

4.2 Summary Conclusions: membership of a particular social group

Expert Roundtable organized by the United Nations High Commissioner for Refugees and the International Institute of Humanitarian Law, San Remo, Italy, 6–8 September 2001



The San Remo Expert Roundtable addressed the question of the meaning of ‘membership of a particular social group’ in the refugee definition, as contained in the 1951 Convention Relating to the Status of Refugees. The discussion was based on a background paper by T. Alexander Aleinikoff, Migration Policy Institute and University of Georgetown, entitled ‘“Membership in a Particular Social Group”: Analysis and Proposed Conclusions’. In addition, roundtable participants were provided with written contributions from Justice Lory Rosenberg, United States Board of Immigration Appeals, Deborah Anker, Harvard Law School, and James C. Hathaway, University of Michigan, and subsequent comments were received from the US Government, and Joan Fitzpatrick, University of Washington. Participants included thirty-three experts from twenty-three countries, drawn from governments, NGOs, academia, the judiciary, and the legal profession. Lee Anne de la Hunt, from the University of Cape Town Legal Aid Clinic, moderated the discussion.

The following summary conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the understandings emerging from the discussion.

1. The membership of a particular social group ground is the Convention ground with the least clarity. Varying interpretations have been given to it in different jurisdictions, with two dominant approaches having been developed in common law jurisdictions – those of protected characteristics and social perception. In civil law jurisdictions, this ground is less developed, with more focus placed on the interpretation of persecution and on the other four grounds. The evolution of this ground has advanced the understanding of the refugee definition as a whole.

2. The ground must be given its proper meaning within the refugee definition, in line with the object and purpose of the Convention. It is important that its interpretation should not render the other Convention grounds superfluous.
3. Depending on the circumstances of an individual case, one or more grounds may overlap or may be equally applicable. This phenomenon is not limited to the social group ground.
4. There is no requirement that a group be cohesive in order to be recognized as a particular social group within the meaning of the Convention, that is, there need be no showing that all members of a group know each other or associate together.
5. A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, and which sets them apart. The characteristic will ordinarily be one which is innate, unchangeable, or which is otherwise fundamental to human dignity.
6. While a particular social group cannot be defined solely by the fact that all members of the group suffer persecution nor by a common fear of persecution, nevertheless, persecutory action toward a group may be a relevant factor in determining the visibility of a group in a particular society.
7. An applicant need not establish that every member is at risk of persecution to establish a well-founded fear of persecution.
8. Adjudicating refugee claims based on membership of a particular social group involves a global appraisal of an individual's past and prospective situation in a particular cultural, social, political, and legal context, judged by a test which, though it has legal and linguistic limits, has a broad humanitarian purpose.
9. Consideration could be given to the continued evolution of the membership of a particular social group category in particular by exploring the relevance of a 'social perception' test.