scrupulously observed. In the development of international law, this principle must remain the cornerstone.

It was also agreed that in terms of the formulation of principles, there must be an inherent flexibility in any general formulation as to what the appropriate or necessary durable or permanent solutions in any given situation should be, taking into account the relevant root and proximate causes of mass flows.

It was agreed that temporary refuge, which was based upon, and an implication of, the principle non-refoulement, had proved to be a valuable tool in dealing with sudden mass flows and deserved further study and elaboration in relation to protection of certain categories of persons involved in such flows and to make it more solution oriented.

Notwithstanding the fact that different meanings had been attached to the term "refugee," the Round Table noted that, as a legal concept, the only universally recognised definition was that contained in the 1951 United Nations Convention relating to the Status of Refugees.

Participants also observed that all present interpretations of what constituted a refugee had in common the element of coercion of the persons concerned and of the fact of crossing a frontier. It was considered, however, that for the purposes of the Round Table, there were other mass movements of people who were not refugees in the strict legal sense but whose plight deserved thorough consideration with a view to the development by the international community of adequate responses and solutions. Moreover, without prejudice to the definition of the 1951 Convention, it was observed particularly that there were a variety of categories of persons involved in mass movements who might be able to establish a valid claim for international protection and assistance.

\* \* \* \* \*

In respect to phase (4), the Round Table agreed that in a general approach to the solution of voluntary repatriation, regard should be given to four relevant factors: the rights, duties and interests of the persons involved, the country of origin, the country of refuge and the international community. The obligations of the country of origin in regard to providing the solution of voluntary repatriation could not be made contingent on one factor only, such as its own will or the will of the individuals concerned, but on all relevant factors. The obligation to provide the solution of voluntary repatriation could be seen as part of the general obligation to observe human rights, including the right to return and enjoy those rights, and to remedy conditions which compelled the original flow. The solution of voluntary repatriation would also be facilitated by all the interested parties meeting their obligations in regard to obtaining this solution. At the same time, the Round Table reaffirmed the important principle of the voluntary character of repatriation.

**Working Group on Mass Expulsion**  
*San Remo, Italy, 16-18 April 1983*

The International Institute of Humanitarian Law convened a Working Group on Mass Expulsion in San Remo from 16-18 April 1983.

The Working Group was attended by experts in a number of fields, and included officials of governments, intergovernmental and non-governmental organisations, and independent jurists. The participants attended in their personal capacity and the discussion was on an unofficial and non-attributable basis. Essentially, the meeting was a forum for an open and friendly discussion on matters of general interest and importance.

The Working Group was chaired by the President of the Institute, Professor J. Patrnoic.

A working paper was prepared by Mr. G.J.L. Coles, a member of the Institute, who was also a reporter of the Working Group.

\* \* \* \* \*

In his opening statement, the President of the Institute said that the initiative of the Institute to convene the present Working Group was the result of the deep concern that the phenomenon of mass expulsion continued to be a problem which had not been studied adequately at the humanitarian and legal levels. There is a need to examine the phenomenon as a whole and to see what humanitarian principles and international rules are applicable and what practical measures can be adopted to respond satisfactorily to it.

\* \* \* \* \*

The participants agreed that mass expulsions are frequently the result of troubled or complex internal and international conditions and that they are, by their nature, the subject of international concern because of the scale and gravity of their consequences to individuals and to States.

By their nature, mass expulsions, whether of a direct or indirect nature, are generally arbitrary and discriminatory, entailing the violation of basic human rights and humanitarian standards and causing unnecessary suffering to the human beings involved and frequently damaging relations among States.

The Group expressed its deep concern about the vulnerable and precarious situation of many national minorities, whether racial, ethnic or religious, and of aliens in all regions of the world. The urgent need for the international community to consider seriously this phenomenon was stressed, as well as the urgency of taking appropriate preventive and remedial measures.

To this end, the Group decided to examine the phenomenon of mass expulsion in relation to times of peace and in armed conflicts, as well as in relation to nationals and aliens.

\* \* \* \* \*

For the purpose of its examination, the Working Group agreed that “expulsion” is an act, or a failure to act, by a State with the intention and the effect of securing the departure of a person or persons against their will from the territory of that State.

In this context, the concept of expulsion encompasses indirect measures including ill-treatment, racial and other forms of discriminatory practices, harassment and other means of coercion designed to force people to leave – as well as the direct exercise of State power. Forms of indirect measures or practices are many and are sometimes of a subtle kind. These can be of a psychological, as well as of an economic or social nature.

In this respect a serious concern was also expressed about situations where authorities of a State tolerate, or even aid and abet, acts by its citizens with the intended effect of driving

persons out of the territory of that State. Attention was also drawn to cases of panic flight where for the purpose of removing the persons concerned, the authorities create a climate of fear or do nothing that can be reasonably expected of them to assure those contemplating flight that they would protect them.

The Working Group noted that a number of terms have been used to describe different kinds of expulsions, such as “mass,” “extraordinary,” “collective” and “group.” It decided that in using the word “mass” it would employ it in a loose sense to include all forms of “multiple” expulsion.

\* \* \* \* \*

It was noted that in the last four decades the international community has responded to the practice of mass expulsion by formulating certain rules. It was agreed, however, that there are many gaps in conventional law and an insufficiently specific coverage of the problem of mass expulsion in both international and domestic law.

In particular, the legal approach to the problem of mass expulsion has suffered from fragmentation. Rules have been formulated mainly in regard to some aspects only of the phenomenon. They are found in branches of the law such as human rights, aliens law, labour law, refugee law, and humanitarian law applicable to armed conflicts. The Group emphasised the need to see them together and in relation to the phenomenon as a whole. Such an examination would contribute significantly to the understanding of the international response required, especially in relation to those areas where positive law is inadequate or even entirely lacking. It can also facilitate significantly the task of developing the law in a progressive way to meet present and future needs.

\* \* \* \* \*

The Working Group agreed that the expulsion of nationals is illegal under international law and that the mass character of the expulsion compounds the specific illegality of “exile” and the violation of other basic human rights. Compulsory transfers of populations by treaty are as inherently objectionable as unilateral expulsions, and any such treaty today is to be considered null and void as inconsistent with those peremptory norms of international law from which there can be no derogation (*ius cogens*).

The Group also agreed that the mass deprivation of nationality is not permitted under international law. It is usually an indiscriminate attempt to avoid the responsibilities of statehood, and in practice it can not normally be distinguished from expulsion, since it is frequently, if not invariably, a preliminary to expulsion or a bar to return.

The Working Group recalled that deportation within the meaning of the relevant international instruments is a crime against humanity, as well as a war crime, irrespective of whether it is committed in time of peace or in time of war. Also, the provisions of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide foresee that mass expulsion in some circumstances can be considered as an act of genocide within the meaning of this Convention if, inter alia, it were committed with intent to destroy, in whole or in part, a national, ethnic, social, or religious group as such:

- causing serious bodily or mental harm to members of the group, and
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

\* \* \* \* \*

With respect to aliens, whether they be in a regular or irregular situation, the Working Group questioned the legality of mass expulsion in time of peace. Even if the purpose of the expulsion is a lawful one in extreme circumstances and even if such expulsion does not offend

the rule of non-discrimination, the Group doubted that the legitimate interests of the State would justify such a severe measure, since in practice it is arbitrary and indiscriminate in its application, inflicting severe suffering and loss on the individuals involved, as well as entailing violations of basic human rights.

The Working Group considered as particularly objectionable the mass expulsion of domiciled or resident aliens or of persons who migrated from one country to another for reasons of employment.

This objection extends as well to a mass expulsion of “undocumented” workers or aliens unlawfully in a country, particularly when it is carried out in a sudden manner which disregards their basic human rights.

The Group noted that this concern has been taken into consideration in the context of ILO instruments and is being reflected in the elaboration of a UN Convention for the protection of all migrant workers and their families.

\* \* \* \* \*

The Working Group emphasised that the principle of non-refoulement is the cornerstone of refugee protection. This principle applies regardless of whether or not refugees are lawfully in the country. It noted also that respect for the prohibition on expulsion not constituting “refoulement” is essential to ensure a country of asylum to refugees.

In regard to those persons who did not satisfy the applicable criteria for refugee status, the Working Group considered that the question of their expulsion should be approached on the basis of human rights and humanitarian principles. It stressed that elementary considerations of humanity should be considered as having the same force as principles of law and that expulsion should not be carried out if it constituted “inhuman” treatment.

The Group noted that while the right, at least initially, of a State in cases of large-scale influx of asylum-seekers to admit on a temporary basis only is recognised, the temporary character of the admission related only to the solution provided and not to the application of the principle of non-refoulement which continues to apply as long as the circumstances, which give rise to the application of the rule, continue to exist. In the eventuality that refugees do not have their presence “regularised,” the country of refuge should not expel them until another country can be found to receive them.

The Working Group noted that new problems have arisen in recent times with massive influx of persons seeking asylum whose eligibility as a group for refugee status is not accepted by the receiving State. In such circumstances, an obligation arising from the principle of non-refoulement is that of not expelling them until individual applications for refugee status have been dealt with according to appropriate rules and procedures. In the case of a difference of determination of status between the receiving State and the United Nations High Commissioner for Refugees and other competent UN authorities, expulsion should not be carried out until the international obligation to co-operate with the High Commissioner, or other competent UN authorities, in resolving the question of protection of persons who are of concern to the High Commissioner, has been complied with satisfactorily.

\* \* \* \* \*

The Working Group noted that in an armed conflict of an international character, deportation or forcible transfer of protected persons from an occupied country for any motive other than the security of the population or imperative military reasons is prohibited. Unlawful deportation or transfer is a grave breach of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and of the Protocol Additional to the Geneva Conventions relating to the protection of victims of international armed conflict. According to the Charter of the Nuremberg War Tribunal, deportation is not only a crime against humanity, but also a war crime. Under the 1977 Protocol II additional to the 1949 Geneva Conventions

and relating to the protection of victims of non-international armed conflicts, civilians cannot be compelled to leave their own territory for reasons connected with the conflict.

\* \* \* \* \*

The Working Group considered that these rules clearly establish the gravity of mass deportation or expulsion even in the exceptional circumstances of armed conflict.

The Working Group considered that no international response to the phenomenon of mass expulsion would be adequate which does not address the question of their causes and their prevention.

Mass expulsions are generally the result of a disordered state of affairs due to political, social and economic factors. In the case of nationals, mass expulsions are frequently the result of troubled conditions arising from such factors as economic and social inequalities, the violation of basic human rights, terrorism, foreign intervention in internal affairs and acts of aggression. Problems of development constitute additional factors. In the case of aliens, economic and social conditions are also determining factors. Mass expulsion of resident aliens generally occurs in situations where there is no integration of minorities or of migrant worker populations. In situations where there is no policy or intention on either part of integration, such expulsions can become a distinct danger when economic or political conditions deteriorate in the receiving country.

Particular reference was made in the Working Group to the situation of foreign students.

The avoidance of mass expulsion of migrant workers points to the importance of planned migration to forestall negative human and political consequences. Some expulsions have been due to an inability to exercise normal immigration controls and, in some cases, to an attitude of "laissez-faire" to immigration by the countries concerned.

The Group noted that a better knowledge of size and characteristics of labour migration, particularly of undocumented workers, and a dialogue between countries of origin and of employment may help to prevent mass expulsion.

The Working Group considered that the reaffirmation and development of the humanitarian principles and international rules applicable to expulsion situations are basic preventative measures. It is also essential at the present time to develop a moral and social conscience in this matter which can constitute a bulwark against narrow nationalist tendencies and political pressures to disregard the basic rights of individuals.

\* \* \* \* \*

The Working Group considered that where a reduction of the number of aliens in a territory is effected by lawful means, principles or guidelines for searching such reduction and their reestablishment in another country in a just and humane way should be followed.

Finally, the Working Group considered that there are still many gaps in the law and also dimensions of the phenomenon which have not been sufficiently addressed at the legal and practical levels.

It believed that the possibility of an international instrument or instruments on mass expulsion should be considered, including the further development of conventional law in this respect.

The Group believed also that there is a need for a renewed emphasis on the problem of mass expulsion in the various negotiating fora in which the question of expulsion is relevant. Additional initiatives at the universal and regional levels should be considered.

\* \* \* \* \*

The Working Group expressed its appreciation to the Institute for having organised the meeting. It believed that its initiative was both timely and helpful.

## Round Table on the Movements of People

*Florence, Italy, 14-18 June 1983*

### Reflections on the Movements of People

*(Summary of the Round Table by Professor Patrnogic)*

Have we been too ambitious? Some have said we have tried too hard to bring too many human problems within the shade of comforting principles. I do not think that we have done that but we do have an achievement from our efforts over the last days.

One particular value of this meeting has been the recognition given, without exception or contradiction, to the existence of a human problem whose nature we come close to understanding, but whose dimensions we are, as yet, hard pressed to determine. We have recognised many of the problems that cause population movements, and of the problems that those movements themselves may cause. We have seen some of the obstacles which, sometimes wittingly, sometimes unwittingly, stand in the way of solutions. We have shared our own perceptions with others, and have noted how those of others may differ, and we have begun to learn, I think, that alternative approaches have their own value and make their own contribution. There is no one bright sun destined to illuminate this world and each must proceed by the light of their own candle, but I think we can be a little proud of the sum of our illumination and imagination, provided at least that it sets us on the road to concrete achievements.

People move and have moved for a variety of reasons. Such migration is inherent in the human condition and we have been rightly reminded of its beneficial effects on so many societies throughout the world. We must work to maximise the effects of the movements already behind us, and not forget the situation of second and later generations, of young people now looking to the future. The first shock of movement is over and those now newly established will make substantial and valuable contributions to a better world.

We should not forget the positive side of migration even while concerning ourselves with the actual difficulties of those who move.

Certain migratory movements are desirable, permitting individuals to fulfil themselves and better the quality of their lives and those of their children. Provided that those migrating may do so in peace and security, and in conditions where their fundamental human rights are and remain protected, then only encouragement seems to be required. But even that can be translated into concrete action to the advantage of all. Schemes for the return of talent and the recent suggestion for a programme of training for migrant workers are clearly worthy of support at the national, regional and international levels.

Understandably, perhaps, our attention over the last days has tended away from the ordinary, to the problems of involuntary migrations and displacement, of movements due to varying degrees of coercion and compulsion. Certain aspects of other movements are also capable of remedy. Whatever their actual effects, upon which there may be room for debate, large-scale movements are perceived to cause problems. We cannot disregard the legitimate concerns of States and communities, although we are able to develop the capacity for compassion. Problems must be faced with honesty, common sense and humility. Public opinion, negative and positive, cannot be disregarded, even while we work to overcome the fear of the stranger.

The need for international measures to avert as far as possible further flows is now receiving widespread recognition. At the same time, prevention is being seen not in a narrow and negative light of simply preventing trans-frontier movements but in a more positive way as the adoption of measures which will help avoid situations or conditions arising which will cause enforced movements of people.

People move to survive, they flee the effects of war or internal disorder, natural disaster, famine, or through fear of persecution or other violations of human rights. As human beings, their hopes and expectations will vary; the question of solutions itself becomes dependent upon

variables and imponderables. Some have questioned the value of distinctions, particularly among those compelled to flee and evidently in need. Others have argued eloquently for clearer definitions and for administrative machinery to make their application easier. It is all a question of perspective.

Distinctions do not count where fundamental human rights are at issue or in the face of self-evident humanitarian need. But they frequently matter for the purpose of devising solutions or attributing organisational or functional responsibility. There is thus a well-established and generally recognised concept of the refugee, which has legal consequences for States in regard to admission and treatment. The special position of the refugee and the unique protection accorded by the international community continue to require support. Similarly, those who benefit from the Red Cross Conventions and Protocols – the victims of war – need active protection; on these issues I have heard no dissent, only regret at the tendency of States today to avoid or circumvent established principles. Those in need must receive protection, and not be returned to where their lives or freedom may be endangered, and must be received with humanity pending a solution to their plight.

In the case of refugees and other exceptional cases, the general feeling of this meeting has also been that certain legal gaps for their protection should be filled as rapidly as possible. The situation of the undocumented worker needs to be improved, humanitarian considerations will sometimes require regularisation in the country of employment, or at least full recognition of fundamental human rights and some account too of legitimate expectations. Solutions for some problems of clandestine migration should be found in the context of international cooperation and assistance.

Concern has rightly and repeatedly been expressed about the legality of mass expulsions. Where such measures affect nationals and produce refugee outflows, there can be no doubt about their unlawful character. Other causes also present grave humanitarian problems and call for the development of appropriate legal principles designed, among others, to combat arbitrariness, discrimination and the violation of human rights.

But perhaps the clearest point to emerge from this meeting has been the recognition of the link between movements of people and social and economic development. After all, what value is the right to life, without the means of a livelihood? What value is liberty, if it be no more than the freedom to starve?

There is an inescapable interdependence between civil and political rights, and economic, social and cultural rights. The North/South dialogue must be brought to fruition. Aid, including transfer of technology, must be channelled effectively and coordinated at the global, regional and national levels. Only if the grave economic imbalance is remedied and the right to development given substance, will most of the root causes of so many of today's large-scale movements be eradicated. Underdevelopment, however, can never be an excuse for human rights violations, nor human rights violations an excuse for underdevelopment. Promotion of development needs a matching exercise on behalf of fundamental freedoms. The principle of non-discrimination, of equality of treatment, invites us to re-examine the status in fact of non-citizens. To what extent, if at all, is alienage a relevant distinction? Nationality as the criterion of entitlement to rights is now under question, particularly in the civil, economic and social fields.

Promotion of the right to development, of the right to peace, and generally of human rights and fundamental freedoms is an objective which is easy to express. The task, however, is to translate the sentiment into action, and to bring about both a new economic and a new humanitarian order.

The starting point, surely, must be the essential human values so eloquently stated in the United Nations Charter and developed in the 1966 Human Rights Covenant. All peoples should enjoy the rights to work, to just and favourable conditions of employment, to an adequate standard of living, to health and education. All peoples should likewise enjoy the right to life and liberty, freedom from torture or arbitrary arrest and detention, to equal protection of the law and to freedom of thought and conscience.

In this field, experience tells us that much can be done at the regional level, through the conclusion of local agreements and the establishment of sympathetic machinery of supervision. International human rights instruments, especially those allowing individual petition to independent international bodies, are an important means of improving the situation of groups and persons at large, not only citizens but also those directly affected by problems stemming from the movement of populations.

We have seen that such movements also involve problems of management. How to manage the desirable, the predictable, the unpredictable and the avoidable? Quite rightly, I feel, we have focused particularly on the adequacy of the international response. We all know of deficiencies, and of occasions when help has been too little, too late. We all desire that the various agencies – national and non-governmental, as well as international – operate as effectively as possible. We know they will have to do so in the future, for persecution and war and disorder, let alone natural disaster or underdevelopment, will not be abolished overnight. Looking to the future, we must also understand the importance of planning movements in advance, taking into account people's expectations.

But our time and the concentration of our efforts have produced, I believe, both understanding and some practical suggestions. First, perhaps to the relief of all, the view seems to be that no new international organisations is called for and that the proliferation of instruments should be avoided. We can see a little more clearly now the areas of responsibility and the limitations of mandates. A repeated call was made, and I hope it will continue to resound, for communication, cooperation and coordination. It is surely not beyond the capacity of those present to establish the ways and means by which these essential objectives may be attained by agencies concerned with any and every aspect of the movement of people.

Secondly, we have again noted the important and dynamic role to be played by non-governmental organisations, both in relation to their own governments (for example, by informing them of developments of concern), and at the practical level, by meeting problems head on, by providing relief and even protection. Looking to our higher objectives also, I cannot stress enough the need for NGOs to pursue their role in education, both to provoke solidarity, to combat intolerance and xenophobia, and especially to ensure that people know their rights and the remedies available to them. Given the importance of public opinion, and the power and potential of the mass media, NGOs have a crucial responsibility to disseminate reliable and continuous information.

Thirdly, and I repeat some remarks made a moment ago, there is a vast scope for the development of coherent and concrete programmes of action at the regional level. Already there is a substantial network of political organisations (OAS, OAU, League of Arab States, ASEAN, the Council of Europe), economic and social agencies (for example, the regional commissions), and development institutions (such as the regional development banks). It is a fact of life that the regional context frequently offers the most appropriate environment for understanding, for dialogue, for mediation, for fact-finding and for solution; it may also be the first and best place to evolve the early-warning systems which will be essential to the effective management and resolutions of problems still to come.

Finally, there was one further practical suggestion for improving overall the adequacy and effectiveness of the international response to problems arising from actual or potential movements of people. That proposal is for the establishment of a standing humanitarian committee to be convened by the UN Secretary-General, which is competent in large-scale or complex disasters. Its dual role would be to establish the need for assistance and to coordinate that provided by the international community. Provision would need to be made for participation by the major governmental organisations in and outside the UN system which are involved in humanitarian assistance. Government representation would have to be at a high enough level to permit rapid and effective decision-making, while observer status for NGOs would allow the presentation of their frequently untapped resources of knowledge and experience.

Movements of people, whether motivated by internal or external elements of compulsion, will continue after today. Old problems will occur and new problems will bewilder us and our successors. There will be a continuing need for humanitarian relief, while we know that relief alone is no solution. There remains, nevertheless, a clear complementary relationship between humanitarian aid and aid for development.

But I believe that we have, over this week, taken the first steps to clarify issues, to reach understanding, and to reach out for answers. We have a sense of responsibility; of responsibility of states; of the responsibility of organisations; of the responsibility of the international community; and of responsibility as individuals.

This sense of responsibility will lead us to new initiatives and to expand in a concrete, practical way some of those which have been delivered here in Florence. Our work will be both general and specific. Thus, it will be appropriate for us to analyse and develop the principles and modalities of orderly movement; to secure the maximum protection of children and to promote the reunion of families divided by population movements, whatever their causes; to define and to clarify the right to belong; to look in depth at the question of voluntary repatriation; and to give meaning and substance to the right to development and the right to peace.

Urgent human needs require that there be no delay and no postponement in our work.

We will also need to build a secure foundation for the principle of international solidarity and burden-sharing; to build and repair bridges between nations; to refine the methods of conciliation and mediation; to keep the dialogue going. Dialogue between nations is the prerequisite to solutions and every initiative to promote such dialogue is to be encouraged.

We may well ask what has happened to the world outside during our few days here in this ancient and beautiful city. What have our deliberations meant? What value has emerged?

The answer in part depends upon what each of us is prepared to do. For its part, this Institute will continue its work, taking up many of the points which have emerged and which I have briefly mentioned. In this work we will of course look to you for cooperation and support.

The understanding which we have reached here at this meeting should serve also as a message to all nations and all people of goodwill. We live in a community of interdependent nations of peoples bound by that other universal sense of the value and integrity of the human being.

We speak in the name of a common humanity.

Thank you.

## **Seminar on Current Problems in International Humanitarian Law**

*Florence, Italy, 20 – 22 August, 1985*

1. The Round Table reaffirms the significance of the 1980 Executive Committee Conclusion on Voluntary Repatriation as reflecting basic principles of international law and practice;
2. The basic right of persons to return voluntarily to the country of origin is reaffirmed and it is urged that international cooperation be directed and developed to achieve this solution;
3. the repatriation of refugees should take place only at the freely-expressed wish of the refugees;
4. The aspect of causes is critical to the issue of solution and international efforts should also be directed to the solution of the causes of refugee movements. Further attention should be given to the causes and prevention of such movements, including the coordination of efforts currently being pursued in the international community;
5. The responsibilities of States towards their nationals and the obligations of other States to promote voluntary repatriation must be upheld by the international community. International action in favour of voluntary repatriation, whether at the universal or regional level, should receive the full support and cooperation of all States directly concerned, as appropriate. A precondition for the prevention of refugee flows and for the promotion of voluntary repatriation as a solution to refugee problems is sufficient political will by the States directly concerned to address such issues as respect for human rights, the non-use of force, the peaceful settlement of disputes and economic and social development. This is the primary responsibility of States;
6. The existing mandate of the High Commissioner is sufficient to allow him to promote voluntary repatriation by taking initiatives to this end, promoting dialogue between the main parties, facilitating communication between them, and by acting as an intermediary or channel of communication. It is important that he establishes, wherever possible, contact with all the main parties and acquaint himself with their points of view. From the outset of a refugee situation, the High Commissioner should at all times keep the possibility of voluntary repatriation for all or for part of a group under active review and, wherever he deems it appropriate, he should actively pursue the promotion of this solution;
7. The humanitarian concerns of the High Commissioner should be recognised and respected by all parties and he should receive full support in his efforts to carry out his humanitarian mandate in providing international protection to refugees and in seeking a solution to refugee problems;
8. In dealing with an entity within the country of origin or of asylum, the High Commissioner should not be unduly inhibited by the formal status of any particular entity. If his concern for the basic well-being of the individuals within his care so dictates, he should be prepared, wherever necessary, to deal with non-recognised entities without implying thereby any form of recognition;
9. On all occasions the High Commissioner should be fully involved from the outset in both the planning and implementation stages of repatriation;
10. The importance of spontaneous return to the country of origin is recognised and it is considered that action to promote organised voluntary repatriation should not create obstacles to the spontaneous return of refugees. Interested States should make all efforts, including assistance in the country of origin, to encourage this movement whenever it is deemed to be in the interests of the refugees concerned;
11. When, in the opinion of the High Commissioner, a serious problem exists in the promotion of voluntary repatriation of a particular refugee group, the High Commissioner should consider choosing for that particular problem an informal, ad hoc Consultative Group, which would be appointed by the High Commissioner in consultation with the Chairman of his Executive Committee and may include, as appropriate, States which are not members of his Executive Committee;

12. The practice of establishing tripartite commissions is well adapted to securing satisfactory general cooperation. The tripartite commission, which should consist of the countries of origin and of asylum and UNHCR, could involve itself in both the joint planning and the implementation of a repatriation programme. It is also an effective means of securing consultations between the main parties concerned on any problems that might subsequently arise;
13. International action to promote voluntary repatriation requires consideration of the situation within the country of origin as well as within the receiving country. Assistance for the reintegration of returnees provided by the international community in the country of origin is recognised as an important factor in promoting repatriation. To that end, UNHCR should have funds available readily to assist returnees in the country of origin;
14. The High Commissioner should be recognised as having a legitimate concern for the consequences of return, particularly where the return has been brought about as a result of an amnesty or other form of guarantee of safe return. The High Commissioner must be regarded as entitled to insist on his legitimate concern over the outcome of any return that he has assisted. He must also have direct and unhindered access to the returnees and be in a position to ensure fulfilment of the amnesties, guarantees or assurances on the basis of which the refugees have returned. These rights should be considered as inherent in his mandate; and
15. Serious consideration should now be given to the further elaboration of a multilateral framework governing voluntary repatriation for adoption by the international community as a whole.

## **Conclusions on Family Reunification** *Florence, Italy, 4 – 6 December, 1986*

1. Under the auspices of the International Institute of Humanitarian Law, a group of experts on family reunification met in Florence from 4 to 6 December 1986, with a view to examine, in a broad context, current trends and humanitarian problems in relation to the reunification of families. It was considered important that the subject be addressed with regard to all categories of persons affected by family separation, including refugees, migrants, victims of armed conflict situations, asylum-seekers and other persons who have compelling reasons to leave their homeland or to return to it. It was also considered essential to discuss the issue primarily in relation to the transfrontier movement of people, while recognising that due consideration should also be given to situations of internal displacement of persons.
2. The participants reaffirmed the long established principle of family reunification applying to all persons in need of transfrontier family reunification and, while recognising that many States continue to observe this principle, expressed concern for the increasingly restrictive policy and practice adopted by States on matters of emigration and immigration and at the progressive erosion of the concept of family reunification.
3. While reaffirming the continuing validity of the “body of principles for the procedures on the reunification of families” adopted by the Institute in 1980, they felt that the principles expressed in that declaration had not been given sufficient attention and thus called for urgent consideration by governments and humanitarian institutions.
4. While recognising that there is no generally accepted definition of the family, both at the international and national level, they urged that any definition should be flexible enough to take account of different cultural and social factors.
5. They acknowledged the urgent need for more purposeful dialogue and cooperation in a humanitarian spirit between States of origin and receiving States, as well as States of transit, in the matter of family reunification.
6. They stressed that such dialogue should, whenever practicable, take place in cooperation with international organisations, governmental and non-governmental, concerned with the matter and that the States concerned should support the activities of these international and national entities.
7. They requested that States of origin and receiving States treat, in a favourable manner, the application of persons who wish to be reunited with separated members of their families. In this regard, particular efforts should be made by governments in liaison with international organisations in the following areas:
  - a) facilitating the identification and tracing of separated family members;
  - b) supplying full information on family reunification procedures to the persons concerned;
  - c) dealing with applications for exit and entry visas for the purpose of family reunification as liberally and expeditiously as possible;
  - d) helping to meet the transportation costs involved;
  - e) ensuring that the absence of housing and employment in the receiving states should not be an impediment to family reunification and adopting measures of assistance in this field whenever possible; and
  - f) facilitating the exchange of news and family visits where permanent family reunification is not envisaged.
8. They called upon international organisations such as UNHCR, ICM and ICRC to cooperate with each other within their respective mandates, in order to promote the respect of family unity and to facilitate family reunification.
9. They urged NGOs to facilitate reunification efforts of family members who wish to join relatives abroad. It was acknowledged that National Red Cross and Red Crescent Societies may have a special role to play in this field in view of their activities, which facilitate the exchange of family news and tracing of separate family members.

10. They urged governments to adopt flexible criteria and measures permitting family reunification, including appropriate national legislation which upholds the principle of family unity. They also felt that the need to protect the unity of the family should be duly taken into consideration in all international efforts aimed at improving the condition of various vulnerable groups, such as bilateral, regional and universal instruments to promote family reunification through orderly departure and the current elaboration, within the United Nations, of a Convention on the Rights of the Child and a Convention on the Protection of the Rights of all Migrant Workers and their Families.
11. They underlined the necessity for greater respect for the principles of family unity and family reunification as already recognised in international fora and expressed the need for greater efforts to be undertaken by all concerned in this field through the broad dissemination and advocacy of those principles.
12. They commend the International Institute of Humanitarian Law for organising the meeting and requested the Institute to undertake further studies on the subject, such as additional analysis of the various problems faced by the categories of persons in need of family reunification, and a compilation of relevant State practice, with a view to proposing generally acceptable standards and practices.
13. They endorsed the convening of further meetings under the auspices of the International Institute of Humanitarian Law on family reunification that should include government representatives.

## **Meeting of Experts on Reinforcement of International Co-operation for Solving Refugee Problems**

*San Remo, Italy, 25 – 27 April, 1991*

### Concluding Statement by the Chairman

During the three days of our discussions under the Chairmanship of Ambassador Dr. F. Dannenbring, we have seen a remarkable degree of general agreement on the ways and means by which international cooperation can be strengthened.

Clearly, certain recent events, such as those in the Gulf region, Europe and Africa, have convinced all of us of the importance of an innovative and action-oriented approach to the refugee problem. Most recently, certain actions have been taken by States and by the international community that, by common consent, are particularly significant for the question of how the international community should develop its response to the refugee problem. There was general agreement at our meeting on the necessity for a change in the traditional approach to the refugee problem.

Among the many elements that emerged during our discussions, I think that the following can be noted here:

#### **1. Prevention and Voluntary Repatriation**

These aspects must be key elements in a modern approach to the refugee problem, as much for reasons of humanity as for those of security and international peace. In most cases today, the return of refugees is the only solution. Also, the vast and growing sums of money being spent on the processing of non-refugee asylum-seekers is money wasted and better spent on development assistance. A State must be able to enforce its right to exclude those who cannot establish a case for entry or continued presence.

#### **2. Protection**

The proper emphasis on prevention and voluntary repatriation must not detract in any way from the fundamental importance of the traditional principles of refugee protection and of the duty of the State to protect refugees, and the concerns behind this emphasis should be consistent with human rights principles.

#### **3. A Modern Strategy**

A concerted international strategy is required to attach the multiple causes of social conflicts and refugee movements. Resolving the modern refugee problem should be an important objective in the determining of the principles and institutions of any new international order. The strategy must rest basically on international solidarity and co-operation in social and economic development. In view of the fact that economic deprivation is a contributing factor to mass flows, economic aid and assistance are indispensable, but so is the concurrent promotion of human rights, including the realisation of democratic societies. In regard to Africa, for example, it was affirmed that there was a continuing willingness to move towards political reforms which would allow for more popular participation and political pluralism. The culture of human rights and democracy was also beginning to take root.

#### **4. Country of Origin**

Countries of origin have a basic responsibility to ensure the well being of their nationals, not only in the political and legal areas but also in the economic area. This responsibility should be supported by the international community which should impress upon

them its importance. State responsibility is an area of law which needs to be progressively developed in regard to the refugee problem.

## **5. Human Rights Approach**

A broad human rights approach to the refugee problem continues to need further development. A wider dissemination of information on human rights is also necessary.

The refugee problem must be seen in relation to human rights as well as in relation to international peace and security. Exile, or the involuntary separation of an individual from the country of nationality, is, sooner or later, a human rights issue in itself, raising basic issues of law and policy. Also, human rights violations are one of the major causes of massive flows of refugees.

## **6. Consistent Patterns of Gross Violations of Human Rights**

The international community has a duty to take effective action to deal with flagrant abuses of human rights. The plea that such abuses fall within the domestic jurisdiction of a State and that the United Nations is not authorised to intervene in internal affairs is without foundation and cannot be made an obstacle to such action.

## **7. Verification and Fact-Finding**

An effective system of verification, including fact-finding and on-site inspection, should be developed so as to enable UN member States and the relevant international organisations to identify human rights and humanitarian problems which might have led to the emergence of refugee situations. The United Nations Human Rights Commission should consider such measures as appointing a special reporter for the refugee problem as well as sending missions.

## **8. International Humanitarian Assistance**

Immediate access of international humanitarian organisations to all those who have need of assistance should be granted by the State, which should put at their disposal all the means necessary for their work.

## **9. Early Warning Systems**

Although the establishment of early warning systems should not be considered a substitute for political and moral leadership, such systems are necessary, especially for increased preparedness, and they should be developed. While limitations exist on what can be done in predicting man-made disasters, there is nonetheless a need to do all that can be done to anticipate major crises and ensure appropriate action, particularly in regard to those which could lead to mass displacements.

## **10. Implementation Deficiency**

States must take more seriously their responsibility in the areas of prevention and remedy. In regard to human rights, fuller use of advisory and technical services should be considered. In grave situations of massive human rights abuses such as apartheid and genocide, sanctions should be considered. Where appropriate, the prosecution before an international tribunal, such as the International Court of Justice, of those committing crimes against peace and humanity should be considered. Decisions to provide economic or developmental assistance (in contradistinction to disaster relief assistance) should take into account the applicant's record of compliance with human rights. A review of the UN system should take

into account the development of the organisation's capacity to respond more effectively and quickly to the refugee problem. There is also a need to see that the conclusions and recommendations of ongoing reviews of coordination requirements in the humanitarian field should as far as possible be in harmony with each other. A high level advisory body might be a useful tool for that purpose. More systematic cooperation of governments with the UN system and other organisations should be promoted.

### **11. Migratory Flows**

Particular emphasis should be put on the provisions of information within the country of origin on conditions of entry and stay in receiving countries. Irregular migratory movements can jeopardise the satisfactory screening of asylum-seekers and destabilise the situation of migrant workers. In situations where spontaneous mass migration was a real possibility, international cooperation should take place to improve the political, economic and social situation within the country of origin.

Confidence building measures should be taken and, where appropriate, arrangements should be made to promote or facilitate orderly migration.

### **12. Regional Cooperation**

Regional cooperation was considered to be of particular importance, and was an area where significant developments could ensure a more effective response to the refugee problem, especially in regard to prevention, voluntary repatriation and burden sharing through assistance and resettlement.

### **13. Continued Dialogue**

The value at the present time of a dialogue such as the present one at the International Institute of Humanitarian Law was stressed and the hope was expressed that it would continue.

**Meetings of Experts on Prevention**  
*San Remo, Italy, 18 – 20 June 1992*

Orientation Note

Refugee problems are the result of an abnormal political or politico-social situation in countries from which refugee movements originate. For a long period, however, the concern of the international community in the refugee area was limited to dealing with the consequences of such abnormal situations and refugee problems were thus only addressed when they had already come into existence. Such an approach is, however, no longer adequate in view of the dramatic growth of refugee problems – both as regards their scope and complexity in recent years.

Needless to say, the United Nations High Commissioner for Refugees must continue to promote the traditional solutions for refugee problems and when they arise, under the Statute of the Office, the High Commissioner is called upon to seek permanent solutions for refugees by way of voluntary repatriation or assimilation within new national communities. The last mentioned solution involved either integration in a country of first asylum or resettlement in a third country. Such integration or resettlement could be more readily envisaged when the refugee problem was relatively limited in scope. With the increasing numbers of refugees in different areas of the world, the availability of this solution has become more limited and greater emphasis is not being placed on voluntary repatriation which – whenever feasible – is the optimum and most desirable solution for refugee problems.

The solution of voluntary repatriation calls for a full knowledge and understanding of the conditions in countries of origin that have given rise to a refugee exodus and for corresponding efforts to modify these conditions so that refugees can return home in safety and dignity. Special measures should be undertaken concerning their reintegration into their country of origin, including necessary guarantees for the respect of their rights in the country of origin. Moreover, the growing size and complexity of refugee problems has led to greater emphasis being placed on efforts to address the causes of such problems with a view to preventing them from arising. This again makes it necessary to focus on conditions in countries in which a refugee exodus is likely to originate, with a view to possible preventive action.

It should be emphasised that the aim of prevention is not merely dictated by the wish to avoid the increased burdens which refugee problems may now place on other States and on the international community as a whole. There has indeed been a growing tendency in recent years for the international community to concern itself with situations in individual countries involving the violation of human rights, serious discrimination of minorities, persecution and violence. Such factors which could give rise to a refugee exodus can no longer be regarded as falling exclusively within the area of national sovereignty.

Any discussion of “root causes” or “prevention” must necessarily take account of this more recent tendency. It should also examine ways and means by which it could be further strengthened and developed.

The term “refugee exodus” has traditionally been taken to refer to an involuntary movement of persons across an international frontier due to the political situation existing in their country of origin. Situations of this type may, however, also lead to displacement of persons within their own country. From a general humanitarian standpoint and in the particular context of “causes” and “prevention” the question whether – due to political upheavals or similar events – people have or have not been forced across an international frontier is largely academic.

The extent of causes of an actual or potential movement may be difficult to identify in a given situation. These causes may be very complex and for this reason the question as to what measures could appropriately be envisaged by way of prevention may prove to be correspondingly difficult. From a general standpoint the causes of international refugee movements or internal “refugee” displacement are to be found in the political or politico-social conditions in a given country. The more direct and immediate causes of such movements are

violations of human rights, discrimination against or persecution of ethnic or religious minorities, political factors, violence and armed conflict, and economic factors.

It must however be recognised that these various causes may frequently coincide and/or inter-link and it may therefore be difficult if not impossible to identify any one of them as being exclusively responsible for a refugee movement. These various causes will now be examined.

#### **(A) Violation of Human Rights**

The view has frequently been expressed that standards for the observance of human rights cannot be defined in absolute and universally applicable terms and that these standards must depend upon the particular national, social, ethnic or religious context. For present purposes, however, this element does not appear to be of undue relevance. The essential criterion is that what could be regarded as a violation of human rights according to a reasonable standard is of such a character as to lead to internal or external refugee displacement. It is, therefore, essential to ensure that the human rights situation in countries in which such displacement is likely to occur is kept under constant review by competent international organisations at the intergovernmental and non-governmental levels and also by concerned individual governments. If it appears in the light of such monitoring that the human rights situation is reaching a critical stage, appropriate preventive action should be envisaged. Such action may not only help to avert international or internal refugee movement but may also contribute to a general improvement in the human rights situation in the country concerned. It should, however, be recognised that violations or threatened violations of human rights, while being the immediate cause of displacement or refugee exodus, may only be the “tip of the iceberg” and reflect more deep-seated problems. Latent national or ethnic disharmony may, for example, be exacerbated by unfavourable economic conditions or the unequal distribution of material wealth or economic opportunities as between different sections of the population. Situations of this kind may well culminate in human rights violations leading to refugee movements. It is, therefore, also necessary to monitor such underlying causes if “prevention” is to be constructive and if it is not to be resorted to at a late stage when human rights are being seriously threatened or when violations have actually occurred.

#### **(B) Discrimination Against or Persecution of Ethnic or Religious Minorities**

Minority groups are frequently the victims of discrimination or persecution when serious political or economic problems exist in a particular country. It is therefore necessary to give due consideration – in the area of monitoring – to the situation of vulnerable minority groups which are likely to become the victims of discriminatory or persecutory measures if general conditions in the country deteriorate.

#### **(C) Political Factors**

Causes of this kind may be more difficult to address in the context of “prevention” due to their inherent nature. We are here concerned with measures such as those resulting from fundamental changes in the social structure of a country, or problems based on a particular political approach or a particular religious philosophy. Measures of this kind may have serious consequences for certain sections of the population rendering their continued stay in the country intolerable and may thus lead to a refugee exodus. On the other hand, they are intimately connected with a country’s basic political, social or religious orientation. Such problems must, however, conform to accepted minimum human rights standards and if these are not respected the international community will have legitimate grounds for direct concern.

In regard to the political causes of refugee movements it is once again necessary to apply effective monitoring action. Such action should be directed more especially to determining the exact nature of the particular phenomenon and whether – despite the obvious difficulty – some remedial action, such as addressing the underlying economic causes, could be envisaged.

#### **(D) Violence and Armed Conflicts**

Conditions of violence are frequently the cause of international displacement or refugee exodus. The notion of violence in the present context covers a variety of situations including generalised violence due to internal political instability and violence resulting from external or internal armed conflicts.

Political instability in a particular country involving upheavals or revolution may give rise to generalised violence in the form of guerrilla, death-squad or similar activity. It is necessary to monitor situations likely to result in violent action in order, if possible, to prevent such situations from reaching a critical stage e.g. by addressing the underlying political or economic problems. If violence has already broken out, consideration should be given by competent organs of the international community to the possibility of exercising an effective mediatory role.

External or internal armed conflicts are again the result of an underlying political or economic problem which has not been possible to resolve by peaceful means. Such situations of armed conflict need to be met by a threefold approach:

- (i) efforts through appropriate mediation arrangements to bring the fighting to a halt as soon as possible;
- (ii) efforts to ensure that the rules of international humanitarian law are observed for as long as the fighting continues;
- (iii) efforts to address the underlying political problem which has given rise to the armed conflict.

#### **(E) Economic Factors**

Reasons of an economic nature may frequently be the underlying cause of political or ideological intolerance or the non-observance of basic human rights. It should be determined whether in any given situation there is an economic element which – if appropriately dealt with – could contribute to avoiding a refugee exodus. Such investigations should be carried out on an ongoing basis in the context of established monitoring arrangements.

As is known, many of today's movements of asylum seekers coincide with movements of persons who leave their home country for purely migratory purposes. In the context of prevention, it is important to seek solutions for current migratory problems in order that persons wishing to take up employment in another country should have the possibility of doing so in a regular manner.

#### **(F) Possible Methods of Approach**

In the preceding paragraphs, an effort has been made to summarise the possible causes of external or internal refugee movements, and to give some indications as to the type of action that might be envisaged with a view to prevention. These indications must necessarily be of a general character in view of the complexity of the issue and the need to adopt any concrete measures to the special circumstances of each particular situation. It is, however, clear that the key to any constructive approach is the existence of appropriate monitoring arrangements and an effective early warning system.

It is, therefore, necessary to examine in detail the extent to which existing monitoring arrangements are adequate and the extent to which they should, if necessary, be strengthened and further developed. In this respect consideration should be given to the possibilities which already exist or which could appropriately be established both at the universal and at the regional levels i.e. under the United Nations or within important regional organisations such as the European Community, the Organisations of American States, the Arab League and the Organisation of African Unity.

It should be stressed that effective monitoring arrangements should be aimed at obtaining a complete and in depth knowledge of the often complex factors likely to give rise to internal displacement or a refugee exodus in any given situation. It is in the light of this knowledge that the appropriate "preventive" action will have to be determined. While this must

necessarily depend upon the particular circumstances, it would be useful, already now, to determine the type of action which could be envisaged both at the universal and at the regional levels.

Consideration should be given in the first place to the “preventive” or “remedial” action that could be envisaged within the framework of the United Nations. If the situation likely to give rise to internal refugee displacement or to a refugee exodus involved a “threat to international peace and security,” the Security Council would, of course, be competent to intervene. There is, however, the question as to how the notion “threat to international peace and security” is to be applied. In situations involving external or internal armed conflict, the existence of a “threat to international peace and security” could probably be more readily established than in less acute situations involving serious discrimination or the violation or threatened violations of human rights. Moreover, would the Security Council have a competence to intervene in such situations of the last-mentioned type even if they do not clearly involve a threat to international peace and security. In any event, it is necessary to consider whether existing arrangements are adequate to deal within conflict, generalised violence and the violation of human rights.

Consideration could also naturally be given to the possibilities for “preventive” or “remedial” action afforded by the regional organisation such as those referred to above. This aspect is very important since many of the situations likely to give rise to internal refugee displacement or to a refugee exodus have a specifically regional character calling for appropriate solutions in a regional context.

As stated above, many of the “causes” of refugee displacement contain economic elements. The question therefore arises as to whether and to what extent appropriate economic or development assistance could be made available in order to avoid the emergence of more acute situations involving internal conflict, generalised violence, serious discrimination, persecution or the violation of human rights.

Finally, the issue of migration needs to be seriously addressed in view of the above-mentioned convergence of migratory problems and problems of refugees and asylum seekers. To what extent is it possible to arrange for regular migration in order to relieve the present burden on the refugee and asylum problem resulting from irregular migratory movements.

As states at the outset, there has been a tendency in recent years for the international community to concern itself increasingly with situations of the type likely to give rise to refugee flows and displacement. It is believed that a full discussion of the issue on the lines indicated above all will contribute to the further development of this positive and encouraging tendency.

\* \* \* \* \*

#### Concluding Statement by the Chairman

1. The International Institute of Humanitarian Law convened a Group of Experts on Prevention which met in San Remo from 18 to 20 June 1992. The meeting was held under the auspices of the Office of the United Nations High Commissioner for Refugees. The High Commissioner, Ms. Sadako Ogata, was represented by the Director of International Protection, Mr. Leonard Franco, who made a statement on the subject of prevention with particular reference to the problem currently confronting UNHCR: the meeting was chaired by Professor J. Patrignic, Honorary President of the Institute.
2. In the course of its discussions, the Group took note of a number of general considerations relevant to the prevention of external and internal displacement and also identified a number of specific approaches with a view to addressing this problem which had assumed increasing importance and gravity.
3. General Considerations:
  - (a) Forced external movement of persons due to the political or socio-political situations existing in various countries had now assumed serious proportions. It involved a heavy

burden for asylum countries and also gave rise to difficulties for other concerned countries and in some cases for the international community as a whole. It had therefore become necessary to perceive refugee problems in a more global context. This involved a full recognition of the international responsibility of the country of origin for situations giving rise to refugee movements and also of the responsibility of the international community as a whole to take more active, preventive or remedial measures as a matter of major concern and as a solution to the problem of displacement.

- (b) There had in recent years been a number of situations involving the internal displacement of persons similarly due to the political or socio-political situation in the countries concerned. Since the causes of refugee movements and internal displacement were closely related – if not identical – it was in many cases inappropriate to distinguish between internal and external displacement when envisaging preventive or remedial action.
- (c) The problem of external and internal displacement today had certain common elements with more general problems of migratory pressures and movements – especially illegal migration and the phenomenon of the movement of populations from rural to urban areas in the third world. These wider questions relating to migrations also needed to be addressed in their appropriate context.
- (d) A problem which bore certain similarities to the problem of external and internal displacement was that of the forced large-scale return of migrant workers in armed conflict or related situations. The existence of this problem was duly noted by the group.
- (e) The recent end to the cold war had certainly contributed to reducing or eliminating many of the refugee problems which existed in a previously bipolarised world. The emergence of newly independent States, combined with nationalistic trends, was, however, a factor which could give rise to new problems of external or internal displacement. There was, moreover, a danger that the sudden transition to a free market economy in many areas of the world would create migratory pressures which, if not corrected by appropriate remedial measures, could result in further movements of persons.
- (f) The causes of external and/or internal displacement were often very complex having their roots in the political and social conditions in the country concerned. There was a general crisis of responsibility and identity and special attention also needed to be given to problems of economic development and related issues such as demographic increase and environmental deterioration. From the standpoint of prevention, it was particularly necessary to address the problem of “causality” in relation to the more direct and immediate causes of displacement.
- (g) Preventive or remedial action to deal with external or internal displacement was closely linked to the question of State sovereignty. The issue of so-called “humanitarian intervention” which was discussed in detail by the group also needed to be seen in this context. It was gratifying to note that there had recently been a number of positive developments as a result of which national sovereignty could no longer be relied on by States as an unqualified bar to preventive or remedial action, viz:
  - i) With the adoption of various treaties and other instruments relating to human rights at the universal and regional levels, situations involving an actual or potential violation of human rights which could give rise to internal or external displacement were now a matter of legitimate concern to – and possible action by – the international community as a whole.
  - ii) United Nations General Assembly Resolution 41/70 of 3 December 1986 on International Cooperation to Avert New Flows of Refugees inter alia calls upon member States to respect the principles contained in the United Nations Charter and in particular to refrain from action likely to lead to large-scale refugee flows; and to promote international cooperation in all its aspects, in particular at

the regional and sub-regional levels as a means to achieve this objective. The Secretary-General is moreover required to give continuing attention to the matter and, pursuant to the Resolution, has established within the Secretariat an Office for Research and Information on situations likely to result in new flows of refugees.

iii) In Resolution 46/182 of 19 December 1991 on strengthening the coordination of humanitarian emergency assistance of the United Nations, the General Assembly entrusted the Secretary General with various functions in the area of prevention including an overview of all emergencies on the basis of an early warning system and actively facilitating access by obtaining the consent of the parties concerned through modalities such as the establishment of temporary relief corridors where needed and days and zones of tranquillity and other forms. Pursuant to this Resolution, a Department of Humanitarian Affairs was established within the United Nations Secretariat.

(h) In view of the above developments, it was considered that a number of international instruments and arrangements, on the basis of which preventive or remedial action could be initiated, were already in existence. Their effectiveness could however be strengthened and further possibilities for preventive or remedial action could, if necessary, be considered.

#### 4. Specific Approaches

(a) Governments should be strongly encouraged to make full use of existing mechanisms – notably those created by General Assembly Resolutions 41/70 and 46/182 – in order to address the causes of external and internal displacement and to take appropriate preventive or remedial action. They should also be encouraged to have recourse to informal consultation mechanisms and to “preventive diplomacy” whenever appropriate. One method that might usefully be envisaged could be for the Secretary-General to convene ad hoc meetings of Foreign Ministers in the case of an imminent refugee crisis.

(b) Concern for situations giving rise to displacement was not only the prerogative of governments but was also a matter for non-governmental organisations and for the public at large. Situations likely to give rise to displacement should therefore be given the necessary coverage in the media. There was a need to develop an “active morality” in this critical area so that situations likely to give rise to refugee flows or internal displacement do not pass unnoticed through complacency or default. The importance attaching to humanitarian law and human rights issues should also be given due emphasis in the media. The question of displacement, its causes and possible preventive or remedial action should, moreover, also be made the subject of lectures or courses of study and of research at universities and academic institutions, particularly those concerned with humanitarian and human rights law. Initiatives along these various lines could also help to intensify the concern of governments and encourage them to envisage appropriate preventive or remedial action.

(c) The United Nations General Assembly and the UNHCR Executive Committee should be encouraged to state explicitly that the High Commissioner has a mandate to concern herself with the question of preventive or remedial measures in the context of UNHCR’s humanitarian experience and expertise. Any action taken by the Office in countries of origin, especially as regards financial involvement should be coordinated with the other competent United Nations bodies. It was of course essential that any action or initiative taken by UNHCR in the area of prevention or on behalf of internally displaced persons should not have a weakening effect on established principles of asylum and protection and should not in any way be seen as an alternative to the full implementation of these principles.

(d) Action by non-governmental organisations in the area of prevention should be strongly encouraged. Non-governmental organisations operating in countries where situations of displacement exist or are likely to arise should seek to promote necessary improvements

in the human rights situation in the country concerned. Non-governmental organisations operating elsewhere could also play an important part in drawing attention to situations of actual or potential displacement wherever they may exist, with a view of mobilising public opinion and stimulating preventive action on the governmental level.

- (e) Insofar as external and/or internal displacement are the result of actual or threatened human rights violations, they naturally fall within the purview of intergovernmental human rights bodies. At the universal level, efforts should be made to strengthen the effectiveness of such bodies established under the United Nations in dealing with situations of actual or potential displacement. In this connection, Article 56 of the United Nations Charter – according to which all members pledge themselves to take joint and separate action in cooperation with the organisation inter alia for the promotion of human rights – was of particular relevance. Similarly important was Article 28 of the Universal Declaration of Human Rights according to which everyone is entitled to a social and international order in which the rights and freedoms set out in the Declaration can be fully realised.
- (f) Situations of actual or potential displacement should whenever possible or appropriate be brought to the notice of human rights bodies established within the framework of regional organisations. More generally, it was important to strengthen and if necessary to develop the role of regional organisations in regard to prevention. Due to their more intimate knowledge of problems existing in their respective areas, regional organisations may be in a better position to recommend or initiate preventive action.
- (g) Both at the universal and regional levels, efforts should be made – on an on-going basis – to promote an improvement of the human rights situation in countries of actual or potential displacement. Measures to improve the implementation of human rights should, whenever appropriate, also be included in peace-keeping arrangements. More generally, the international community should progressively develop human rights directly relating to the freedom of movement in regard to the country of origin including the right of return and the prohibition of expulsion, exile, and the arbitrary – deprivation of nationality and State responsibility for situations likely to give rise to displacement.
- (h) Displacement is frequently the result of internal armed conflict. It was noted that fully adequate legal provisions existed for the protection of civilian victims of armed conflict situations. Thus, Article 3 common to the Four Geneva Conventions of 1949 and Protocol II Additional to the Four Geneva Conventions of 1949, and relating to the protection of non-international armed conflicts of 1977, define basic humanitarian standards for the treatment of victims of internal armed conflicts. The practical implementation of these legal provision and the possibility of enhancing their effectiveness should be examined in cooperation with the International Committee of the Red Cross.
- (i) Armed conflict situations likely to give rise to displacement are frequently made possible by the ready availability of arms which at the present time often encourages and facilitates the solution of disputes by violent means. Serious consideration should therefore be given to measures for improving international cooperation for more effectively restricting the provision of arms to potential parties to armed conflicts.
- (j) Consideration should be given to the question whether preventive action could not be more frequently envisaged under the United Nations Charter with particular reference to possible intervention by the Security Council and the Economic and Social Council. Chapter VI of the Charter dealing with the peaceful settlement of disputes should therefore be resorted to in the context of prevention whenever possible and appropriate. It has also been recognised that action by a State likely to give rise to displacement could in certain circumstances constitute “a threat to international peace and security” within the meaning of Article 39 of the Charter. The pacific settlement of international disputes was an important factor in avoiding situations likely to give rise to displacement. Moreover, according to Article 35 of the Charter, the Economic and

Social Council is more particularly competent for questions relating to refugees, therefore, it might be possible for it to bring to the notice of the Security Council situations likely to give rise to displacement.

- (k) Effective, preventive or remedial action necessarily presupposes a full knowledge of all the relevant facts of a given situation and the availability of adequate information is always an essential prerequisite. It should therefore be determined whether the necessary monitoring arrangements can be organised in cooperation with those United Nations bodies already established for the purpose of "early warning" and with concerned regional bodies. The possibility of alternative or supplementary arrangements should also be closely investigated.
- (l) Finally, the International Institute of Humanitarian Law should be encouraged to develop its activities in the field of study and research especially in relation to questions of displacement and prevention.

## **Conflict Prevention – The Humanitarian Perspective**

*New York, United States, 15 – 16 April 1994*

1. The meeting was organised by the International Institute of Humanitarian Law in close cooperation with the International Peace Academy. It was attended by experts from the United Nations, diplomats accredited to the United Nations in New York and representatives of various concerned specialised organisations including the Office to the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), the United Nations Centre for Human Rights and the International Organization for Migration (IOM).
2. The various issues addressed by the meeting were the following:
  - a) Interaction of different preventive activities
  - b) Avoiding the emergence of conflict situations or their continuance: preventive diplomacy, stimulating political will in the area of prevention
  - c) Preventive actions related to human rights, humanitarian law, refugee law and migration law issues
  - d) Public opinion: the mass media factor
3. The discussions proved to be very valuable and constructive and centred both on possible actions to prevent the emergence of conflict situations and on the action to be taken once a conflict situation had come into existence. The discussions also provided an opportunity for examining a number of recent conflict situations which has underscored the urgent need to develop appropriate preventive arrangements. In this context, mention was also made of the special problems facing European countries in the area of prevention.
4. The work of the meeting was also of relevance to the Round Table on this subject to be organised by the Institute in San Remo during the period 6–10 September 1994. The present Summary Report does not cover in detail all the issues examined by the meeting, but reflects the main trends of the discussions. It was a source of particular satisfaction for the Institute that the meeting had been organised in close cooperation with the International Peace Academy. It was moreover, generally recognised that the fact that the meeting could be held in New York, the seat of the United Nations, was of particular value since it facilitated the participation of experts who had particular knowledge and experience of the various issues addressed.
5. As regards anticipatory action to avoid the emergence of a conflict situation from arising, it was recognised that the effectiveness of such action must necessarily depend upon the particular circumstances. It had to be recognised that certain potential conflict situations were less susceptible to preventive action than others. This might, for example, be the case in potential – or actual – civil war situations involving a general upsurge of popular passions, making it difficult to identify an accountable party.
6. Among the reasons for the emergence of conflict situations, reference was made to demographic, economic, developmental and migratory factors. The extent to which these various factors could be made the subject of effective preventive action should be further examined. The question of the rights of minorities and their treatment was frequently a major factor in the emergence of conflict situations and it was believed that this subject should be given special prominence at the Round Table.
7. A precondition for effective preventive action was the availability of comprehensive information which could form the basis of “early warning.” There was a need for increased transparency and the international community should place greater emphasis on fact-finding. It was also desirable that the process of early warning should be strengthened at the field level where non-governmental organisations could have an important role to play. Early warning was not, however, limited to obtaining the relevant facts but also implied a genuine willingness to take preventive action should this prove to be necessary.
8. It was noted with satisfaction that the concept of “preventive diplomacy” had now come to be fully accepted, e.g. in various United Nations General Assembly resolutions. While

every effort should be made to increase the effectiveness of preventive diplomacy, it was difficult to establish concrete guidelines due to the fact that many of the actions involved were of a pragmatic and confidential nature. An effort to establish such guidelines should nevertheless be made especially with regard to ensuring coordinated action in the area of preventive diplomacy. Such coordination would also make it easier to stimulate the necessary political will to arrive at a solution. Preventive diplomacy should moreover comprise a religious element which should be of a clearly ecumenical character.

9. An important aspect of preventive diplomacy was the mediatory role which had in a number of situations been exercised by the United Nations Secretary-General. The nature and scope of this role has so far not been clearly defined. There appeared to be little doubt, however, that the Secretary-General could propose his good offices to the parties to a potential or actual conflict. If these good offices were accepted, this could represent an important element in the area of prevention.
10. In certain situations, resort to enforcement measures (Chapter VII of the United Nations Charter) could constitute appropriate preventive action. Such action – in those cases in which it was considered appropriate – could be rendered more effective through the establishment of a permanent United Nations Military Force (whether referred to as a “stand-by,” “designated” or “available” force) in line with the suggestion made in the “Agenda for Peace” submitted by the United Nations Secretary-General.
11. The question arose, however, as to whether enforcement action under Chapter VII of the Charter was indeed appropriate in all cases, and whether greater attention should not be given to possibilities of resolving conflict situations without resort to force. Of essential importance was the need to establish an open and constructive dialogue in regard to potential or existing conflict situations including their humanitarian aspects. There was a need to define the type of dialogue in regard to potential or existing conflict situations including their humanitarian aspects. There was a need to define the type of dialogue required in regard to preventive measures including the presence and contacts which needed to be established.
12. It was also important to ensure coordination of the activities of the various organs and bodies represented in a particular country where a conflict situation might arise, e.g. United Nations organs, intergovernmental and non-governmental organisations, and the press. These organs and bodies normally tended to report directly to their respective headquarters and more intensive prior consultation at the local level could result in more effective co-ordination rather than piecemeal action in the area of prevention.
13. The major role that can frequently be played by non-governmental organisations in the area of prevention should be fully recognised. There were indeed certain cases in which non-governmental organisations had easier access to the parties in an actual or potential conflict situation, and might well be in a position to establish a constructive informal dialogue free from political considerations.
14. In general it was essential to give greater consideration to possible approaches outside the scope of enforcement action under Chapter VII of the United Nations Charter. It should not be overlooked that action in the last-mentioned context may frequently introduce a political dimension involving the “taking of sides” which could sometimes even render the ultimate solution of a conflict situation more difficult and could impede the provision of assistance to the victims in a purely neutral and humanitarian manner.
15. The provision of assistance to the victims of a conflict situation should not be regarded as action intended to meet a humanitarian need. It should also be seen as possessing a clearly “preventive” character in avoiding a deterioration of a conflict situation which has already come into existence. This applies as regards assistance to the victims of an armed conflict by the ICRC in accordance with international humanitarian law and the protection and assistance provided by UNHCR to refugees and displaced persons in accordance with international refugee and human rights law. Such assistance plays an important role by reducing as far as possible the measure of human misery and suffering, the continuing

existence of which cannot fail to be a negative factor in arriving at a solution of the conflict. It was considered that the manner in which the provision of humanitarian assistance can play an effective role in regard to prevention should be closely examined at the forthcoming Round Table. Ensuring respect for international humanitarian law, human rights law and international refugee law and their effective implementation was recognised as being a priority objective.

16. Since conflict situations frequently result from the non-respect of human rights, on-going efforts by the competent United Nations Human Rights bodies charged with a supervisory function in this regard are of special importance in the area of prevention. The results of these efforts may not, however, be immediately apparent. Consideration should therefore also be given to the manner in which existing United Nations Human Rights mechanism might be utilised, adapted or reinforced in order to ensure more immediate and direct action once a conflict situation has come into existence.
17. These various considerations regarding the preventive implications both of humanitarian assistance and of action to ensure the more effective enforcement of human rights, point to the need to promote further accession to the international human rights, humanitarian law and refugee law instruments. They also underline the continuing need for promotion, dissemination and training in these various branches of law. The manner in which existing arrangements for dissemination and training could be strengthened and further extended should be further examined. Consideration should also be given to the possible establishment of new modalities to ensure that action in the area of dissemination and training reached persons at all levels concerned with the application of international humanitarian, human rights and refugee law.
18. The Meeting also considered whether and to what extent resource could be had to public opinion and the media as a positive and active element in the area of conflict prevention and in particular its humanitarian aspects. Any such efforts should be directed towards ensuring accurate and balanced reporting on actual or potential conflict situations, and developing a willingness by the media to have regard not only for “news value” but also for the importance of stimulating and strengthening humanitarian awareness in public opinion. Experience to date has tended to be somewhat uneven and this question should therefore be made the subject of further examination.
19. In conclusion, it was recognised that many of the issues relating to conflict prevention were of a far reaching and global character and might not readily lend themselves to solutions in the short term. These issues should, however, continue to be closely examined on an on-going basis. Other more concrete matters arising in the area of prevention could, however, already now be made the subject of more specific proposals leading to the establishment of relevant and constructive guidelines. This applies in particular as regards the preventive aspects of humanitarian assistance in conflict situations.

## **Meeting of European Government Experts on Current Refugee Issues**

*Zurich, Switzerland, 22 – 24 March 1996*

The International Institute of Humanitarian Law organised, with the support of the Swiss Federal Office of Refugees, a Meeting of Government Experts on Current Refugee Protection Problems in Europe from the 22<sup>nd</sup> until the 24<sup>th</sup> of March 1996 in Zurich, Switzerland. Informal and without publicity, the Meeting was convened to gather together national government officials and to allow them to exchange their experiences and views on some critical refugee problems.

1. The participants included 18 officials from Austria, Belgium, Denmark, Germany, France, Italy, Hungary, the Netherlands, the Russian Federation, Spain, Sweden, Switzerland, the United Kingdom, as well as from Australia, Canada and the United States. Experts from the International Institute of Humanitarian Law were also attended and participated in the discussions.
2. Following the introductory statement by Professor Patrnoic of the IIHL, the participants were invited to comment on a variety of current issues listed on the Annex of the Meeting's Agenda with a view to identify the subjects which should be given priority for an in-depth discussion. Most country experts expressed interest in discussing questions related to the Return of Rejected Asylum-Seekers, Temporary Protection, Assistance for Development to the Countries of Origin and the Applicability of the 1951 Refugee Convention.
3. Subsequently, the participants presented the current asylum and refugee situations of their respective countries. This was followed by a question and answer session to provide clarification on certain aspects of country situations.
4. On the last day, three subjects were selected for further in-depth consideration. These were: the obligation of states to readmit their own nationals in connection with the right to return; temporary protection; and the applicability of the 1951 Refugee Convention.

### **The Obligation of States to Readmit their Own Nationals**

5. Reference was made to Article 12.4 of the International Covenant on Civil and Political Rights. The meeting assessed that the right to return is a universally accepted human right proclaimed in the Universal Declaration of Human Rights, definitely in those regions where practically all States are parties to the International Covenant.
6. It was also mentioned that in the Dayton Agreements the right to return and the creation by parties concerned of suitable conditions for voluntary return are crucial elements for the success of the operation of return to the former Yugoslavia, although promotion of return should be "consistent with international law" (Agreement on Refugees and Displaced Persons, Chapter 1, Article 1, par. 5 and Article II).
7. One participant pointed out that the interpretation of the notion of return as a human right supported the argument of some countries unwilling to accept their own nationals, unless they agree to return voluntarily. Thus, the problem of persons who do not have a right to stay in a certain country, but nevertheless refuse to return to their country of origin, remains unresolved.
8. Another participant stressed that the right to leave and to re-enter one's own country was a consequence of a traditional principle of international law according to which States have an obligation to readmit their own nationals. This obligation was the basis of a readmission agreement in the 19<sup>th</sup> century which was a time when there were no international conventions on human rights.
9. Finally, one expert stated that readmission is normally subject to the conclusion of bilateral agreements between States. However, it was not clear in relation to whom States should be obliged to readmit. It was a question of whether it was in relation to other states or in relation to the individuals concerned. Appearing as a difficult question to answer, the participant suggested an eclectic interpretation: Bilateral agreements could be used as tools

to establish an obligation for States to co-operate in clarifying a situation which would allow the individual to exercise his/her right to return.

10. Following a brief discussion, it was agreed by all participants that the question of return is a relevant contemporary issue which needed further clarification. In this regard, they welcomed and looked forward to the forthcoming meeting on the subject which is being organised by the IIHL in June 1996 in Bucharest.

### **Temporary Protection**

11. The IIHL introduced the subject pointing out that the debate in Temporary Protection ("TP") is nowadays focused on the issue of cessation of refugee status. Who determines when the benchmark has been reached? According to the UNHCR, the standards contained in Article 1, section C(5) of the 1951 Refugee Convention have to be fulfilled in order to facilitate or to organise the return. The question arises, however, as to whether or not States granting TP to ex-Yugoslavs are now assessing on an individual basis and according to other criteria the possibility of including ex-Yugoslavs hitherto under TP schemes in a return programme, thus distancing themselves from the position of the UNHCR and from the provisions in the Dayton Agreements.
12. According to one participant, the volunteer nature of return does not arise in situations where there is an existing fear of persecution. This may be the case when the causes of flight are (civil) wars and other armed conflict situations. The absence of the persecution element would justify the non-individual determination prior to the grant of TP as well as the temporary nature of the protection. Other participants believed that the principle of non-refoulement was also linked to the fear of persecution. If TP is accorded in non-persecution situations, non-refoulement should be considered as a humanitarian and much less as a legal commitment.
13. For other delegates, the question was not so clear. As in many cases, persons accepted under TP schemes have been granted refugee status or in many cases access to the asylum procedures. One participant stated that in his country TP was granted as long as it was needed. Therefore, the problem was not a question of protection but that of status which was established with a limited time frame.
14. A number of questions were pointed out to be needing further clarification, inter-alia:
  - Is TP an exceptional measure or an anti-chamber to the asylum procedures?
  - Is a complementary instrument needed to harmonise the granting of TP?
  - Should the UNHCR, as a general rule, have a role in the determination of groups in need of TP?
15. Following an exchange of views on the above-mentioned questions, it was felt that strict rules for dealing with TP were not necessary because of its pragmatic rather than doctrinal nature in responding to mass influx situations. It was reminded that the European Union had approved in 1995 two resolutions providing guidelines to ensure a common response to crises. Furthermore, any future mass-influx would have its own characteristics. Flexibility in the approach should be a key element of any TP strategy. Ad hoc measures should thus be adopted on a case by case basis and in line with existing international instruments or complementary to such instruments. It was finally agreed upon by the majority of the participants that a consultation mechanism is needed to tackle the question of burden sharing in mass-influx situations.

### **Applicability of the 1951 Convention**

16. It was pointed out that the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees had been concluded to afford international protection to persons fleeing from the fear of persecution. The topic for discussion was whether or not international protection was required by other people who did not come within the terms of reference of the 1951 Convention.

17. Already during the period when the 1951 Convention was concluded, and in fact long before, other population movements – particularly economic and social migrants – had considerable international significance. These categories of aliens came under the protection of municipal law or general international law until specific instruments (within the framework of the ILO, the Council of Europe, the European Union or the United Nations) came into being.
18. For many years, the problem of “displaced persons” (i.e. persons displaced outside the boundaries of the State of their nationality or habitual residence) has been an international preoccupation. The number of externally displaced persons is estimated to be equal to or larger than the number of refugees. According to the 1951 Refugee Convention and the 1967 Protocol, externally displaced persons are formally protected in all African States who are parties to the OAU Convention which govern the specific aspects of refugee problems in Africa of 10 September 1969. In Central America and the adjacent States, they are protected at least from a policy aspect, through the Cartagena Declaration on Refugees of 2 November 1984. At the universal level, externally displaced persons are considered by the UN General Assembly to come within the overall competence of the High Commissioner for Refugees. They are mentioned in the resolution which the General Assembly adopts at its yearly session on the activities of the UNHCR.
19. The question arose whether or not European States believe that an instrument on displaced persons is also required in Europe. In view of the difficulty of amending the 1951 Convention, some participants suggested the possibility of a few interested European States signing a Memorandum of Understanding similar to the Cartagena Declaration as a way to start the process. An alternative could be the drafting of a Protocol open to the signature of States possibly within the framework of the Council of Europe.
20. The importance was stressed on looking into the complementarity of existing instruments, including Resolutions, Recommendations and Decisions of the Parliamentary Assembly or the Committee of Ministers of the Council of Europe. It was also believed that existing mechanisms, in the framework of the Council of Europe and the OSCE, were underestimated and under-used. Finally, one participant believed that all the necessary legal tools to deal with different types of population movements exist, (i.e. process initiated by the CIS Conference), provided that comprehensive regional understanding could be reached. In this connection, structured cooperation between competent international organisations, such as the UNHCR, IOM, OSCE and others were of utmost importance.
21. Other interventions focused on the legal situation of de facto refugees and the need to have UNHCR more involved by, for example, taking up this issue with the Executive Committee as was recently done with the question of statelessness.
22. As to internally displaced persons, Conclusions No. 75 (XLV) adopted by the Executive Committee of the High Commissioner’s Programme in 1994 was a useful set of guidelines for action within the framework of the UNHCR. A more comprehensive international approach would result from further discussions within the United Nations framework, e.g. at the initiative of the Representative of the Secretary General for Internally Displaced Persons.
23. All participants have very much appreciated the efforts of the International Institute of Humanitarian Law in organising this informal dialogue of European governmental officials and encouraged the Institute to continue in this kind of understanding.

International Institute of Humanitarian Law/ United  
Nations High Commissioner for Refugees: Regional  
Meetings in Refugee Issues

**Round Table of Asian Experts on Current Problems in the International Protection of Refugees and Displaced Persons**  
*Manila, Philippines, 14 – 18 April 1980*

Declaration of Pirate Attacks on Refugees and Displaced Persons

The Round Table of Asian Experts on International Protection of Refugees and Displaced Persons,

Having met from 14 April to 18 April 1980 under the auspices of UNHCR and the sponsorship of the University of the Philippines Law Centre and the International Institute of Humanitarian Law;

ALARMED by the increasing scale of pirate attacks on boats carrying refugees in the Gulf of Siam and the adjacent areas;

NOTING that such pirate attacks have been accompanied by acts of violence including robbery, murder and rape and the abduction of women and children;

NOTING that in the past three months such crimes have increased dramatically and that several hundred cases of pirate attacks on refugee boats have been reported;

NOTING with concern that action taken by States to suppress and deter the pirate attacks has so far not produced the desired results;

CONSIDERING that pirate attacks are not only limited to refugee boats but are also directed against other vessels at sea;

RECALLING that piracy is a crime against mankind and that States have an obligation to take all necessary measures to suppress pirate attacks in national as well as in international waters and to cooperate to such end; and

URGES States within whose waters pirate attacks occur to take immediately all measures to suppress completely such attacks, to assist persons who are victims thereof and to prosecute those responsible.

\* \* \* \* \*

Declaration on the International Protection of Refugees and Displaced Persons in Asia

The Round Table of Asian Experts on the International Protection of Refugees and Displaced persons,

Having met in Manila from 14 April to 18 April 1980 under the auspices of the United Nations High Commissioner from Refugees (UNHCR) and under the sponsorship of the University of the Philippines Law Centre and the International Institute of Humanitarian Law to review current problems relating to the international protection of refugees and displaced persons, under the high patronage of Mrs. Imelda Romualdez Marcos, Minister of Human Settlements and Chairman of the Task Force on International Refugee Assistance and Administration of the Philippines.

Having recognised that lawyers, scholars and other experts in Asia can make a positive contribution towards ensuring the protection of refugees and displaced persons in the Asian region by promoting a greater understanding of their problems and needs, both among the public and in government.

Having considered in particular:

- (a) the need to strengthen the activities of UNHCR in promoting respect for fundamental principles of international protection of refugees and displaced persons;
- (b) the serious problems which have arisen regarding the observance of the principle of non-refoulement and the granting of asylum by Asian States; and
- (c) the need for a more intensive promotion and dissemination of International Refugee Law.

Therefore

1. COMMENDS the work of UNHCR in the Asian region;
2. REAFFIRMS that all persons are entitled to enjoy human rights and freedoms without discrimination, and draws attention to the humanitarian character of the principles relating to the protection of refugees and displaced persons;
3. STRESSES the fundamental importance of the principles relating to asylum and appeals to Asian States to base their practices on these principles;
4. DEEPLY REGRETS that situations have arisen where large numbers of persons have felt compelled to leave their country, creating heavy burdens for States in Asia;
5. RECALLS with deep regret that in Southeast Asia instances have occurred in which thousands of refugees and displaced persons were forcibly returned to their country of origin and in which refugee boats were turned away and/or towed out to sea, resulting in considerable loss of lives;
6. STRESSES the importance of the observance of the principle of non-refoulement as defined in international instruments;
7. RECOGNIZES that States have a legitimate concern to preserve their territorial integrity and political independence; and recognises further that every refugee has duties in the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order, and that he also abstains from any subversive activities;
8. CALLS UPON all Asian States to express their commitment to the principle of non-refoulement of refugees and displaced persons by legislative enactments and appropriate administrative policies and instructions;
9. AFFIRMS that persons seeking asylum should not be subject to prosecutions or punishment merely on account of their entry or presence;
10. RECOGNIZES that while international solidarity and cooperation should not be a precondition from compliance with basic humanitarian principles, they are indispensable for satisfactorily resolving problems of refugees and displaced persons arising in situations of large-scale influx; international assistance may be essential not only for immediate relief but also for durable solutions;
11. CALLS UPON all Asian States to continue to support vigorously the efforts of UNHCR in the performance of its functions;
12. CALLS UPON all Asian States to consider seriously accession to the United Nations Refugee Convention of 1951 and to the United Nations Refugee Protocol of 1967 which extended the scope of the Convention in order to cover new refugee situations;
13. RECOMMENDS the consideration of a regional instrument or a set of principles relating to the specific problems of refugees in Asia as a complement to the United Nations Refugee Convention and Protocol;
14. CALLS UPON legal and other experts in refugee matters in Asia to promote in consultation and in cooperation with UNHCR, an awareness of the problems of refugees and displaced persons in their own countries and throughout the region, to contribute their expertise in the protection of refugees in their respective countries and to assist in the creation of institutions for the promotion of international refugee and humanitarian law;
15. DECIDES to create a working group of Asian Experts with the task of following up the recommendations and conclusions of this Round Table.

## **Round Table on Humanitarian Assistance to Indo-Chinese Refugees and Displaced Persons**

*San Remo, Italy, 28 – 30 May 1980*

### Conclusions Adopted by the Round Table on Humanitarian Assistance to Indo-Chinese Refugees and Displaced Persons

The Round Table on Humanitarian Assistance to Indo-Chinese Refugees and Displaced Persons, assembled in San Remo from 28 to 30 May 1980, under the auspices of the International Institute of Humanitarian Law, the Diakonisches Werk der Evangelischen Kirche Deutschlands and Gernal Caritas,

DEEPLY CONCERNED that the problem of refugee and displaced persons from South East Asia will for a number of years continue to require the cooperation of all those involved; governments, UNHCR, and other intergovernmental organisations, as well as Red Cross and other non-governmental organisations (NGOs);

EMPHASIZES the specific role of the NGOs in contributing to the assistance to refugees in countries of provisional asylum, and still more to their reception and their economic and social integration in countries of resettlement but:

- Stresses the need for UNHCR to continue to seek resettlement opportunities, and to give special attention to those refugees and displaced persons who have been waiting for long periods in countries of provisional asylum
- Emphasises that in view of the urgent need to expedite departures to resettlement countries, the processing of refugees and displaced persons should be streamlined by relaxing admission criteria so far as is consonant with national legislation

BELIEVES that a continuing policy of admission requires the full understanding and cooperation of the people in the resettlement countries, and that the NGOs should intensify their efforts to inform and educate in this respect;

RECOGNIZES the importance of the reunion of family members of refugees and displaced persons in countries of resettlement, and in this regard:

- Endorses the “Body of Principles for the Procedures on the Reunification of Families” adopted by the Council of the International Institute of Humanitarian Law
- Emphasises the fundamental right of refugees to be reunited with other members of the minimum family unit, and requests that this minimum family reunion not be subjected to quota or other numerical considerations
- Recommends that governments practise a liberal policy considering the reunion of members of extended family groups

BELIEVES that meeting like this Round Table in San Remo are essential not only for exchanging views between organisations, but also to promote international collaboration on specific aspects of resettlement and integration, with a view to achieving tangible results, for instance:

- The publication of material on countries of origin and refugee groups, for circulation to foster groups
- The publication of material in “refugee languages” to promote a policy of preservation of cultural identity
- The recognition and validation of diplomas, degrees and qualifications of refugees in the vocational and academic fields

The round table, also preoccupied with the problem at its origins in Southeast Asia,

BELIEVES that, whilst observing full respect for human rights and particularly that of freedom of movement, the international community should try to eliminate essentially economic motives for leaving the countries of origin, and that this could be achieved by an adequate economic aid policy;

STRESSES that voluntary registration towards the countries of origin should be encouraged by assistance towards economic and social rehabilitation;

EXPRESSES its serious concern and disappointment over the lack of adequate international measures for the actual enforcement of the obligation of rescue at sea, as embodied in the international maritime conventions;

NOTES WITH CONCERN the increasing numbers of acts of piracy against refugees in Southeast Asia, endorses the Manila Declaration on Piracy adopted by the Round Table April 1980 in Manila, and urges that immediate international action be undertaken by all sea-fearing nations actually to implement the principle of national or international responsibility with regard to piracy that is embodied in the international maritime conventions;

RECOMMENDS that, without the impinging on freedom of emigration, and while taking account of the wishes of the refugees themselves, the possibility of solutions for refugee problems in Southeast Asia within the geographical limits of the region should be systematically investigated and wherever possible promoted;

BELIEVES that further research on Southeast Asian refugee problems should be undertaken in consultation with the International Institute of Humanitarian Law, by expert staff and institutions in cooperation with NGOs, governments and intergovernmental organisations:

- On legal and protection problems, both in countries of provisional asylum or transit and in countries of resettlement; and
- On social, cultural, economic, and administrative problems related to the integration of refugees.

\* \* \* \* \*

### Summing Up on the Discussion of the Round Table on Humanitarian Assistance to Indo-Chinese Refugees and Displaced Persons

The discussion of the Round Table raised a number of questions of major importance in connection with the resettlement of Indo-Chinese refugees including:

- In view of the social isolation of Indo-Chinese refugees, if resettled at a distance from each other, does scattered resettlement meet their real needs?
- What can be done to improve the host community's understanding of the specific cultural and social needs of the refugees?
- Do the prevailing channels of social communication in the resettlement countries meet the expectations and needs of the Indo-Chinese refugees and enable their needs and basic interests to be correctly identified, or is the approach a paternalistic one?
- What can be undertaken to make the receiving community more open to the different cultural values of the refugees?
- How can NGOs, with the support of the mass media, help to convey basic information on the native cultures of refugees to a larger proportion of the receiving population?
- How can refugee communities be helped to maintain their cultural identity and achieve cultural self-fulfilment?
- How can greater recognition be given to the contribution refugees make to the receiving society?
- What more can be done, in countries of provisional asylum, to prepare the refugees for resettlement?
- What encouragement should be given to refugees to help themselves, in countries both of provisional asylum and of resettlement?
- How can refugees better integrate themselves with the local community as they wish?

It was thought that the importance of the following subject-areas merited fuller discussion in a future forum:

- Psychological problems of refugees after the trauma of their flight;

- Culture-shock;
- Tensions between refugees and indigenous population, in employment and in the local community;
- Risk of mutual misunderstanding of attitudes;
- Right of the refugees to live in ethnic communities;
- Difficulties arising from the non-recognition of qualifications;
- Scope for developing the independent economic capacity of the refugees; and
- Problems specific to unattached children and elderly persons, and to the handicapped.

## **Asian Working Group on the International Protection of Refugees and Displaced Persons**

*San Remo, Italy, 28 – 30 May 1980*

### Excerpt from the Document and Paper prepared for the Round Table

An examination of international law established, I believe, that there are rules of customary international law applying to the protection and status of refugees. These rules are based on general principles of law and the practice of States.

While there may be some uncertainty about the precise content of general international law, a substantial body of practice has grown up which establishes that at least the term “refugee” has a meaning in general international law and that a refugee is a class of persons specially protected by international law, in particular by the humanitarian legal principle of non-refoulement, which prohibits his rejection at the frontier or his subsequent expulsion or return if the consequences of such acts would be to endanger his life or liberty. There is also little question that the Office of the High Commissioner has the authority of the United Nations to intervene directly with the States, whether or not they are parties to international treaties for the protection of refugees and of other persons of concern to the High Commissioner, and that States are obliged by the terms of General Assembly resolutions to cooperate with the High Commissioner in the performance of his functions.

Also, international human rights law provides, *inter alia*, the following legal principles that are particularly relevant to refugees:

- (a) a bona fide asylum-seeker should not be penalised solely on account of entry into the territory of States for the purpose of seeking asylum;
- (b) the grant of asylum or temporary refuge to a person, who is not excluded from the category of persons to whom asylum can be granted, is a peaceful and humanitarian act and must be respected by other states;
- (c) the person granted asylum or refuge must be accorded conditions which are reasonable and which are in accord with his dignity as a human being;
- (d) a refugee must be regarded as a person before the law;
- (e) a refuge may not be subject to cruel, inhuman or degrading treatment;
- (f) protection must be granted without discrimination on the grounds of race, religion, country of origin, membership of a particular social group or political opinion;
- (g) wherever possible, families must be reunited;
- (h) a refugee must not be obliged to renounce his nationality against his will; and
- (i) a refugee must be allowed to return to his country of origin if he wishes to do so.

In addition, the State granting asylum or refuge is obliged to grant the refugee all such other rights as are conferred on him by international law.

International law also applies to the relations between the State granting asylum and the State of origin, its obligations to accord basic human rights to those subject to its jurisdiction, including the right to return and enjoy those rights, and its duty to respect the lawful granting of asylum; and in regard to the State granting asylum, its obligations to observe the principles of the United Nations Charter and to refuse to allow its territory to be used for activities which engage the responsibility of the State because of their unlawful nature.

To say this, however, does not diminish the importance generally of accession to the 1951 United Nations Convention and to its detailed rules governing the status of refugees.

While the 1951 Convention has its limitations as a universal international instrument of its kind, and it contains provisions on such basic protection aspects as the definition of a refugee, non-discrimination, non-penalisation on account solely of unlawful entry or presence, non-refoulement, non-expulsion generally, and cooperation with the United Nations.

A study of the international aspects of refugee problems established the need for strengthening and developing international law relating to refugees; not only because of the important humanitarian considerations, but also because of the need to reduce or eliminate the

dangerous tensions that can develop between the States as a result of refugee situations. An international instrument is also necessary to lay a firm basis for the international solidarity and cooperation which are necessary for the satisfactory management of refugee situations, particularly those arising from large-scale influx.

The experience of recent years indicates that in the uncertain and troubled conditions of the modern world, refugee problems may be among the most important and serious problems facing the international community in the coming decade. The problems are of such a scope and nature that they cannot be handled without the involvement of the international community generally; and the breadth of that involvement indicated that the development of legal provisions are necessary to ensure that the handling of such problems will be timely, effective and satisfactory from both the humanitarian and political aspects.

While the 1951 United Nations Convention provides an important statement of legal principles, it is not a complete statement. It lacks clear provisions on admission, adequate provisions on the status and legal conditions applying to persons granted temporary refuge, any provisions on durable solutions other than settlement in the country of first refuge or asylum in the broad sense, with particular regard to the matter of terminology, the right of qualification and the rights and obligations relating to the activities of the refugees in the country of asylum or refuge.

The most serious deficiencies of the 1951 United Nations Convention relate to temporary refuge and international solidarity and cooperation. The vast majority of refugees in the world at the moment who are still awaiting a satisfactory durable solution are in the situation of temporary refuge. They have not been assimilated in any significant sense and they are mostly living in special camps. They may find themselves in this situation for a considerable length of time, and for many of them the future is uncertain.

The solidarity and cooperation of the international community is essential not only for the immediate protection for the health and well-being of the refugees but also for securing a satisfactory and early durable solution, including the optimum solution of voluntary repatriation. In terms of its operative provisions as they effect durable solutions, the 1951 United Nations Convention provides mostly what could be called negative principles, such as non-refoulement and non-expulsion. More positive provisions are needed.

One beneficial aspect of the development of international refugee law, it is to be hoped, will be the clarification of a number of critical areas of uncertainty in international refugee law. In recent years there has been a marked tendency to gloss over those areas of uncertainty in the apparent hope that by pretending that these uncertainties do not exist they will disappear. There is no certainty that the practices of States left to the evolution of circumstances will lead to such a satisfactory development. Under the pressure of events, negative developments could take place which could be harmful to even the existing structure of the law.

Common sense and prudence dictate, therefore, that these uncertainties should be confronted in an open, honest, and constructive manner, and that efforts should be made to develop the law in a way which will satisfactorily take account of the humanitarian and political aspects. Difficult as it may be, these efforts should be made before these further serious problems arise, so as to avoid as far as possible a situation which has existed since the inception of international refugee law where humanitarian gains are obtained only after heavy loss of human life and a great deal of human suffering.

In the troubled conditions of our times, a courageous and dynamic approach to refugee problems is imperative. To rest on established principles and institutions in the belief that they are strong enough and sufficiently developed to deal satisfactorily with future situations would be disastrously short-sighted. The complexity of problems and the nature and range of situations existing in the world make clear that international refugee law is still only in the early process of development.

It is particularly important that solutions should be sought at a global level. So far, the major contribution to international refugee law has been European; and there is no avoiding the fact that the 1951 United Nations Convention was primarily a response to a European situation.

The Africans, however, have already made a significant response to the problems of their region and in a number of respects they have gone farther than any other region, from a humanitarian point of view. In contrast, at the international level the countries of Asia have still a great deal to do. The 1966 Bangkok Principles were an important first step; but they were not a complete statement of the basic principles governing asylum and the protection of refugees, and there have been very important developments since then.

The major refugee problem of our time is that of large-scale influx. The nature and scope of large-scale influxes can be such that they are universal in dimension. These problems can only be satisfactorily dealt with at the universal level. It is in the interests of all States, therefore, to see that this problem is discussed and dealt with at a universal level. It is of the utmost importance, therefore, that all the regions of the world should be engaged in a global discussion of these problems.

For various reasons, the Asian contribution to the global consideration of this problem has been so far relatively slight and quite out of proportion to the extent of the Asian interest in this problem. In the United Nations, for example, the main thrust of the contribution to the protection aspects has come from the Western European countries. While this contribution has been of great value, it has inevitably been conditioned by European experience and interests. The European contribution is insufficient to provide an adequate basis for a global legal regime. The perceptions of other regions are urgently needed to ensure the satisfactory and balanced development of international refugee law at a global level.

There is a danger that if this global contribution is not made, a serious imbalance will develop that will seriously complicate the task of finding a satisfactory system of international management and control of refugee problems at the global level.

Two thirds of the human population is found in Asia. The countries of Asia cannot afford to be peripheral to the international consideration of refugee problems. It is of utmost importance for a universal system for dealing with refugee problems that Asia make a significant contribution to the resolution of the humanitarian and political problems created by refugee situations. This contribution includes involvement in the development of international law relating to refugees. The absence of an adequate Asian contribution in this area is to the detriment of the entire international community.

For all countries, the heart of the challenge is to proceed from the point of national sovereignty to international solutions which take account satisfactorily of the humanitarian and political aspects. To rest on national sovereignty is no longer adequate, as the nature of refugee problems, particularly those of large-scale influx, is international, even global.

Perhaps the most important contribution the Working Group can make is to draw the attention of the Governments and the peoples of Asia to the nature and extent of refugee problems and the importance of finding satisfactory solutions for them. The development of international refugee law is of particular importance in this regard.

Opinions may differ as to the desirability or possibility of developing a regional instrument. It may be that the primary necessity is for the development of international refugee law at the global level. Recent events have shown that refugee problems can no longer be contained within regions. They can involve directly the entire international community. There is also the consideration that Asia is a vast and heterogeneous region and lacks the solidarity to make a regional instrument possible. There is the wider consideration that the primary need in the modern world is for global solidarity to deal with the major problems of the large-scale influx that can be related to power balances of global scale. Sub-regional instruments may be a possibility, in respect to such groupings as that of the ASEAN States; but even here, recent events have shown that refugee situations affecting those sub-regions extend beyond those sub-regions, requiring wider international response. For those situations, international solidarity and cooperation have had to be more universal in character. A danger of a sub-regional approach is that the absence of a wider basis of international solidarity and cooperation will inevitably be at the expense of the level of humanitarian obligations accepted. Left to cope with their own problems that have had their origins outside the ASEAN region, the ASEAN States have fallen

back on national sovereignty in recent years. It has only been the involvement of the United Nations and the provision of various forms of international assistance that have induced them reluctantly to admit everyone seeking admission. Even then they have made clear that admission was not granted out of legal duty, but on the basis of actual guarantees of resettlement elsewhere.

Finally, no international response to refugee situations can be adequate or sufficient unless it deals with the origins as well as the consequences. This aspect is outside the scope of this paper but it would not be amiss to observe that there are obvious dangers to any international arrangement for the protection of refugees if the exodus of people attains such proportions that the situation becomes unmanageable. It may be too negative to speak of preventive measures. A better term might be the removal of causes of mass exodus. Likewise, the remedial response should not overlook the fact that the exodus does not in itself exclude the possibility of eventual voluntary repatriation. More international attention may need to be given to the possibility of voluntary repatriation, in line with the greater attention being given to the origins or causes of mass exodus. The response to a mass exodus situation may require an approach which reflects more accurately the complexity of the origins or causes of mass exodus. The appropriate response may not necessarily be condemnation but one of good offices or mediation designed to seek a quick and positive agreement to provide the conditions necessary to secure voluntary repatriation. Like any other area of human relations, the legal approach in terms of determining responsibilities and blame can lead to over-simplifications that are ultimately unhelpful. Conciliation may sometimes be much the best response to discord.

As for future action, it may be worth considering whether the subject of territorial asylum and the international protection of refugees should not be resubmitted to the Asian-African Legal Consultative Committee for further signature by member States but its recommendations have provided valuable interim guidelines pending international legislation. The Committee may also provide a forum for a useful dialogue between the States of Asia and Africa.

**Seminar on the Rights of Asylum and the Rights of Refugees in Arab Countries**  
*San Remo, Italy, 16 – 19 January 1984*

A group of Arab experts, met in a seminar on “Asylum and Refugee Law in the Arab Countries” in San Remo from 16 to 19 January 1984, at the invitation of the International Institute of Humanitarian Law in collaboration with the United Nations High Commissioner of Refugees.

Having followed with special care the speech of Mr. Poul Hartling, the United Nations High Commissioner for Refugees;

Having considered the introductory report presented by Mr. Michel Moussalli, Director of the International Protection Division of the Office of the High Commissioner and Chairman of the Academic Committee on International Refugee Law of the Institute, as well as the contributions and studies presented by the reporters;

Underlining the Arab-Islamic ancestral traditions of asylum and refuge;

Being aware that the refugee problem must be considered in its entirety, without omitting the aspects which are related to causes, prevention and solutions;

Noting that a certain number of constitutions of Arab States advocate the respect of human rights especially the right of asylum;

Recognising the importance of implementing international instruments to ensure a better protection for refugees who have found asylum in the Arab countries;

Desiring to strengthen the dissemination on as wide a basis as possible of International Refugee Law in the Arab countries;

Considering with satisfaction the cooperation existing between the Office of the High Commissioner and certain Arab governments and non-governmental institutions;

Having expressed to the International Institute of Humanitarian Law and to the Office of the United Nations High Commissioner for Refugees its appreciation for the efficient way in which the Seminar was organised;

**CALLS** for the strict observance and implementation, without any discrimination in all refugee situations, of the fundamental principles which form the basis of International Refugee Law, notably the principles of humanity, asylum, non-refoulement, respect for basic human rights, voluntary repatriation and international cooperation and solidarity;

**INVITES** the Arab States which have not yet acceded to the 1951 United Nations Convention and to the 1967 Protocol relating to the Status of Refugees, to do so without delay;

**RECOMMENDS** that the Arab States work towards the conclusion of a regional instrument relating to refugees which would usefully complement the 1951 United Nations Convention and the 1967 Protocol relating to the status of refugees and which would take into account the traditions, realities and needs prevailing in these States;

**UNDERLINES** that, in line with the 1969 OAU Convention governing the specific aspects of refugee problems in Africa, Arab countries should adopt the broadest possible definition of “refugee”;

**STRESSES** the urgent necessity of elaborating at the national level laws and regulations which give effect and ensure the implementation of the international and regional instruments concerning refugees;

**PROPOSES** the drafting of model laws and regulations relating to refugee rights for use by Arab States in the elaboration of their own laws and regulations;

**INVITES** the League of Arab States to intervene with member States with a view to ensure the issuance and/or the renewal of travel documents which would enable refugees to exercise their right to freedom of movement and in particular take the necessary measures to implement the resolutions of competent organs of the League concerning the right to freedom of movement, family reunification, residence and work of Palestinians;

**UNDERLINES** the importance of the dissemination, research and teaching of international refugee law in Arab States, notably by utilising means of mass communication, with a view to increasing awareness of the refugee problem by the public in general;

EXPRESSES the desire that an Arab Institute of Human Rights, Humanitarian Law and Refugee Law be established;

UNDERLINES the necessity of strengthening the cooperation among Arab States and between those States and the Office of the United Nations High Commissioner for Refugees;

EXPRESSES its concern that the protection for Palestinian refugees be ensured as a matter of urgency without prejudicing in any way the inalienable rights of the Palestinian people including that of self-determination;

ENCOURAGES the furtherance of dialogue between the Palestine Liberation Organisation and the Office of the United Nations High Commissioner for Refugees on humanitarian issues of concern to them;

RECOMMENDS that, in order to follow up on the conclusions adopted by the Seminar, a working group of experts be set up by the president of the International Institute of Humanitarian Law, in consultation with the United Nations High Commissioner for Refugees, the League of Arab States, the Palestine Liberation Organisation, and the non-governmental Arab organisations concerned with refugee problems.

**International Humanitarian Law in the Contemporary World: New Trends in Humanitarian Issues**  
*San Remo, Italy, 5 –7 July 1984*

Concluding Remarks by the Chairman

We are all in agreement that the opportunity to engage in an informal and friendly dialogue on humanitarian issues of general concern has been both timely and valuable. The Institute has been greatly pleased to have been host to this meeting. I believe that our discussions have brought together in a most useful way experts from the socialist countries in Europe as well as officials from the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Refugees.

Our discussions have taken place in a most cordial and constructive spirit. The Institute draws great encouragement from this meeting which, as you know, is part of its modest but sincere effort to promote a greater understanding of regional problems and perspectives and to obtain more effective universal cooperation in dealing with humanitarian issues of world-wide concern.

We have started with a panel on international humanitarian law and action that in fact introduced guidelines for our seminar. During our three-day meeting, we have considered a wide range of important humanitarian issues, in recognition of their close interrelationship and of the imperative need to understand them in a broad and comprehensive context that includes such basic issues as human rights, peace, disarmament, social and economic development and international cooperation and solidarity.

We have also considered certain specific humanitarian issues, principally those relating to the implementation of humanitarian law in armed conflicts, the contemporary world-wide refugee problem and the movements of people generally.

I think that we all agree that while the progressive development of international humanitarian law must continue, the first priority must now be given to finding ways to ensure that the existing provisions of this law are accepted and respected and that all the measures necessary are taken to secure their implementation. Grave violations of fundamental humanitarian principles must be firmly condemned in a responsible and consistent manner so as to ensure universal respect for these principles.

It was recognised that the responsibility for the maintenance and development of humanitarian principles is that of States. We have all been of one mind about the crucial importance today of open and constructive dialogue at every level to achieve progress in international cooperation in favour of a more humane and peaceful world, where, one day, want, violence, oppression and war will be largely, if not entirely, eliminated.

The Institute is proud and honoured to have been the host of this meeting; and I would like to end these brief concluding remarks by pledging to you once again that the Institute will continue to offer its modest forum and resources in furthering international dialogue in the search for solutions to humanitarian problems and in the obtaining, finally, of a world which is both more humane and peaceful.

**4<sup>th</sup> Seminar on International Humanitarian Law in the Contemporary World**  
*Moscow, Russia, 4 – 6 June 1987*

Concluding Remarks by the Chairman

We are all in agreement that the opportunity to maintain an informal and friendly dialogue on humanitarian issues of general concern continues to be both timely and valuable. This Institute has been greatly pleased to organise this meeting with the Alliance of Red Cross and Red Crescent Societies of the USSR and the Peoples' Friendship University in Moscow. I believe that our discussions have brought together in a most useful way experts and officials from the Socialist countries in Europe and the experts from the Nordic countries, as well as officials and experts from the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Refugees. The fact that the panel was chaired by Mr. Jean-Pierre Hocke, the United Nations High Commissioner for Refugees, shows the great interest that he attaches to dialogue in this form. The participation of high governmental officials of the USSR gave great support and encouragement to this kind of meeting.

Our discussions have taken place in a most cordial and constructive spirit. We can draw much encouragement from this meeting, which as you know, is part of our modest but sincere effort to promote a greater understanding of regional problems and perspectives and to obtain more effective universal cooperation in dealing with humanitarian issues of world-wide concern.

We have started with a panel on international humanitarian law and action, that in fact introduced guidelines for our Seminar. During our three-day meeting we have considered a wide range of important humanitarian issues, in recognition of their close interrelationship and of the imperative need to understand them in a broad and comprehensive context that includes such basic issues as human rights, peace, disarmament, social and economic development and international cooperation and solidarity.

We have also considered certain specific and crucial humanitarian issues, principally those relating to the implementation of humanitarian law in armed conflict situations, the contemporary world-wide refugee problem and asylum.

I think that we all agree that while the progressive development of international humanitarian law must continue, the first priority should now be given to finding ways to ensure that the existing provisions of this law are accepted and respected and that all necessary measures are taken to secure their implementation. Grave violations of fundamental humanitarian principles must be firmly condemned in a responsible and consistent manner so as to ensure universal respect for these principles. Governments, international organisations, national Red Cross and Red Crescent Societies, academic institutions and other bodies must, in cooperation with the International Committee of the Red Cross, continue their efforts to disseminate as widely as possible these principles and to encourage teaching and research in the field of humanitarian law.

Humanitarian actions of States, international and national governmental and non-governmental organisations directed at the protection of human rights should be based on the full observance of the UN Charter, generally accepted principles of international law and relevant international conventions.

There has been agreement that the question of prohibiting the use of nuclear weapons as well as other weapons of mass destruction should be given the highest priority. The use of weapons of mass destruction is not compatible with the basic humanitarian principles. We insisted on the importance of preventive measures that are the most essential factors in the maintenance of peace around the world. We should prevent the danger of self-destruction by the elimination of nuclear weapons and other weapons of mass destruction; we should prevent the danger of mass violation of fundamental rights; we should prevent mass flows of refugees and displacement of population by the elimination of root causes such as violence, armed conflict situations and flagrant violations of human rights.

We have recognised the importance and the complexity of the contemporary world-wide problem of refugees, many of whom today are displaced as a direct result of armed conflicts, serious internal disturbances and breaches of fundamental human rights. We are all in agreement that this problem is one that calls, by its nature, for international cooperation and solidarity, and that, in a purely humanitarian spirit, the international community must continue its benevolent action in favour of victims of man-made and other disasters. Many of such victims are found today in countries of the Third World that are encountering serious problems in social and economic development. The basic human rights of refugees should be respected by all States; and the international body established by the United Nations General Assembly to protect and assist refugees, the Office of the United Nations High Commissioner for Refugees, should be supported and strengthened in its humanitarian work by the international community and competent international organisations. Humanitarian measures in favour of refugees should continue to have the adherence of all States members of the United Nations and consideration should continue to be given to the accession to relevant international refugee instruments. It has also been felt that the problems of refugees and displacement requires urgent study and attention in order to determine how global international humanitarian cooperation and solidarity can be further developed and strengthened. The meeting also paid special attention to the problems of different regions and to the importance of international assistance and solidarity in obtaining humanitarian solutions.

It was recognised that the primary responsibility for the maintenance, respect and development of fundamental principles of humanitarian law and refugee law as well as fundamental principles of humanitarian law and refugee law together with fundamental human rights lies with States. We have all been of one mind about the crucial importance today of an open and constructive dialogue at every level to achieve progress in international cooperation in favour of a more human and peaceful world where, one day, want, violation, oppression and war will be largely, if not entirely, eliminated. But if peace is to be durable it will certainly not be enough that peace is only well formulated and defined in international instruments: peace should be rooted in the heart of human beings.

The main characteristic of this kind of informal gathering was its open and free dialogue which enabled the introduction of new ideas. The Institute, the Alliance of Red Cross and Red Crescent of the USSR and the Peoples' Friendship University of Moscow are proud and honoured to have been hosts of the seminar; and I would like to add these brief concluding remarks by pledging to you once again that the Institute will continue to offer its modest forum and resources in furthering international dialogue in the search for solutions to humanitarian problems and in obtaining, finally, a more humane and peaceful world.

**2<sup>nd</sup> Seminar of Arab Experts on the Asylum and Rights of Refugees**  
*Tunisia, 15 – 18 May 1989*

Summary of the Meeting

The group of Arab experts, gathered together in Tunisia from 15 to 18 May 1989 for a Second Seminar on Asylum and Refugee Law in the Arab Countries at the invitation of the International Institute of Humanitarian Law, in collaboration with the Study and Research Centre of the Faculty of Law of Tunis University and the Tunisian Red Crescent and under the auspices of the Office of the United Nations High Commissioner for Refugees:

Having followed with close attention the address by Mr. Sadok Chaabane, Tunisian Secretary of State for Higher Education and Scientific Research, Mr. Ghassan Arnaout, Director of the Division of Refugee Law and Doctrine, Office of the United Nations High Commission for Refugees, Mr. Habib Slim, Director of the Research Centre of the Faculty of Law of Tunis University, and Professor Jovica Patnogie, President of the International Institute of Humanitarian Law;

Having taken note of the introductory report presented by Mr. Ghassan Arnaout and of the various contributions and studies presented by the rapporteurs;

Welcoming the favourable reception given to the work and conclusions of the First Seminar on Asylum and Refugee Law in the Arab Countries organised in San Remo from 16 to 19 January 1984 by the International Institute of Humanitarian Law under the auspices of the Office of the United Nations High Commissioner for Refugees;

Gravely concerned by the fact that refugees throughout the world are in large part natives of Muslim countries or are living in countries of asylum which are likewise Muslim;

Regretting, in that connection, that since the First Seminar only one Arab State has acceded to the 1951 Convention relating to the Status of Refugees;

Bearing in mind that universality of human rights and the fact that the rights of refugees form an integral part thereof;

Recalling the principles, teachings and ancestral traditions of Muslim countries with regard to asylum and to refugees;

Gravely concerned by the persistent inadequacies and shortcoming of the protection and assistance extended to Palestinian refugees;

Noting with satisfaction the progress achieved with regard to the dissemination of refugee law in certain Arab countries;

Convinced of the need to strengthen cooperation between the Arab States, the Office of the United Nations High Commissioner for Refugees and Arab governmental and non-governmental organisations with a view to promoting refugee law in Arab countries, ensuring its observance and consolidating its development and dissemination;

1. **FORCEFULLY REITERATES** the need for the respect and implementation, without discrimination and in all refugee law, namely the principle of humanity, asylum, non-refoulement, respect of fundamental human rights, voluntary repatriation, and international cooperation and solidarity;
2. **AGAIN INVITES** Arab States that have not yet done so to accede to the 1951 United Nations Convention and to the 1967 Protocol relating to the Status of Refugees;
3. **WELCOMES** the efforts being made by the League of Arab States with a view to the elaboration and adoption of an Arab Convention relating to refugees, and expresses the wish that those efforts may yield the anticipated results within a reasonable period of time, in consultation with the specialised international bodies and, in particular, with the Office of the United Nations High Commissioner for Refugees;
4. **INSISTENTLY RECALLS** the importance of the wordings of standard legislative and regulatory texts relating to the rights and duties of refugees to which Arab States should refer when elaborating their own laws and regulations in the field;

5. URGENTLY APPEALS to the international community and to Arab States in particular to discharge their responsibilities and their humanitarian duty in assisting the Arab countries most seriously affected by the phenomenon of massive refugee inflows or of displacement of individuals;
6. EXPRESSES ONCE AGAIN its concern over the urgent need to ensure international protection of Palestinian refugees by competent international organisations and, in particular, by the United Nations, without prejudice, however, to the inalienable national rights of the Palestinian people, including its right to self-determination;
7. INVITES all countries to ensure that Palestinians may enjoy their rights to freedom of movement, family unification, residence and work;
8. REQUESTS ALL ARAB STATES to ensure the effective application of their national laws as well as of the decisions and resolutions of organs and bodies of the League of Arab States relating to Palestinians in Arab countries signed by the Arab Ministers for Foreign Affairs at Casablanca;
9. ADDRESSES AN URGENT appeal to the international community as a whole, and in particular to the United Nations, urging the Israeli Government to implement in the occupied territories the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War;
10. STRESSES NEED to implement a programme aimed at developing the dissemination, study and teaching of human rights relating to refugees, and of international refugee law and welcomes the setting up of a laboratory of “Human Rights and International Humanitarian Law” within the Studies, Research and Publications Centre of the Faculty of Law of Tunis University.
11. ADVOCATES the strengthening of cooperation among Arab States as well as between those States and the Office of the United Nations High Commissioner for Refugees, and also invited the League of Arab States to strengthen its cooperation with the Office of the United Nations High Commissioner for Refugees;
12. WELCOMES the establishment, within the International Institute of Humanitarian Law, of a working group entrusted with the promotion of studies and research on refugee law in the Arab world and with watching over the continuing implementation of the present conclusions;
13. EXPRESSES ITS SUPPORT of efforts being made by the International Institute of Humanitarian Law in organising seminars for experts from Arab countries in the sphere of international refugee law; and
14. EXTENDS CORDIALY THANKS to the joining organisers of the Second Seminar of Arab Experts on Asylum and Refugee Law.

**6<sup>th</sup> Seminar on International Humanitarian Law in the Contemporary World**  
*Warsaw, Poland, 20 – 22 June 1989*

Concluding Statement by the Chairman

The Sixth Seminar on International Humanitarian Law in the Contemporary World, organised by the International Institute of Humanitarian Law, in cooperation with the Polish Red Cross and the Institute of State and Law of the Polish Academy of Sciences, under the auspices of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, was held in Warsaw from 20 – 22 June 1989.

Dr. Adam Lopatka, First President of the Supreme Court of the Polish People's Republic and Dr. Stanislaw Gura, President of the Polish Red Cross, addressed the opening session of the Seminar. They underlined the importance and timeliness of the meeting, the topicality of the humanitarian issues it was to deal with and the contribution of Poland in the sphere of international humanitarian law, especially as regards its dissemination.

In his opening address to the Seminar, the President of the International Institute of Humanitarian Law pointed to the accumulation of humanitarian problems around the world, which were chronic and increasingly required urgent solution. To achieve this, a permanent dialogue was necessary and this Seminar served also to maintain this dialogue. It was part of a series of seminars involving participants from European socialist countries, extended to include also the participants from countries in northern, central and south-eastern Europe. Thus, the Seminar had gathered experts from socialist countries, Yugoslavia, Federal Republic of Germany, Austria, Greece, Turkey, Finland and Sweden, as well as from three international organisations (United Nations High Commissioner for Refugees, International Committee of the Red Cross and the International Institute of Humanitarian Law).

General discussion on various subjects on the agenda was preceded, in each case, by introductory reports by rapporteurs. The rapporteurs at this Seminar were Dr. Ghassan Arnaout (UNHCR), Dr. Vladimir Balas (Czechoslovakia), Professor Igor Blischenko (USSR), Dr. Ionel Closca (Romania), Mr. Jean-Pierre Colombey (UNHCR), Mr. Eduardo Greppi (IIHL), Dr. Liselotte Kraus-Gurny (ICRC), Ms. Kristina Kruck (ICRC), Peter Nobel (Sweden), Professor Jovica Patrnogic (IIHL), Mr. Michael Saalfeld (Federal Republic of Germany), Mr. Carl-Iuvar Skarstedt (Sweden), Mr. Bjorge Sjöquist (Sweden), Dr. Emilia Yaneva (Bulgaria), and Professor Bogdan Wierzbicki (Poland). The High Commissioner for Refugees, Mr. Jean-Pierre Hocke, also addressed the Seminar.

The Seminar started with an examination of the contribution of international humanitarian law to the maintenance and re-establishment of peace. It was recognised that, besides promoting the spirit and progress of peace, this law, as part of the system of humanitarian cooperation, contains numerous rights and duties of individuals, state organs and various organisations, which together contribute to the maintenance and re-establishment of peace in a very concrete way. In this connection the importance of the link between international humanitarian law, human rights law, refugee law, and disarmament was stressed.

Seminar participants then turned to the specific problem of respect for humanitarian standards in armed conflicts. It was recognised that these standards exist and are to be found in a variety of different legal instruments, such as the Charter of the United Nations, the Geneva Conventions of 1949 and their Additional Protocols of 1977, human rights instruments and the Hague Law. All these various sources of standards are closely interrelated. It is therefore important to continue efforts to obtain, as widely as possible, ratification or accession to such instruments. Concerning the Additional Protocols of 1977 although ratification was not yet satisfactory, it was reported that there are indications that the ratification process will be speeded up. This was greeted as a very encouraging trend.

Seminar participants also underlined that, regardless of the state of ratification of these instruments, there exist basic humanitarian standards or humanitarian considerations that form part of the general international law and are the source of rights or duties that are binding on

States and other entities. Once the standards have been established, the problem of ensuring their respect is the main concern. The Seminar noted the important contribution of the ICRC to ensure the respect of humanitarian law standards in various situations, through the various activities it undertakes on its doctrine, guided always by the need to respect the best interest of the victims. The ICRC works through silent diplomacy and by other methods and the results obtained this way are remarkable.

Within the context of ensuring respect for international humanitarian standards, special attention was paid to the question of violations of these standards and the search for ways and means to stop and suppress these violations. There was recognition of the need to analyse existing law for the purposes of identifying any lacuna which could be removed, in order to achieve better implementation of these standards.

The participants at the Seminar equally agreed that the very widespread trade in arms and the arms race are both factors which magnify the effects of conflicts, which lead to the development of armed conflicts, and contribute to the violation of generally accepted humanitarian standards. Therefore, it is important to consider the control of the arms race and the trade in arms as an urgent task. This among other measures should be undertaken to ensure an effective and better respect of humanitarian standards.

The participants then turned their attention to one of the most important problems: how to ensure the effectiveness of humanitarian law through supervisory machinery, understood in the widest sense of the phrase, as including all kinds of measures, procedures and bodies to ensure the implementation of this law. The debate was most fruitful. It was generally recognised that there are many international, regional and national bodies and measures of implementation, different in nature and character, included in the instruments themselves or developed through practice. These included, not exhaustively the protecting powers and their substitutes, the International Committee of the Red Cross, the International Red Cross conferences, meetings of States parties to various instruments, measures contained in human rights instruments, both specific bodies and procedures, the activities of the UN High Commissioner for Refugees, the activities of other bodies within the UN system such as the General Assembly, ECOSOC, Commission of Human Rights, specific bodies within specialised agencies, fact-finding and investigating commissions, non-governmental organisations, specific measures such as legal advisors in armed forces. The role of world public opinion was also agreed. All these and other measures exist, but it was stressed, they were not sufficiently used.

In spite of this, speaking *de lege ferenda*, participants indicated the need to develop law and suggested that more and better coordination in the use of these various measures and mechanisms was needed; new bodies for the control, investigation and coordination of the activities of such mechanisms could be created; more account should be taken of the rights and needs of individual victims, using when possible models from certain existing regional human rights instruments; the rights to humanitarian assistance as a human right should be developed. Participants also drew attention to the necessity to enlist more active support from public opinion in the enforcement of humanitarian law.

By examining the problem from various aspects, participants advanced valuable suggestions, some of which could be retained for further examination and study by ICRC, the International Institute of Humanitarian Law or any other body concerned with humanitarian issues.

A study of international humanitarian law could not be complete without looking at the questions of dissemination. Accordingly participants also paid attention to this important activity as one of the basic conditions for ensuring the application of the fundamental principles. Participants spoke on the basis of their various and direct experiences in this field. The International Institute of Humanitarian Law, the ICRC, supported by all the other components of the Red Cross and the Red Crescent Movement and the UNHCR were all commended for their work. Dissemination, which is informing all those concerned about the existence and the need for respect of humanitarian law, includes the issuance of instructions to the armed forces

on how to apply this law. Examples of such instructions were cited and it was considered that all the States parties to the Geneva Conventions of 1949 should issue such instructions.

The conclusion of the participants was that, although dissemination activities world wide have markedly increased, further efforts are needed, in order to reach all those concerned. In this connection, new methods should be developed to help identify this important and essential activity, not only in the field of humanitarian law but also in the areas of human rights and refugee law.

The promotion and ratification of humanitarian law and refugee law was also discussed in detail at the seminar. The participants recognised the need to speed up accessions to the Additional Protocols of 1977, the Refugee Convention of 1951 and its Protocol of 1967. The ICRC reported on its efforts to achieve wider accession to the Protocols of 1977. The UNHCR representative provided details about the promotional activities of its organisation, the significance of the 1951 Convention and its Protocol in this regard and the value of adherence to these instruments.

The Director of the Division of Refugee Law and Doctrine, UNHCR, Dr. Ghassan Arnaut addressed current problems in the international protection of refugees. He stressed that major questions today are who is a refugee and what is the refugee problem. He suggested that the element of coercion was instrumental in differentiating refugee movements from, for example, migratory flows and that in this context it needed to be recognised that a wide variety of factors compelled departures of refugees. Protection was a dynamic means to defend but also ultimately to secure the totality of refugee rights. In this endeavour, fundamental human rights principles went to every facet of the problem and were directly relevant to solutions particularly at the initial phase of preventing the causes.

Problems of refugee protection, accession to and the more effective implementation of instruments designed to secure this protection and humanitarian resolution of refugee problems, notably through voluntary repatriation, were all topics which gave rise, in ensuing discussions, to a provocative debate and innovative suggestions. Most speakers drew attention to the close link and complementarity between refugee protection principles and fundamental human rights principles. There was broad agreement that human rights problems in countries of origin needed to be addressed in the first instance to prevent situations arising where people were compelled to leave, but also to ensure that voluntary return was a visible and safe option open to the refugees. The approach to the solution of the refugee problem must focus increasingly on the aspect of causes in the human rights context. Participants uniformly seemed to feel that, at the heart of the refugee problem today, was the difficulty of deciding who is a refugee. Clearly the 1951 Convention definition, although more flexible than it might first appear, could not be made to meet all situations which arise in which people find themselves in need of international protection. There were important lessons to be learned in this regard from the OAU Convention and the Cartagena Declaration which more accurately reflected the character of today's refugees.

What is needed is a more flexible approach to the existing standards for identifying and protecting persons who had been coerced or compelled to flee and who were in need of international protection, coupled also with the development of complementary standards, or at least agreed international understandings. Worrying trends, in certain regions, caused comment. Attention was drawn to restrictive measures introduced to scale down arrivals and to limit responsibility in relation to the granting of refugee status, even while more encouraging trends were also identified, including a certain *rapprochement* in attitudes and policies towards refugees between East and West. UNHCR was praised by many participants for its intensive effort, in the area of protection, to break down negative attitudes and to strengthen the international legal regime of protection.

There was a broad agreement that an important first step in strengthening the regime of international protection of refugees is accession by States to these treaties. It was suggested that the participants might agree to address an appeal to all countries who have not yet done so to accede to the 1951 Convention and its Protocol without delay. This would be without prejudice

to further consideration of how the law might progressively be developed, as well as in relation to fundamental human rights protection.

The panel discussion on voluntary repatriation under the chairmanship of Dr. Arnaut generated much lively comment. It was generally accepted that voluntary return under consideration of safety and dignity was the preferred solution and in this sense the ultimate protection for the large majority of the world's refugees. Conditions to be fulfilled to ensure safe return included reversal in the country of origin of the major circumstances which had compelled flight, effective, enforceable and generally applicable guarantees of non recrimination on return and adjustment of socio-economic circumstances to facilitate return without unfavourable consequences either for the returnee or for the country of origin.

It emerged from the panel discussion that there could really be no hard and fast blueprint for a voluntary repatriation operation, as each situation differed from the other and required a response adjusted to the circumstances. Throughout any repatriation operation, respect for international human rights standards and the wishes of the refugees had to prevail. The need to respect basic humanitarian standards in relation to the return of rejected cases and UNHCR's legitimate concern for the conditions of return of these people was also the subject of comment. Other considerations underlined included the close link between refugee problems and development and the need to structure international aid to meet developmental concerns brought on not only by refugee influxes but also as a result of receiving back these returnees. Many participants agreed with the panel chairman that, while development can never be a precondition for respect of basic rights, it is an important aspect of the promotion of a general social order which facilitates respect for these rights.

Seminar participants greatly appreciated that the United Nations High Commissioner for Refugees, Mr. Jean-Pierre Hocke, was present in Warsaw to address the Seminar. The High Commissioner gave an overview of the refugee problem today stressing in particular recent changes in the international climate favouring solutions to long-standing refugee problems. He reported particularly on recent conferences concerning Central America and Indo-China directed at resolving refugee problems in these regions, as well as the implications of these meetings for international protection efforts. He expressed, however, his concern about restrictive tendencies on the part of a number of States as regards admission of refugees.

Mr. Jean-Pierre Hocke underlined the need for a realistic appreciation by the international community of the nature of asylum and refugee problems today and greater flexibility concerning the situations people fled from, and their need to receive international protection and humane treatment. Many of these people, possibly eight to nine tenths, are victims of major upheavals in their own countries and will, when circumstances allow, want to go home.

This Seminar has confirmed again the necessity of a continuing dialogue between the experts of different groups of countries and tendencies on current problems of international humanitarian law, in particular in the field of protection of refugees and victims of armed conflicts.

The experts of the 6<sup>th</sup> Seminar strongly supported and encouraged the International Institute of Humanitarian Law to continue this important humanitarian dialogue.

**7<sup>th</sup> Seminar on International Humanitarian Law in the Contemporary World**  
*East Berlin, Germany, 6-7 June 1990*  
*West Berlin, Germany, 8-9 June 1990*

Concluding Statement by the Chairman

The organisers of this Seminar invited you all with a view to continuing the international dialogue on current humanitarian problems, reviewing actual situations and suggesting possible solutions, or at least making a contribution to finding them. I think that the broad response to our invitations, and the very active participation of all those attending, has helped to achieve constructive results in this regard.

Our Seminar proved to be an excellent forum for an open, free and friendly debate between people from East and West European Countries, holding different professions and positions: government officials, representatives of various organisations, national and/or international Red Cross people, diplomats and persons from academic life.

Berlin was a particularly right and happy choice of venue; developments in this city reflect all the deep changes that are taking place in Europe today, as well as the new processes at work. The environment of Berlin inspired our debate and deliberations positively. The opening of the Wall was an event of world dimensions on the international political level but also, and immeasurably, at the level of individuals, for the divided families, for refugees and for those who will return home. The 9<sup>th</sup> November 1989 will remain, I believe, a very significant date for all of us.

The three main subjects selected for this Seminar were closely interconnected, and it proved very useful to treat all three as separate but mutually reinforcing issues. The practice of combining these subjects should be continued, since it proved such a good experience here in Berlin.

Some general consensus common to all three subjects emerged from the discussions. There were also specific reflections to each topic which invite further discussion.

Our starting point was that in spite of the great progress achieved in many fields in the contemporary world, huge and very serious humanitarian problems exist which require strengthened and more efficient action. In the first instance what is required is good law reflecting generally recognised humanitarian standards.

A large body of useful law already exists, but this is not sufficient. We should not be over satisfied with the fact that we have a good legal basis. The law needs to be interpreted, applied, and if necessary, adapted and developed. It was generally agreed that proper implementation of the law is the key, and I believe that concerted efforts should be directed towards that goal. The agenda of the Seminar is predicated on that point of view. We have explored the field of application and many new and interesting ideas have been put forward. The measures of implementation themselves are potentially very numerous and varied. The need for better harmonisation of both the law and the measures of its implementation in each of the three subjects was recognised, and that was already an important achievement for this Seminar.

Turning to the specific agenda topics:

1. Human rights were for the first time included on the agenda of this series of seminars. As a topic it provoked great interest. It was generally agreed that there is a parallel need to develop adequate legislation, national and international, to secure enforcement of the law, and to educate and inform the public about human rights concepts and to make them conscious of their own rights.
  - (a) In particular, it was recognised that while the process of standard-setting had achieved its main milestones, the priority was now the largest possible implementation of human rights norms. In this connection, the UN Centre for Human Rights had recently developed a programme of technical assistance to countries in order to strengthen their national infrastructures for the promotion and protection of human rights. The basic

feature of this programme was to be action-oriented and pragmatic and geared to the need of national administrators of justice towards broader application and knowledge of human rights standards and mechanism of implementation. In that connection, special attention needs to be paid to the improvement of the machinery for implementation, and in this domain we really had fruitful discussion.

- (b) Another key element in this respect is the need for information and education on human rights matters. Through the launching by the UN General Assembly of the world public information campaign for human rights, the Centre has tried to expand its cooperation with the UN specialised agencies and with academic and research institutes, media, NGOs and other relevant national and regional human rights institutions world wide. The response from the wider human rights community had been encouraging yet greater cooperation between the human rights and the refugees NGO communities was also indicated as a welcome development in the direction of a universal culture in favour of human rights.

The importance and complexity of the problem of protection of minorities, in contemporary Europe in particular, was underlined, and I am satisfied that this subject had our attention.

The role that the United Nations plays in the field of human rights was emphasised and discussed thoroughly. I am sure that this debate was of interest to all those concerned, including the UN Centre for Human Rights.

The European Convention of Human Rights was also presented and discussed, and its importance in the system of the protection of human rights was underlined.

2. The value of international law in international relations is an important element of the promotion of international humanitarian law (IHL) that must have its place in the UN Decade for International Law. The fact that IHL is a branch of that law and entails specific commitments and obligations needs to be stressed. Parties to a conflict too often forget that the IHL is not simply a moral standard. The UN Decade for International Law should serve to underscore this.

While it is true that the Decade's main objective is to strengthen the legal foundations of international relations so as to provide an alternative to armed violence, we cannot ignore this violence as long as it continues to exist. Moreover, endeavours to increase respect for IHL do not run counter to, but are in line with the general effort to promote international law.

The thorough study of legal and factual questions related to IHL including the principle of proportionality, civil defence, the use of nuclear weapons, the relation between Art. 51 of the UN Charter and IHL, or the definition of non-international armed conflicts, remain necessary for the credibility and proper appreciation of IHL, in particular in military circles.

With the 1977 Additional Protocols, IHL has reaffirmed and developed the provisions governing the conduct of hostilities that had been elaborated, for the most part, at the 1899 and 1907 Hague Conferences.

These provisions directly concern all members of the armed forces and should be taken into account when devising strategic plans and formulating combat instructions.

Although the provisions are detailed and explanatory commentaries have been published, to be thoroughly understood they must be incorporated in practical exercises and illustrated by case studies enabling military commanders to acquire a broader knowledge of their practical implications.

It is of great importance to clarify and disseminate the fact that the main humanitarian rules forbidding or restricting means and methods of warfare in international armed conflicts are also valid in non-international armed conflicts which are far more numerous. The status of combatants in those conflicts should also be clarified, and it was felt that, for the sake of full acceptance of IHL by the dissident party, the captured combatants should be treated during the conflict similarly to prisoners of war, and not be judged under common criminal law.

We are referring here to the use of weapons such as mines which, when employed indiscriminately, primarily affect civilians, particularly children. An in-depth study of this problem may be found in the soon-to-be published final report of the latest Round Table held in San Remo in 1989.

The creation of a Fact-Finding Commission of Article 90, which will occur in the near future, requires further study of many questions to be tackled i.e. those related to the working methods and rules of procedure of that Commission.

In cases where members of the opposition captured by government forces are systematically dealt harsh sentences merely for having taken up arms, it is far more difficult to convince the opposition to respect IHL. The death penalty should in any case not be imposed since it inevitably leads to an uncontrollable escalation of the means and methods of warfare used.

The tragic context of IHL and the violations of that law must neither hide its successes, nor discourage those who fight for its better implementation, in particular the members of the Red Cross and Red Crescent Movement. New ideas and new forces are necessary in the field of dissemination of IHL, in particular towards armed forces.

As eighteen of the twenty States needed to establish this Commission have already declared that they will recognise its competence, it is likely to be set up in the not too distant future. However, whereas the Commission will step in automatically only when requested to do so by a State that is party to the Protocol, has made the said declaration and is engaged in armed conflict with another State that has also made the declaration, its services will also be available on an optional basis in other armed conflicts. Attention should therefore be given without delay to the way the Commission will work and the part it will play in the system for implementation of IHL.

3. Current problems impeding protection for refugees, the prospects both for their amelioration and generally for an effective response to the global refugee problem, were widely canvassed from a variety of different perspectives. It was recognised that the present climate was particularly favourable for cooperation at the international level to resolve refugee problems within their appropriate context and solve refugee problems within their appropriate context and to develop approaches more responsive to the changed character of the problems that were certainly different from those that had led to the development of the existing protection structures in the early 1950's. A measure of racism and xenophobia in receiving countries was complicating national efforts and international cooperation and there was a need to de-mystify issues and present them in their proper context. Above all the refugee problem was a humanitarian and social problem and protection had to be seen essentially as restoration of enjoyment of fundamental human rights. Human rights promotion and protection and prevention of root causes had to be reinstated at the centre of efforts to develop new policies and programmes.

A number of suggestions were made as to what were the roots of the crisis in refugee protection today. It was suggested that at the centre of the issue was the fact that the refugee problem was losing its definition for States and required reassessment in the face of changes in its magnitude, composition and geographic focus. It was also suggested that state responses to date has in themselves compounded the problem, having been inadequately conceptualised in terms of "administering" the crisis rather than trying to resolve it. The gap here between the size of the problems and the inadequacy of the responses was ever increasing.

The fact that a number of States are already in the process of re-examining their refugee and asylum policies was noted. The emphasis on viewing refugee problems in the broader context of international movements of people, or migration, was seen as appropriate although there was agreement among speakers on the need to maintain a clear distinction between migrants and refugees. With this qualification, governments should give a high priority to migration questions as a whole, exploring, for example, the appropriateness of special kinds of visas or tailored admission policies to deal with specific problems.

Several schools of thought existed as to the appropriate approach to take at this point. It was possible to continue with the traditional approaches, improving procedures but placing particular emphasis on responding to the needs of 1951 Convention on Refugees. On the other hand, it was also possible to develop a new global perspective on the problem. It was proposed that what was at this point needed was a broadly based approach at both the national and international levels to develop refugee and asylum policy so that humanitarian development aid and human rights concerns are well balanced in relation to foreign policy and immigration control considerations. Human rights promotion, as well as economic, civil and political rights, had a certain role. While a new approach must address primarily the needs and rights of affected persons, it must also acknowledge and respond to the legitimate concerns of all affected States. It was also suggested that each of the traditional solutions for refugees – voluntary repatriations, local settlement and resettlement – all have their place and be regarded as viable in the new approach.

Aside from future prospects, the meeting looked at current problems, particularly in the European context. It was felt that the complexity of problems taken together constituted a serious challenge to the very important institution of asylum. Concern was expressed about the multiplicity of obstacles hindering entry onto territory and access to asylum and status determination procedures, including visa regimes and administrative enforcement mechanisms such as carrier sanctions. There was also concern about discussions currently under way in Europe to harmonise procedures and asylum approaches from which organisations with expertise and the public in general are excluded. Particular problems in European countries included excessively high standards of proof to be met by refugee applicants, lack of status accorded to measurably large groups of de facto refugees and inconsistent application of criteria for determination of status, particularly in relation to persecution. There were also problems with recognition of rights set out in the 1951 Convention, compounded by the different status accorded to asylum seekers which depended on factors not relevant to the application of the Convention.

At the global level, it was recognised that both exile and return are traumatic processes in themselves. The illustrations under which the exiles live, the problems of integration in new communities or reintegration into countries of origin were not to be underestimated. These problems were both of a legal and of a practical nature and included quite serious difficulties for children. Donor countries were called upon not to abandon too early their foreign aid programmes to newly restored democracies. Finally a number of speakers drew attention to particular concerns or situations in their respective countries.

The importance of Red Cross efforts in dealing with the many problems in countries of reception and in facilitating programs of return was widely recognised. Besides legal and material assistance and psycho-social counselling of refugees, Red Cross societies had a major role to play in arousing public awareness and developing positive public attitudes. There was a need to dispel in particular the association made in many minds between refugees and anti-social groups, a link which in itself served unjustifiably to discredit the efforts of agencies involved in assisting refugees. The Red Cross works on the basis of its Charter but with much scope for humanitarian initiative, and it performs an invaluable task.

The attention of the meeting was also drawn to the serious plight of the internally displaced. They are often rightly referred to as refugees because, while they continue to have the rights attached to their nationality, they are unable effectively to enjoy these rights.

UNHCR was widely praised as performing invaluable work and was encouraged to continue to take the initiative in promoting dialogue and appropriate new approaches by the international community to tackle the various problems discussed.

As an overall proposal, it was suggested that there would be merit in high level discussion in Geneva about the mechanisms for coordination and cooperation among agencies which needed to be developed.

Turning now to the promotion and dissemination of refugee law it was considered that there is a direct relationship between the quality and the degree of promotion and the kind

and level of protection offered to the refugees. Both accessions to refugee instruments and dissemination of refugee law were considered important for achieving a proper protection of refugees.

Though a large number of States have already acceded to the refugee instruments, it was considered that further accessions were necessary to ensure the universality of the instruments. It was also recognised that future accessions should no longer be accompanied by geographical limitations and too many reservations.

In relation to dissemination of refugee law, it was also noted that efforts on dissemination should not be limited to higher educational levels, but should also include secondary and even primary education levels, so as to sensitise youth to these problems.

4. As can be seen from the above summary of the discussions on the three subjects, many new ideas were generated. A theme running through all the discussion was that, in order to achieve full and effective application of the law related to humanitarian problems, it is necessary that all those concerned – governments, international organisations as well as other authorities responsible for the implementation – must possess the political will to do so.

It was equally stressed that there is not at the present time sufficient political will. But I think it is necessary to create humanitarian will, the determination to act in a humanitarian way, to apply the humanitarian standards which are generally accepted and which find their expression in law and practice. Our task is to see how to create this humanitarian will, the determination to act in accordance with humanitarian law, its principles and rules. This seminar showed that there are many possible ways to achieve this goal.

The Seminar, while having stimulated thinking and having contributed to the debate on the search for solutions to humanitarian problems, can not be the last word. Efforts should continue along this path. The International Institute of Humanitarian Law, and I am sure also other organisations involved in this Seminar, are encouraged by the results of our discussions to proceed on this road which we have chosen.

I would like to add one more thing: the widening of the circle of participants, from Eastern European countries to other countries in Europe, proved to be a very positive experience. This trend should be continued, with these seminars gradually becoming all-European. As Europe is heading towards its unification, reducing frontiers and barriers, this type of seminar should grow further. It is obvious that such meetings are necessary as long as there are grave humanitarian problems.

Let me take this opportunity to thank most warmly the organisations hosting this Seminar – the German Red Cross of the GDR, the Institute of State and Law of Berlin, the German Red Cross in the FRG, the Berlin Senate, the Government of the Federal Republic of Germany, the Foundation for UN Refugee Aid of the FRG – for having created such a good atmosphere and for having helped us to achieve the results we had hoped for when we decided to convene this Seminar.

Thank you all for your participation.

**8<sup>th</sup> Seminar for European Countries on Contemporary International Humanitarian Law and Current Human Rights Issues in Europe**  
*Bucharest, Romania, 27 – 30 June 1991*

Concluding Statement by the Chairman

The eighth Seminar on Contemporary International Humanitarian Law and Current Human Rights Issues in Europe, organised by the International Institute of Humanitarian Law in cooperation with the Romanian Association of Humanitarian Law and the Romanian Red Cross Society, under the auspices of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and the International Organization for Migration, was held in Bucharest from 27 to 30 June 1991.

H.E. Dr. Adrian Nastase, Romanian Minister for Foreign Affairs, Dr. Ionel Closca, President of the Romanian Association of Humanitarian Law and Dr. Nicolae Nicoara, President of the Romanian Red Cross Society, addressed the opening session of the Seminar. They welcomed and underlined the importance of the meeting, the topicality of the humanitarian issues with which it was to deal and the efforts of Romania in the field of human rights, refugee law and humanitarian law, especially as regards their teaching and dissemination.

In his opening address to the seminar, Professor J. Patrnoic, president of the International Institute for Humanitarian Law, pointed out that big political changes and new processes toward the democracy of Eastern European countries will inspire positively the debate and deliberations of the Seminar. This traditional humanitarian gathering with Eastern European countries, which the Institute started in 1984, has become today an excellent forum for an open, free and friendly debate of people from both East and West Europe. The accumulation of humanitarian problems, not only in Europe but around the world, increasingly require urgent solutions. To achieve this, a permanent dialogue was necessary and this Seminar serves to maintain this dialogue.

Romania was selected as the venue of the Seminar in the desire to bring the examination of the current humanitarian problems close to this part of Europe and the aspects in which these problems could be viewed. The Seminar got full support in Romania, on the part of the highest authorities of the State, of national institutions engaged in humanitarian problems and in the public, including mass media.

All main topics for this seminar are closely interconnected and reflect various aspects of current humanitarian problems. The participants of the seminar were very concerned with the gravity of the existing problems, both acute and chronic, and the necessity of making permanent efforts to reduce and solve them in the spirit of tolerance and cooperation.

General discussion on the subjects of the agenda was preceded, in each case, by introductory reports of rapporteurs. The rapporteurs at this Seminar were Mr. Michel Moussalli (UNHCR), Mr. Rene Kozirnik (ICRC), Dr. Ralph Jenny (IOM), Dr. Ionel Closca and General Nicolae Spiroiu (Romania), Mr. Alfred Dezayas (UN Human Rights Centre), Mr. Gottfried Zürcher (Switzerland), Mr. Kersten Rogge and Professor Claudio Zanghi (Council of Europe) and Mr. Jean-Pierre Colombey (UNHCR).

The introductory reports were followed by excellent papers, comments that contributed to the very animated debate.

**1. Implementation and Reinforcement of Humanitarian Law at the National Level**

The participants agree that the respect of international humanitarian law depends also on the development of preventive measures, such as national measures of implementation, and the efficiency of the system of control.

While being aware of the formal and practical differences between international humanitarian law, human rights and refugee law, a tendency appears in favour of a global perception of these separate branches of international law destined to protect individuals in different situations. This vision implies the continuity of the protection of individuals by

international law, which could help reduce a certain resistance toward the activities on the implementation of humanitarian law in peacetime.

The seminar was pleased to note that on 25 June 1991 the Fact-Finding Commission of Art. 90 of Protocol I was constituted, and the desire was expressed that more States Parties would accept its competence.

Special attention of the participants was drawn to the forthcoming XXVI International Conference of the Red Cross and Red Crescent in Budapest, November 1991, which would evaluate the armed conflicts that took place in recent years, and would examine the efficiency of the measures of implementation and control and possible improvements and developments of these mechanisms.

On the basis of the mandate of the previous International Red Cross Conference, the ICRC invited governments to submit information on various national measures of implementation. However, the number of substantive replies was very limited, and the ICRC is examining possibilities of strengthening the system of periodic reports, which is a useful tool to ensure respect of this law.

Among different measures of implementation, attention was drawn to national military instruction which is certainly very important among these measures, as the members of armed forces should have, in the first place, knowledge of humanitarian law. The obligation of States to enact laws of application was also mentioned. Inter-ministerial commissions to be formed in each country, in order to monitor various measures of implementation, were strongly recommended.

Without entering into the examination of these and other measures, the Seminar has contributed to draw the attention of all those concerned to the importance of national measures of implementation to be undertaken. This should be one of the messages of this Seminar.

## **2. Refugee Phenomenon and Movement of Populations in the New Europe**

The seminar emphasised the importance of the UN Convention on the Status of Refugees, as the only universal instrument on this subject, which, however imperfect, is an irreplaceable tool containing basic principles on which the protection of refugees is placed and which should be developed. In this connection, the need for all the States to adhere to this Convention without reservations was stressed.

The important role of the UNHCR in the supervision of the application of the Convention (in accordance with Article 35) was underlined. Besides discussing protection and assistance activities, mainly the curative approach to the problem, the attention of the participants was drawn to the prevention, to the activities directed toward root-causes of refugees. Preventive measures, to prevent mass influx of refugees, including an early warning system, were brought to light as one of the modern trends in dealing with this problem.

The Seminar debated the role of the Convention as a minimum standard by which all the States, regardless of their formal participation, should be guided.

The difference between refugees and migrants was also explained, with all the consequences of this difference on their status, rights and duties. Another fact which appeared was that refugees should enjoy most of the basic human rights, recognised by general international instruments, and the position of refugees should be viewed in this light.

The problem of refugees was also examined in light of the right of asylum which is not an acquired right in international law, but remained a prerogative of the States. Therefore, it requires further development in international law.

The issue of asylum is particularly complex. Article 14, paragraph 1, of the Universal Declaration of Human Rights provides that "everyone has the right to seek and enjoy in other countries asylum from persecution." A right of asylum, however, was not included in the Covenant on Civil and Political Rights. States chose not to restrict their sovereignty by assuming obligations in this field, beyond those assumed by virtue of the 1951 Refugee Convention.

The 1993 World Conference on Human Rights should consider new approaches to the refugee problem. First priority is to prevent mass exodus or large economically-based migration by improving conditions in all countries so that citizens stay in their respective homelands. This will entail major efforts in the field of development aid. Moreover, information should be disseminated on conditions in the host countries so that potential refugees do not abandon their countries in the vain hope of finding “greener pastures” elsewhere.

Once a great number of refugees arrive in a host country, the immediate concern is to help them survive and then to process their requests for refugee status in a just and expeditious manner. They should not have to wait three years to learn that they will not be granted refugee status. Repatriation, however, must be carried out in an orderly and humane way.

Because of the ever increasing numbers of economic migrants, the very concept of asylum is in danger of being vitiated. Those seeking asylum for genuinely political reasons and having good reasons to fear re-foulement may be denied refugee status if they are confused with economic migrants. Clearly, the definition of a refugee under the 1951 Convention is not broad enough to deal with the problems of the 1990's.

Perhaps the experience to be gained from the establishment of security zones for internally displaced Kurds in Iraq will be helpful in devising solutions for future crises. The concept of State sovereignty is being questioned, and it will be for the world community to decide on the scope of Article 2, paragraph 7, of the United Nations Charter and on the practicability of humanitarian intervention.

The responsibility of the States that generate refugees, in particular through gross violations of human rights, is a notion which finds more and more place in the approach of this problem, side by side with the measures to protect and assist the refugees. The condemnation of acts producing refugee situations by the international community should be a tool to be used more efficiently.

The situation in relation to the refugee problem in some European countries was exposed in order to show the different approaches and aspects of the refugee problem, how the international and national laws were applied to these situations, and how it could be developed in order to cope with specific problems that appeared.

Refugee problems, being part of the movement of population phenomenon, should be addressed properly, taking into account their interconnection, in the global and national context.

On the subject of “humanitarian intervention” and “right to humanitarian assistance,” the Seminar voiced its caution against the introduction of this kind of action as a human right. In the context of human rights we do not need a new ideological controversy. The question is not to introduce a right of intervention but to reinforce the collective obligation of States to bring the necessary relief and redress in human rights emergencies in situations of flagrant violations.

The necessity of all countries in Europe to continue together the dialogue on refugee and migration problems was encouraged. The seminar welcomed the participation of most European countries, from all regions of the continent, in the examination of current refugee problems.

### **3. Implementation of Human Rights Standards in the New Europe**

The Seminar was conceived to combine the subjects of human rights and humanitarian law because they are linked and these two branches influence one another, so that the humanitarian problems should be examined from the viewpoint of both of these legal systems.

The question of human rights issues in Europe was examined in the light of the European Convention of Human Rights. This legal instrument has not only proclaimed basic civil and political rights, but created a very developed system to ensure their application, namely in the European Commission and the Court, and the role of the Committee of Ministers. This system has been exemplary for further development of human rights protection. The process of democratisation in Eastern Europe is to be reflected in the adherence of the States concerned to the European Convention. The adherence to the competence of the Commission and the Court

is today considered to be an obligation which must be assumed at the time of the adherence to the Convention.

The Seminar, while recognising the importance of the system of the European Convention of Human Rights, also indicated some of its deficiencies, in particular the fact that the procedure before the organs to ensure its application often takes a long time, in some cases 5 to 6 years, and that efforts should be made to improve the system.

In the review of the progress to be achieved in the field of human rights, the necessity to promote equally economic, social and cultural rights was underlined, keeping in mind the difference in character in the implementation of this group of rights compared to political and civil rights.

The Seminar examined some of the specific human rights, comparing law and its practical application, with special reference to the situation in some Eastern European countries, and stressing the need to take all the aspects into consideration in assessing the scope of rights and their role in the democratisation process underway.

#### **4. Dissemination of Humanitarian Law, Human Rights and Refugee Law**

After having examined some current problems in humanitarian law, human rights and refugee law, the Seminar turned its attention to the dissemination of all these branches. The character of law which they express, affecting basic rights of persons who are found in different situations, but who are all in need of international protection and assistance, requires wide dissemination activity. This activity is an important factor in ensuring the respect and application of the rights contained in these branches.

While dissemination is differently treated in each of these branches, the need for dissemination was recognised in all of them. Consequently, intense and systematic activities were developed. In the dissemination of international humanitarian law, the Red Cross and Red Crescent Movement plays the leading role, developing a great variety of forms and activities and combining it with the dissemination of Red Cross principles.

Wide dissemination of human rights has been carried out by the UN Centre for Human Rights, the Council of Europe and many other agencies and organisations.

UNHCR develops equally systematic dissemination of Refugee Law, supported by the International Institute of Humanitarian Law and some other institutions. The Refugee Law courses which UNHCR organises each year in cooperation with the Institute in San Remo give very positive results and should be more developed, in particular at the regional level.

The promotion and ratification of Humanitarian Law instruments and the 1951 Refugee Convention was also discussed largely at the Seminar. The participants recognised the need to speed up the accessions to the Refugee Convention and Additional Protocols of 1977. They expressed the strong will to intervene with their governments for the accession to these important humanitarian instruments.

There is a need for the exchange of experiences and coordination of these activities carried out in these legal branches, which might result in further expansion of the dissemination activity and its greater effectiveness.

This seminar has confirmed again the necessity of a permanent dialogue between the experts of all European countries in humanitarian issues, in particular in the field of protection of refugees, displaced persons and victims of armed conflicts. The seminar pays tribute and gives its full support to the International Institute of Humanitarian law for its efforts in organising seminars under the auspices of the UNHCR and ICRC in Europe.

The participants warmly thanked the organisers of the Seminar and the authorities of the host country.

**3<sup>rd</sup> Seminar of Arab Experts on “Asylum and Refugee Law”**  
*Amman, Jordan, 2-4 November 1991*

Concluding Statement by the Chairmanship

Introduction

The Third Seminar of Arab Experts on Asylum and Refugee Law in the Arab Countries, organised by the International Institute of Humanitarian Law in cooperation with the Jordan National Red Crescent Society, under the patronage of HRH Crown Prince Hassan of Jordan, and under the auspices of the United Nations High Commissioner for Refugees, was held in Amman, Jordan, from 2 to 4 November 1991.

Prince Hassan actively participated at this important humanitarian gathering. His introductory statement and interventions received full attention and were highly appreciated.

The presentations of H.E. Dr. Ahmad Abu Goura, President of the Jordan National Red Crescent Society, of Mr. Michel Moussalli, representative of the United Nations High Commissioner for Refugees, Dr. Sadako Ogata, director of International Protection of UNHCR, and Professor Jovica Patrnogic, Hon. President of the International Institute of Humanitarian Law also received the close attention of the over 60 participants of the Seminar.

The well prepared introductory reports and other studies presented by the rapporteurs contributed to the dynamic debates which were at the same time both controversial and constructive. All participants respected the tradition of the Institute to keep an open and friendly dialogue on humanitarian issues in the manner of the meetings organised by the Institute over the past twenty years.

The experts from 16 Arab countries, as well as the experts from UNHCR, ICRC, IOM, League of Arab States, UNRWA and Arab Red Crescent and Red Cross Societies unanimously adopted the Conclusions which recommended some guidelines for the further progressive development of humanitarian rules, in particular rules for the protection of refugees and displaced persons in Arab countries.

Certainly the International Institute of Humanitarian Law, with the cooperation and under the auspices of the United Nations High Commissioner for Refugees, will pursue the propositions arising from the Seminar.

\* \* \* \* \*

Conclusions

The group of Arab experts, gathered together in Amman from 2 to 4 November 1991 for the Third Seminar on Asylum and Refugee Law in the Arab Countries at the invitation of the International Institute of Humanitarian Law, in collaboration with the Jordan National Red Crescent Society, under the patronage of His Royal Highness Crown Prince Hassan of Jordan and under the auspices of the United Nations High Commissioner for Refugees:

Having followed with close attention the addresses of H.E. Dr. Ahmad Abu Goura, President of the Jordan National Red Crescent Society, of Mr. Michel Moussalli, Director of International Protection and Representative of the United Nations High Commissioner for Refugees, and of Professor Jovica Patrnogic, Hon. President of the International Institute for Humanitarian law;

Expressing its thanks to the President of the Republic of Tunisia, His Excellency Zein El Abidine Ben Ali, for his friendly message and wishes for the success of the seminar;

Expressing its cordial thanks and fully appreciating the statement of HRH Crown Prince Hassan of Jordan, and sharing his outlook;

Having taken note of the excellent introductory reports and of the various contributions and papers presented by the *rapporteurs*;

Welcoming the favourable reception and encouragement given to the work and conclusions of the Second Seminar on Asylum and Refugee Law in the Arab Countries organised in Tunisia from 15 to 18 May 1989 by the International Institute of Humanitarian Law in collaboration with the Study and Research Centre of the Faculty of Law of Tunis University and the Tunisian Red Crescent Society under the auspices of the United Nations High Commissioner for Refugees;

Noting with deep concern the increase in the number of refugees in the Arab world and particularly in certain countries of the Middle East;

Taking into consideration that the persistence of the Arab-Israeli conflict and other conflict situations prevailing in the Middle East are root causes of the increase in the number of refugees in this part of the world;

Noting with deep regret that some Arab States have suffered in the past from mass flows of refugees and have recently been affected by other big flows of refugees and displaced persons;

Fully supporting the humanitarian work of the United Nations High Commissioner for Refugees and its protection and assistance activities in favour of refugees and displaced persons in the Arab countries, as well as the humanitarian activities of the International Committee of the Red Cross, the International Organization for Migration, the League of Red Cross and Red Crescent Societies and of Arab National Red Crescent and Red Cross Societies in favour of those who are in need of assistance and protection in the Arab region;

Recalling the deep root of the humanitarian principles of asylum and refuge in Islamic and Arab values and their glorious contributions which attest a veneration and constant respect for these principles;

Regretting that many Arab countries have not yet acceded to the international instruments relating to refugee law, particularly the United Nations Convention of 1951 and the 1967 Protocol;

Regretting also that some Arab States have not yet enacted national legislation concerning refugees;

Considering that asylum law and refugee law are inherent parts of human rights law, the respect of which should be fully assured in the Arab world;

Affirming its attachment to the principles of solidarity and burden sharing among States in the situations of mass movements of refugees and displaced persons;

Deeply concerned that the Palestinians do not enjoy adequate and appropriate international protection by competent international organisations, in particular by the United Nations;

Noting with satisfaction the progress realised in the area of promotion and dissemination of refugee law in certain Arab countries;

Stressing the need for strengthening cooperation between the Arab States, the Office of the United Nations High Commissioner for Refugees and Arab governmental and non-governmental organisations with a view to promoting refugee law in Arab countries, ensuring its respect and consolidating its progressive development and dissemination;

1. COMMENDS the efforts undertaken by some Arab countries which have suffered from mass flows of refugees and displaced persons to receive, assist and protect them;
2. ADDRESSES AN URGENT APPEAL to the international community and particularly to the Arab countries to lend its strong and effective support, by all means, including material and financial means, to the Arab States which have made and are making heavy sacrifices by granting asylum and refuge on a massive scale;
3. UNDERLINING that international humanitarian assistance should be given effectively and indiscriminately to the Arab States facing mass flows of refugees and displaced persons;

4. STRONGLY REITERATES the need for respect and implementation, without discrimination, in all refugee situations, of the fundamental principles of international refugee law, human rights and international humanitarian law;
5. REITERATES ITS APPEAL TO THE ARAB STATES that have not yet acceded to the United Nations Refugee Convention of 1951, and to the Protocol of 1967 to do so without further delay;
6. UNDERLINES the necessity to enact national legislation on the protection of refugees in conformity with the precepts and teachings of Islam, the traditional Arab-Islamic practices with regard to asylum and refugee and other international instruments relating to refugees;
7. FULLY SUPPORTS the efforts being made by the League of Arab States to elaborate and adopt an Arab Convention relating to refugees;
8. EXPRESSES THE WISH, meanwhile, for the adoption of an Arab Declaration on the protection of refugees establishing fundamental humanitarian rules for the protection of asylum seekers and refugees, until the Convention referred to in paragraph 7 above is adopted;
9. UNDERLINES the imperative and urgent necessity to ensure an appropriate international protection to Palestinians by the international humanitarian organisations, in particular by the United Nations, without prejudice to the national and inalienable rights of the Palestinian people, including its right to self-determination;
10. CALLS UPON all countries concerned to ensure that the Palestinian refugees enjoy their rights to freedom of movement, family reunification, residence and work;
11. REQUESTS all Arab States to ensure the effective application of their national legislation as well as of the decisions and resolutions of the various organs of the League of Arab States relating to Palestinians, and in particular the 1965 Protocol relating to the rights of the Palestinians in Arab countries adopted by the Arab Ministers of Foreign Affairs in Casablanca;
12. REITERATES ITS URGENT APPEAL to the international community as a whole, and in particular to the United Nations, to persuade the Israeli Government to implement the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, in the Arab occupied territories;
13. INVITES the League of Arab States, in collaboration with Arab governments, concerned Arab governmental and non-governmental organisations, to call for a conference on human rights in the Arab world, with a view to adopting an Arab Charter on Human Rights;
14. URGES to further strengthen the cooperation between the Arab states, the League of Arab States, with the Office of the United Nations High Commissioner for Refugees;
15. ADVOCATES the creation of a Pan-Arab Research and Study Institute on Humanitarian Law and Refugee Law;
16. ENCOURAGES studies and research on the concepts and practices on asylum and refuge in Arab Islamic law with a view to promoting the practices and awareness of Arab States in this regard;
17. PAYS TRIBUTE and gives its full support to the International Institute of Humanitarian Law for its efforts in organising seminars under the auspices of the United Nations High Commissioner for Refugees on progressive development of refugee law in Arab countries;
18. EXPRESSES ITS WARM THANKS to the organisers of the Third Seminar of Arab Experts on Asylum and Refugee Law.

## **Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World**

*Cairo, Egypt, 16 – 19 November 1992*

### Declaration on the Protection of Refugees and Displaced Persons in the Arab World

The group of Arab experts, meeting in Cairo, Arab Republic of Egypt, from 16 to 19 November 1992 at the Fourth Arab Seminar on “Asylum and Refugee Law in the Arab World,” organised by the International Institute of Humanitarian Law in collaboration with the Faculty of Law of Cairo University, under the sponsorship of the United Nations High Commissioner for Refugees,

1. NOTING with deep regret the suffering which the Arab world has endured from large-scale flows of refugees and displaced persons, and also noting with deep concern the continuing outflow of refugees and displaced persons in the Arab world and the human tragedy encountered by them;
2. RECALLING the humanitarian principles deeply rooted in Islamic-Arab traditions and values and the principles and rules of Moslem Law (Islamic Sharia), particularly the principles of social solidarity and asylum, which are reflected in the universally recognised principles of international humanitarian law;
3. RECOGNISING the imperative need for a humanitarian approach in solving the problems of refugee and displaced persons, without prejudice to the political rights of the Palestinian people;
4. EMPHASISING the need for the effective implementation of paragraph 11 of General Assembly Resolution 194 (III) of 11 December 1948, calling for the right of return or compensation for Palestinian refugees;
5. CONSIDERING that the required solution is the full implementation of the Resolutions of the Security Council and of the United Nations, including Resolutions 181 of 1947 and Resolution 3236 of 1973, which guarantee the right of the Palestinian people to establish its independent State on its national territory;
6. DEEPLY CONCERNED that Palestinians are not receiving effective protection either from the competent international organisations or from the competent authorities of some Arab countries;
7. RECOGNISING that the refugees and displaced persons’ problems must be addressed in all their aspects, in particular those relating to their causes, means of prevention and appropriate solutions;
8. RECALLING that the United Nations Charter and the international human rights instruments affirm the principle that human beings shall enjoy fundamental rights and freedoms without discrimination of whatever nature;
9. CONSIDERING that asylum and refugee law constitute an integral part of human rights law, respect for which should be fully ensured in the Arab world,
10. RECOGNISING that the United Nations Convention of 28 July 1951 and the Protocol of 31 January 1967 constitute the basic universal instruments governing the status of refugees;
11. RECALLING the importance of regional legal instruments such as the 1969 OAU Convention governing the specific aspects of refugee problems in Africa and the 1984 Cartagena Declaration on Refugees;
12. RECOGNISING that the fundamental principles of human rights, international humanitarian law and international refugee law represent a common standard to be attained by all peoples and nations; that they should provide constant guidance to all individuals and organs of society; and that competent national authorities should ensure respect for these principles and should endeavour to promote them by means of education and dissemination,
13. RECALLING the historic role of Islam and its contribution to humanity, and the fact that universal respect for human rights and fundamental freedoms for all constitute an integral part of Arab values and of the principles and rules of Moslem law (Islamic Sharia),

14. NOTING with appreciation the humanitarian role of the Office of the United Nations High Commissioner for Refugees in providing protection and assistance to refugees in providing protection and assistance to refugees and displaced persons,
15. RECALLING with particular gratitude the efforts of the International Institute of Humanitarian Law for the developing of refugee law in the Arab world and for organising the four Arab seminars held for this purpose in San Remo (1984), Tunisia (1989), Amman (1991) and Cairo (1992); and
16. RECALLING with appreciation the efforts of the International Committee of the Red Cross in protecting refugees and displaced persons in armed conflict situations.

**Adopts the Following Declaration:**

- Article 1* Reaffirms the fundamental right of every person to the free movement within his own country, or to leave it for another country and to return to his country of origin;
- Article 2* Reaffirms the importance of the principle prohibiting the return or the expulsion of a refugee to a country where his life or his freedom will be in danger and considers this principle as an imperative rule of the international public law;
- Article 3* Considers that the granting of asylum should not as such be regarded as an unfriendly act vis-à-vis any other State;
- Article 4* Hopes that Arab States which have not yet acceded to the 1951 Convention and the 1967 Protocol relative to the status of refugees will do so;
- Article 5* In situations which may not be covered by the 1951 Convention, the 1967 Protocol, or any other relevant instrument in force, or United Nations General Assembly resolutions, refugees, asylum seekers and displaced persons shall nevertheless be protected by:
- (a) the humanitarian principles of asylum in Islamic law and Arab values,
  - (b) the basic human rights rules, established by international and regional organisations,
  - (c) other relevant principles of international law;
- Article 6* Recommends that, pending the elaboration of an Arab Convention relating to refugees, Arab States adopt a broad concept of “refugee” and “displaced person” as well as a minimum standard for their treatment, guided by the provisions of the United Nations instruments relating to human rights and refugees as well as relevant regional instruments;
- Article 7* Calls for the League of Arab States to reinforce its efforts with a view to adopting an Arab Convention relating to refugees. These efforts will hopefully be brought to fruition within a reasonable period of time;
- Article 8* Calls upon Arab States to provide the Secretariat of the League with relevant information and statistical data, in particular concerning:
- (a) the condition of refugees and displaced persons in their territories;
  - (b) the extent of their implementation of international instruments relating to the protection of refugees; and
  - (c) national laws, regulations and decrees in force, relating to refugees and displaced persons.
- This will help the League of Arab States in taking an active role in the protection of refugees and displaced persons in cooperation with the competent international organisations;
- Article 9*
- (a) Strongly emphasises the need to ensure international protection for Palestinian refugees by competent international organisations and, in particular, by the United Nations, without in any way prejudicing the inalienable national rights to repatriation and self-determination;
  - (b) requests the competent organs of the United Nations to extend

with due speed the necessary protection to the Palestinian people, in application of Security Council Resolution 681 of 20 December 1990; and  
(c) requests the Arab states to apply in its entirety the Protocol relating to the Treatment of Palestinians in Arab States, adopted at Casablanca on 11 September 1965.

*Article 10* Emphasises the need to provide special protection to women and children, as the largest category of refugees and displaced persons, and the most to suffer, as well as the importance of efforts to reunite the families of refugees and displaced persons;

*Article 11* Calls for the necessary attention which should be given to the dissemination of refugee law and to the development of public awareness thereof in the Arab world; and for the establishment of an Arab Institute of International Humanitarian Law, in cooperation with the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and the League of Arab States.

\* \* \* \* \*

#### First Recommendation

The Arab experts, meeting in Cairo at their Fourth Seminar on Asylum and Refugee Law in the Arab world, wish to express their deep appreciation to the International Institute of Humanitarian Law and to the Faculty of Law of Cairo University for their valuable efforts, as well as to the Office of the United Nations High Commissioner for Refugees for its generous sponsorship, all of which led to the success of the Seminar and point to the need for periodically holding similar seminars in other parts of the Arab world in view of the benefits accruing therefrom.

The Arab experts addressed their special thanks to the International Institute of Humanitarian Law for publishing the proceedings and synopsis of previous seminars. They note with deep appreciation the intended publication and large-scale dissemination by the Institute of the proceedings and results of their Fourth Seminar, including the Cairo Declaration.

#### Second Recommendation

The Arab experts, meeting in Cairo at their Fourth Seminar on Asylum and Refugee Law in the Arab world, express their appreciation to the General Secretariat of the League of Arab States for its effective participation in the work of the Seminar and urge it to continue its constructive efforts with a view to reaching satisfactory solutions to the problems of refugees, including moral and material sponsorship of future meetings on the subject.

They also invite the League to study the feasibility of creating an Arab organisation for refugees in the Arab world, within the framework of the specialised agencies of the League, with a view to providing legal and humanitarian protection for the refugees.

## **Central and Eastern Europe: The Challenge of Becoming Refugee Receiving Countries**

*Prague, Czech Republic, 6 – 8 April 1993*

### Conclusions by the Chairmanship

The Seminar on “Central and Eastern Europe: The Challenge of becoming Refugee Receiving Countries” organised in Prague in the Czech Republic from 6 to 8 April 1993 by the International Institute of Humanitarian Law in cooperation with the Red Cross Society of the Czech Republic, the Red Cross Society of the Slovak Republic, Charles University, Prague, and the Comenius University, Bratislava, and held under the auspices of the United Nations High Commissioner for Refugees:

NOTING the complex and multiple dimensions of the challenges posed by external and internal populations movements, including refugees, migrants and displaced persons, to the States of Eastern and Central Europe, many of which are facing these issues for the first time;

RECOGNISING the commonality of issues demonstrated by recent experience in Western Europe and the importance in meeting the challenge of a comprehensive and equitable response in accordance with international standards;

NOTING WITH CONCERN the serious potential for further displacement within the region posed by emergent ethnic conflicts;

RECOGNISING that population movements place particular demands on national and international institutional resources, and call for close attention to the implementation of applicable international norms;

NOTING that there exists a substantial body of international law concerning the protection of refugees, freedom of movement, population transfers and protection of minorities, citizenship and statelessness;

WELCOMING the fact that compliance with basic human rights standards is increasingly recognised as a condition of membership in international and regional organisations.

1. RECOMMENDED that the governmental and non-governmental institutions concerned be strengthened, and that renewed emphasis be placed on the practical application of established principles of international co-operation and solidarity;
2. URGED a concerted and coherent response to causative issues, including civil and ethnic conflict and human rights violations, in order that the necessity for future displacement and flight can be avoided;
3. STRESSED the need for developing appropriate monitoring and oversight mechanisms to ensure compliance with international rules and standards; and
4. NOTED that refugee movements often coincide with migratory movements and that the causes of these movements are often inter-linked, and underline the urgency of addressing this dimension in a coherent manner in all appropriate fora.

## II

The Seminar, having examined in wide-ranging and informative discussions specific elements relating to population movements and displacements, namely, the role of asylum as a solution-oriented response; freedom of movement; population transfers and minorities; integration and non-discrimination; statelessness; dissemination and their appropriate implementation;

RECOGNISED the fundamental importance of internationally accepted norms and standards relating to asylum which had received full affirmation by countries of Central and Eastern Europe;

NOTED with appreciation the deeply humanitarian approach of countries of Central and Eastern Europe in responding to refugee problems which had recently arisen in their region;

REAFFIRMED the fundamental principle of non-refoulement, under which no person may be returned in any manner whatsoever against his will to a territory where his life or freedom may be threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

WELCOMED the substantial number of accessions without geographical reservation by States in Central and Eastern Europe in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees;

WELCOMED and encourages the adoption of national legislation in conformity with the international obligations with a view to ensuring their effective implementation;

NOTED with appreciation the existing cooperation between States, international organisations, regional organisations and NGOs in advising on the implementation and in developing appropriate national institutions at both governmental and non-governmental level;

URGED that the standards of treatment defined in the 1951 UN Refugee Convention, based on fundamental human rights, be applied to refugees who have been granted asylum in such a manner as to ensure non-discrimination and, where appropriate, their full integration in accordance with the principle of equality of treatment with nationals;

NOTED with satisfaction that increasing attention is now being paid by the international community to the responsibility of States in the area of migratory movements and refugee phenomena, including the obligations of countries of origin with regard to coerced population movements and that there is growing awareness of the inter-linkage between human rights, humanitarian law and refugee law;

RECOGNISED that, without prejudice to the principle and practice of asylum and the protection of refugees, concerted international cooperation was urgently required to alleviate the causes of population displacements and refugee flows, also permitting return in safety and dignity;

UNDERLINED in this respect the importance of voluntary repatriation and the right of an individual to return to his country of origin at any time and without hindrance;

NOTED that the principle of international solidarity and burden-sharing was of particular importance in situations involving large-scale flows of refugees and asylum seekers as reflected in Conclusion No. 22, adopted by the UNHCR Executive Committee at its 32<sup>nd</sup> Session;

RECOGNISED that in situations of large-scale influx in Europe special arrangements may be called for, and that such arrangements could include temporary protection and return in full safety to the country of origin, with due regard to accepted international principles and humanitarian standards;

RECOMMENDED that States consider, in an appropriate forum, the establishment of a comprehensive burden-sharing mechanism in Europe, both to assist countries of asylum and countries of origin in their efforts to create or maintain conditions that will avert coerced population movements and/or will be conducive to safe return;

NOTED that a major cause of population displacement is the violation of basic human rights, including the rights of persons who are members of minorities, the right to freedom of movement, the right not to be exposed to situations obliging a person to leave, thus infringing his right to remain;

STRESSED the need for the protection of minorities to be fully ensured in the internal legal order of all States, in particular through the effective application or, if appropriate, the further development of international instruments established for this purpose, with particular reference to monitoring and enforcing mechanisms;

RECOGNISED that the practice of population transfers, including the implantation of settlers and settlements, is not an acceptable method of conflict resolution, which should be achieved by other appropriate means;

RECOMMENDED further that the United Nations and regional bodies should urgently consider the preparation of appropriate international mechanisms, including monitoring, mediation and enforcement, with a view to prohibiting population transfers;

RECOMMENDED the strengthening and further development of existing procedures, within all appropriate fora, for monitoring the causes of refugee potential problems and displacement, including population transfers and disregard of the rights of minorities, and called upon all states to bring appropriate pressure to bear on countries whose human rights practices fall short of international standards and may cause people to seek protection abroad;

NOTED the existence of relevant international rules and standards relating to the right to a nationality, reduction of statelessness, and the status of stateless persons;

RECOGNISED the importance of citizenship issues which had now arisen in a number of countries in Europe;

NOTED with concern that serious human problems result from statelessness and lack of protection and the link between statelessness and the violation of human rights and displacement;

RECOMMENDED that States adopt appropriate citizenship legislation with a view to avoiding statelessness and , in this respect, welcomed their readiness to invite international and regional bodies to provide appropriate advice and monitor the implementation;

NOTED that issues of statelessness may also give rise to tension between States and therefore urged States, regional and international organisations, to keep issues of statelessness under constant review; and

STRESSED the vital importance of ensuring the widespread and effective promotion and dissemination of standards of human rights, humanitarian and refugee law through appropriate action at the international, regional and national levels, in particular through the organisation of training programmes and inclusion in regular teaching programmes at all levels in schools, universities and other educational academic and professional institutions, and in particular in teacher training courses.

The Seminar reiterated the necessity for a continuing dialogue between the experts of different groups of countries and tendencies on current problems of human rights law and international humanitarian law, in particular in the field of the protection of refugees, displaced persons and victims of armed conflicts.

The participants of the Seminar strongly supported and encouraged the International Institute of Humanitarian Law to constitute this important humanitarian dialogue.

**International Symposium on The Protection of Refugees**  
*Sofia, Bulgaria, 21 – 23 June 1994*

Conclusions are the responsibility of the Institute, having more freedom as an open forum for discussion, contrary to UNHCR which is under the UN system and is conditioned by its policy.

First of all, all compliments are for you. We expected a very open dialogue in the corridors, during lunches etc. I think this dialogue was very necessary given the very complex situation in Europe today. We don't know what the situation will be like in Europe tomorrow, as you can see how in 24 hours the European Parliament can change profile concerning refugees. What kind of future tendencies will be, depends on how governments will take their responsibilities.

At the same time we have so many new situations that we do not know which name to give to some persons, if they are refugees or not. We must be very pragmatic and flexible, as Madame Ogata has said, to help these people, not to ask very special legal formulations. These people need concrete assistance and protection.

The problem is to define what is "humanitarian." I think that humanitarian activity cannot replace political activity. There must be a kind of complementarity. It is evident that human action can help politicians but we cannot admit that politicians are going to dictate what is humanitarian. We must define what is fundamental for human beings. There are some fundamental human rights which must be respected without any discrimination and politicians must be aware of this. We must defend humanitarian rules and governments must respect modest refugee law based on some fundamental principles that derive from human rights.

Therefore, the importance of these kinds of meetings is to facilitate dialogue and to exchange experiences.

For this kind of dialogue we need responsible people and I think that this responsibility must be reciprocal between governments and the UNHCR. Implementation of international instruments is a government's obligation and you have different resources for that. But there is also a responsibility of the UNHCR to check that these international instruments concerning refugees are respected and this respect must be very concrete. That is why we are so interested in the elaboration of national laws. We must accelerate the process increasing contacts between governments and UNCHR. But it is also very important for you to have bilateral contacts, to continue this exchange of views that may lead to the discovery of some common denominators, useful at the national level.

NGOs system can play a special role in this regard. There is a great number of NGOs and it is certainly important to coordinate them not to disperse their work. I participated in two regional meetings, one with an Arab group and another with a Latin American group. There are big differences but there are also some common denominators, which have been stressed at the Oslo PARINAC Meeting.

We are now trying to teach, to give some lectures to Eastern European countries, asking them to have a kind of *recyclage*. But I think that it must be a reciprocal exchange because we too have something to learn from them and we also need a *recyclage* to understand them. The Institute has some experience in this process of renewal and exchange of views in Central and Eastern Europe after having organised several meetings in those countries, notably the meeting held in Berlin, just a few days before the wall was destroyed. I think that we must put ourselves in a reciprocal balance to understand each other and this kind of meeting can help very much.

I am convinced that in this process of open discussions concerning protection of refugees we must bear in mind all the debate going on at the UN level on the so-called peace-keeping and peace-building.

Another very important issue in this field, as Madame Ogata pointed out, is that of preventive measures, how to prevent people from leaving their countries and therefore to improve the general situation in those countries. Humanitarian law, refugee law and human rights law without separation can also help to prevent and to undertake preventive measures.

Good solutions concerning refugees and displaced persons can contribute to these preventive measures at a national level.

Another aspect of discussion, on which we cannot linger now for lack of time, is the mass media factor and public opinion. The problem of information is a very important one. We must insist on objective information. We cannot just speak and mobilise public opinion and then not be able to give anything. If you want to have the public opinion with you, you have to offer very objective information at national level.

Again, I would like to thank the President of Bulgaria and the Minister of Foreign Affairs who has been with us today and who has shown a great interest in these issues. Thanks also to Mr. Angelov and Mr. Nikolov who spent three days with us and I am sure they took into account some reflections from our discussions. Thanks also to our UNHCR delegation here in Sofia, which has helped us very much.

## **13<sup>th</sup> European Dialogue on Current Humanitarian Issues: The Right to Return to One's Own Country**

*Bucharest, Romania, 17 – 19 June 1996*

### The Right to Return to One's Own Country and the Readmission Obligation of States: Notes for a Declaration of Principles

#### Concluding Statement by the Chairmanship

The International Institute for Humanitarian Law (IIHL) organised, with the support of the Swiss Federal Office for Refugees, the 13<sup>th</sup> European Dialogue on Current Humanitarian Issues from the 17<sup>th</sup> until the 19<sup>th</sup> of June in Bucharest, Romania. The European Dialogue was convened to gather together European national and international authorities, Red Cross officials, as well as university experts and to allow them to exchange their experiences and views on some crucial humanitarian issues. The subject matter specifically discussed this year and was on the "Right to Return to One's Own Country."

There were 71 experts from Romania, Albania, Macedonia, Russia, Italy, Bulgaria, Switzerland, Hungary, Lithuania, the Netherlands, Denmark, Belgium, Yugoslavia, Poland, France, Austria and Sweden. There were 9 Romanian participants who represented various humanitarian organisations in Romania. Experts from the IIHL were also invited to attend and participate in the discussions.

#### II

The right to return is laid down in Article 13 of the 1948 Universal Declaration of Human Rights and confirmed in Article 23 of the 1966 International Covenant on Civil and Political Rights. It is also defined in Article 3.2 Protocol Number 4 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and has been reaffirmed in paragraph 23 of the 1993 Vienna Declaration on Human Rights.

The right to return poses, however, a number of problems in its implementation, particularly concerning countries which have not incorporated the provisions of the 1966 International Covenant into their national statutes. Furthermore, from a practical point of view, difficulties may arise in providing proof of nationality or from lack of political will of the State of return to implement its international commitments.

As regards the readmission of the obligations of States, in its Resolution 45/140 of 14 December 1990 on the activities of the United Nations High Commissioner for Refugees, the UN General Assembly underlines the concept of State responsibility particularly as related to the countries of origin, including addressing root causes, facilitating voluntary repatriation and the return of their nationals who are not refugees;

This emphasis has been repeated in subsequent annual resolutions relating to UNHCR, including Resolution 50/152 of 21 December 1995 that also upholds the right to return. Paragraph 23 of the Vienna Declaration has also underlined the "responsibilities of the States, particularly as they relate to the countries of origin."

Persons subject to return have normally been habitual residents of the country where they have lived (country of departure). Their right to return is governed, therefore, by the general provisions of nationality law and of international human rights law.

The voluntary repatriation of refugees and related categories has not been considered as a distant concept by the 1951 Convention or the 1967 Protocol relating to the Status of Refugees, although there is a reference to individual voluntary repatriation in Art. 1, Section C of the 1951 Convention.

However, the promotion of voluntary repatriation was listed as a main function of the United Nations High Commissioner for Refugees in Resolution 428(V) of 14 December 1950, in which the General Assembly adopted the Statute of UNHCR.

Provisions concerning the voluntary repatriation of refugees are contained in Art. V of the 1969 OAU Convention governing the specific aspects of refugee problems in Africa. These provisions acknowledge the right of return of refugees according to the extended definition of the OAU Convention, therefore including refugees displaced by war or civil conflict.

Voluntary repatriation is also governed by a wealth of “soft law” provisions, particularly the General Assembly resolutions and conclusions of the Executive Committee:

- The annual resolutions of the General Assembly on the activities of UNHCR have referred from the outset (1952) to voluntary repatriation as one of the permanent solutions to refugee problems. As from 1978 more emphasis has been laid on voluntary repatriation than on other solutions, and since Resolution 44-137 of 15 December 1989, the General Assembly has described voluntary repatriation as “the most desirable solution.”
- The General Assembly has also referred in many of its resolutions to repatriants and returnees in specific countries or regions.
- The Executive Committee of the High Commissioner’s Programme has adopted Conclusions No. 18 (XXXI) and No. 40 (XXXVI) which emphasises the right to return, the responsibilities of the States and the mandate of the High Commissioner.

The voluntary repatriation of refugees and related categories has been the object of bilateral treaties, e.g. the Evian Agreement of 1962 and the Addis Abbaba Agreement of 1992. Furthermore, voluntary repatriation has been the object of a large number of tripartite agreements between States of departure, States of asylum and UNHCR. More recently, the issue of voluntary repatriation has been thoroughly dealt with in Annex 7 of the Dayton Agreements, November 1995.

The individual voluntary repatriation of refugees and related categories should continue to be handled within the framework of existing international legal instruments, including soft law instruments.

The voluntary repatriation of large numbers of refugees or related categories would require, as hitherto, the conclusion of ad hoc agreements between the State of asylum, the State of previous habitual residence and international organisations such as UNHCR, IOM, ICRC and OSCE. These agreements should provide for the ancillary role of NGOs to assist both in the departure of repatriants and the reception of returnees on arrival in the country of habitual residence, including assistance towards reintegration.

The recommendation in the preceding paragraph should also deal with the voluntary repatriation of large numbers of temporarily protected persons. Such voluntary repatriation normally takes place after the State of asylum ceases to afford this temporary protection.

International Institute of Humanitarian Law/ United  
Nations High Commissioner for Refugees: Excerpts  
of Conclusions and Recommendations of Round  
Tables and Congresses

**Reunion of Families**  
*San Remo, Italy, 6 – 9 September 1978*

The International Institute of Humanitarian Law, at its Fifth Round Table on Current Problems of International Humanitarian Law (6 – 9 September 1978, San Remo),

Recalling that family unity is one of the fundamental human rights under international instruments,

Considering the highly humanitarian aspect of the reunion of dispersed families,  
Recommends the following principles on the reunion of families:

**1. Definition of the Family**

The minimum concept of the family should be the spouse, dependent children and dependent parents. Due consideration should however be given to widening this concept where the social custom of the person concerned is wider.

**2. Permission to leave a country**

The reunion of families should be facilitated in every possible way by permitting family members to leave their country of origin or of habitual residence.

**3. Permission to enter a country**

A country which has granted a person permission to reside in its territory should for humanitarian reasons admit other members of his family.

**4. Procedures**

The procedures for the reunion of families should be carried out without undue delay. Travel documents, visas or any other relevant documents should be granted without fees or taxes whenever possible.

**5. Fiscal and other charges**

In the interest of the reunion of families, no duties, charges or taxes, of any description whatsoever, should be imposed on any family member, other than those prescribed by law.

**6. Status of family members**

A country which has granted a person permission to reside in its territory should grant a legal status not less favourable to members of his family who accompany or follow him.

**7. International Cooperation**

In the interest of the reunion of families, the work of the international humanitarian organisations should be encouraged. They should be permitted to assist any person and should be granted facilities in tracing members of his family.

**Congress on International Solidarity and Humanitarian Actions**  
*San Remo, Italy, September 1980*

International Solidarity and the International Protection of Refugees  
by Poul Hartling

The word solidarity no doubt originates from the Latin *solidus* meaning: free from empty space, or dense consistency, firm, stable.

Solidarity describes the attitude of standing closely together, of being fully at one in promoting, protecting and defining interests; indeed of acting “*in solidum*.”

Solidarity is one of the most popular and one of the most frequently used words in the United Nations and in current language it is very usual to talk of “international community”, of “international co-operation”, and of “international solidarity”. This might appear paradoxical because, as we know, international politics and the foreign policies of governments seem to be conducted in a way in which the first thoughts coming to our mind are certainly not associated with something like solid, firm or consistent – except in one point: in looking after one’s interests. It is therefore all the more remarkable that in regard to the humanitarian work of the United Nations the international community – that is to say all sovereign States which in other spheres pursue their own particular interest – has constantly shown a high degree of solidarity and co-operation.

The Charter of the United Nations expresses the concept of international solidarity in its most simple form with the words in its opening lines: “We, the peoples of the United Nations ...”. The Charter goes on to define the achievement of international co-operation as one of the main purposes of the United Nations with particular reference to the solution of international problems of economic, social, cultural and humanitarian character.

We can see therefore that in 1946 international solidarity was perceived by those countries represented at San Francisco as the vehicle through which the ills of the world could be solved. Internationalism was, of course, in the immediate aftermath of World War II, the spirit of the time and the first resolutions of the General Assembly relating to refugees reflect this theme.

Resolution 319(IV) of 3 December 1949, which contains the decision of the General Assembly to establish the Office of the United Nations High Commissioner for Refugees, opens with the words:

“Considering that the problem of refugees is international in scope ...”

The General Assembly then went on to vest in the High Commissioner the primary task of international protection of refugees and to call upon governments to co-operate with him in the performance of his functions concerning refugees falling under the competence of his Office.

There is hardly a single subsequent resolution of the General Assembly of the United Nations relating to the importance of international solidarity in seeking solutions to the refugee problem. International solidarity has indeed acted as the mainspring for all action undertaken by my Office in favour of refugees. The notion that refugee problems should be the concern of the international community and should be resolved in the context of international solidarity was of course not new, since one of the first concerns of the League of Nations was to find humanitarian solutions for the plight of refugees. As we know, already in 1921 the first League of Nations High Commissioner for Refugees, Fridtjof Nansen was appointed to deal with a million and a half refugees from the Russian Revolution and the subsequent fighting which spread throughout the former Russian Empire. In the next three decades a succession of international organs were established on an *ad hoc* basis to deal with the successive waves of refugees that were the sad result of the upheavals of the time. As regards to establishment in 1950 of the Office of the United Nations High Commissioner for Refugees, its real significance lay in the fact that the first time the competence to deal with refugee problems wherever they might occur was – with certain exceptions – entrusted to a single organ which by its Statute was charged with finding appropriate solutions in co-operation with governments.

The concept of international solidarity is of primary and of major importance in regard to the international protection of refugees and I am particularly gratified that this particular aspect of international solidarity has been chosen as the theme for this Round Table. The significance of international solidarity in relation to international protection is illustrated in a variety of ways. The first response of the international community to the special situation of the refugee as a person who can no longer turn to his home State for protection was impressive by reason of its simplicity. The greatest immediate handicap of the refugee was the fact that he was without papers. He must therefore be provided with a travel document. And it was thus that the so-called Nansen passport was called into being. The creation of the Nansen passport under the League of Nations was the first step in what I believe is one of the most significant developments of our time: the idea that the refugee in his country of asylum is not alone but can call upon the international community to provide him with the protection that he needs.

Later achievements in the field of international protection were more sophisticated. I am referring here to the definition at the international level of basic standards for the treatment of refugees. The international instruments adopted under the League of Nations became increasingly comprehensive as regards their material scope. While the earlier instruments were essentially concerned with the issue of travel documents, the later instruments dealt with a variety of matters of importance in the day to day life of the refugee: the right to work, social security, public assistance and most important, protection against expulsion or return to a territory where he may have reason to fear persecution. In this evolutionary process the adoption in 1951 of the United Nations Refugee Convention was a milestone. The Convention – the personal scope of which was later extended by the 1967 United Nations Refugee Protocol – is the most comprehensive instrument relating to refugees yet adopted at the international level. It represents a pivotal point in the international protection of refugees.

The definition – on the international level – of basic standards for the treatment of refugees is of course an important example of the effective functioning of the principle of international solidarity. Once it is accepted that the refugee problem is a matter of international concern, every State which participated in this collective humanitarian effort has an obvious interest in ensuring that the standards which it applies in the treatment of refugees are also applied by other States. Moreover, if States realise that in treating refugees according to acceptable standards, they do not stand alone but that the “burden” is shared by other States, this will necessarily facilitate the development of more liberal standards on the international plane.

International solidarity is of practical significance in regard to asylum and the need for joint international efforts in this sphere received early attention by the United Nations. Thus the Preamble to the 1951 Convention states:

“Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem, of which the United Nations has recognised the international scope and nature, cannot therefore be achieved without international co-operation”.

The idea is further developed in the United Nations Declaration on Territorial Asylum which calls upon States individually or jointly or through the United Nations to consider measures to lighten the burden of those States which encounter difficulty in granting or continuing to grant asylum.

International solidarity in regard to asylum has also received full recognition on the regional level. In Europe, the Committee of Ministers of the Council of Europe in adopting Resolution 14(1967) on Asylum to Persons in Danger of Persecution recognised the principle of European solidarity and of common responsibility where a State encounters difficulty in carrying out the recommendations concerning the granting of asylum which are contained in the Resolution.

In Africa, where there exists a long-standing tradition of extending hospitality to asylum seekers, the principle of international solidarity in regard to asylum has been reinforced by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. This regional instrument is of particular significance in the field of asylum where the principle of co-operation

is defined in mandatory form. Thus, in accordance with Article 2, Paragraph 4 of this Convention, it is provided that where a Member State finds difficulty in continuing to grant asylum it may appeal directly to other Member States or through the OAU with a view to their taking appropriate measures to lighten the burden.

The concept of international solidarity has been further strengthened in Africa by the deliberations of the Pan-African Conference on Refugees, which met in Arusha, the United Republic of Tanzania in May 1979. The Conference specifically recognised that the effective implementation in Africa of the principle relating to asylum will be further advanced by the strengthening and development of institutional arrangements for burden-sharing adopted within the framework of African solidarity and international co-operation. This last-mentioned concept of “burden-sharing” represents a more recent and concrete expression of the principle of international solidarity which I hope and believe is gradually taking solid root in Africa and elsewhere.

When speaking of international solidarity in the context of asylum, we tend – perhaps – to think primarily of action by the international community to relieve the burden of first asylum countries. It should not, however, be overlooked that countries of first asylum – especially in the developing world – in admitting large numbers of asylum seekers to their territories, are also assuming a burden which represents an important contribution towards the solution of refugee problems in the context of international solidarity.

I would like to highlight some of the results achieved throughout the practical implementation of the principle of international solidarity as regards resettlement and the provision of material assistance to refugees. These results are indeed impressive and it is a source of the greatest encouragement that whenever a large-scale refugee situation calling for international action has arisen, the international community has always met the challenge. In this way, tens of thousands of Hungarian and Czech refugees were resettled in Europe and elsewhere after events in their home countries in 1956 and 1968. Similarly, large numbers of Asians from Uganda and refugees from Chile could be provided with resettlement opportunities in the early 1970s. And, of course, there is the present resettlement of refugees from Southeast Asia, which is an on-going programme of vast dimensions. I believe it is no exaggeration to say that this particular example of international solidarity has literally saved tens of thousands of lives. Outside these large-scale resettlement programmes which attract so much public attention, there are also the more modest numbers of refugees who on an individual basis are every day given the opportunity to start a new life in many countries around the world.

As regards material assistance, one important aspect is of course the provision of care and maintenance to refugees pending a more durable solution. The provision of care and maintenance was not one of the traditional forms of assistance as conceived by the UNHCR Statute. However, with the emergence of refugee situations involving large numbers of refugees who cannot repatriate voluntarily, who cannot be accepted by their country of first asylum for permanent integration, and whose resettlement cannot be immediately effected, the provision of care and maintenance on an emergency basis has become an obvious necessity and now constitute a major part of UNHCR’s assistance budget.

The need to provide emergency assistance in the particularly dramatic refugee situations existing at the present time should not over-shadow the more traditional type of material assistance to refugees: assistance aimed at bringing about permanent solutions. My Office has been enabled to provide such assistance through the realisation of the international community that the refugee cannot simply be abandoned in the country where he has received durable asylum without regard to the available integration possibilities. Having received asylum the refugee’s most urgent need is to turn his back on the pain and anguish of his recent past and to start a new life. Where the integration facilities in this asylum country do not permit this objective to be attained with a minimum of delay, these facilities must be supplemented by assistance from the international community.

Programmes of material assistance geared to providing permanent solutions for refugees have assumed special importance in developing countries where such assistance is often related

to a wider process of development. Indeed, many of the assistance projects implemented by my Office in countries of the developing world have proved to be of benefit not only to refugees but also to the population as a whole.

Finally, a word about voluntary repatriation which – if it can be realised – is the most happy solution for the refugees. Here again the international community has kept fully abreast of the new dimension of this solution. In the past, voluntary repatriation was mainly the return home of individual refugees. Nowadays, it increasingly involves the return of large numbers of refugees to their home country which is frequently a developing country and which may not be adequately equipped to receive them. Here again there is a need for large-scale material assistance to enable countries of origin to ease integration so that returning refugees can rapidly resume a normal life.

The expansion of the work of my Office in the field of material assistance has necessarily led to a rapid increase in the financial burden that has to be shared by the international community. I need only mention that in ten years the annual budget of UNHCR has grown from \$8 million in 1970 to \$500 million for this year. In spite of ever-increasing demands, the international community has consistently provided the necessary financial resources to meet the challenge.

The provision of resettlement possibilities and of material assistance, of course, also have a wider impact. Where resettlement possibilities and care and maintenance assistance are provided, this makes it easier for countries faced with a large influx to fulfil their international humanitarian duty of granting temporary asylum. Where material assistance is provided with a view to promoting permanent solutions for refugees, this makes it easier for countries of durable asylum to integrate refugees into their society which in turn facilitates their efforts to ensure that refugees are treated according to accepted international standards. The provision of resettlement possibilities and material assistance – as a matter of international solidarity – therefore, also facilitates the accomplishment of my Office's tasks in the field of international protection.

I hope that I have succeeded in giving you a picture of what I believe international solidarity means in relation to the manifold and urgent refugee problems which have become a tragic feature of our troubled generation.

International solidarity has meant that in the course of the years solutions could be found for millions of refugees the world over. Refugees have been granted temporary or durable asylum and have been treated in accordance with acceptable standards. The definition of these standards in binding legal instruments has been an important achievement of the international community. Refugees have also been provided with material assistance and have been enabled to start new lives in countries of resettlement. They have also been assisted to repatriate voluntarily and to re-establish themselves in their home countries. International solidarity has also made it possible to assist governments of countries of asylum and of countries of origin to cope with the social and economic upheavals that necessarily result from the sudden arrival of large numbers of refugees or returnees.

It is to the greatest credit of the international community that one of its first actions after the establishment of the League of Nations was to concern itself with the refugee problem, and also that this concern once again manifested itself as soon as the United Nations came into being. I believe that the particularly effective manner in which the principle of international solidarity has been applied in this important humanitarian field can serve as an encouragement for other areas of endeavour of the United Nations.

\* \* \* \* \*

International Solidarity and the Protection of Refugees  
by Professor Atle Grahl-Madsen

In the wake of the First World War several States were suddenly faced with a refugee problem of unprecedented proportions.

Stateless and paperless, the refugees were unable to cope with the many requirements of civic life, and, above all, they could not legally cross any international frontiers. Family members remained separated. Untold hardships resulted.

Individual States found themselves incapable of resolving the matter. And it was that faithful watchdog, on the alert when humanitarian action is needed, the International Committee of the Red Cross, which sounded the alarm.

In a famous letter to the Council of the League of Nations, Gustave Ador, president of the ICRC, proposed that the League of Nations should assume responsibility for the refugee situation and appoint a High Commissioner who could provide international protection for refugees.

The Covenant of the League of Nations contained no provision for such an appointment, but the need was pressing and the matter was resolved in a pragmatic manner. The President of the Council, in concert with his colleagues, appointed Fridtjof Nansen, already renowned for the manner in which he had brought home 400,000 prisoners of war, High Commissioner for Refugees and allowed him to act in the name of the League of Nations. Thus, in a modest and round-about way, was created that which was destined eventually to become an important and respected international Office, as indispensable today as it was sixty years ago.

Fridtjof Nansen, explorer, scientist, diplomat and statesman, eventually to be hailed as the greatest humanitarian of his time, soon set in motion a legal avalanche. His representatives were received in the capitals of the world, and governments accepted invitations to attend conferences under the auspices of the High Commissioner.

The first achievement was the identity and travelling document for refugees – later to be known as the Nansen passport – recognised by virtually all governments.

International agreement followed international agreement. The Arrangement concerning the status of refugees, adopted in 1928, was a milestone.

Nansen was no lawyer, but in the course of Nansen's nine years as High Commissioner, refugee law became a subject in its own right, both at the national and the international levels. From being an outcast – a non-person – the refugee emerged as a person entitled to certain rights and benefits, and refugee status became a definable term.

What States had been unable or unwilling to do on their own, was easily agreed under the driving influence of the High Commissioner and accepted as a matter of course, almost with a sigh of relief.

Nansen died in 1930.

For several reasons, international solidarity was at a low ebb throughout the 1930's. The Refugee Convention of 1933 was ratified by very few States. And the Intergovernmental Committee on Refugees – IGCR -, founded in Evian 1938, never became the efficient instrument for the rescue of human lives as its authors had hoped for.

But at the next crossroads they were more successful: in the midst of the war efforts, in 1943, the foundation was laid for the United Nations Relief and Rehabilitation Administration, which was to become a mighty machinery for the rescue of needy human beings and more generally for the alleviation of suffering in the territories liberated by Allied forces.

Like all great organisations, UNRRA surely had its faults and its shortcomings, but there can be no doubt that at a crucial time when civil government in most continental countries was badly disorganised, the millions of displaced persons would have stood little chance, had UNRRA not been there to assist and to protect them. The organisation proved time and time again the importance of practical international solidarity.

The continuation of the task, first by the Preparatory Commission for the International Refugee Organisation (PCIRO), later by the International Refugee Organisation (IRO) proper, showed clearly how effectively legal and political protection for refugees could be exercised by an international organisation. The many resettlement agreements concluded with governments, or between governments under the auspices of the IRO, have given refugees protection effective long after the IRO itself had ceased to exist.

The IRO played, of course, a leading role in the preparation of that great monument of the period, the Refugee Convention of 1951, which now for almost thirty years has provided a legal framework for the position of refugees.

Such a Convention is in itself an effective means of protection. There is a striking semblance to treaties providing benefits for citizens on a basis of reciprocity, and also to human rights conventions. In a different context, I have coined the term “contractual protection” for this kind of protection.

For thirty years now, the Office of the United Nations High Commissioner for Refugees has been the leading organ for active protection of refugees on behalf of the community of States. We do not need any imagination to realise that the fate of refugees – legally and otherwise – would have been very different – very much inferior – had we not had this instrument for supervision, initiative, and active prodding of governments.

This provides us again with proof – if proof be needed – that nations acting jointly may be prepared to grant concessions and indeed take actions which they would not have envisaged individually.

But international solidarity does not merely entail co-operation between States. Common people have a heart. They react instinctively when they learn that fellow human beings are in need and that it is within their power to help. It is not necessary for statesmen and politicians to endorse an appeal for charity. This theme was stressed emphatically by Fridtjof Nansen in one of his great speeches in the League of Nations.

To the contrary, the popular demand for humanitarian action has often been the spur – and sometimes even a *conditio sine qua non* – for official efforts.

When we are talking about international solidarity and the protection of refugees, we cannot silently pass the virtual protection provided by voluntary agencies, non-governmental organisations, both national and international.

Protection, as provided by intergovernmental and governmental agencies in the humanitarian sphere, normally takes the shape of moral persuasion. There may be a referral to international law, but this will regularly be veiled in very polite terms.

And it has been proven again and again that when it comes to moral persuasion, the non-governmental organisations are the real experts. Their activities are borne by real concern for fellow human beings, and when it comes to moral persuasion, there is, as so often in life, no substitute for the genuine stuff.

And genuine concern has one unmistakable trademark: it does not stop, it cannot stop at frontiers or at ethnic, religious or other differences. It is the human being and his need that count, not his membership in this or that group. If we attempt to limit or restrict our own – or others’ – concern to particular categories of fellow men and women, we are apt to kill charity altogether and to end up in cold-blooded egotism.

But it is no good to reflect on international solidarity, to try to grasp its nature, to see what it has achieved in the past, if we do not also try to fathom to what use we may put it today and in the days and years ahead.

Everything is not well with respect to the protection of refugees. One of the best definitions of asylum says that asylum is protection afforded by a State in its territory or in some other place under its control. We know what happened at the United Nations Conference on Territorial Asylum in 1977. The idea of writing at least a rudimentary right to asylum into a binding international text was thwarted. It is, as before, up to each government to decide which persons it will admit to its territory. But even so, also in this field international solidarity has worked wonders, in particular when the world has been faced with a real challenge. The joint

efforts with respect to Hungarian refugees in 1956-57 and with respect to Indochinese refugees in 1979 are textbook examples of international solidarity at its best.

A problem which cries loudly for international action in a spirit of international solidarity – or perhaps merely common sense – is that of “refugees in orbit”, numerically speaking, probably not very large groups of unfortunate human beings who are not allowed to settle legally anywhere, yet are unable, for cogent reasons, to return to their country of origin. If States could agree to regularise the status of those persons already in their respective territories, they would not have to accept any real additional burden, and the governments would all have the “excuse” that they had not done more than all the others had done. In times of economic crisis and much unemployment, such an “excuse” may clearly serve a purpose.

We have come to accept the existence of a growing number of *de facto* refugees, and it is generally agreed that an attempt to define their status with any precision may indeed prove counterproductive. There is a case for the “grey zone theory,” that is to say, for the contention that a right of residence may be more readily given if governments are not too tightly tied by stringent rules as to definition and status of the individuals in question.

But as time passes, numbers increase, and the persons concerned grow older, we shall probably be faced with a need for international action to regulate one particular aspect of the situation of *de facto* refugees. This is in an area where it will not cost governments anything, but which is nevertheless vital to the individuals concerned. I am thinking of the so-called “personal status,” which has been regulated in Article 12 of the Refugee Convention. The question of “personal status” is one which is not quite so easily resolved, and we shall therefore do well to consider it before the matter becomes one of urgency.

The time may also be ripe for considering the question of travel documents and visa exemptions. In Western Europe, refugees may move practically without let or hindrance, thanks to the provisions of the Refugee Convention and its Schedule and to those of the European Agreement on the Abolition of Visas for Refugees of 1959.

But for *de facto* refugees and outside the area where the European Agreement applies, the matter is very different.

Aliens passports were first defined and given recognition in a recommendation adopted by the Third International Conference on Communication and Transit in 1927. Would it not be timely – and indeed a step forward – if the international community now could see fit to agree on a more up-to-date aliens passport with a more or less obligatory return clause; a travel document which would be readily available to all those who may not obtain a national passport, and one which, because the issuance would be without political overtones, could be recognised by all or practically States? And would it not be worth considering whether such a document could be covered by bilateral and multilateral agreements on the exemption from visa requirements? Or should we be really radical and start thinking of a travel document which could replace all the existing passports and travel documents, and whose issuance would be based on residence rather than formal nationality?

These examples should suffice to show that the protection of refugees is an issue very much alive, providing us with a number of challenges.

By binding our minds to thinking in terms of human concern and international solidarity, we are setting out on a road which will bring us face to face with many complex problems, but which also eventually may lead us to solutions which may prove valuable far beyond the limited scope of the subject at hand.

\* \* \* \* \*

## Concluding Statement by Prof. Jovan Patrnogic, President, IIHL

### **Introduction**

On the occasion of the tenth anniversary of our Institute, it was important to take stock of international humanitarian action at a time when there is great progress in concepts and even legal instruments, and simultaneously sometimes unbearable tensions within States, as well as between States and groups of States. We have tried to do this through a principle common to all international humanitarian action: solidarity.

The harvest reaped from these three days of work has been rich, too rich for us to patch together a few hasty conclusions. This would not be doing justice to our efforts.

In the space of a few minutes, therefore, I shall confine myself to bringing out a few salient points among the many themes that have been developed here, obviously without claiming to be exhaustive.

It will then be up to the Institute, to its Scientific Committee, officials and those participants able to contribute, to summarise our work and to draw properly structured conclusions, which will necessarily contain the specific suggestions which meet with the approval of the Congress.

We are convinced that the participants in the Congress now ending, as well as the institutions concerned, and our Institute above all, will be able to draw lessons from our discussions and continue in the same direction.

### **Human Rights**

Since human solidarity is a matter for the entire international community, it was appropriate to examine the relationship between such solidarity and human rights. It appeared obvious that international solidarity was a factor of the highest importance in ensuring respect for human rights everywhere. It is in fact an essential prerequisite for applying all the international instruments on human rights, whether universal or regional. The effective application of these instruments should never be interpreted as interference in the domestic affairs of States.

The importance of the indivisibility and interdependence of human rights was emphasised in particular. By using human rights in a fragmentary and selective way, we also run the risk of distorting these rights and using them for purely political aims.

The communications media, which can be a double-edged sword, must be used to further objectives of peace instead of destroying them. It is of primary importance to free the communications media and place them at man's disposal, using them in a new and rational way, organising them internationally.

Public opinion must be mobilised in favour of international solidarity through the rational and systematic use of the communications media, in order to better defend human rights, in particular, through universal accession to and ratification of the international human rights instruments.

Lastly, there must be a greater degree of coordination among all the governmental and non-governmental international organisations working to achieve respect for human rights.

In the context of solidarity between States members of the Council of Europe, for example, the international system of collective safeguards, while not perfect, still represents tremendous progress and we shall make efforts to improve it further and to increase the number of guaranteed rights. The States members of the Council of Europe should take initiatives and become more open, in particular, to the countries of the third world.

It may be that instead of fashioning ambitious new legal structures it may be more helpful to identify practical issues stemming from the inter-reaction of human rights and solidarity, and to deal with them in such a manner as can lead to concrete results.

## **Development**

The participants in the Congress analysed the connection between international solidarity and development. Consideration of this aspect showed that the principle of solidarity in this area had moved from the sociological to the political sphere and that, more recently, it had appeared in legal formulae. The relationship between solidarity and the right to development of individuals and communities implies fairer treatment in international trade, so as to lead to a reduction in inequalities of all kinds.

In other words, it is the feeling of international solidarity that underlies the recognition of new international legal standards seeking to promote the development of the least-advantaged States. Solidarity is a foundation of the right to development, implying duties for States, particularly the most developed States and those rich in natural resources, so as to secure the well-being of the developing countries. Furthermore, the right to development is an indispensable element for the peace and security of mankind. To provide a basic and decent minimum for every human being, we must emphasise the need for continued promotion of international solidarity, since it is absolutely necessary to all development.

In other words, it has now become urgent to achieve a more equitable and more functional economic order.

Of special importance and urgency is the determination for the international community of an International Development Strategy for the years ahead.

## **The Red Cross Movement**

From the outset, solidarity has always been the very essence of the Red Cross. At the World Red Cross Conference on Peace in 1975, it was defined as follows: "International solidarity today is marked by awareness that the distress of an individual or a community entails the responsibility of all others. The duty to help has replaced mere charitable actions".

A study of basic principles clearly shows that the duty to help one's fellow man in accordance with these principles raises them to the dimension of international ethics centred on the idea of peace.

Solidarity is shown in two ways: first of all, the solidarity that emerges spontaneously from groups of human beings with the aim of satisfying basic needs; and second, long-term solidarity whose results are institutional or lead to the establishment of organisations.

The reciprocity which causes a person to render assistance to a wounded enemy is also a form of solidarity which has been developed from the very beginning of the Red Cross.

Cooperation between neighbouring countries was a great step forward, when the League of National Red Cross Societies was founded in 1919. Since then, a world-wide network based on solidarity has been developed with some 126 national societies comprising 250 million members. An important aspect of solidarity within this structure is equality among the different National Societies, expressed in the principle of universality, which is also a result of true humanity.

Disaster relief remains the most spectacular and essential task of the Red Cross, and it is perhaps the function which deserves the most attention. Solidarity is felt much more easily when disasters actually occur than during contingency preparations or when development aid is being given to new or weak societies. Great efforts have been made to strengthen these functions, for example, the preparation and implementation of a new development strategy for the decade to come.

It is generally agreed that when we work for others, we are also working for ourselves. In this connection, I believe that we must develop further the concept that we have of our interdependence. This is why the solidarity currently being practised by millions of volunteers must be supported.

Emotional motivation is an extremely important element, and great efforts should be made to encourage this motivation and harmonise it with other motivations for action among the various institutions of the Red Cross.

Humanitarian law continues to be an important expression of solidarity. The Red Cross must, therefore, continue to promote it and especially to make it known, accepted and applied. The dissemination of information in this area cannot be separated from education on the basic principles of the Red Cross.

It is also important for the Red Cross to take every opportunity to assist efforts that may come from the outside, seeking to support the aims it pursues. Cooperation and even, in many cases, coordination with other organisations such as those of the United Nations system or the non-governmental organisations thus assumes particular importance.

It is of great importance that the interest of youth in the Red Cross should be encouraged so that international solidarity will continue in the coming generations.

The concept of donors and beneficiaries must be gradually erased, and international assistance should be seen as an exchange between operating and participating societies aiming at the common objective of the well-being of communities. International assistance must be given its true significance – the establishment of a lasting bond between individuals, communities and national societies.

### **Protection of Disaster Victims**

The principle of international solidarity has most definitely been an important foundation for the considerable development of disaster relief action during the past decade, which has been closely linked with the population expansion as well as the improvement in current communications media.

Unfortunately, two types of obstacles are encountered in the organisation of relief action: first, there are technical and logistic obstacles such as obtaining the necessary funds, food and other basic needs, as well as distributing them, particularly at the scene of the disaster. Second, there is a completely different category of obstacles of a political nature: some States refuse to recognise the fact that a disaster has occurred on their territory and show some reluctance to accept or even oppose the assistance offered to them by the international community. It is quite clear that these two obstacles are based on the principle of sovereignty of State and that the question arises as to what extent this principle remains acceptable in a progressive vision of inter-State relations when the lives of thousands and even millions of human beings are in jeopardy.

The intergovernmental and non-governmental organisations have tried to find pragmatic solutions to these problems. A consensus emerged recognising the validity of this approach to the problem, an approach that should be maintained. Nevertheless, the possibility of formulating universal treaties deserves exploration, even though we are not at all sure that immediate results can be achieved in that direction. That is why, in such situations, certain principles of international humanitarian law could be developed now:

- (a) States have the obligation to assist other members of the international community which have been victims of natural disasters;
- (b) a State affected by such disasters should not refuse international assistance, nor should it consider this assistance to be interference in its internal affairs; and
- (c) any State that is the victim of a disaster should facilitate immediate relief efforts by lifting all obstacles that could prevent or slow down relief operations organised by the international community.

### **Protection of the Child**

Seeking protection of the child is one of the major human rights concerns. It is especially urgent because reality has shown that millions of children die each year because they are unable to satisfy their most basic needs.

The various proposals seeking to establish a statute particular to the child or, even better, a convention on international protection of the child, are laudable efforts; however, they give rise to some difficulties. The draft Convention being considered by the United Nations Commission on Human Rights has been widely discussed. It defines the child according to age

and formulates a series of provisions concerning the State's responsibility in the protection and care of the child; reaffirms the basic role of the family, the child's natural environment; grants the child the right to express his opinion on matters concerning him; and emphasises the need to protect the child against harmful influences.

However, several difficulties have been noted, primarily in the definition of the child and the criteria differentiating him from the adult (position of weakness, unformed judgement, etc.). However, it appears that the family should continue to play an essential role, for it conditions the healthy and normal development of the child, even though the institution of the family is not defined in international law.

But in this particular area, the State must continue to play a leading role in securing the satisfaction of the child's material needs and defending the social values the State embodies: the right to health, education, free choice of values, etc.

Emphasis must also be placed on obstacles which are due basically to differences in the level of development of societies. Thus, on this point, particular mention was made of the problem of the child and the communications media, the threat of recruitment into the armed forces, etc.

The view was expressed that the Convention should contain additional provisions prohibiting the application of the death penalty to persons under the age of 18 years and to pregnant women or to mothers of young children dependent on their mother and prohibiting the conscription or recruitment into the armed forces of children under the age of 15 years. It was also observed that a well-functioning reporting system is of the greatest importance in the effective implementation of a convention.

These were, in essence, the proposals put forward and the difficulties to which they gave rise.

But what was emphasised above all was the fact that it is not enough to proclaim the rights of the child: they must also be guaranteed.

So far as the sovereign State is concerned, it remains an open question whether international solidarity will be able to ensure increased protection of children in the future.

### **Disarmament and Control**

The unbridled arms race all over the world is the most senseless aspect of a demented humanity.

The greatest pressure must be brought to bear on all governments to make them finally take concrete and serious disarmament measures and devote the enormous sums that would be saved to the most urgent needs of peoples; to the struggle against hunger, disease, abject poverty with all its consequences and the serious damage to human dignity which results.

So far as weapons are concerned, the allegations of the use of biological and chemical weapons, like accusation of genocide, are so serious that it is absolutely necessary to make the greatest possible effort to establish the truth about these issues. The world must no longer be able to say, as it did after World War II, that it "didn't know". Confronted with allegations of such serious crimes, we must do everything to discover the truth, for we must know in order to know how to act and to put an end to any such crimes.

The importance of the current Diplomatic Conference on Weapons was emphasised as a significant step in the development of international humanitarian law applicable in armed conflicts. It is to be hoped that progress in this area will encourage the international community to take the further and essential step of declaring the use of mass destruction leading to the indiscriminate taking of human life as contrary to international law.

### **Protection of Refugees**

The very system of international protection of refugees is based on the spirit of international solidarity. The reason being that the plight of the refugee affects the universal conscience. Refugee problems are of an international character and dimension and require solutions on a global scale. International solidarity has constantly been affirmed, especially

recently, as the guiding principle of international co-operation, that is, of the method of application of this solidarity. International solidarity has two basic aspects: protection of refugees and assistance to States in securing the well-being of refugees. This is especially obvious in the current crises in Africa and Asia, which can be resolved, gradually, only through concerted international action, more widespread than ever before, corresponding to the current dimensions of the refugee situations. However, several problems, several aspects of the refugee problem have not been solved or adequately solved. Although international action is increasingly being taken on behalf of refugees and displaced persons, the question arises whether the category of "refugee" should be extended, perhaps more in practice than in the actual legal sphere.

The other basic aspect, asylum, has not been satisfactorily settled, except for one legal instrument of regional scope. This situation must be changed through complementary regional arrangements, unless a universal consensus can be reached despite the difficulties. This consensus could be limited to a few basic elements, such as the principle of non-refoulement.

Large-scale refugee situations will probably continue to arise in the near future, requiring a considerable effort at international co-operation, not only in the area of protection but also in the closely complementary area of assistance.

Improvement of the instruments of protection and dealing with many other practical aspects of international co-operation will require a deepening and intensification of the spirit of solidarity that must remain the basic principle of international work on behalf of refugees.

### **Political Detainees**

The lack of a definition of political detainees makes it difficult to express international solidarity in this area. Nevertheless, a universal demonstration of international solidarity should be possible with respect to the material and psychological conditions in which all prisoners are detained, which should always be in conformity with human dignity.

Ideally, the concept of political crime should disappear and, together with it, the all-too widespread phenomenon of political prisoners of conscience.

Torture, involuntary disappearances and other forms of ill-treatment represent the same of all mankind; nothing excuses or justifies them and methods to end them must be systematically developed, in particular, the use of public opinion to bring pressure to bear on the responsible authorities and the improvement of mechanisms of control.

Side by side with the development of international law in this area, the main effort should be directed to ensuring effective respect for the existing rules, which begins with better knowledge and, therefore, better dissemination of international law, particularly within governments.

### **Conclusion**

Solidarity is the guiding principle underlying international humanitarian action; it arises from awareness of the fact that the main humanitarian problems of our time are international in their causes, nature and dimension; it requires peoples and States to make concerted efforts to secure man's physical integrity and dignity, as well as respect for his other fundamental rights, individually and collectively, at all times and particularly under exceptionally difficult circumstances. There is no doubt in my mind that these efforts will contribute to a better understanding and strengthening of the concept of international solidarity.

As was remarked during the Congress, international solidarity can be expressed as common humanity. If common humanity can also be expressed as common sense, the case for common action accords both with morality and self-interest.

## **Round Table on the Protection of Refugees in Armed Conflicts and Internal Disturbances**

*San Remo, Italy, 8 – 11 September 1982*

### Conclusions

The Round Table, deeply concerned by the increasing frequency and scale of the massive flows across frontiers of civilians and civilian populations seeking refuge which are mainly a result of armed conflicts of an international or internal character and civil strife:

BELIEVES that many of these flows could be diminished or largely avoided if human rights in their collective and individual dimensions and the provisions of the international humanitarian law instruments are scrupulously observed in regard to these persons;

DEPLORES the fact that in many situations where such persons are forced to cross frontiers their basic rights and elementary considerations of humanity are also not observed and are even grossly disregarded;

STRESSES that where the lives or fundamental well-being of persons are at stake, they should be admitted and allowed to remain, in accordance with the principle of non-refoulement, until the circumstances which gave rise to their flight have ceased to exist. In their country of refuge, they should enjoy basic human rights and should be treated, without discrimination as to race, religion or country of origin, as persons whose tragic plight requires special understanding and sympathy;

DEPLORES the fact that in many cases such persons are being subjected to inhuman attacks carried out by military forces, resulting in death or grievous suffering to large numbers of innocent people;

IS DEEPLY CONCERNED that the countries or parties involved frequently use refugee situations and the refugees themselves to promote their military or political objectives. In so doing, they expose refugees and surrounding populations to serious physical danger;

BELIEVES that the existing instruments and principles of international humanitarian law, including those relating to the status of refugees should form the basis of the protection of such persons;

URGES the earliest possible ratification of, or accession to, such instruments by all States;

EMPHASISES the obligation to implement fully and to observe scrupulously the provisions of such instruments;

STRESSES that even where a State is not yet a party to such instruments, it is, nevertheless, bound by those of its provisions which embody general or customary rules of international law;

DRAWS ATTENTION to the obligation to respect the fundamental principles governing the relations of States contained in such instruments as the Charter of the United Nations and the Declaration of Principles of International Law relating to Friendly Relations;

CONSIDERS that the international community should examine what further measures are necessary to ensure the better protection of victims of armed conflict situations, by such means as the clarification and elaboration of principles of refugee law for the protection of persons compelled to leave their country because of armed conflict. Such measures, following the model of the 1969 OAU Convention, should include the implementation of such principles as that:

- 1) "refugee" should be deemed to include persons in regard to whom the United Nations High Commissioner for Refugees is competent under the Status of his Office and also every person who, owing to external aggression or occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality;

- 2) the granting of refuge or asylum is a peaceful and humanitarian act and that, as such, cannot be regarded as unfriendly by other States;
- 3) every refugee should abstain from subversive activities;
- 4) States shall undertake to prohibit refugees residing in their respective territories from attacking another State;
- 5) countries of refuge or asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

STRESSES that victims of armed conflict situations should be allowed to seek and receive the protection and assistance of competent international bodies. These bodies should be given access to such persons and the possibility of exercising fully their functions of international protection and assistance, and should be allowed to supervise the well-being of such persons in reception and other refugee centres;

NOTES that international solidarity should be seen as applying to all aspects of refugee situations, including the defence of the rights, safety and well-being of refugees, support for States in protecting and assisting refugees, the search for satisfactory durable solutions and the support of international and national bodies with responsibilities for protection and assistance;

EMPHASISES the importance in the case of refugee movements of obtaining early satisfactory solutions, particularly that of voluntary repatriation where that is possible, or, where that is not possible, settlement; and

URGES that States or international organisations, at the universal or regional level, after giving urgent consideration to the serious problem of refugees in situations of armed conflict or civil strife, should adopt all such measures as are necessary for the protection and assistance of such persons and for obtaining permanent solutions to the refugee problem.

**9<sup>th</sup> Round Table on Current Problems in International Humanitarian Law:  
Physical Safety, The Activities of Refugees and National Security**  
*San Remo, Italy, 7 – 10 September 1983*

Conclusions

RECALLING its Conclusions on the Protection of Refugees in Armed Conflicts and Internal Disturbances adopted at its 8<sup>th</sup> Round Table on Current Problems in International Humanitarian Law in San Remo, 8-11 September 1982;

NOTING that the above Conclusions were directly relevant to problems of physical safety, activities of refugees and national security in the refugee situation;

CONSIDERING that the problems of safety, activities of refugees and national security required further urgent examination;

CONCLUDED that:

1. in order to deal adequately with a refugee problem, including such of its manifestations as affect physical safety and national security, it is necessary to deal with the problem as a whole. This entails dealing with causes, manifestations and solutions, and understanding the inter-relationship of these basic aspects;
2. the general response to a refugee problem, particularly one arising from a large-scale influx, should be directed, therefore, not only to protecting and assisting refugees but also to every other aspect of the problem. This includes both the relationship of individuals to States and the relationship of States to each other. It includes not only the intermediate aspects of protection and assistance but also the aspects of durable or permanent solutions, prevention and causes (including related aspects, such as responsibility and liability). For example, armed attacks on refugee camps are rarely the starting point of a refugee problem: they usually follow events or circumstances which gave rise to the refugee flow. A satisfactory, lasting solution to the problem of armed attacks, therefore, may require a solution to the basic problem represented by a refugee situation. This approach is without prejudice to the question of the proper sphere of competence of individual institutions charged with responsibility for certain aspects of a refugee problem;
3. the issue of the responsibility of the country of origin for a refugee situation should be a fundamental element in determining the appropriate overall response, particularly in regard to a durable or permanent solution. It would be a grave distortion of the purposes and principles of refugee law, rightly conceived, to see them as unrelated to general issues of human rights and humanitarian law and to the responsibilities of statehood generally. Obligations in regard to a refugee problem, including those relating to the eventual obtaining of conditions necessary for a satisfactory solution, may devolve also on the refugee themselves and on the country of asylum of refuge, as well as on other States, and on the competent international organisations;
4. the progressive development of refugee law through the elaboration of an appropriate and comprehensive international instruments is required to define more adequately the rights and obligations of all the various parties to a refugee situation and to obtain a satisfactory overall response from the international community as a whole;
5. voluntary repatriation is, in principle, the best solution, all parties to a refugee situation, therefore, should co-operate, in accordance with their international obligations, to make possible return to the country of origin and to avoid any actions which worsen the refugee problem. Such return, however, should be voluntary, and should normally take place after there has been a fundamental change in the circumstances which gave rise to the refugee situation;
6. in a general scale of values and priorities, the avoidance of conditions which could give rise to refugee situations should be considered as the first humanitarian priority. The question of preventive measures, while difficult and complex, requires continued urgent and careful study by the international community, particularly in the context of improved international

- co-operation to avert or to put an end to such occurrences as the grave and systematic violations of human rights, and breaches of the peace;
7. the absence of adequate international arrangements for the protection of certain categories of refugees, particularly the Palestinian refugees, is a matter of serious concern, and appropriate arrangements for their better protection should be made by the international community as soon as possible;
  8. serious problems of physical safety include:
    - (a) bombardments, and armed attacks on refugee camps and settlements;
    - (b) physical attacks, including piracy;
    - (c) "refoulement";
    - (d) failure to rescue at sea;
    - (e) location of refugee populations close to the borders with countries of origin, either as "buffer zones" or as screens behind which military activities can be conducted;
    - (f) abductions;
    - (g) disappearances; and
    - (h) exploitation and abuse of women and children.
  9. disputes between States arising out of a refugee situation should be settled peacefully, in accordance with the purposes and principles of the United Nations Charter and of other relevant international instruments;
  10. the State of asylum or refuge should take all measures that are within its power to ensure that refugees within its territory do not commit acts engaging its responsibility because of their wrongful nature;
  11. refugees should conform to the laws and regulations of the country of asylum or refuge as well as to the measures taken by that country for the maintenance of public order and national security;
  12. laws, regulations and measures taken for the preservation of public order and national security should not infringe fundamental rights and freedoms from which no derogation is permissible;
  13. consideration should be given, in the context of refugee protection, to the formation of a United Nations or regional peace-keeping force for the suppression of piracy outside territorial waters;
  14. urgent attention should continue to be given to the serious problem of armed attacks on refugee camps and settlements and to the international consideration of this problem, especially that given recently in the Executive Committee of the UNHCR Programme;
  15. here there should be a strengthening of the responsibilities and efforts of international and national bodies and of individuals in the protection of refugees, and greater use should be made of the means of public information and education;
  16. further consideration should be given to the general question of responsibility and liability (including compensation). The International Court of Justice has advised that injury or damage to UN personnel or property may entitle the UN to seek reparation from the responsible State; it should be examined whether the UN can seek reparation in regard to persons who are placed under the protection of a UN body, particularly those who come within the protection mandate of the UNHCR; and
  17. consideration should be given in cases of protection problems to the possibility of having recourse either to the judicial function of the International Court of Justice - for example, under Article 38 of the 1951 United Nations Convention relating to the Status of Refugees - or to an advisory opinion of the Court.

**10<sup>th</sup> Round Table on Current Problems in International Humanitarian Law: The Treatment of Refugees, with Particular Reference to the Problem of Detention**  
*San Remo, Italy, 17 – 20 September 1984*

Conclusions

**Introductory Note**

The Conclusions were commended for the consideration of Governments and International Organisations by the participants of the 10<sup>th</sup> Round Table on Current Problems of International Humanitarian Law which was held by the International Institute of Humanitarian Law in San Remo from 17-20 September 1984.

They stemmed from a consideration by the Round Table of a report of a Working Group convened by the Institute under the auspices of the United Nations High Commissioner for Refugees which met in Florence from 3-6 June 1984. The report and the background paper prepared for the Working Group will shortly be published separately by the Institute.

**Conclusions**

NOTING with approval the Report of the Working Group on the Treatment of Refugees with Particular Reference to the Problem of Detention, convened in Florence from 3-6 June 1984 by the International Institute of Humanitarian Law and held under the auspices of the Office of the United Nations High Commissioner for Refugees;

CONCERNED that detention and similar measures taken in regard to refugees and asylum-seekers constitute an increasingly serious problem in many parts of the world;

STRESSING the need for the special situation of refugees and asylum-seekers to receive greater attention by governments and governmental authorities;

RECALLING that relevant international instruments state that no-one shall be subjected to arbitrary detention;

EMPHASISING the importance of respect for human rights and applicable humanitarian rules;

COMMENDS the following observations and conclusions for the consideration of governments and international organisations;

1. The automatic or indiscriminate detention by States, without valid reason, of refugees and asylum-seekers who are under their jurisdiction is at fundamental variance with the notion of protection. The detention of refugees and asylum-seekers should only be resorted to as an exceptional measure and should only be maintained for as long as strictly required by the exigencies of the situation.
2. Entry in search of refuge on account of persecution, armed conflict or other event seriously disturbing public order does not constitute an unlawful act. Detention in such circumstances solely on the ground of illegal entry or presence is therefore unjustifiable.
3. In the case of individual asylum-seekers, a reasonable initial period of deprivation of liberty may be unavoidable to establish identity and the *bona fide* nature of the asylum claim. Detention should otherwise only be envisaged in cases where action is being taken with a view to lawful deportation or extradition and where there are serious grounds such as criminal association or intent or a reasonable apprehension that the person is likely to abscond.
4. In all cases, detention of refugees or asylum-seekers should be subject to administrative re-examination and judicial review and in accordance with national law and relevant international obligations. All such persons should be notified of their legal rights in a manner that they can understand and they should also have access to legal counsel and to a representative of the United Nations High Commissioner for Refugees. Where justified, they should be granted provisional liberty on suitable conditions.

5. The observations in paragraphs 3 and 4 do not affect the question of detention in cases of arrest in general criminal proceedings or administrative detention arising from other provisions of national law which are not in violation of international law
6. In the situation of large-scale influx, restrictions on freedom of movement might also be unavoidable, but should similarly be strictly limited to the requirements of the circumstances. The conditions of such restrictions, however, should in no case fall below the basic minimum standards identified by the Executive Committee of the United Nations High Commissioner for Refugees Programme at its 32<sup>nd</sup> Session in 1981
7. In order to ensure that they are not exposed to unjustified measures of detention, it is essential that refugees be identified as such. In situations of large-scale influx where individual determination of status may not be feasible, group determination should be made. In the case of individual asylum-seekers, appropriate procedures for the determination of refugee status should be established. Such procedures should be as expeditious as possible so as to ensure that any measures of detention are not unduly prolonged.
8. Measures of detention should not be applied in a manner which violates the principle of non-discrimination, nor should detention be resorted to in order to deter further refugee movements.
9. Refugees and asylum-seekers should never be used as a buffer in cases of armed conflict or confined to areas where their physical safety is threatened.
10. In cases of detention, refugees and asylum-seekers whose status has not yet been determined should continue to benefit from the principle of non-refoulement and their human rights should be respected. Refugees and asylum-seekers should not be subject to forced or compulsory labour. Whenever possible, national authorities – if necessary with international assistance - should provide suitable opportunities for work and education, as well as conditions which respect their religious and cultural identity and personal dignity.
11. Competent national authorities should inform UNHCR promptly of all cases of detention of refugees and asylum-seekers and allow access to such detainees; they should also permit UNHCR to supervise the well-being and protection of the inhabitants of refugee camps. UNHCR, intergovernmental agencies and other non-governmental agencies concerned with the welfare of refugees should be afforded an effective role based upon close co-operation with States of refuge.
12. International solidarity and co-operation are of paramount importance in refugee situations. The effective implementation of the principle of solidarity may facilitate the solution of the problem of detention of refugees, in particular in cases of large-scale influx.

All States, therefore, should promote appropriate solutions by way of voluntary repatriation, local integration or third country resettlement.

**13<sup>th</sup> Round Table on Current Problems in International Humanitarian Law:  
Family Reunification**  
*San Remo, Italy, 6 – 10 September 1988*

Conclusions

The Round Table organised in San Remo from 6 to 10 September 1988 under the auspices of the International Institute of Humanitarian Law,

Recalling previous principles and conclusions adopted by the Institute, in particular the 1980 Body of Principles for the Procedures on the Reunification of Families and the 1986 Conclusions on Family Reunification adopted in Florence,

Having noted the respective mandates in the field of family reunification of international organisations such as the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and the Intergovernmental Committee for Migration, and having recognised their activities undertaken in this field,

Having examined, in a broad context, the subject of family reunification with regard to all categories of persons affected by family separation, including refugees, migrants, victims of armed conflict situations, asylum-seekers and other persons who have compelling reasons to leave their homeland or to return to it,

Acknowledging the improvements which are taking place in family reunification policy and practice of certain sending and receiving States,

Noting with satisfaction the purposeful dialogue which was held among the participants, including government officials, representatives of international organisations and of non-governmental organisations,

Reached the following conclusions:

1. The humanitarian principle of family reunification is firmly established in international practice.
2. This principle is closely linked to the right of the unity of the family which recognises that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. It is at the same time related to the right for everyone to leave any country, including his own, and the right to return to his country, as they are enshrined in existing international instruments.
3. While these rights and principles apply to all circumstances of family separation, there exist different situations where families need to be reunited, and solutions must be reached in accordance with relevant international law and the requirements of the particular situation.
4. The principal responsibility for implementing family reunification rests with States and this responsibility can best be discharged by means of a constructive dialogue and efficient humanitarian co-operation among the countries concerned.
5. The political will of States to respect and facilitate family reunification is therefore of decisive importance and represents the key factor for the removal of the legal, administrative and practical obstacles to family reunification. In this respect, facilitation of family reunification through orderly departure and reception arrangements should be encouraged; if needed, co-operation with competent international and national organisations should be established. Similar arrangements should be made to facilitate family reunification through voluntary return.
6. The development of domestic laws providing rights of family reunification should be promoted by all States.
7. Appropriate priority should be given by receiving States to persons seeking to enter their territory with a view to family reunification. Defining the legal status of persons admitted by a State for family reunification is within the competence of that State, and the consequent granting of admission should not be interpreted as an unfriendly act by other States. Consideration should be given to this aspect whenever orderly departure and reception arrangements are envisaged.

8. The definition of the family should be applied in a humanitarian spirit and take account of different cultural and social factors.
9. Sending and receiving States are called upon to take all necessary measures to facilitate family reunification, *inter alia* by:
  - (a) establishing appropriate national legislation which recognises the humanitarian principle of family reunification, regulates corresponding procedures and includes a “humanitarian clause” for cases of exceptional hardship;
  - (b) assisting in the identification and tracing of separated family members;
  - (c) supplying full information on family reunification procedures to the persons concerned;
  - (d) dealing with applications for exit and entry visas as liberally and expeditiously as possible;
  - (e) facilitating the exchange of news and of family visits when permanent family reunification is not intended;
  - (f) whenever possible, helping to meet transportation costs involved; and
  - (g) whenever possible, adopting measures of assistance in the field of housing and employment so as to ensure that their absence in the receiving State be not an impediment to family reunification.
10. The importance of the efforts of non-governmental organisations to facilitate family reunification is underlined. It is acknowledged that National Red Cross and Red Crescent Societies have a special role to play in this field in view of their activities for the exchange of family news, the tracing of separate family members and their counselling.
11. Governments are encouraged to continue and increase co-operation with UNHCR, ICRC and ICM, in particular, in situations where orderly family reunification arrangements require the intervention and services of such third parties.
12. The necessity to create a better understanding of the right of the unity of the family, the right to leave any country and to return to his country, and the humanitarian principle of family reunification is acknowledged, and the need for a broader dissemination and constant advocacy of these rights and principles emphasised.
13. The International Institute of Humanitarian Law was commended for organising its 13<sup>th</sup> Round Table on the theme of family reunification. The initiative to promote this humanitarian dialogue among States and competent international and national bodies was highly welcomed, in particular, in view of current problems still affecting large numbers of separated families in many parts of the world.

**14<sup>th</sup> Round Table on Current Problems in International Humanitarian Law:  
Declaration on the Protection of Refugees, Asylum Seekers and Displaced Persons**  
*San Remo, Italy, 12 – 16 September 1989*

Declaration

DEEPLY CONCERNED about the plight of refugees and displaced persons;  
RECOGNIZING the necessity of applying humanitarian principles and  
securing the full observance of fundamental human rights in refugee situations;  
COMMENDING the Office of the United Nations High Commissioner for Refugees for  
pursuing the development of international refugee law,  
the participants of the 14<sup>th</sup> Round Table on current problems of international  
humanitarian law, inspired by compelling humanitarian sentiments;  
Declare that:  
In situations not covered by international Conventions in force, refugees, asylum-  
seekers and displaced persons are nevertheless protected by the general principles of  
international law, by the humanitarian practices of international organisations accepted by  
States, by the principle of humanity and by the rules on basic human rights.

**15<sup>th</sup> Round Table On Current Problems in International Humanitarian Law:  
Refugee Day**  
*San Remo, Italy, 4 – 6 September 1990*

Conclusions

1. The continuing complexity of the refugee problem calls for urgent practical action on the part of governments and concerned inter-governmental and non-governmental organisations. Such action should be directed towards:
  - (a) attenuating the causes of refugee movements through economic and social development assistance aimed at creating in countries of origin a better political climate and promoting the maintenance of human rights standards;
  - (b) the provision of appropriate solutions for refugees in their regions of origin in order to reduce the pressure of transcontinental movements; and
  - (c) creating in countries of origin, conditions favourable to the solution of voluntary repatriation.
2. Solutions should not at present be primarily sought in the conceptual area, by seeking to modify or adapt recognised protection principles. Such an approach would involve a serious danger of eroding established protection standards and principles, as has been the case in recent years.
3. It is noted with satisfaction that the importance of practical – as distinct from conceptual – solutions is now receiving increasing recognition on the part of governments. Results will, however, probably only become apparent in the medium or longer terms. In the meantime it is of utmost importance that recognised protection standards and principles be fully respected.
4. The complexity of the current problem is compounded by the fact that it is connected with more general issues involving the movement of population e.g. for migration purposes. A sustained effort on the part of governments is required to deal with each type of population movement – including migration – outside the refugee context. This will facilitate a surely humanitarian approach to refugee problems without regard to extraneous, migration factors.
5. A sustained effort should also be made to secure accessions to the 1951 Convention and the 1967 Protocol by countries of first asylum confronted with large-scale refugee problems which are not yet parties to these instruments. Such accession would be an important factor in strengthening international burden-sharing in regard to asylum and would thus also contribute to the better observance of protection principles.
6. There is an essential need for governments to ensure that asylum practices are fully adequate to guarantee that no person is returned to a country where he may be exposed to persecution or serious danger. In particular, every person seeking asylum should be granted temporary admission in order to enable his claim to be duly considered. It is important that governments give their full support to UNHCR in its efforts to promote such correct asylum practices and to enable it by every means to accomplish its full mandate including all types of durable solutions.
7. The introduction by various governments of visa requirements for certain nationalities and the imposition of sanctions on airline companies for carrying improperly documented passengers were noted. While governments were entitled to adopt measures of this kind in the exercise of State sovereignty, the indiscriminate application of such measures was a matter of serious concern in so far as it could prevent potential asylum seekers from addressing themselves to the competent authorities in order to request asylum.
8. An appropriate application of the refugee concept defined in the 1951 Convention and the 1967 Protocol would probably be adequate to deal with the majority of today's refugee situations. A broader refugee concept like that contained in Article I (2) of the 1969 OAU Refugee Convention and in paragraph 3 of the 1984 Cartagena Declaration on Refugees

nevertheless provides an important tool to States and to UNHCR in those cases where the applicability of the 1951 Convention and the 1967 Protocol is not clearly established.

9. The situation of internally displaced persons is in many ways similar to that of persons obliged to leave their country of origin as refugees. The question of internally displaced persons should therefore be the subject of further detailed study on the initiative of the International Institute of Humanitarian Law with the view to formulating appropriate principles for international action leading to adequate solutions.
10. In the majority of countries there is still insufficient realisation in public opinion that the refugee problem is one calling for special concern. Sustained efforts should be undertaken to promote – by appropriate information - a better knowledge and understanding of the refugee problem in the context of wider efforts to combat racism and xenophobia.
11. Finally, there is an essential need for an ongoing dialogue between academic institutions, inter-governmental agencies, non-governmental agencies and governments in regard to asylum and refugee problems. Such a dialogue should be aimed at promoting an awareness on the part of governments at the highest level that fundamental solutions to the refugee problem can only be obtained through a large scale concerted effort in the field of economic and social development leading to political stability and full respect for individual and collective human rights in countries – or potential countries – of origin of refugee flows.

**17<sup>th</sup> Round Table on Issues of International Humanitarian law**  
*San Remo, Italy, 2 – 4 September 1992*

Concluding Statement by the Chairman

Dear Friends,

Before presenting to you a kind of sum-up of our Round Table, I would like first of all to thank our rapporteurs and Experts who took an active part in the debate. I would also like to add that, thanks to UNHCR, ICRC, the Federation of Red Cross and Red Crescent Societies, the International Organization for Migration, to some Governments (Italy, France, Switzerland, Sweden, Finland), as well as to some Red Cross Societies (Sweden, Monaco, Finland, Italy, Norway), we had full support and the necessary facilities to organise this Round Table.

This Round Table differs from the previous ones as it concentrated on one subject only, a very complex subject of great current importance.

We have tried to throw light on its different aspects to follow new developments and to identify obstacles in order to see what should be done, and what it is possible to do in the future.

This has been achieved through a frank and open discussion at a high professional level, from various points of views and aspects.

It was generally recognised that humanitarian assistance was becoming an issue of great importance because of the recent developments in many parts of the world which had given rise to grave human suffering. There was a great diversity in the situations which could arise and the specific cases of Iraq, Somalia and former Yugoslavia were not necessarily typical.

Certain general conclusions coming out of the debate could be drawn. It was the view of all participants that international humanitarian law regulates in detail all basic questions related to humanitarian assistance activities in international armed conflicts. There was, however, a need to ensure that the rules of international humanitarian law were fully and effectively applied in all armed conflict situations.

In non-international armed conflicts, there were few legal rules, and in mixed situations problems arose as to which rules were applicable.

In non-armed conflict situations, the international community is at present confronted with a lack of legal rules for regulating questions of humanitarian assistance.

There have, however, been a number of positive trends. It was now clearly recognised that human sufferings arising in situations of this kind were of concern to the international community. Moreover, serious violations of human rights could no longer be justified on the basis of State sovereignty.

Finally, when taking enforcement action under Chapter VII of the United Nations Charter, the Security Council had made specific arrangements for the provision of humanitarian assistance. These developments provided an encouraging basis for future efforts to develop international law in this area.

The role of ICRC in the development and implementation of humanitarian assistance on the basis of international humanitarian law was recognised by all. This law could be interpreted as implying a right to humanitarian assistance. The various activities of UNHCR in providing or arranging for humanitarian assistance to refugees and internally displaced persons were noted with satisfaction. The impact of these activities on the further development of the law was duly noted and encouraged.

Another important sphere of actions, which was thoroughly discussed was the role of the UN system, especially in the light of various recent experiences, such as those in Iraq, Somalia and ex-Yugoslavia.

The new role of the UN reflected the increased responsibility of the international community in the field of humanitarian assistance. The creation of the Department for Humanitarian Affairs within the UN system was commended by all participants and it was

expected that the Coordinator for Humanitarian Activities and his Department would develop this increased role of the UN.

In connection with the recent practice of the UN, the Round Table debated especially the question whether this practice was in conformity with existing law, whether it was contrary to the law, or whether it contributed to the development of new legal rules. The general view was that this practice was in conformity with the existing law and also opened new horizons for its further development.

Since large-scale violations of human rights leading to serious human sufferings had now become a matter of concern to the international community, the United Nations had been called upon to intervene in various ways, if necessary with the use of force, for humanitarian purposes.

Some caution was voiced there. Even if resorted to for strictly humanitarian purposes, the use of force could lead to actions contrary to established humanitarian principles and thus create additional humanitarian problems. There was also a danger that force might be used for other purposes, notably those of a political character. The view was also expressed that the use of force to protect convoys transporting humanitarian assistance was in principle undesirable, but might have to be accepted for purely pragmatic humanitarian reasons.

The participants unanimously expressed the view that all humanitarian actions, including those involving the use of force, must be carried out in conformity with the principles inherent in any humanitarian activity, namely the principles of humanity, neutrality and impartiality.

Out of the discussion, in particular as regard the role of ICRC and the content of international law, on the one hand, and the new role of the UN and UNHCR, on the other hand, certain basic conclusions could be drawn:

- (1) Victims in emergency situations should have the right to demand and to receive humanitarian assistance, in particular if their life, health or physical integrity are endangered;
- (2) Authorised international organisations should have access to the victims, the right to offer humanitarian assistance and to extend it;
- (3) Sovereignty remains the basis of international humanitarian assistance actions; however, in case of severe human suffering and the existence of major obstacles to the provision of assistance, the international community should have the right, through its various organs, to intervene to protect and assist the victims.

From the examination of these and related questions, it could be concluded that there were two “parallel” bodies of legal mechanisms for dealing with the question of humanitarian assistance.

There was, on the one hand, a body of detailed law regulating the provision of humanitarian assistance in armed conflict situations. At the same time, the UN Security Council had taken action relating to humanitarian assistance in the context of enforcement measures under Chapter VII of the Charter. If, however, a situation calling for humanitarian assistance did not involve a “threat to international peace and security”, and was not an armed conflict situation, there was at present no basis on which the UN could act and General Assembly Resolutions, particularly Resolution No. 43/131 of 1988, concerning humanitarian assistance in the case of natural disasters did not permit action going beyond the traditional notion of State sovereignty. It was important that future action by the UN in this area should not be of a piecemeal nature and should be harmonised with existing rules relating to armed conflict situations.

It was also recognised that there is a need to strengthen the UN disaster response system.

The role of the NGOs was also emphasised, as independent bodies based on humanitarian principles. They should continue to be important factors in extending humanitarian assistance.

It was recognised that a need for humanitarian assistance implied that an abnormal situation had reached an advanced stage. It was therefore essential to address the causes of such situations with a view to taking appropriate preventive action. In this connection, the work of the meeting of experts on "Prevention", convened by the International Institute of Humanitarian Law from 18 to 20 June 1992, under the auspices of UNHCR, was of particular importance.

During the discussions, participants underlined the importance of increased dissemination of the rules of international humanitarian law which should be drawn to the attention of various target groups as an element of prevention.

The participants unanimously agreed that the point of departure for a further development of international law on humanitarian assistance should be the rules and principles which already existed and that the rules relating to humanitarian assistance in armed conflict situations could provide an appropriate example. It was also felt that such a development of the law could be promoted within the existing legal framework. While it would, of course, be desirable to draw up an International Convention defining specific legal criteria, this would not be realistic at the present stage.

In the meantime, it would be desirable as a first step to work out a body of Guiding Rules which could, if appropriate, be used in discussions on a future international instrument.

The participants of the Round Table expected that the International Institute of Humanitarian Law would continue to be concerned by this question.

The Institute had already prepared some draft Guiding Rules on the question of humanitarian assistance, including the right to humanitarian assistance. At the Round Table, a proposal was also made for a Guide of Conduct for the use of non-governmental organisations in disaster relief.

On the basis of the reports presented to the Round Table, of several proposals made and the views expressed during the discussion, the Council of the Institute will examine the various proposed texts, introduce any necessary changes or adaptations and decide on how to proceed further in this matter.

\* \* \* \* \*

### Conclusions

The XVII Round Table on Current Problems of International Humanitarian Law, organised by the International Institute of Humanitarian Law (IIHL), took place in San Remo, 2-4 September 1992.

Placed under the auspices of the International Committee of the Red Cross, the United Nations High Commissioner for Refugees, the United Nations Human Rights Centre, the International Organization for Migration and the International Federation of Red Cross and Red Crescent Societies, the meeting was attended by 120 participants, including the representatives of some fifteen National Red Cross and Red Crescent Societies, academics and representatives of diplomatic missions and non-governmental organisations.

The ICRC was represented at the Round Table by Mr. Yves Sandoz, a member of the Executive Board and Director for Principles, Law and Relations with the Movement, and Mr. René Kosirnik, Head of the Legal Division and the Cooperation-Dissemination Division, together with Ms. Denis Plattner, Mr. Jacques Meurant and Dr. Pierre Perrin.

This year's Round Table was devoted to the single theme "The Evolution of the Right to Assistance".

After Dr. Enrique Syquia, President of the International Institute of Humanitarian Law, had welcomed the participants, Professor Jovica Patrnogic, Honorary President of the IIHL, introduced the Round Table's subject for discussion: he began by pointing out that the view of the new and large-scale suffering caused by recent conflicts, the responsibility of the international community for protecting and assisting victims, including that of the UN, UNHCR, the ICRC and humanitarian organisations as a whole, had considerably increased.

He then spoke of the right to humanitarian aid, the legal provisions in which it is enshrined and its application by the United Nations and humanitarian organisations, stressing the shortcomings of the law governing internal conflicts and the political and military problems raised by the notion of sovereignty, especially the problem of having access to victims.

Convinced that humanitarian aid should always be carried out in conformity with the principles of humanity, neutrality and impartiality inherent in any type of humanitarian work, he invited the participants to examine new developments in the right to humanitarian assistance both as regards the form it took, and how it was implemented. Prevention and coordination should not, he said, be overlooked.

Dr. Frank Verhagen, representative of H.E. Mr. Jan Eliasson, United Nations Under-Secretary-General for Humanitarian Affairs, referred to the complexity of issues connected with humanitarian aid and stressed the importance of coordinating international assistance during emergency situations. He hoped that the Round Table would find a way of reconciling the concept of national sovereignty with that of the right to assistance.

The meeting was honoured by the presence of Mrs. Barbara Hendricks, UNHCR Goodwill Ambassador and Honorary Member of the IIHL. Several experts put forward their opinions and suggestions concerning the problem of providing humanitarian assistance during conflict situations.

Summarised below are the reports submitted to the meeting, which were commended for their high-mindedness and the originality of their ideas.

Mr. Yves Sandoz, who opened the discussions, felt that the serious violations and irregularities observed during recent conflicts should be attributed less to the legal provisions themselves, which on the whole were satisfactory, than to their application. Experience had shown that international humanitarian law formed a well thought out and carefully balanced body of law. What needed reviewing were the practical arrangements governing relief operation and their coordination, together with the procedures for consultation and concerted action.

To this way of thinking, the main problem was that international humanitarian law enjoyed only a marginal place in international relations. The crux of the matter was to what extent world authorities were today really willing to subject themselves to a system based on international law. Despite this uncertainty, action had to be taken and courage and imagination shown, like the humanitarian organisations at present working in Somalia and the former Yugoslavia.

Another serious question came to mind: up to what point should those traditionally involved in humanitarian action expect States to provide the necessary human, financial and logistic support to cater for humanitarian needs within the framework of the system of international humanitarian law, and at what stage should they make it plain that the system was no longer working, and force the community of States to face up to their responsibilities when a situation became too much for humanitarian organisations to handle.

The system of international humanitarian law was based on the consent of States and everything must be done to convince the parties in conflict, where appropriate, to obtain their financial and logistic support. Mr. Sandoz, acknowledged that, in dramatic situations endangering thousands or even millions of lives, armed intervention (within the framework provided for in the UN Charter) could not be ruled out.

He concluded by stating that international humanitarian law could not be used as an alibi to ignore the underlying problems: poverty, illiteracy, overpopulation and the disintegration of structures. Those questions must therefore be tackled as a matter of priority if we wanted to move towards solving them and improving respect for the law.

Mr. Hans Thoolen, Chief of the Centre for Documentation on Refugees, representing Mr. Leonardo Franco, Director of International Protection, referred to Security Council decisions taken during recent conflicts and which were gradually eroding the distinction between humanitarian assistance and humanitarian intervention. One of the crucial problems facing the United Nations was how to reconcile the need for more effective international measures with the principle of sovereignty. He cited Resolution 46/182 adopted by the United Nations General

Assembly on 19 December 1991 entitled “Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations” and the guiding principles it contained on humanitarian assistance, i.e. the need for it to be provided in accordance with the principles of humanity, neutrality and impartiality. He went on to describe and assess UNHCR operations in several countries of the world to help refugees displaced both within and outside their national borders, pointing specifically to the establishment of “corridors of tranquillity” in Sudan and “zones of peace” in Angola, Ethiopia, Iraq and, most recently, in the former Yugoslavia.

He concluded by stressing that the establishment of a well-defined and internationally accepted right to assistance could be of major importance for the work of UNHCR.

Mr. Carlos Villa Durán, on behalf of Mr. Ibrahim Fall, Director of the Human Rights Centre, spoke of the right of access for humanitarian purposes during an armed conflict, and the problems involved. To exercise the right required the consent of the State (which was expected to act in good faith). In that connection, he drew attention to the provisions under humanitarian law concerning the right to humanitarian assistance and the relevant resolutions adopted by the United Nations General Assembly and the Security Council. He also pointed out that the only possibility for having recourse to force under the United Nations system was to be found in Chapter VII of the Charter (“Action with respect of threats to the peace, breaches of the peace, and acts of aggression”). The precedents established in Bosnia-Herzegovina and Somalia demonstrated the Council’s determination to resort to force, if necessary, to get aid through the victims. He concluded by commenting that, although humanitarian assistance had long been provided for in humanitarian law, the conditions governing access to victims still needed to be improved in order to render such aid more effective.

On behalf of the International Federation of Red Cross and Red Crescent Societies, Mr. Göran Bäckstrand, Adviser, International Affairs, described how the effects of natural and man-made disasters were becoming ever more complex: they were bringing about the collapse of political and administrative structures, seriously disrupting economic and social activities and leading to violence, famine, epidemics and mass population displacements. Moreover, the provision of aid was often seen as a political act.

As a result we faced, he said, a most serious humanitarian gap: since States were either curtailing their commitments for various reasons or requirements were in excess of agencies’ means, there was a growing number of vulnerable groups which the humanitarian agencies were unable to assist.

To remedy this situation, the Federation was proposing a Code of Conduct to help non-governmental organisations set a base-line of ethical and behavioural standards for their work during disasters and to improve information-sharing and cooperation between humanitarian agencies. Stressing that the prime motivation for any humanitarian response was – and must continue to be – concern to alleviate human suffering, the Code laid down a series of obligations for non-governmental organisations and a series of commitments sought from disaster-affected governments (for instance, NGOs should be granted rapid access to victims). Also specified were commitments sought from donor countries and intergovernmental organisations.

Mr. Richard Perruchoud, representing the International Organization for Migration (IOM), spoke of the relationship between the right to humanitarian assistance and State sovereignty. He believed that the main question was to determine what measures States, individually or collectively, were entitled to adopt vis-à-vis a State which no longer complied with its obligations. Could assistance be imposed upon a recalcitrant State, if necessary by force? The answer had to be in the affirmative since the purpose of supplying humanitarian assistance was to remedy a situation which threatened international peace and security.

He accordingly made the following points:

- (1) Humanitarian assistance was not an end in itself; it could not be dissociated from other measures already or still to be taken to eradicate the cause of such grievous situations.
- (2) Above all, humanitarian aid should not become an alibi for political inaction

- (3) Humanitarian assistance should not be counterproductive and undermine existing humanitarian law; for example, setting up humanitarian corridors might give combatants the impression or assurance that all kinds of excesses were permitted and/or lawful outside such corridors.
- (4) Humanitarian assistance must henceforth be systematic, as opposed to the previous empirical approach, lest it become selective and attributed solely according to subjective and/or arbitrary criteria. The adoption by the San Remo Institute of a Code of Conduct (or minimum standards of behaviour) would be an initial step in that direction.
- (5) For the international community the human being was and remained its foremost concern: the State and State sovereignty, international bodies and their mandates should not stand in the way of providing people with humanitarian assistance, but should facilitate it.

H.E. Dr. Mounir Zahran, Permanent Representative of Egypt to the Office of the United Nations in Geneva, delivered a paper on the subject of “Humanitarian Assistance and the Maintenance of Peace.” He thought that the concept of peace maintenance as defined in the Charter of the United Nations had evolved in recent years and was tending to extend the peace-keeping mandate to cover the protection needs of relief convoys and any humanitarian assistance organised or coordinated by intergovernmental and non-governmental organisations. The purpose was to restore peace and facilitate the peaceful settlement of conflicts.

He went on to analyse the experience of the United Nations in the Bosnia-Herzegovina and Somalia conflicts. In conclusion he stated, like the United Nations Secretary-General, that massacres and torture systematically carried out for racial and ethnic or religious reasons could no longer be tolerated and that the notion of sovereignty could no longer serve to shield certain acts committed by governments.

Mr. Rene Kosirnik, head of the ICRC Legal Division, spoke about the implementation of humanitarian law in terms of humanitarian assistance.

He first drew attention to the legal provisions in the Geneva Conventions and their Additional Protocols which laid down the right to humanitarian assistance and defined the conditions governing it. If provided in conformity with IHL, such assistance, which must be humanitarian, impartial and non-discriminatory, could not be considered as interference; on the contrary, it was above any such reproach.

On the practical level, he deplored the serious breaches of IHL and the fact that the humanitarian organisations’ efforts to help were continually being hampered. The way in which aid was being provided during the conflict in the former Yugoslavia and Somalia was untypical; where widespread anarchy and hazardous conditions prevailed the ICRC was prepared to accept a minimum of protection from the armed forces in order to reach the victims. However, such measures should be the exception rather than the rule.

He felt that those who played a major part in providing aid during armed conflicts should have a keener awareness of their role: it was up to States to respect and ensure respect for humanitarian law, to defend the emblem of the red cross and red crescent, to implement monitoring mechanisms and apply existing sanctions and to step up dissemination of that law, especially within the armed forces. In short, all the bodies involved should act in compliance with strict ethical rules (indeed according to the Code of Conduct proposed at the meeting).

Dr. Bernard Koucher, French Minister of Health and Humanitarian Action, noted that concern for humanitarian problems was increasingly being expressed in United Nations texts and work. He quoted a series of resolutions adopted by UN bodies, ranging from Resolutions GA 43/129 and 43/131 of 8 December 1988 on the new international humanitarian order, which endorse the role of non-governmental organisations working alongside States (whose role is “primary”) and the need to have free access to victims “in the event of natural disasters and similar emergency situations,” to Resolution SC 771 (1992) of 13 August 1992, which reaffirms that all parties to the conflict in the former Yugoslavia are bound to comply with their

obligations under international law and that persons who commit or order the commission “of grave breaches of the Geneva Conventions” are individually responsible.

Paying tribute to the work of UNHCR and the ICRC, he pointed to a change in attitude on the part of humanitarian organisations; they were becoming more actively involved and more forthright.

In his opinion, humanitarianism was an attitude which was motivating people more and more strongly, a form of action which reconciled them with their political responsibilities, and a policy – because humanitarianism was an integral part of diplomacy.

After describing how the duty to assist (making war less inhumane) and the right to assist (the right to life) had evolved, the speaker made a case for what he termed the *droit d'ingérence* – the right to intervene (preventing war), a right still to come which would be expressed by the international community’s ability to intervene without prior consent from an oppressor State. He then went on to outline a policy of prevention through diplomacy whereby international instruments would be genuinely respected, dialogue would start before war actually broke out, and the international community could send in civilian observers wherever tension was running high.

Mr. Mohamed Ennaceur, Permanent Representative of the Republic of Tunisia to the United Nations, outlined two concepts: the integration of humanitarian issues into United Nations law, and state intervention in humanitarian activities. He began by stressing the United Nations’ increasing interest in humanitarian work and pointed to the relationship thereby established between violations of the Geneva Conventions and threats to peace and international security; military intervention in implementing the right to humanitarian assistance had been a tangible expression of that relationship.

Regarding State intervention in humanitarian activities, he believed that there was an inherent danger in the tendency to subject humanitarian work to political considerations; the right to assistance might find itself bound by conditions capable of suspending it, and humanitarian action, which is supposed to be universal, would become selective and would lose its credibility for donors and recipients alike.

He, therefore, thought that the United Nations system, the State party to the Geneva Conventions and the intergovernmental and non-governmental humanitarian organisations would in future have to allocate their respective roles in such a way that the right to humanitarian assistance could be given the necessary effect, while at the same time broadening its scope and ensuring that humanitarian action retained its specific character and its independence.

\* \* \* \* \*

The following points emerged during the lively discussions initiated by each of these introductory reports:

- to be humanitarian, assistance must comply with the principles of humanity, impartiality, and neutrality;
- military intervention, even for assistance purposes, is not an assistance operation within the meaning of international humanitarian law;
- apart from very exceptional cases, humanitarian relief missions must not be of a military nature;
- by virtue of international humanitarian law, sovereignty may not stand in the way of humanitarian action when imperative needs exist;
- the law governing international armed conflicts is well developed and quite sufficient; this is not the case for non-international armed conflicts and still less so for other situations which are not covered by the Conventions; and
- guiding rules or a practical code of conduct for assistance operations would be useful.

At the closing session, Professor Patrnoic presented the conclusions of the work of the Round Table. The full text follows.

## Closing Statement by the Chairmanship

It was generally recognised that humanitarian assistance was becoming an issue of great importance because of the recent developments in many parts of the world which had given rise to grave humanitarian suffering. There was great diversity in situations which could arise and the specific cases of Iraq, Somalia, and the former Yugoslavia were not necessarily typical.

Certain general conclusions could be drawn from the debate. It was the view of all participants that international humanitarian law regulated in detail all basic questions related to humanitarian assistance activities in international armed conflicts. There was, however, a need to ensure that the rules of international humanitarian law were fully and effectively applied in all armed conflict situations.

In non-international armed conflicts, there were few legal rules, and in mixed situations problems arose as to which rules were applicable.

In non-armed conflict situations, the international community was at present confronted with a lack of legal rules for regulating questions of humanitarian assistance.

There had, however, been a number of positive trends. It was now clearly recognised that human sufferings arising in situations of this kind were of concern to the international community. Moreover, serious violations of human rights could no longer be justified on the basis of State sovereignty.

Finally, when taking enforcement action under Chapter VII of the United Nations Charter, the Security Council had made specific arrangements for the provision of humanitarian assistance. These developments provided an encouraging basis for future efforts to help international law in this area.

The role of the ICRC in the development and implementation of humanitarian assistance on the basis of international humanitarian law was recognised by all. This law could be interpreted as implying a right to humanitarian assistance. The various activities of UNHCR in providing or arranging for humanitarian assistance to refugees and internally displaced persons were noted with satisfaction. The impact of these activities on the further development of the law was also duly noted and encouraged.

Another important sphere of action which was thoroughly discussed was the role of the UN system, especially in light of various recent experiences, such as those in Iraq, Somalia and the former Yugoslavia.

The new role of the UN, reflected in the increased responsibility of the international community in the field of Humanitarian Affairs within the UN system, was commended by all participants and it was expected that the Coordinator for Humanitarian Activities and his department would develop this increased role of the UN.

In connection with recent UN practice, the Round Table in particular debated whether this practice was in conformity with existing law, whether it was contrary to the law, or whether it contributed to the development of new legal rules. The general view was that it was in conformity with the existing law and also opened new horizons for its further development.

Since large-scale violations of human rights leading to serious human suffering had now become a matter of concern to the international community, the United Nations had been called upon to intervene for humanitarian purposes in various ways, if necessary with the use of force.

Some caution was voiced here. Even if resorted to for strictly humanitarian purposes, the use of force could lead to action contrary to established humanitarian principles and thus create additional humanitarian problems. There was also a danger that force might be used for other purposes, notably those of a political character. The view was also expressed that the use of force to protect convoys transporting humanitarian assistance was in principle undesirable, but might have to be accepted for purely pragmatic humanitarian reasons.

The participants unanimously expressed the view that all humanitarian operations, including those involving the use of force, must be carried out in conformity with the principles inherent in any humanitarian activity, namely the principles of humanity, neutrality and impartiality.

The discussion, in particular as regards to the role of the ICRC and the content of international humanitarian law on the one hand, and the new role of the UN and the UNHCR on the other, gave rise to certain basic conclusions:

1. victims in emergency situations should have the right to demand and to receive humanitarian assistance, in particular if their life, health or physical integrity are endangered;
2. authorised international organisations should have access to the victims, the right to offer humanitarian assistance and to extend it;
3. sovereignty remains the basis of international humanitarian assistance operations; however, in the event of severe human suffering and the existence of major obstacles to the provision of assistance, the international community should have the right, through these various bodies, to intervene to protect and assist the victims.

From the examination of these and related questions, it could be concluded that there were two parallel sets of legal mechanisms for dealing with the question of humanitarian assistance.

There was, on the one hand, a body of detailed law regulating the provision of humanitarian assistance in armed conflict situations. At the same time, the UN Security Council had taken action relating to humanitarian assistance in the context of enforcement measures under Chapter VII of the Charter. If, however, a situation calling for humanitarian assistance did not involve a “threat to international peace and security” and was not an armed conflict situation, there was at present no basis on which the UN could act, and General Assembly Resolutions, particularly Resolution No. 43/131 of 1988 concerning humanitarian assistance in the case of natural disasters, did not permit action going beyond the traditional notion of State sovereignty. It was important that future action by the UN in this area should not be of a piecemeal nature and should be harmonised with existing rules relating to armed conflict situations.

It was also recognised that there is a need to strengthen the UN disaster response system.

The role of the NGOs as independent bodies based on humanitarian principles was also emphasised. They should continue to be important factors extending humanitarian assistance.

It was recognised that a need for humanitarian assistance implied that an abnormal situation had reached an advanced stage. It was, therefore, essential to address the causes of such situations with a view to taking appropriate preventive action. In this connection, the work of the meeting of experts on “Prevention,” convened by the International Institute of Humanitarian Law from 18 to 20 June 1992 under the auspices of UNHCR, was of particular importance.

During the discussions, participants underlined the importance of increased dissemination of the rules of international humanitarian law, which should be drawn to the attention of various target groups as an element of prevention.

The participants unanimously agreed that the point of departure for further development of international law on humanitarian assistance should be the rules and principles which already existed, and that the rules relating to humanitarian assistance in armed conflict situations could provide an appropriate example. It was also felt that such a development of the law could be promoted within the existing legal framework. While it would of course be desirable to draw up an international convention defining specific legal criteria, this would not be realistic at the present stage.

In the meantime, it would be desirable as a first step to work out a body of guiding rules which could, if appropriate, be used in discussions for a future international instrument.

The participants of the Round Table expected that the International Institute of Humanitarian Law would continue to be concerned by this question.

The Institute had already prepared draft guiding rules on the question of humanitarian assistance, including the right to humanitarian assistance. At the Round Table, a proposal was also made for a code of conduct for the use of non-governmental organisations in disaster relief.

On the basis of the reports presented to the Round Table, of several proposals made and the views expressed during the discussion, the Council of the Institute will examine the various proposed texts, introduce any necessary changes or adaptations and decide on how to proceed further with regard to the subject under consideration.

**22<sup>nd</sup> Round Table on Current Problems in International Humanitarian Law:  
Impact of Humanitarian Assistance and the Mass Media on the Evolution of  
Conflict Situations**  
*San Remo, Italy 3 – 6 September 1997*

Address by Mr. Mario Villarroel Lander, President of the International Federation of  
Red Cross and Red Crescent Societies

It is a great honour and source of satisfaction for me to be among you at the opening of the 22<sup>nd</sup> Round Table, organised by the International Institute of Humanitarian Law, and I take this opportunity to thank the President of the Institute for having invited me to address such an important audience. I also want to thank him for devoting himself to the development and implementation of the Institute, more specifically since the last Diplomatic Conference which started in 1974 and ended in 1977, because since then, the San Remo Institute has played a vital role in the development of international humanitarian law.

I know of his involvement with the International Red Cross and Red Crescent Movement and his willingness to disseminate international humanitarian law all over the world for a better knowledge and application. Today, then, the subject for this Round Table needs deep consideration and it is why, from the outset, I am expressing my best wishes for success in your work.

It has become somewhat trite today to speak of the rapidly changing world in which we live; to talk of the environmental revolution, the information revolution, the traumatic political and economic changes of the world. We speak of these changes and we debate them. They are great fun to debate, but after the debate we return to the real world of budgets and negotiation. This somewhat sophist approach denies the reality that radical change is already here. We are not debating the world of tomorrow, we are struggling to understand the world of today.

It is important to indicate that, in the real world today, the non-profit sector is growing in size and power at a phenomenal rate. Non-profits include the humanitarian NGOs, the Red Cross and Red Crescent, church organisations, trade unions, environmental groups and various community-based organisations.

Non-profits are active in the corridors of power, or to be more accurate, at the tables of power, and we saw how, in the 1980s, it was the corridors and non-profits groups that held “alternative summits” and fringe meetings, and sought to lobby their individual governments. All this is changing.

We can note that the original goal of the “Earth Summit” held in Rio de Janeiro in 1992 – generating a global agreement to control greenhouse gasses – was set by the non-profits. Closer to home the campaign to ban landmines has been non-profit led and inspired. At last year’s crucial Ottawa Summit, non-profits were accredited a status similar to States. They not only advocate, they deliver. Today, in Africa, the non-profits provide more development aid than the World Bank does.

They delivered most of the humanitarian relief purchased with the combined 3.1 billion American dollars from the OECD countries in 1995.

The reality is that agencies such as Red Cross and Red Crescent Societies no longer just fill the gaps. We now play a central role in caring for and, more recently, empowering the most vulnerable. This new position gives us a special responsibility to understand who we assist, how and why, both in conflict and non-conflict situations.

Just as the relationship between the State, the corporate sector and the non-profits has been changing, so too has the nature of conflict and the rules upon which its conduct is premised. Conflict is about power and power is about politics.

Under the old rules, which led to the concept of professional armies, the birth of the Red Cross and Red Crescent and the Geneva Conventions, the State politics, the military force and the population were three separate entities. States contested political power through the proxy of

their armies. The State directed, the army reacted “ours is not to reason why, ours is but to do and die” is a well-known saying. The civilian non-combatant part of the population looked on awaiting the outcome of the battle and the resultant changes in political leadership.

Today, most wars are internal, not between States, and much of it is not even between the prospective States of liberation or secessionist armies. Today there may be no clear distinction between banditry and politically motivated conflict. Controlled armies as the instruments of political will are in many places a thing in the past. Add to this the fading away of the distinction, in people’s mind, between combatant and non-combatant. For example, we have to ask whether a pastoralist cattle raider is still a civilian when he uses a modern means to raid other people’s cattle in times of need, or is he now a combatant? If the oppressed ethnic minority civilian population willingly feeds and shelters its militia, are they still civilians or quartermasters to the army? And if conflict and political violence move with refugees into camps or if banditry and protection rackets follow oppressed minorities who seek asylum, where does the battlefield end?

These are not just rhetorical questions, they are very real ones. Humanitarianism is constructed, then, on the premise that it is practised by agencies who are apart from States, fill gaps left unfilled by the State, deliver impartial and neutral assistance to non-combatants and take no part or side in hostilities. All of these premises are under attack today. The traditional notion of Humanitarianism is essentially that of the rescue mission. It is underlined by two principle arguments.

Should Humanitarianism go beyond seeking to restore normality, transcending the old notions of sovereignty and sovereign responsibilities and seek to work with vulnerable people to build more secure and sustainable features? Can one do this and still preserve the values and working fieldcraft behind the traditional notions of the neutrality and independence? These are key issues for humanitarian agencies today.

With so much in question, so much in flux, it is important to hold true to those fundamental principles which define our work and the motivation behind it. We work to alleviate suffering wherever and whenever it is found. We work for those who suffer not for self aggrandisement or institutional glory. We, therefore, expect to be held accountable for what we do.

Financial accountability and legal accountability is something which the humanitarian agencies are at last starting to address collectively. To protect the rights of aid beneficiaries, the Red Cross and Red Crescent and leading NGOs are now further developing the existing Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs. This Document, adopted by the International Red Cross and Red Crescent Movement in the early 1990s and by States party to the Geneva Conventions at the 1995 International Red Cross and Red Crescent Conference, and now endorsed by more than 100 agencies and NGOs, set out 10 simple rules for providing effective relief – with the emphasis on the interest of disaster victims.

Should independent agencies like the Red Cross and Red Crescent and the NGOs also show concern for the more long-term and more political issue of balance between addressing the effects of crisis and their causes? Should we show concern for the efficacy and efficiency of the whole humanitarian system, from donor government, through UN agency, the Red Cross/Red Crescent and down to the disaster victim? To be honest, this is ground where most agencies still fear to tread for it means accepting that we have responsibility beyond the immediacy of our actions and constituency.

With reference to the specific theme of this Round Table, the participants will undoubtedly study:

- The impact of the media on conflict, including the widely held assumption that media coverage dramatically changes the nature and evolution of conflict. What evidence do we have of the truth of that? How clear is the link between media coverage of a crisis and the changing response of governments? After the passion and media hype have died down, what real evidence do we have that journalists significantly influenced decision-makers, and therefore the course of events?

- Public opinion is certainly influenced or changed by media coverage, but how influenced by changes in public opinion, often transitory, is decision-making? Aren't other factors – strategy, cultural, historical, political – more influential? Isn't the “we must do something” feeling among the public too unfocused and general to have any real influence?
- aren't saturation and instant coverage technology weakening the impact of crisis coverage on all the players – general public – donors, the military, and governments? Is there a danger that the media will become over-dramatic and irresponsible to overcome the decline in interest?

In conclusion,

- For humanitarian organisations, dramatic images of people in distress can certainly raise awareness of the problems of conflict, among wider audiences. But how do we balance the need for fund-raising, supported by publicity, with the need of victims? The very same publicity can create political sensitivity on the ground which threatens our access to those we are trying to help.
- Humanitarian organisations also have to consider their relations with the media in the wider context of their relations with governments, UN agencies, war lords and the military, and their partners, including, in the case of the International Federation, local Red Cross and Red Crescent Societies, which are the backbone of our international network.

And so I take this opportunity to express once more my deep appreciation to all the people involved in the preparation of this 22<sup>nd</sup> Round Table, whose theme is extremely relevant for the whole Movement. I appreciate the fact that several National Societies attend these debates which, as I have said several times, are very important for our world-wide work.

It is quite certain that this Round Table, attended by distinguished persons who have lofty sentiments of public service and particular experience, will make a valuable contribution in affirming the principles and duties of international humanitarian law and those who extol it, as a universal commitment.

I hope that we shall be very successful and thank you for listening to me.

\* \* \* \* \*

## Concluding Statement by the Chairman

1. This year we are marking the 20th anniversary of the adoption of the two Protocols Additional to the Geneva Conventions for the Protection of War Victims. This important codification of international humanitarian law was adopted thanks to the efforts of all those concerned with respect for humanitarian values in the midst of armed conflict, when these values are so dramatically threatened. The efforts to prepare and adopt the Protocols are to be commended.

With the end of the 20<sup>th</sup> Century approaching and on the eve of the 21st Century, questions may be raised as to what the future of these Protocols and of international humanitarian law in general is.
2. Expectations that war would be abolished in this century have not materialised. It is to be hoped that in the century to come wars will be eliminated as a method of resolving disputes between human groups and that all disputes will be resolved by peaceful means. Hence efforts should be continued to achieve this goal, a stable peace in the world, both between nations and within nations.
3. Parallel to this, efforts should be continued to ensure respect for basic human rights in all circumstances, including the rules protecting these rights in times of armed conflicts, by way of international humanitarian law. The standards set out in this field in the 20th Century represent the minimum below which mankind cannot sanely go. These rules should be reaffirmed in their full scope, but with a view to their amplification under the ever-changing circumstances of human society world wide.
4. The International Institute of Humanitarian Law considers several of its tasks to be of priority, as follows:
  - action to achieve universal ratification of the Protocols of 1977, as was done for the Geneva Conventions of 1949, both of these groups of international instruments representing the standard of behaviour and of the protection of basic human rights in war;
  - continuation of the search for the ways of ensuring their better implementation and supervision;
  - efforts to develop further international humanitarian law, particularly in situations of non-international armed conflicts and of the disintegration of State authorities, and to develop the right to humanitarian assistance;
  - analysis of the increased engagement of the United Nations in the application of international humanitarian law and its relation to the principles of this law, as well as, in this context, to foster the distinction between the political, military and economic functions of the United Nations and its functions in the field of humanitarian law;
  - better harmonisation of the rules and measures of the implementation of human rights with those of international humanitarian law;
  - reinforcement and elaboration of more efficient methods in the promotion, teaching and dissemination of international humanitarian law; and
  - contribution and encouragement to the efforts in the humanitarian action of the ICRC, in particular in armed conflict situations, in favour of the protection of victims and for the respect of international humanitarian law.
5. It is recognised that within international humanitarian law, humanitarian assistance in a broad sense has occupied a crucial place, and it is vital for the victims. Therefore, special attention should be paid to it, and the exploration of some of its aspects has been a task of this Round Table. It is, however, only a first step in this direction, and the Institute will continue to explore this field.
6. In examining humanitarian assistance and the role of the mass media, it must be borne in mind that the right to seek humanitarian assistance exists for all persons in need thereof, regardless of the status of the party to which they adhere in a dispute and of other factors. This right is based solely on their actual needs for humanitarian assistance.

7. An important question related to humanitarian assistance is whether it can be rendered only with the consent of all parties concerned, or could be given by some authority unilaterally. While the classical rule of international humanitarian law requires such a consent, there have been occasions when humanitarian assistance has been delivered only on the basis of the decision of a competent United Nations body, without necessarily asking for agreements of all the parties concerned. This is because there is a general interest in assisting persons in urgent need, exposed to dire sufferings, and deprived of the basic necessities for their survival. This has been done when consent cannot be obtained from one or the other of the parties in dispute.
8. It is generally accepted that humanitarian assistance should be based on the principles of humanity, impartiality and neutrality, regardless of the actor which renders such assistance. There are cases in which certain political conditions are demanded as a requisite of providing such assistance, and this would not be in conformity with the above-mentioned principles.
9. Humanitarian assistance in time of international armed conflict is regulated to a great extent in international humanitarian law, although certain aspects remain open. In other cases, particularly those of non-international armed conflicts, in mixed situations between war and peace and of peacetime, there are few rules. Some of the rules have been crystallised to a degree but have not been codified. The Institute paid attention to this problem, and in 1993 adopted the "Guiding Principles on the Right to Humanitarian Assistance." They could be regarded as a preliminary step in the process of creating codification. Views were expressed that there should be an international convention regulating this subject for all situations: armed conflicts of all kinds, peacetime, and cases which are difficult to classify. Clearly the Institute will be attentive to developments of this idea as a matter falling within its core concerns.
10. The impact of humanitarian assistance on the evolution of a conflict can vary from case to case, depending on diverse factors. The obtaining of humanitarian assistance could be one of the causes of the conflict, when it is vital for victims to receive it. It may contribute to shortening the conflict or to prolonging it, or to its final termination. It may also have positive effects on the many victims, or certain negative effects, as has been clearly shown at this Round Table. No general conclusions can be drawn to that impact, as an analysis must be made in each case, with different factors producing divergent perceptions.
11. The effects of humanitarian assistance may also depend very much on the modalities under which it is extended. This refers in large measure to political circumstances and attitudes surrounding the giving of assistance and related differing perceptions among the parties regarding its respect for the principles of neutrality and impartiality.
12. One of the problems in connection with humanitarian assistance is coordination of the action of numerous actors, which may often be very independent and reluctant to subordinate themselves to any other authority. When, in some cases, this co-ordination has been far from satisfactory, it is the victims who suffer as a result. There is no doubt that the competent organs of the United Nations and, in the case of armed conflicts, of the International Committee of the Red Cross, should have the main roles in co-ordination. This question requires further study, because it is in the interest of the victims that action be well co-ordinated in order to achieve the best results from it.
13. The Institute has been paying full attention to the question of the important role of the mass media and its impact on the evolution of conflict situations. It gathered at this Round Table outstanding representatives of the media, and it has been the place of open and frank dialogue between them and others who are concerned with the good functioning of humanitarian assistance. The results of this dialogue are well recorded in the reports from the panels on that subject, and they represent the basis for further exploration of such an important aspect of humanitarian assistance.
14. International organisations engaged in humanitarian assistance both those whose main purpose is humanitarian activity and others engaged in such activity in addition to their

other tasks, have their principles of action and methods of work. Mass media, before presenting news on problems and cases of humanitarian assistance, should be informed adequately of these principles as background information. They should transmit the messages of the major humanitarian organisations to the public. In the process of presenting news, the media should bear in mind these basic elements, and should be open, in addition to other sources, to information furnished by such organisations. Without this, the news can be distorted and incomplete.

15. There is a general responsibility of the media to recognise that it is in the interest of the victims to accord prominence to their need to receive adequate humanitarian assistance. This prominence should be given with due professional restraint and discipline, and should not be presented in a sensationalist manner with a main purpose of maximising public attention to media reports beyond balanced news worthiness. There is also the responsibility of the media not to have, as the effect of their news, the spreading of nationalist, racial or religious hatred as an incitement to discrimination, hostility and violence.
16. The Round Table was a unique occasion for frank and open dialogue between organisations engaged in humanitarian work on the one hand, and journalists on the other. It was agreed that both parties to the dialogue need each other, and that both respect each other's purposes, principles of work, and role of authority.
17. The objectives of both parties to the dialogue are often different, but they share the need for promptness and timeliness in their actions. The media are obliged to work quickly, as a condition of their survival in the media market. Humanitarian organisations also operate in an environment of competition and this impels them toward prompt action. These considerations interrelate with others, perhaps most notably with correlation.
18. The humanitarian organisations are numerous and may differ markedly from one another. The same is true of the media, and it is difficult to put them under the same roof. But such is the reality which must be accepted of the present scene in which humanitarian assistance is being rendered.
19. The media have certainly their own purposes and principles of work which must be understood and respected. They should work professionally, be as independent as possible, and seek to present the truth although this may hurt somebody. There are also the media of governments and political parties, which reflect the views of their publishers. They may engage in propaganda, but it is often difficult to define a limit where good information ends and false propaganda and partiality begin.
20. There are some journalists who do not work in conformity with the principle of their profession. There are also humanitarian organisations which act in ways detrimental to the victims. But these bad examples should not serve to condemn, as a community of actors as a whole, either the media or humanitarian organisations. It is true that both parties to the dialogue commit mistakes wherein they do not respect the other party. This often creates mistrust, damaging to the work of rendering humanitarian assistance.
21. There have been examples of manipulation by the media with distorted information and presentation of a situation. These cases are frequent. It is, however, in many cases difficult to establish when ones in the presence of a case of manipulation and distortion or of an actual description of how humanitarian assistance is carried out. We cannot admit that human sufferings could be used for political purposes.
22. While pointing out these and other negative examples, the Round Table has agreed that there is a need to establish better relations between the organisations engaged in humanitarian work and those of the media. Thereby they can better co-operate, understand each other's roles, and respect each other's freedom of action in conformity with their respective purposes and principles.
23. The "**Mini Round Table**" which put together humanitarian actors and journalists confirmed the necessity for a closer co-operation between humanitarian actors and mass media, the establishing of regular contacts, including the presence of journalists at different meetings organised by competent humanitarian organisations and institutions. The panellists fully

agreed that the credibility between humanitarian actors and journalists became a problem which should be carefully analysed. Good and objective information in a conflict situation could be a very important factor for a concrete humanitarian solution for the protection of victims. Journalists are also actors in humanitarian action and can contribute very much to the constructive results of the organisations involved in humanitarian activities.

24. It is not possible, nor is it our task, to summarise the debates of this Round Table, very exhaustive and very rich in its contents. The report of the various panels serve as sources for further exploration of the subject, deserving of continuing close attention by the Institute.

This is an opportunity for me to thank most warmly all the participants for having taken part in the deliberations of this Round Table and for exposing their views and experiences. This is really a dialogue of various actors concerning a common subject, something which characterises the work of our Institute.

## Congress on Humanitarian Action and State Sovereignty

*San Remo, 31 August – 2 September 2000*

### Recommendations – Conclusions

During the Congress, various aspects of State sovereignty and humanitarian actions were discussed, and these are the main conclusions as they emerged:

- The world is organised on the basis of State sovereignty and this should remain the basis of the world order. However, sovereign States shall respect a growing number of obligations, constituting more and more important limits to their sovereignty. Among these obligations, special importance must be attributed to those protecting the interests of the international community as a whole. This is particularly the case of:
  - a) the obligation for each State to promote and respect human rights and humanitarian law; and
  - b) the obligation not to act in a manner which causes harm to other States or human environment (for example, pollution, water problems, massive flow of refugees and displaced persons).
- It is very important to keep and/or rebuild States and be willing to respect the fundamental principles of the world order. In the short term, there is a need to resolve the dilemma between the respect of State sovereignty and the necessity to act even without governmental consent when human rights or humanitarian law are violated on a large scale.
- The international organisations have an important role in this field in conformity with their respective mandates and in accordance with principles of the UN Charter. Well co-ordinated action on the part of these different organisations at the regional and universal level would be an important contribution towards ensuring the respect of human rights and humanitarian law. The UN system has the central role in dealing effectively with massive violations of human rights and humanitarian law, as such violations clearly constitute a threat to peace and security. The primary responsibility, as well as the duties of the UN Security Council in this field should be stressed. In other words, it should be underlined that the actions of the Security Council in cases of massive violations implies a disregard of the principles of the UN Charter.
- But the real problem is what should be done in cases where the Security Council is unable to take decisions in situations where an action is evidently necessary? There is no clear response to this dilemma. But some ideas, which have been presented, might deserve further examination:
  - a) the reform of the UN system in order to avoid a deadlock of the Security Council;
  - b) the identification of means and procedures for monitoring the Security Council; and
  - c) the creation of a UN body to constantly evaluate the world situation and ascertain objective and credible facts which should facilitate the taking of decisions on international action, which can range from delivery of humanitarian aid to military intervention.
- However, some objections were put forward, in particular, the fact that it is not the lack of information which prevents States to act. The importance of raising the consciousness of the Security Council members, particularly of the permanent members, and their particular responsibility, should be underlined as a key measure to increase the efficiency and credibility of the Council. Another aspect worth looking into is the usage of different terms, particularly of the term “humanitarian intervention” (the usage of the term created confusion in public, especially, as to the role of the different actors). The establishment of a Standing Force was also suggested to ensure immediate and effective deployment of peacekeeping forces if needed.
- As for humanitarian action, it has to be remembered that there is a recognised right for the population to have food, medicine and other goods essential for their survival, at their disposal. In the case of armed conflict, the parties to the conflict concerned have the duty to

meet these basic needs or to accept international humanitarian action if they are unable to do so. A delicate issue is: what should be done if they refuse such an action, although absolutely necessary? In those situations, humanitarian organisations can only transfer the problem to the United Nations and States, which have to take measures in conformity with the UN Charter.

- Humanitarian organisations have a key role to play in trying, by all means, to avoid the deadlock caused by the fact that States refuse assistance. For that purpose, they have to enhance the dissemination of international humanitarian law and principles, and work with the States in peacetime to build up their confidence in their capacity to deliver assistance in a neutral, impartial and professional way.
- Humanitarian organisations also have to recognise the very detrimental effect caused by actions which are not properly co-ordinated, and carried out without sufficient professionalism. To build up this confidence, it is therefore important to obtain from all humanitarian organisations the commitment to work according to basic ethical principles with great professionalism and in good co-ordination. The existing code of conduct, (in particular, the one adopted by the International Red Cross and Red Crescent Conference), has therefore to be disseminated, respected and constantly re-examined in the light of new situations and experiences.
- Finally, the quality of the debates and the important need for the International Institute of Humanitarian Law to maintain its central role in hosting such a gathering on humanitarian issues, have to be underlined. Co-operation with ICRC, UNHCR, UN High Commissioner for Human Rights, International Organization for Migration, the International Federation of Red Cross and Red Crescent Societies, and other interested humanitarian organisations is a key factor, not only for the success of such fora but also to the future of humanitarian action.