

**REPORT OF THE WORKING GROUP ON SOLUTIONS AND
PROTECTION TO THE FORTY-SECOND SESSION OF THE
EXECUTIVE COMMITTEE OF
THE HIGH COMMISSIONER'S PROGRAMME¹**

I. INTRODUCTION

A. The Problem

1 The Working Group on Solutions and Protection (Working Group) was created to examine the relationship between the demands of protection and the effective solutions of refugee problems, with a view to ensuring the compatibility of any solution pursued with the needs, well-being and rights of the individual concerned.² The initiative was based on the premise that solution was the final purpose of protection and that protection should be seen as governing the entire process towards solution, without prejudicing international protection as an end in itself. The exercise arose out of major changes in the character and composition of asylum-seekers since the adoption of the 1951 Convention relating to the Status of Refugees. These changes have brought into question traditional thinking about solutions and have necessitated new approaches.

2 During the past forty years, mass movements of persons have increasingly included types of asylum-seekers not covered by existing international refugee instruments. The institution of asylum has, as a result, been overburdened, and sometimes misused, and the protection responsibilities of States, the United Nations High Commissioner for Refugees (UNHCR) and the international community have been obscured. Who should be considered and treated as a person deserving of international protection - and, therefore, the central beneficiary of the exercise of these responsibilities - has become an even more delicate issue. It became necessary, therefore, to analyze the various population movements in order to identify those groups which were of direct concern to protection- and solution-oriented efforts.

B. The Mandate

3 During its fortieth session in October of 1989, the Executive Committee of the High Commissioner's Programme (Executive Committee) adopted a conclusion on "Durable Solutions and Protection", in which it decided to call on the High Commissioner, in consultation with the Chairman of the Executive Committee, to convene an open-ended working group of Executive Committee Members "to examine protection and solutions in a coherent and comprehensive manner, bearing in mind the mandate of the High Commissioner, with a view to reporting to the Executive Committee at its forty-first session".³

4 Among the issues that the Executive Committee considered in need of the Working

Group's study were the following: examination of "existing law and doctrine in light of the real situations being faced by refugees, taking into account the relevance of human rights principles"; solutions through more effective regional and "international initiatives aimed at encouraging and facilitating" dialogue; development cooperation as both a preventive and curative measure; and prevention by addressing causes of refugee flows.⁴

5 At its forty-first session in October 1990, the Executive Committee, in its conclusion on the "Note on International Protection",⁵ referred a variety of additional issues to the Working Group on Solutions and Protection for its consideration. They included early warning, the differences policy-related and other between refugees and economic migrants, the concept of State responsibility, ways to deal responsibly and effectively with rejected asylum-seekers, and concomitant public information activities.

6 In its conclusion of the same year on "Solutions and Protection",⁶ the Executive Committee noted the urgent and necessarily result-oriented nature of the Working Group's task and that its participation should not be limited to Executive Committee Members. The Executive Committee also requested the Working Group to report to the forty-second session of the Executive Committee.

C. Work Schedule and Methodology

7 The Working Group held its first meeting in September 1990 and was composed of representatives of Executive Committee Member States, UNHCR, as well as States and international organizations with observer status at the Executive Committee who had a direct concern in the work of the Group.⁷ It was agreed in the Working Group's initial stages that its Members would be represented by senior, technical-level delegates. The Working Group, depending on the matters under discussion at any one point in time and responding to requests for input from other entities, invited representatives of other organizations not members of the Group - including non-governmental organizations - as well as individual experts, to contribute to the discussion.

8 The Working Group met on an average of once every three to four weeks and organized its work in the following fashion:

FIRST STAGE: Information Collection: During this stage, the Working Group received, shared and discussed information provided by Working Group Members and experts on the problems under consideration generally, as well as on a region-specific basis.⁸

SECOND STAGE: Analysis: At the end of the information-gathering stage, the Working Group decided to arrange its analytical work by "categories of persons of concern to the Group", i.e. those associated with the search for asylum and refuge. The Working Group agreed to examine the situation of the following categories of persons,⁹ taking into account relevant international instruments and UNHCR's mandate as set out in UN General Assembly Resolutions:¹⁰

- (1) persons covered by the 1951 Convention;
- (2) persons covered by the OAU Convention/Cartagena Declaration;
- (3) others forced to leave or prevented from returning because of man-made disasters;
- (4) persons forced to leave or prevented from returning because of natural or ecological disasters or extreme poverty;
- (5) persons who apply to be treated as 1) or, when applicable, 2), but are found not to be in these categories;
- (6) internally displaced persons; and
- (7) stateless persons.

9 As the starting point for the Working Group's examination of each category, one or two delegations submitted a discussion paper analyzing the problems of that group of persons. The intent was for each paper to be divided into the four broad headings of causes, protection, responses and solutions (including prevention). In examining each of these categories, each paper, as well as the Working Group itself, addressed as appropriate the issues raised in the Executive Committee conclusions mandating the Group's work, in addition to the following: the relationship between human rights, including freedom of movement, and refugee flows; socioeconomic and security-related dimensions of the problem; the elimination of root causes; regional and international cooperation and solidarity, including burden-sharing; post-return assistance in countries of origin; the implications of financial shortfalls for solutions and protection; migration movements, programmes and mechanisms; temporary arrangements; and refugee related information exchange.

10 In relation to these issues, and as appropriate, the responsibilities and roles of the following entities were analyzed: countries of origin, first asylum, refuge and resettlement; donor countries and others; regional and international organizations; UNHCR and other United Nations (UN) organizations and agencies; non-governmental organizations (NGOs); as well as the media and public bodies. Also analyzed were the protection of those in need through solutions, and the assumptions necessary for the attainment of said solutions.¹¹

THIRD STAGE: Report Preparation and Recommendation Formulation: The present report to the Executive Committee was then prepared to provide recommendations for addressing the problems discussed during the Working Group's analytical stage.

II. ANALYSIS OF CATEGORIES OF PERSONS ASSOCIATED WITH THE SEARCH FOR ASYLUM AND REFUGE

A. PERSONS COVERED BY THE 1951 CONVENTION (Category 1)

11 There was consensus on the importance of the 1951 Convention and its 1967 Protocol Relating to the Status of Refugees (1967 Protocol) for victims of persecution as well as on the usefulness of these instruments as models for protection of persons fleeing a more generalized threat to their security. It was also noted that the number of asylum-seekers world-wide was increasing, and that this group included both persons in need of international protection - but not covered by the 1951 Convention/1967 Protocol - as well as those not in need of international protection. The need for States to assist UNHCR in promoting a more-thorough and uniform application of the 1951 Convention/ 1967 Protocol was underlined. Wide support was also expressed for broader accession to the 1951 Convention/1967 Protocol, including the withdrawal of geographic reservations, as well as for the role States could play in assisting UNHCR to promote such accessions. Countries who have not acceded to one or both of these instruments highlighted the contributions they have made to assist and protect refugees.¹²

12 While acknowledging the continuing relevance of the 1951 Convention/1967 Protocol, the Working Group discussed the need to provide international protection to persons outside the current global regime, but still in need of protection. Concern was expressed by a number of delegations that the majority of the world's refugees were not covered by the Convention and that ad hoc measures were not sufficient to meet the needs of all those requiring international protection. It was argued that it was illogical from a legal and moral point of view to provide legal status as a refugee to a person if (s)he stayed in his/her region of the world, but not if (s)he left it. It was pointed out that the competence of UNHCR had been extended beyond the persons covered by the 1951 Convention/1967 Protocol in accordance with various General Assembly resolutions.

13 There was general agreement that States should apply those instruments currently in existence more vigorously, as well as provide for a more efficient screening process and a humane rejection procedure, without undermining the institution of asylum. The Working Group

recognized that various national legislations provided coverage for deserving cases falling outside the scope of the 1951 Convention/1967 Protocol, but that the character of this coverage was not uniform from country to country. A number of delegations expressed the view that further elaboration of a global regime might result in increased restrictions instead of liberalization.

14 The Working Group noted that the safety and dignity of refugees were not being respected in many instances and discussed the possibility of expanding the role of the Sub-Committee of the Whole on International Protection to support UNHCR more actively in its protection efforts. It was also suggested that other existing mechanisms, such as Special Rapporteurs on thematic issues of the United Nations Commission on Human Rights, might also offer the possibility of complementing the response to potential protection problems.

15 The Working Group examined the implications of the increasing numbers of unfounded asylum claims for resources and the institution of asylum. Consideration was also given to the need for UNHCR to have additional emergency resettlement places for protection purposes.

16 There was general agreement on the need for mechanisms to attain a flexible and broader funding base as well as additional resources to enable UNHCR to perform its mandate of protection and the search for durable solutions. Addressing refugee situations, the need for increased burden-sharing and, in that context, assistance to individual receiving States, was also considered. The Working Group endorsed the need for greater international solidarity and responsibility in responding to refugee problems and discussed the concept of State responsibility in averting refugee flows as well as in facilitating return and reintegration of refugees in their respective countries of origin. In addition, support was expressed for the strengthening of coordination between UNHCR and other relief agencies.

B. PERSONS COVERED BY THE OAU CONVENTION OR THE CARTAGENA DECLARATION (Category 2)

(i) Overview of Persons Covered by the Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa (OAU Convention)

17 In Africa, refugee flows have been caused by a variety of, often interconnected, factors, including: individual persecution or the well-founded fear thereof; man-made disasters such as armed conflict resulting from struggles for national independence; dictatorship and authoritarianism resulting in gross and persistent violations of human rights, including apartheid; and the destabilizing policies of the Government of South Africa against its States neighbours. In some instances, receiving countries have also been the source of refugee flows. Where one or more of these factors is coupled with economic hardships or natural or ecological disasters, the compulsion to leave becomes more urgent.

18 The 1951 Convention, its 1967 Protocol, and the OAU Convention are treated as a whole in terms of refugee protection in Africa. The OAU Convention provides enhanced refugee protection, covering groups of refugees as well as individual refugees. Where a Member State is unable to continue granting asylum to refugees, it may appeal to other Member States and, through the OAU, take appropriate measures to lighten its burden. Member States are obliged to "use their best endeavours consistent with their respective legislations to receive refugees and to secure their settlement",¹³ thereby strengthening the individual's claim on the grant of asylum.

19 The OAU Convention reaffirms the principle that "[t]he grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State".¹⁴

20 Receiving countries in Africa are severely constrained in responding to refugee problems by their lack of resources and development. Assistance to refugees is facilitated by assurance of burden-sharing on the part of the international community.

(ii) Overview of Persons Covered by the Cartagena Declaration on Refugees

21 The main objective of the 1984 Cartagena Declaration was to establish a common framework for countries in the region to respond to the refugee situation in Central America. In addition, the Declaration aimed at establishing regional legislation dealing specifically with refugees and at making the governments of Central American countries aware of the need to eliminate the causes of the problem.

22 Among its main features, the Declaration broadened the concept of refugee, including therein - in addition to persons covered by the 1951 Convention and the 1967 Protocol - those who have fled their country because their lives, security or liberty had been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights and other circumstances having seriously disturbed public order. Other distinctive elements of the Declaration are its reaffirmation of the humanitarian nature of the right to asylum, the right to non-refoulement and the principle of family reunification; its embodiment of the notion of integration of refugees into the productive life of countries of asylum; and its request to States of the region to incorporate the Declaration into their national legislation for the treatment of refugees.

(iii) Working Group Findings Regarding Persons Covered by the OAU Convention and the Cartagena Declaration

23 There was broad agreement that the 1951 Convention/1967 Protocol did not fully respond to the refugee problems confronting African and Latin American countries. There was also an exchange of views as to whether the respective definitions in the OAU Convention and Cartagena Declaration were well-suited to the situations only in the regions they covered, or whether the factors which led to promulgation of these two texts could be found in other regions as well.

24 In this regard, attention was drawn to the applicability of these definitions outside Africa and Latin America, e.g. in Southwest Asia, where the relevance was direct. The Working Group also discussed the ambiguities inherent in situations where refugees meeting the broader OAU/Cartagena definition, but outside the African and Latin American regions, were considered to be of international concern and were receiving international protection and assistance on a mandatory basis from the international community through UNHCR, but on a discretionary basis from individual States.

25 The means by which a broader applicability of the OAU/Cartagena definition could be achieved were also discussed. Those in favour of the universalization of these two regional definitions proposed an additional protocol to the 1951 Convention, or, as a first step, a UN General Assembly resolution, perhaps annexing a declaration to this effect. There was no unanimity on the methods of, or indeed the need for, making the definition more universal. Others felt that any attempt to universalize the OAU Convention and Cartagena Declaration would not solve the problem. Some felt that it might lead to a still larger number of unfounded asylum claims, thereby undermining further the existing system of protection. It was also felt that a more widespread application of the OAU Convention and the principles in the Cartagena Declaration, in the regions where they apply, should be ensured, either through implementation in national legislation or by States becoming party, or both, as appropriate.

26 The importance of resources, international solidarity and burden-sharing for the ability of countries to shoulder the refugee burden was recognized.

C. OTHERS FORCED TO LEAVE OR PREVENTED FROM RETURNING BECAUSE OF MAN-MADE DISASTERS (Category 3)

27 The Working Group discussed the several types of man-made disasters which could lead to mass outflows of persons. International or internal armed conflict and/or foreign aggression, massive violations of human rights and other phenomena including industrial accidents were

seen as causes of significant cross-border movements of people. Some delegations also suggested that dysfunctional national and international economic and political policies could lead to significant mass border flows. At the same time, a number of other economic, political, and social factors could contribute to such mass flows. The Working Group noted that these causes were similar to those resulting in flows of persons belonging to Category 2.

28 The Working Group agreed that efforts should be made to develop a supple, international, rapid-response mechanism for dealing with mass flows of persons. Such a mechanism should be able to ensure effective assistance to persons fleeing man-made disasters, taking into account international solidarity and burden-sharing.

29 The Working Group agreed that concrete efforts were needed to meet protection concerns for the physical safety of persons fleeing man-made disasters. Many such persons are not covered under existing international conventions and/or international humanitarian law. There was discussion of several possibilities for meeting the protection needs of persons in situations where they are not sufficiently covered by existing international instruments. These included proposals for new international and/or regional instruments, ad hoc international arrangements such as occurred in the situations of Afghans and Cambodians, and special national legislation.

30 There was discussion on how best to achieve lasting durable solutions for the large numbers of persons fleeing man-made disasters. There was support for the idea of integrated, comprehensive approaches to protection and solutions, taking into account the experience of existing efforts such as the Persian Gulf Task Force mechanism, the CPA¹⁵, CIREFCA¹⁶ and the recent regional initiative on Rwandese refugees.

31 The Working Group discussed several methods of averting mass flows of persons fleeing man-made disasters, including better early-warning and conflict-resolution mechanisms; enhanced promotion and implementation of international humanitarian law; development of the concept of State responsibility to facilitate solutions (particularly by creating conditions conducive to voluntary repatriation), address root causes, and avoid the creation of conditions causing outflows; as well as the redressing of human rights violations related to mass flows of persons. The Working Group also took note of the report of the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees.¹⁷

D. PERSONS FORCED TO LEAVE OR PREVENTED FROM RETURNING BECAUSE OF NATURAL OR ECOLOGICAL DISASTER OR EXTREME POVERTY (Category 4)

32 The Working Group noted that natural or ecological disaster and extreme poverty are among the causes for migration and uprootedness. Although most cases of displacement by natural or ecological disaster and poverty occur within the borders of the country affected, all three phenomena could contribute to flows of persons across borders. Internal and external displacements could also have a negative impact on the environment due to the sudden influx and temporary settlement of uprooted persons.

33 It was also noted that, while natural and ecological disasters may be caused by sudden disruptive occurrences, in some cases they are an outcome of long-term, cumulative and cyclical processes. It was suggested that a nation's capacity to contain and manage natural or ecological disasters varies according to its level of development. The more developed a nation is, the better is its capacity to cope with such disasters. The effects of ecological disasters, in particular, are most pronounced on those who depend on a viable environment for their subsistence. The point was also made that it is the responsibility of States to implement national disaster preparedness management programmes, which are essential for the effective planning of responses and mitigation of the effects of natural disasters. It was added that such implementation should be undertaken with the assistance of the international community through the UN mechanisms designated for this purpose, such as the International Decade for Natural Disaster Reduction.

34 The Group viewed the causes of extreme poverty as a complex interrelationship of factors linked to lack of development generally. Some delegations pointed out that these include

a certain imbalance as well as unjust economic relations between developed and developing countries. They also include economic, political and social policies which do not effectively address development issues and redress injustices in society. Some delegations pointed out that poverty breeds desperation and can cause social upheaval and political violence which, in turn, often causes uprooting of persons.

35 Although it was stated that the need for relief assistance outweighs protection needs for most people in this category, it was recognized that Category 4 also includes persons with protection needs whose motives for departure are exacerbated by natural or ecological disaster or extreme poverty. It was agreed that the competence of UNHCR does not normally extend to those persons displaced inside their own countries as a result of natural or ecological disaster or extreme poverty. The mandates of organizations like UNDRO¹⁸ are more relevant in addressing the needs of these persons. The Group recognized the need for increased mobilization of resources and greater coordination among agencies to respond systematically and promptly to victims of disasters world-wide. The issue of extreme poverty, though fundamental, was seen to be too complex to be meaningfully dealt with by the Working Group. It was felt by some delegations that an inter-agency meeting would be a more appropriate forum to discuss this issue. There was, however, a broad acknowledgement of the importance of carefully targeted development aid in addressing the needs of persons in this category.

E. PERSONS WHO APPLY FOR REFUGEE STATUS AND ARE FOUND NOT TO BE IN CATEGORIES 1 THROUGH 4 (Category 5)

36 The Working Group based its discussions on this Category on the understanding that the Category did not include any persons under Categories 1 through 4. Category 5 consists of persons who attempt to migrate simply for economic or social reasons by misusing the international asylum system and/or by circumventing legitimate migration controls, where available, and are found by governments to be ineligible for asylum. The Working Group recognized that those in Category 5 moved from developing to developed countries, as well as to other developing countries.

37 The Working Group observed that misuse of the international asylum system disadvantaged those who had valid claims. It noted the negative effects that such claims had on both public opinion in the receiving country and on the institution of asylum generally. Some delegations noted the problems caused for the countries of origin who faced a "brain drain" and the loss of needed skills.

38 There was agreement on the need to respect and protect national rules for orderly migration and the principles governing the institution of asylum. It was also pointed out that the disproportionately large amounts of resources spent on manifestly unfounded claims (many times the annual UNHCR budget) could be better channelled to avert the causes of flows as well as enhance protection and the search for durable solutions to the problems of refugees.

39 The Working Group discussed the action to be taken on a claim after its full consideration and ultimate rejection within fair and proper procedures. It reaffirmed the principle of return, in safety and dignity and in an orderly manner, of persons determined not to be refugees, as well as States' responsibilities towards their own citizens. The Working Group took note of calls made by some delegations for flexibility in the timing of such returns to allow for the possible exploration of the implementation of internationally coordinated repatriation and reintegration programmes aimed at underpinning the viability and lasting character of the returns. The Working Group also took note of the concerns expressed by other delegations regarding the burden for receiving countries if the return of rejected cases is not effected within a reasonable time. It also took note of the psychological repercussions this could have on both the rejected cases and those in the countries of origin who are planning to leave under similar circumstances. It was suggested that political dialogue between the countries of origin and receiving countries would be desirable and that such dialogue could be undertaken under the auspices of the UN or another international agency.

40 The Working Group also discussed the value of carefully targeted public information campaigns to dispel misinformation of would-be arrivals and encourage the voluntary return of non-refugees. Some delegations also saw the value of information campaigns to diminish xenophobia in receiving countries. The Working Group considered the value of possible non-governmental organization contributions to such efforts. Also discussed were various options for incentives to promote voluntary return when there were large groups involved. Opinions varied on incentives to be given to individuals, and some felt that it was important that those who misused the asylum system should not be rewarded.

41 The question of the involvement of an international agency in coordinating returns was also discussed. In this context, various return programmes offered by the International Organization for Migration were detailed. It was felt that, while UNHCR should not be involved in enforcement of return decisions, the Office could, if so requested by the Secretary-General or the General Assembly and, in cooperation with other appropriate agencies, assume responsibilities outside its traditional mandate, but compatible with its strictly humanitarian competence, to coordinate the safe and dignified return of rejected asylum-seekers.

42 The link between development and migration outflows was discussed. It was acknowledged that there was a causal relationship between economic and social conditions in the country of origin and those in the country of migration. It was also agreed that appropriate development-assistance programmes in the country of origin could diminish incentives for departure. The issue was too broad, however, for the Working Group to examine in detail. Some delegations suggested that this issue might warrant additional consideration in an appropriate international forum.

F. INTERNALLY DISPLACED PERSONS (Category 6)

43 Some of the causes for internal displacement were similar to those which caused people to flee across borders. They included internal disturbances, tensions and armed conflict, as well as violations of human rights, foreign aggression, appalling economic conditions, natural disasters and sometimes deliberate government action. Although internally displaced persons faced many of the same problems as refugees and externally displaced persons, in many cases, they were not able to claim the same protection and assistance because they had not crossed international borders.

44 The Working Group noted that the protection that public international law afforded internally displaced persons was inadequate for a number of reasons. In the case of non-international armed conflicts - or civil wars - however, article 3 of the four Geneva Conventions of 1949 and Protocol II of 1977 do afford fairly extensive protection to civilian and military victims, including displaced persons. It is appropriate to mention, for example, that by virtue of Protocol II, article 17, the forced displacement of civilians is prohibited. It is in situations of internal disturbances and tensions that international humanitarian law offers scant protection; international humanitarian law is not applicable and many human rights can be suspended, leaving only non-derogable human rights in effect. The International Committee of the Red Cross (ICRC) enjoys two rights of initiative, one under Article 3 common to the four Geneva Conventions, for non-international armed conflicts, and the other, recognised by States in the Statutes of the International Red Cross and Red Crescent Movement, for other violent situations. In practice, ICRC is seldom refused access to victims when it offers its services by virtue of these rights of initiative.

45 In the debate on the internally displaced, it was suggested that internal disturbances and armed conflict be viewed as a continuum of concerns for appropriate responses and solutions.

46 The Working Group discussed the relationship between national sovereignty and State responsibility regarding internally displaced persons. The paramount sovereignty of a State as an established principle was reiterated. The Working Group discussed the concept of the prerogative of States to request assistance from external sources in protecting the internally displaced; but it was generally felt that the international community should not impose measures on governments.

Some delegations also argued, however, that State sovereignty went hand-in-hand with State responsibility as well as with the collective responsibility of the international community. Some delegations pointed out that, where there is an abrogation of State responsibility, or as situations arise where the authorities cannot exercise their responsibilities towards their citizens, there is a need for international action to identify and seek the resolution of problems as early as possible. If the civilian population is suffering undue hardship in non-international armed conflicts and the authorities could not cope, by virtue of article 18, paragraph 2, of Protocol II, relief action which is "of an exclusively humanitarian and impartial nature and which [is] conducted without any adverse distinction shall be undertaken subject to the consent" of the State concerned. The United Nations and the Secretary-General have a role in this regard, particularly as such situations often require an immediate international or regional humanitarian response. UN humanitarian action needed to be based on dialogue and the UN system needs to develop further the principles which would govern its humanitarian response.

47 In discussing protection and solutions for internally displaced persons, some emphasized the relationship between lack of protection at home and the search for asylum abroad. The role of non-governmental organizations, the ICRC and UNHCR in providing protection and assistance in the country of origin is recognized as valuable but necessarily limited. It was suggested that the UN's ability to respond in a timely manner to emergencies be enhanced by designating a focal point for coordination. Some, however, warned against the financial implications and bureaucratic proliferation which new mechanisms might entail. In this context, attention was drawn to the competence of already existing mechanisms/organs within the UN system for dealing with the protection of persons displaced within their country of origin, as well as the current inadequacy of their mandates for this purpose. It was argued that UNHCR could play the role of the focal point, given its long experience and ready mechanisms which enable it to respond urgently to persons with similar needs. It was generally agreed that there is need to sensitize the international community more on the plight of the internally displaced.

48 Some delegations supported the ICRC's call not to endanger existing international humanitarian law (IHL) norms by over-defining responsibilities, particularly for fear of excluding from equivalent protection persons who have not been uprooted but may be in even greater need of protection than those who have fled. In discussing the internally displaced, it was suggested that the Working Group should also consider the Secretary-General's report to be written on this subject as requested by the Commission on Human Rights in its Resolution 1991/25. It was noted that fora like the Commission on Human Rights and/or its Sub-Commission on the Prevention of Discrimination and Protection of Minorities are appropriate for consideration of the protection concerns of the internally displaced.¹⁹

49 Some delegations said that the durable solutions sought to the problems of the internally displaced should be analogous to those sought for refugees. A few participants observed that linking development efforts to relief aid from the start of a situation or emergency helps avoid the long-term isolation and/or dependency of internally displaced persons (IDPs). It was suggested that development efforts be targeted to situations where underdevelopment is a major factor contributing to the conflict causing the displacement.

G. STATELESS PERSONS (Category 7)

50 The Working Group focussed on persons who are stateless, whether they are refugees or not, and for whom the fact of being stateless is at the root of the problems they are experiencing.

51 The causes of statelessness were identified as including conflicting municipal laws and discriminatory legislation or policies leading to the loss or deprivation of nationality. As a result, there are quite sizeable stateless communities, often with very difficult problems. Outside the basic legal and social framework of a society, stateless persons typically suffer problems of access to social services, educational facilities, medical care and employment opportunities. Freedom of movement is restricted and travel documents are difficult to obtain. Long-term

detention with little prospect of release is a major problem for some. Problems are compounded by time-consuming, complex legal and administrative procedures for claiming or reclaiming a nationality. It was pointed out that all these problems need to be viewed against the basic right of every individual to a nationality, as well as the positive effects of reduction of statelessness, including on refugee numbers.

52 The Working Group acknowledged that the problems do not stem from the absence of an international legal framework. For stateless refugees, the 1951 Convention relating to the Status of Refugees applies. For the non-refugee stateless, there is both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Rather, there is not-sufficiently widespread adherence to, or implementation of, these instruments. Moreover, there is an institutional void at the international level for monitoring effective implementation. UNHCR's role in this regard was noted but it was acknowledged that it is limited.

53 In response to these problems, broader adherence to, and better implementation of, statelessness instruments were recommended, as was enactment of effective national legislation to protect the rights of the stateless, including as regards detention and legal assistance. It was felt that States should be actively encouraged to reassess how they might become party to the statelessness conventions, as well as how their laws do or could directly contribute to the reduction of statelessness. Action was also recommended at the international level to prevent arbitrary deprivation of nationality. Such action might be centred in human rights bodies such as the Sub-Commission on Prevention of Discrimination and Protection of Minorities or, from a monitoring point of view, the Human Rights Committee. Some delegations also supported standard-setting on the right to a nationality.

III. OBSERVATIONS AND RECOMMENDATIONS

A. Observations

54 The Working Group on Solutions and Protection of the Executive Committee of the High Commissioner's Programme OBSERVES THE FOLLOWING:

- (a) Any solution pursued to refugee problems must be compatible with the needs, well-being and rights of the persons concerned as well as with the principles of international protection and burden-sharing.
- (b) The 1951 Convention and 1967 Protocol Relating to the Status of Refugees, and UNHCR's central role in supervising their proper implementation, remain the cornerstone of international protection of persons fleeing their countries in fear of persecution; the Office needs adequate support from the international community to fulfil this role properly.
- (c) Broad international support for effective implementation of the 1951 Convention and 1967 Protocol is essential in meeting the basic protection and assistance needs of refugees, as well as in seeking durable solutions to their problems. An adequate, broad and flexible funding base for UNHCR is also an important element in providing such international support.
- (d) A large number of persons who cross national borders in need of international protection, but who fall outside the scope of the refugee definition contained in the 1951 Convention/1967 Protocol, are receiving some protection and assistance from the international community through UNHCR, and, on an ad hoc basis, from individual States. These ad hoc measures may not always be sufficient to meet the needs of all those requiring international protection and assistance.
- (e) The 1969 Organization of African Unity Convention Governing Specific Aspects of Refugees Problems in Africa (OAU Convention) and the Cartagena Declaration on Refugees (Cartagena Declaration)²⁰ complement the protection provided by the 1951 Convention/1967 Protocol and address protection and assistance needs not exclusive to these regions.

(f) Acceptance of State responsibility is an element in averting mass flows of refugees generally and in facilitating durable solutions to their problems. This responsibility, in particular as it regards countries of origin, includes addressing the causes of mass flows - inter alia, human rights violations, internal conflicts, external aggression, internal and international social and economic injustices -- in both a preventive and curative manner, as well as facilitating the return and reintegration of nationals in safety and dignity.

(g) Recent endeavours where UNHCR has had a catalytic role -- e.g. the International Conference on Central American Refugees (CIREFCA), the Rwanda initiative, and the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) -- have proven the value of both regional and international dialogue as a mechanism for pursuing durable solutions with a view to resolving specific refugee situations.

(h) Persons fleeing natural or ecological disaster normally have a need for relief assistance rather than protection. A range of UN and other international organizations, with appropriate mandates, need to be called upon to respond to these persons, needs in a coordinated and timely manner.

(i) The search for better economic and social opportunities, while justified, should follow legitimate channels. Realistic information about available opportunities should be provided and development concerns need to be addressed to prevent outflows.

(j) The large increase in misuse of asylum procedures through the presentation of unfounded claims has complicated the protection of those persons who have crossed national borders in need of international protection. One way of dealing with the many persons whose claims have been rejected resulting from the determination of the unfounded nature of their claims is their safe return to the country of origin. While return incentives may be useful in this regard, to have a durable effect on the problem of outflows of asylum-seekers with unfounded claims, development assistance to the country of origin, where appropriate, should be focused so as to facilitate such return or prevent further outflows.

(k) Millions of persons displaced within their own countries flee for reasons similar to those of persons in Categories 1 through 3²¹ and share many of the protection needs of refugees, including many of those who have repatriated; yet international law offers scant protection for internally displaced persons. No UN-system agency is mandated to ensure this particular class of persons the protection they require. While external support can only be given at the request of the government concerned, State responsibility for internally displaced persons is a natural concomitant of national sovereignty. The international protection needs of these persons are also under review in the UN system, e.g. within the UN Commission of Human Rights.²²

(l) There is not widespread adherence to, or implementation of, the international instruments relating to statelessness. Moreover, there is an institutional void at the international level for effective monitoring of their implementation; UNHCR's role in this regard is limited.

(m) Poverty breeds desperation. It is, therefore, capable of causing social upheaval and political violence, both of which, in turn, are often accompanied by human rights violations causing the uprooting of persons. As prevention is an integral part of the search for solutions to uprootedness generally, social and economic development, as well as promotion and protection of human rights -- in their civil, political, economic, social and cultural dimensions -- are the most wide-reaching and long-lasting preventative measures available to many States.

B. Recommendations

55 The Working Group,
RECOMMENDS THE FOLLOWING FOR DECISION:

(a) The Executive Committee should consider renewing its call on all States which have not

done so to accede to the 1951 Convention and 1967 Protocol, while UNHCR should continue its efforts to promote broader accession to these instruments. The Executive Committee should also call on States to assist UNHCR in promoting a more uniform and vigorous implementation of these instruments as well as a wider knowledge and understanding of the principles of refugee law and protection.

(b) UNHCR should continue to promote a wider accession to, and more uniform implementation of, the OAU Convention and Cartagena Declaration in these instruments' respective regions of origin, as well as use them as examples on which States elsewhere might wish to draw in developing their own national legislation.

(c) The question of a possible application on a global basis of a refugee definition applicable to persons not protected by the 1951 Convention/1967 Protocol or by regional instruments could be considered further.

(d) The particular protection needs of refugee women as well as those of refugee children should be considered further by the Executive Committee with a view to strengthening the work of UNHCR in this regard.

(e) UNHCR should continue to promote measures and activities which would contribute to averting mass flows of refugees. To assist the Office in doing so, Executive Committee Members should ensure the inclusion of refugee questions on the agenda of any relevant meeting of those bodies or organizations with programmes and/or activities which can contribute to refugee protection, assistance and the search for durable solutions, as representing an important part of the work of these organs.

(f) In their individual capacity and as members of the international community, States have the responsibility to do, inter alia, the following:

- as both a preventive and curative action, take measures to eliminate the causes of refugee flows in a comprehensive manner through activities aimed at economic and social development and guaranteeing respect for human rights, as well as through related political dialogue at the national, bilateral, regional and international levels;
- support the High Commissioner in her catalytic role in facilitating dialogue at the national, regional and international levels, as an integral part of her mandated search for durable solutions to the problems of refugees; and recognize and respect the right to return in safety and dignity.

(g) To safeguard the the right to seek and enjoy asylum, States should do the following:

- ensure respect for the principles governing the right of asylum, for example as set out in Articles 32 and 33 of the 1951 Convention;²³
- ensure that national refugee status determination procedures are conducted in a manner which is consistent with the minimum guidelines accepted by the Executive Committee²⁴ as well as the principles and protections of the 1951 Convention and 1967 Protocol; and
- take measures aimed at preventing the misuse of national refugee status determination procedures. These include implementation -- in accordance with relevant immigration regulations and applicable international standards and practices -- of accelerated procedures to screen out manifestly unfounded claims as well as humane, effective, and appropriately-timed return arrangements for rejected asylum-seekers.

(h) Information campaigns could be conducted by States, UNHCR and/or other organizations in the countries of origin where such activities are necessary' to dispel misinformation regarding policies on, and prospects of, application for asylum abroad. Campaigns could also be undertaken in receiving countries, where appropriate, to encourage positive public

attitudes regarding the arrival of asylum-seekers and refugees and to promote voluntary repatriation. Any such campaign should be conducted in consultation with the country where it is to be implemented.

(i) Where UNHCR is satisfied with both the refugee status determination procedure and its outcome, the decision to return, in safety and dignity, persons determined not to be refugees therein should receive the Office's support. The High Commissioner should not normally be involved in the actual return of such persons.

(j) Countries of origin and receiving countries should consult further in order to elaborate humane modalities for the return and reintegration of those rejected asylum-seekers required to return,²⁵ involving international organizations, such as UNHCR and the International organization for Migration, as appropriate.

(k) The international community should analyze the relationship between development and migration, including the use of development assistance to reduce incentives for outflow, and particularly where the migration is caused by extreme poverty.

(l) A clearer identification of responsibilities within the UN system needs to be made in order to ensure a timely and effective response to the problems and needs of the internally displaced, taking into account the unique role of the ICRC and relevant regional efforts. In this regard, inter alia,

- in the various fora where the situation of the internally displaced is under consideration -- among others, the Economic and Social Council (ECOSOC), the General Assembly, the UNDP Governing Council and the Commission on Human Rights -- the aspect of protection for internally displaced persons should be given particular attention;
- further consultation within the framework of the Executive Committee should follow the consideration of the Secretary-General's report by the UN Commission on Human Rights; and
- consultations on the protection needs of the internally displaced should take into account existing international humanitarian and human rights law as well as the prerogative of States -- on the basis of the principles set out in Article 2 of the UN Charter -- to accept international assistance in providing protection to their own nationals. They should also give due regard to the competence of mechanisms already existing within the UN system, and the ICRC, for providing international protection and relief assistance.

(m) Development and rehabilitation efforts should be linked to relief aid as early as possible in any situation or emergency involving displacement. Strategies to attain this linkage need to be pursued in the various relevant fora. Furthermore, as development efforts of this nature are undertaken, due consideration should be given from their inception to the elimination of the various root causes leading to displacement.

(n) States which have not yet done so should actively consider becoming party to the international conventions concerning stateless persons, while mechanisms to strengthen implementation and monitoring of these conventions should be further developed. UN human rights bodies, including the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, the Committee on the Elimination of Racial Discrimination as well as the Human Rights Committee, should, as appropriate, be apprised of the problems of arbitrary deprivation of nationality and should, as a result, be asked to examine the content of the right to a nationality.

(o) The High Commissioner should continue, in accordance with the relevant General Assembly resolutions, to exercise her responsibilities regarding the various categories of persons in need of assistance and protection, including asylum-seekers, refugees, returnees and others of concern to her Office.

(p) Further consideration should be given to how the Sub-Committee of the Whole on International Protection might be enabled to support UNHCR more actively in its protection efforts.

(q) UNHCR should be given the necessary support in its search for durable solutions, such as voluntary repatriation, local integration and resettlement, wherever appropriate. In this regard, States concerned should consider establishing, or those already so providing should consider increasing the number of, emergency resettlement places made available to UNHCR as an instrument integral to its protection function.

(r) International solidarity should be mobilized to assist more effectively both those developing countries of asylum who host the majority of the world's refugees, and UNHCR, so that protection and durable solution for refugees are both facilitated. Broader and flexible funding mechanisms should be formulated in order for UNHCR to fulfil its mandate of protection, assistance and the search for durable solutions to the problems of persons of concern to the Office.

(s) The international community should vigorously pursue the enhanced promotion and implementation of international humanitarian and human rights law and further develop the concept of State responsibility as it relates to redressing the root causes which lead to mass flows of persons.

(t) The international community should develop a supple, effective, international, rapid-response mechanism within the UN system for dealing with mass flows of persons resulting from natural or man-made disaster. In this regard, States and the international community as a whole should ensure the following:

- better coordination between UN agencies, other international organizations and non-governmental organizations, bearing in mind the High Commissioner's mandate for protection of those of her concern, and
- improved financial provisions and stand-by capacity in order to better respond to the initial stages of a crisis.

(u) Early-warning mechanisms should be important elements in averting refugee flows. The United Nations system should further improve its capacity to collect, analyse and disseminate information on possible mass flows of persons. Particular attention should be given to integrating effectively the work of the Office of Research and Collection of Information (ORCI) into the UN system for addressing situations involving refugees, asylum-seekers and displaced persons. States should also consider how they could contribute to the further development and effective utilization of early-warning mechanisms to avert mass outflows of persons.

ANNEX 1 DOCUMENTS, PAPERS AND REPORTS MADE AVAILABLE TO THE EXECUTIVE COMMITTEE WORKING GROUP ON SOLUTIONS AND PROTECTION

(excluding those under the Categories - see Annex II)

- Terms of Reference and Organizational Details (WGSP/1)
- Terms of Reference and Organizational Details (WGSP/1/Rev.1)
- Agenda (WGSP/2)
- Checklist Agenda (WGSP/2/Rev.1)
- Introductory Note to Bibliographic Short List (WGSP/4)
- Population Movements Associated with the Search for Asylum and Refuge (WGSP/5)
- Summary Overview by Geographical Region (WGSP/6)

- Excerpts of General Assembly Resolutions adopted subsequent to UNHCR's Statute and pertinent to its mandate and activities (WGSP/8)
- Proposal for Future Deliberations (WGSP/9)
- Report of the Round Table on Solutions to the Problem of Refugees and the Protection of Refugees San Remo, Italy
- A/41/324 - International Co-operation to Avert New Flows of Refugees
- "A Comprehensive Refugee and Immigration Policy" - Directives for a Government Committee (Swedish Ministry of Labour)
- "A Comprehensive Refugee Immigration Policy" - An outline from an interdepartmental study group (Swedish Ministry of Labour)
- Overview Paper (submitted by Australia)
- Report by the Interministerial Working Group on a "Refugee Concept" (submitted by Germany)
- Persons falling under the Mandate of IOM and to whom the Organization may provide migration services (submitted by IOM)
- Working Paper of Latin American Countries
- "Berlin Report" - Refugees and Development Co-operation - Chairman's Summary
- U.N. Basic Information - Refugees - A New Challenge to Foreign and Development Policy (submitted by Germany)
- The strategy process of the informal consultations on asylum, refugee and migration policies in Europe, North America and Australia (submitted by Switzerland)
- Section 302 of the New US Immigration and Nationality Act (submitted by the United States)
- Refugees and Migratory Flows in Africa (Paper presented by the African Group)
- ECOSOC Resolution 1990/78
- ECOSOC Resolution 1991/25
- Terms of Reference of the consultant on implementation above-mentioned ECOSOC resolutions
- Concluding Statement by Professor J. Patrnoic, President of the International Institute of Humanitarian Law

ANNEX II EXECUTIVE COMMITTEE WORKING GROUP ON SOLUTIONS AND PROTECTION PAPERS PRESENTED BY DELEGATIONS UNDER THE SEVEN CATEGORIES

Category 1:

Persons covered by 1951 Convention (submitted by the Nordic countries)

Category 2:

Persons covered by the OAU Convention and Cartagena Declaration (submitted by the African and Latin American Groups)

Category 3:

Others forced to leave or prevented from returning because of man-made disasters (submitted by the United States)

Category 4:

Persons forced to leave or prevented from returning because of natural or ecological disasters or extreme poverty (submitted by the African Group and the Netherlands)

Category 5:

Persons found not to be refugees (submitted by Australia)

IOM activities for the voluntary return or emigration of asylum seekers whose claim to refugee status is unfounded (submitted by IOM)

Category 6:

Internally Displaced, (submitted by Sweden)

Persons displaced within their own countries as a result of armed conflict or disturbances (submitted by ICRC)

Category 7:

Stateless persons (submitted by UNHCR)

¹[includes EC/SCP/64/Corr.1 of 12 August 1991]

² The Working Group's creation was, in part, spurred by the discussions at the informal Round Table of a group of experts on Solutions to the Problem of Refugees and Protection of Refugees which was held in San Remo, Italy from 12 to 14 July 1989.

³ No. 56 (XL), endorsed by the General Assembly in its resolution 44/137 of 15 December 1989.

⁴ Id

⁵ No. 62 (XLI), endorsed by GA resolution 45/140 of December 1990.

⁶ No. 63 (XLI), endorsed by the General Assembly in its resolution 45/140 of 1990.

⁷ See Annexes I and II regarding papers contributed to the Group's deliberations by these participants.

⁸ A list of the papers considered during this stage is attached as Annex I.

⁹ The Group made it clear from the outset that the order and division of these categories in no way reflected any prioritization of concern or need in the Working Group's eyes, nor did it deny any overlap between categories in terms of the causes of the respective movements, their protection needs, or possible responses and/or ultimate solutions to their problems.

¹⁰ Described in the paper EXCOM/WGSP/5, submitted by UNHCR.

¹¹ A list of the papers considered during this stage is attached as Annex II.

¹² In this regard, a few States mentioned that they were subject to geographical and political constraints which did not allow them to join in support.

¹³ See Art. II, para. 1.

¹⁴ See Art. II, para. 2.

¹⁵ Comprehensive Plan of Action (for Indo-Chinese Refugees).

¹⁶ Spanish acronym for the International Conference on Central American Refugees, which also addresses the problems of returnees and displaced persons.

17 A/41/324.

18 Office of the United Nations Disaster Relief Coordinator

19 The attention of the Working Group was also drawn to the Fact-Finding Commission soon to be created under Article 90 of the first Protocol to the Geneva Conventions - a body external to the ICRC with the task of enquiring into any facts alleged to be a grave breach as defined in the Conventions and Protocol I, applicable to international armed conflict only, or other serious violations of those instruments, and facilitating, through its good offices, the restoration of an attitude of respect for the Conventions and Protocol I.

20 The broader refugee definition contained in the Cartagena Declaration has been included in the internal legislation of countries in the region, and is implemented de facto by several others. Moreover, at its twenty-first regular session in June 1991, the General Assembly of the Organization of American States adopted a resolution which "welcome[d] the endorsement by the member states of the principles for protection set forth in the 1984 Declaration of Cartagena de Indias on Refugees, and... recommend[ed] that those member states that have not yet incorporated those principles into their internal laws... consider the possibility of adopting measures for the purpose of strengthening the domestic legal system for the protection of refugees..." (AG/Res. 1103).

EC/SCP/64/Corr.1 of 3 October 1991 reads as follows:

1. Please note that footnote number 20 (*footnote 19 in printed version*) (paragraph 54(e)) should read as follows:

20/ The broader refugee definition contained in the Cartagena Declaration has been included in the internal legislation of countries in the region, and is implemented de facto by several others. Moreover, at its twenty-first regular session in June 1991, the General Assembly of the Organization of American States adopted a resolution which "welcome [d] the endorsement by the member states of the principles for protection set forth in the 1984 Declaration of Cartagena de Indias on Refugees, and ... recommend [ed] that those member states that have not yet done so ... consider the possibility of adopting measures for the purpose of strengthening the domestic legal systems for the protection of refugees." (AG/Res.1103)

21 Categories 1 through 3 are comprised of persons covered by the 1951 Convention/1967 Protocol, OAU Convention, and/or Cartagena Declaration, as well as other persons forced to leave, or prevented from returning to their country of origin because of man-made disasters.

22 See E/CN.4/1991/L.34.

23 These articles, entitled "Expulsion" and "Prohibition of expulsion or return ('refoulement')", respectively, can be found in the Collection of International Instruments Concerning Refugees, doc. HCR/IP/1/Eng., Office of the United Nations High Commissioner for Refugees, 1990, p. 22.

24 As set out in conclusions no. 8 (XXVIII) of 1977 and no. 30 (XXXIV) of 1983.

25 In other words, those not offered a humanitarian alternative to refugee status which allows them to remain in the receiving country.