

2.2 Summary Conclusions: the principle of *non-refoulement*

Expert Roundtable organized by the United Nations High Commissioner for Refugees and the Lauterpacht Research Centre for International Law, University of Cambridge, UK, 9–10 July 2001



The first day of the Cambridge expert roundtable addressed the question of the scope and content of the principle of *non-refoulement*. The discussion was based on a joint legal opinion by Sir Elihu Lauterpacht and Daniel Bethlehem of the Lauterpacht Research Centre for International Law, which was largely endorsed.¹

The discussion focused on those aspects of the legal opinion which were considered deserving of particular comment or in need of clarification. The paragraphs below, while not representing the individual views of each participant, reflect broadly the consensus emerging from the discussion. The general appreciation of the meeting was:

1. *Non-refoulement* is a principle of customary international law.
2. Refugee law is a dynamic body of law, informed by the broad object and purpose of the 1951 Refugee Convention and its 1967 Protocol, as well as by developments in related areas of international law, such as human rights law and international humanitarian law.
3. Article 33 applies to refugees irrespective of their formal recognition and to asylum seekers. In the case of asylum seekers, this applies up to the point that their status is finally determined in a fair procedure.
4. The principle of *non-refoulement* embodied in Article 33 encompasses any measure attributable to the State which could have the effect of returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she is at risk of

¹ **Editorial note:** As for the 10 July 2001 roundtable meeting on supervisory responsibility, participants comprised thirty-five experts from some fifteen countries, drawn from governments, non-governmental organizations (NGOs), academia, the judiciary, and legal profession. They were provided with written contributions by Eamonn Cahill, barrister, Dublin, Ireland, and by Friedrich Löper, Ministry of the Interior, Federal Republic of Germany. The morning session was chaired by Sir Elihu Lauterpacht, Lauterpacht Research Centre for International Law, and the afternoon session by Dame Rosalyn Higgins, Judge of the International Court of Justice.

persecution, including interception, rejection at the frontier, or indirect *refoulement*.

5. The principle of *non-refoulement* applies in situations of mass influx. The particular issues arising in situations of mass influx need to be addressed through creative measures.
6. The attribution to the State of conduct amounting to *refoulement* is determined by the principles of the law on State responsibility. The international legal responsibility to act in conformity with international obligations wherever they may arise is the overriding consideration.
7. There is a trend against exceptions to basic human rights principles. This was acknowledged as important for the purposes of the interpretation of Article 33(2). Exceptions must be interpreted very restrictively, subject to due process safeguards, and as a measure of last resort. In cases of torture, no exceptions are permitted to the prohibition against *refoulement*.