



INFORMATION PACKAGE

ON ACCESSION
TO THE 1951 CONVENTION
AND THE 1967 PROTOCOL
RELATING TO THE STATUS OF REFUGEES

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I. HISTORICAL BACKGROUND

The United Nations Convention relating to the Status of Refugees was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held at Geneva from 2 to 25 July 1951. The Convention opened for accession on 28 July 1951 and entered into force on 22 April 1954. Today, the Convention remains the most significant instrument in international refugee law. It contains a definition of who is a refugee and lays down minimum standards for the treatment of persons who are found to qualify for a such status. The definition applies to persons who are outside their country of origin and are refugees as a result of events occurring before 1 January 1951. However, the emergence in the late 1950's and early 1960's of new refugee situations necessitated a widening of both the temporal and geographical scope of the Convention. This was broadly recognised by Governments and achieved through the conclusion of a Protocol to the Convention which was approved by the United Nations General Assembly in 1966 and opened for accession on 31 January 1967.

The Protocol is an independent, though integrally related, international instrument. By acceding to it, States undertake to apply Articles 2 to 34 inclusive of the 1951 Convention to all persons covered by the refugee definition without any reference to dateline or geographical limitation (unless the latter had already been adopted under the 1951 Convention and had not yet been removed under Article 1(B)2 thereof). While accession to the Protocol would, in fact, be sufficient to render most of the Convention's provisions applicable in relation to the acceding State, the vast majority of States have preferred to accede to both the Convention and the Protocol, thereby underlining the universality of the two fundamental international instruments concerning refugees.

At 15 January 1999, 137 States were party to the 1951 Convention and/or the 1967 Protocol.

THE HUMAN RIGHTS FRAMEWORK

The 1951 Convention relating to the Status of Refugees is one of the first in a series of treaties which transcribed the ideals of the Universal Declaration into legally binding obligations. It is the most specific and comprehensive treaty that protects a specific vulnerable group. International human rights law constitutes the broad framework within which refugee law provisions should be seen. Human Rights law complements and sometimes supplements existing refugee law.

Refugees enjoy two partially overlapping set of rights: those accorded to them as individuals and guaranteed under international human rights standards (as well as national law), and specific rights relating to their status as refugees.

Most rights crucial to refugee protection are also the fundamental rights stated in the Universal Declaration: the right to life, liberty, and security of the person; the right not to be subjected to cruel, inhuman and degrading treatment or punishment; the right to freedom of movement and the right to leave and return to one's own country; the right not to be subjected to arbitrary arrest, detention or exile; and the right to a nationality.

II. THE RELEVANCE OF THE 1951 CONVENTION AND THE 1967 PROTOCOL TO CONTEMPORARY REFUGEE PROBLEMS

It is sometimes argued that the 1951 Convention does not provide a suitable legal frame for addressing present-day refugee problems, as these are often caused by war and conflicts. This argument is fallacious.

As was acknowledged by the drafters of the Convention, the fact that a country is experiencing war or conflict does not preclude that, among those forced to leave or to remain outside, there are persons who have a well-founded fear of being persecuted for Convention reasons. The same position has been maintained by the Executive Committee of UNHCR.

Moreover, it is nowadays widely recognised that war and violence may be used as instruments of persecution – they may be the means chosen by the persecutors to repress or eliminate specific groups, targeted on account of their ethnicity or other affiliations. The Executive Committee reaffirmed this most recently during its 1998 session, when it adopted the following Conclusion by consensus:

“The Executive Committee,

(...)

Expresses deep concern about the increasing use of war and violence as a means to carry out persecutory policies against groups targeted on account of their race, religion, nationality, membership of a particular social group, or political opinion”.

The recent conflicts in former Yugoslavia, in the Great Lakes region of Africa and in Kosovo are striking examples of situations where violence has

been used as a means to persecute specific communities, and where ethnic or religious “cleansing” has been the ultimate purpose of war. These conflicts provide a clear illustration of the fact that persecution is still very much a reality in our world, and that, whether occurring in time of peace or in the context of war or conflict, it remains one of the most important causes of forced displacements of populations.

The Convention and Protocol remain the firmer and more universally accepted basis for the protection of those who have been forced to leave, or to remain outside of their country, owing to serious threats to their fundamental human rights to life, security, freedoms and dignity. Group determination is a device to ensure a comparable measure of protection, based on the same fundamental rights and guarantees, without in the first instance the need for individual examination of claims. It serves as the guarantee of essential and needed sanctuary to victims of war, conflict or violence (including victims of persecution carried out the context of war, conflict or violence) who have entered a country forming part of a mass influx.

Responses to situations of large-scale influx: while there is no doubt that actual or potential victims of persecution that takes place in the context of war or conflict should, in principle, be entitled to recognition as refugees under the 1951 Convention and 1967 Protocol, the handling of asylum requests under individual screening regimes set up to implement the Convention and Protocol, may prove impractical or even impossible in the case of large-scale influxes. It is therefore generally accepted that, in situations of large-scale influx occurring under circumstances that indicate that members of the group could be considered individually as refugees, recourse may be had to the so-called “prima facie” or “group” status determination. This form of determination allows the extension of basic protection and assistance to those in need, pending arrangements for a durable solution, without initially addressing the question of their status under the Convention and Protocol.

The Executive Committee of UNHCR has recommended certain minimum standards that States should observe in this connection. The standards in question require that the principle of *non-refoulement*, including non-rejection at frontiers, be respected under all circumstances; that the displaced receive admission to safety and that their essential human rights be enumerated and guaranteed; and that UNHCR be given unrestricted access to persons of its concern.

There has been a gradual evolution in thinking over recent years since the Executive Committee first turned its attention to standards in mass influx situations. This evolution is reflected not least in the development of the concept of temporary protection, which increasingly has legislative under-pinnings both in European countries but also more broadly. Temporary protection is a practical device allowing for a principled response by States to large numbers of asylum-seekers displaced by and arriving from war and violence. Where individual status determination is too cumbersome or even impossible, protection is nevertheless ensured with basic minimum rights guaranteed albeit predicated on the temporariness of the stay in the country of asylum for the majority of the beneficiaries. Temporary protection is not a solution in itself but an interim protection measure and one essential component of a comprehensive approach based on burden-sharing and international solidarity. It is not a new principle as such but a measure which complements protection under the Convention by ensuring its fundamental purposes are respected even while its application is temporarily suspended for a particular group of arrivals. The ending of temporary protection does not, however, entail that all those who benefited from it can safely return. Persons who have well-founded fear of being persecuted for Convention reasons will not be able to do so, and they are entitled to access to proper refugee status determination procedures, with the Convention becoming again fully applicable.

As is clear from the above, the 1951 Convention remains the basic or starting point for protection based responses to arrivals of asylum-seekers. It

does, however, need to be supplemented by complementary mechanisms where its application in the individual case is weakest, notably as regards persons fleeing indiscriminate violence which is not persecution based. Although the need to accord protection to this category of individuals has been recognised in numerous national legislations in the form of “humanitarian status”, “de facto status”, “exceptional leave to remain”, “B status”, etc. These complementary mechanisms for protection are based upon the fundamental universal principles enshrined in the Convention and developed through EXCOM Conclusions and by State practice.

III. MAIN PROVISIONS OF THE 1951 CONVENTION

The main provisions of the 1951 Convention can be grouped into four parts:

1. the provisions giving the basic definition of who is a refugee, who has ceased to be a refugee and who is excluded from refugee status; and
2. the provisions that define the legal status of refugees, their rights and obligations;
3. the provisions that define States' obligations;
4. the final clauses.

1. Who is a refugee ?

1.1. The refugee definition

The essential purpose of the Convention is to provide for a legal regime which ensures protection to a group of persons who are in a particularly vulnerable situation. Article I of the Convention (combined with article I of the 1967 Protocol) defines a "refugee" as a person who:

"owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of this nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

Thus, a refugee is a person who is outside his or her country of origin (or habitual residence in case of statelessness) and who, owing to a well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unable or unwilling to avail himself or herself of the protection to which he or she is normally entitled from that country.

The decision as to whether a person is entitled to refugee status is taken by each State in accordance with its own established procedures, consistent with international standards, on the basis of the criteria laid down in Article 1 of the Convention. UNHCR plays a role in these procedures if and as requested, and is thus able to share its accumulated experience with Governments regarding status determination and the general handling of refugee problems. Such participation is in line with Article 35 for the Convention and the corresponding Article II of the Protocol, which are described *below* in the Section on *the United Nations High Commissioner for Refugees (UNHCR) and the 1951 Convention/1967 Protocol*.

1.2. Cessation of refugee status

Article 1C of the Convention provides that a person shall cease to be a refugee if:

1. he or she has voluntarily re-availed himself or herself of the protection of the country of his or her nationality;
2. having lost his or her nationality, he or she has voluntarily re-acquired it;
3. he or she has acquired a new nationality and enjoys the protection of the country of his or her new nationality;

4. he or she has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
5. the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, and he or she can no longer continue to refuse the protection of the country of his or her nationality; or
6. he or she is without nationality, but because of a change of circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, is able to return to his or her country of former habitual residence.

Thus, a contracting State may resort to this provision to determine that the refugee status of an individual or a group has ceased. It should, however, be noted that there may nevertheless be circumstances in individual cases which could make it unreasonable to expect a person (or his or her family members) to return to the country of origin. Severely traumatised persons should not be forced to return to their country of origin.

1. 3. Exclusion from refugee status

Article 1 of the Convention identifies, in Sections D, E and F, cases in which persons otherwise having the characteristics of refugees are excluded from refugee status. Such persons fall into three groups:

◆ **the first group** consists of persons already receiving protection or assistance from agencies or organs of the United Nations other than UNHCR. Such people include the Palestinians who, in parts of the Middle East, receive assistance from agencies or organs of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA);

◆ **the second group** consists of persons who are not considered to be in need of international protection. Those are persons who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, short of formal citizenship. For example, people of German descent from Central Europe and the former Soviet Union, irrespective of nationality, are thus protected under the German Constitution, and are therefore not refugees under the 1951 Convention;

◆ **the third group** comprises categories of persons who are not considered to be deserving international protection, because there are serious reasons for considering that they have committed a crime against peace, a war crime or a crime against humanity, or a serious non-political crime outside the country of refuge prior to admission to that country as refugees; or they have been guilty of acts contrary to the purposes and principles of the United Nations.

2. The rights and obligations of refugees

2.1. The rights of refugees

In order to secure the legal status of refugees in the country of asylum, the Convention contains comprehensive provisions regarding refugees' rights. Except where more favourable rights are explicitly provided for in the Convention, refugees are accorded as a minimum standard the same rights as are granted to aliens generally. Beyond this, a refugee is to be granted specific rights not normally enjoyed by ordinary aliens, owing to the fact that he/she lacks the protection of his/her State of nationality. Furthermore, the provisions of the 1951 Convention apply to all refugees without discrimination as to race, religion or country of origin (Article 3).

Among the rights granted to refugees under the Convention are the following:

a) the right not to be returned to a country where they are likely to face persecution (“Principle of *non-refoulement*”): Article 33 gives expression to the principle of “*non-refoulement*” which prohibits the expulsion or return of a refugee, in any manner whatsoever, to a territory where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. The principle of “*non-refoulement*” is generally considered as a rule of customary international law. The protection of Article 33, however, cannot be claimed by a refugee who is, on reasonable grounds, regarded as a danger to the security of the country of asylum or has been convicted of a particularly serious crime and therefore constitutes a danger to the community;

b) the right not to be expelled, except under certain strictly defined conditions: pursuant to Article 32, Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. This Article also details the procedural standards which are to be satisfied before expulsion;

c) exemption from penalties for illegal entry into the territory of a Contracting State: due to the circumstances in which refugees may be obliged to leave their home country it may not be possible for them to enter their potential country of asylum in a regular manner, e.g., with a valid passport and/or entry visa. Ordinarily, such illegal entry or presence is punishable by imprisonment or fines. Such punishment should not, however, be imposed on refugees. Article 31 protects refugees from penalties for unlawful entry or presence, provided they present themselves without delay to the competent authorities and show good cause for their illegal entry or presence;

d) freedom of religion and free access to courts: these freedoms are deemed so important that the relevant provisions of the Convention (Articles 4 and 16, para.1, respectively) cannot be made the subjects of reservations by

Contracting States. Like the principles of non-discrimination and *non-refoulement*, referred to *above*, these provisions of the Convention are so fundamental that, if they are not accepted by State parties, the Convention cannot fulfil its purpose;

e) freedom of movement: Contracting States are required to accord to refugees lawfully in their territory the right to choose their place of residence and to move freely within their territory, subject to any regulations applicable to aliens generally in the same circumstances (Article 26);

f) the right to identity papers and travel documents: Article 27 of the Convention provides that once a refugee is recognised, Contracting States should issue the corresponding identity documents. Further, Article 28 provides that Contracting States shall issue travel documents to lawfully staying refugees. The issuance of a travel document does not imply the granting of nationality to a refugee. Nevertheless, such documents are of particular importance to refugees in facilitating travel to other countries, be it for purposes of study, employment, health or resettlement;

g) the right to public education: with respect to elementary education, refugees shall receive the same treatment as nationals.

With respect to secondary and higher education, the States parties to the 1951 Convention shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances (Article 22);

h) other rights: the Convention also deals with a variety of matters which have an important effect on a refugee's day-to-day life, such as movable and immovable property (Article 13), gainful employment (Articles 17, 18 and 19), housing (Article 21), public relief (Article 23) and labour legislation and social security (Article 24).

2.2. The obligations of refugees

Refugees are aliens in a particularly vulnerable situation. This does not place them, however, above the laws of the country in which they find asylum. Article 2 of the Convention stipulates that every refugee has duties to the country of his/her refuge, and has to conform to the existing laws and regulations, as well as to measures taken by the authorities for the maintenance of public order.

<h3>3. Obligations of States parties to the 1951 Convention and the 1967 Protocol</h3>

It is the principal responsibility of States to provide international protection to refugees. As a general principle of international law, every treaty in force is binding upon the parties to it, and must be performed in good faith. By adhering to the 1951 Convention and the 1967 Protocol, States commit themselves, vis-à-vis each other and the international community, to afford refugees on their territories such rights as stipulated by these instruments. The following are examples of stipulations which apply to States' obligations under the Convention and Protocol.

a) Exemption from reciprocity

Where, according to a State's legislation, the granting of a right to an alien is subject to the granting of a similar treatment by the alien's country of nationality (reciprocity), this will not apply to refugees. The notion of reciprocity has no application in the case of refugees, since they do not enjoy the protection of their State of nationality.

b) Co-operation with UNHCR

Article 35 of the Convention and Article II of the Protocol contain an undertaking by the Contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees (UNHCR) in the exercise of its functions and, in particular, to facilitate its duty to supervise the implementation of the provisions of these instruments.

c) Information on national legislation

The States parties to the 1951 Convention undertake to communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the Convention.

4. The final clauses

The final clauses are similar to those found in other international treaties and include provisions on settlement of disputes, signature, ratification and accession, reservations and entry into force.

IV. THE IMPORTANCE OF ACCESSION

The Convention and the Protocol are the most comprehensive instruments which have been adopted to date on a universal level governing the legal status of refugees. The purpose of these instruments is to define the minimum standards of treatment for refugees and their basic rights and obligations in their country of refuge.

Given the current international political climate and continuing refugee-producing events, the importance of accession by a State to the Convention and the Protocol can best be explained as follows:

1. It constitutes an undertaking to apply minimum humanitarian standards of treatment in respect of refugees. These standards were elaborated in the Convention and have now been endorsed by a majority of States.

2. It contributes to the improvement of relations between a refugee's country of origin and the country of asylum. Tensions between these countries in connection with the granting of asylum will be eased where the country of asylum is seen to be acting in accordance with its obligations under international refugee instruments, particularly as these instruments underline the peaceful and humanitarian nature of asylum. Indeed, paragraph 5 of the Preamble to the Convention urges States to do everything within their power to prevent refugee problems from becoming a cause of tension between them. Similar exhortations can be found in paragraph 4 of the Preamble and Article 1 of the United Nations Declaration on Territorial Asylum of 1967; Article 2 of the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa; Conclusion 4 of the Cartagena Declaration on

Refugees (1984) and Paragraph 3 of the Council of Europe Declaration on Territorial Asylum (1977).

3. It underlines the importance attached by the acceding State to co-operation with the international community and UNHCR in their efforts to find solutions to refugee problems. States have generally acted in accordance with the long standing humanitarian tradition of granting refugees asylum until conditions in their countries of origin allow them to repatriate voluntarily. Accession does not impose upon States a legal obligation to admit refugees on a permanent basis. Rather, it serves to strengthen the universal tradition of asylum by placing it within the more solid framework of an international convention.

4. It greatly facilitates UNHCR's task of mobilising international support to address refugee situations that may arise in any country. A sudden, large influx of refugees into a developing country often imposes severe economic strains and may require a diversion of already scarce resources away from the local population. Such situations call for special measures of assistance which are best provided through co-operation with the wider international community.

5. Accession to international refugee instruments further serves to:

- ◆ manifest the profound concern of States for the plight of refugees, and their desire that solutions be found to the problem of refugees;
- ◆ acknowledge and strengthen the universal character of international refugee law, in recognition of the universal character which refugee problems and the search for solutions have assumed; and to

- ◆ reinforce the pivotal role of the United Nations, and in particular that of UNHCR, in the world-wide system of international protection for refugees.
- ◆ depoliticize the act of granting asylum to refugees.

V. COMMON CONCERNS REGARDING ACCESSION

Below are listed the most common State concerns regarding the Convention and the Protocol, and the responses that can be given.

1. Is accession to refugee instruments a pull factor? In other words, upon accession do States suddenly become more “attractive” and witness an increase in asylum applications?

This assertion is contradicted by facts. Many states which are not parties to refugee instruments host among the largest refugee populations in the world. Western European countries, which are all parties to the Convention and the Protocol, do not have the same number of asylum-seekers and the same level of asylum applications. “Attractiveness” is a very subjective notion. Its parameters have very little to do with legal obligations. Geopolitical considerations or family links are likely to play a more crucial role as far as “attractiveness” is concerned. The 1951 Convention draws a clear line between an economic migrant and a refugee.

2. Are contracting States required to give permanent asylum or to offer assimilation – including naturalisation – to refugees who arrive at their borders?

The principle of *non-refoulement* (Article 33 of the Convention) is the main obligation imposed upon States by the Convention. A refugee must not be prevented from entering a country in order to seek protection or be forcibly returned to her/his country of origin or any other country where she/he could face persecution. However neither the Convention nor the Protocol impose upon States an obligation to grant asylum on a durable basis.

The protection afforded by the Convention and the Protocol is not meant to be permanent. The Convention (article 1 C) makes it clear that refugee status is a transitory condition which will cease once a refugee resumes or establishes meaningful national protection. International protection is no longer justified after there have been fundamental changes in the country of origin and that the basis of the fear of persecution has been removed.

Finally, Article 34 of the Convention contains a recommendation to “as far as possible facilitate the assimilation and naturalisation of refugees”.

3. Is it true that a State can avoid hosting refugees by not acceding to the 1951 Convention and the 1967 Protocol?

It is not true.

The principle of *non-refoulement*, which is the cornerstone of the refugee regime, is a universal principle and is generally considered as a rule of customary international law, thus binding on all States without exception and regardless of whether they have acceded to the 1951 Convention/1967 Protocol.

4. Does accession lead to a significant infringement upon State sovereignty?

State sovereignty is never absolute. By definition, international relations imply a reasonable and acceptable level of compromise. The 1951 Convention and the 1967 Protocol are not at all maximalistic. They have been carefully drafted to reconcile State interests with refugee protection. Under special circumstances (see for example Articles 2, 9, 32 and 33 of the Convention), public order or national security can be invoked to restrict or limit refugee rights.

The granting of asylum – in the sense of admission to residence and permanent protection – has not been incorporated into the refugee instruments and continues to be an act of sovereignty.

Finally, it is worth reiterating that there are presently 136 parties to one or both instruments. This is an indication in itself that accession is fully compatible with the requirements of sovereignty.

5. Can the presence of refugees be a threat to national security or public order?

By acceding to the refugee instruments, a State has at its disposal a legal framework which takes into account its legitimate interest, including national security and public order. Article 2 of the Convention in particular states that every refugee has duties to the country in which he finds himself, which require in particular that he conforms to its laws and regulations as well as to measures taken for the maintenance of public order.

Accession to refugee instruments facilitates international co-operation.

6. Do the 1951 Convention and the 1967 Protocol mainly reflect Western values and largely ignore other traditions?

The institution of asylum as well as compassion for those who suffer and have been compelled to flee their country is neither new nor limited to the Western world. Refugees have been around as long as history and protection to refugees has been granted and continues to be granted on the five continents. Africa and most Latin American countries have even adopted an expanded and more generous definition of who is a refugee.

The international community has accepted that refugee problems are international in scope and are the responsibility of States working together in a spirit of solidarity and co-operation.

The provisions of the Convention and the Protocol are seen by many States as a “common denominator” or a “minimum” for this co-operation, which should attract the consensus of all nations.

7. Does accession mean that Contracting States will have to host criminals, terrorists or armed elements who will continue their struggle on the territory of the asylum country?

A person with respect to whom there are serious reasons for considering that she/he has committed a serious non-political crime or a crime which is clearly disproportionate in relation to the political aims (for example killing of innocent civilians during a political struggle) are excluded from refugee status.

⇒ (See Article 1 F b, 1951 Convention).

As regards persons admitted as refugees who commit crimes in the asylum country, a State can, in certain circumstances and in accordance with Article 33 paragraph 2, expel a recognised refugee who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Armed struggle is not compatible with the civilian character of refugee status.

The presence of armed elements among the refugee population is in contradiction with both refugee law and the UN Charter, in the sense that it constitutes a threat to international peace and security. It is the responsibility of Contracting States to ensure that armed elements have laid down their arms

and have given up armed struggle. Those who do not comply and continue to pursue armed action will not be considered as refugees.

8. Some States might have the perception that accession to the refugee instruments might be a source of growing tension with their neighbours, especially when the latter are refugee producers.

Whether parties or not to the refugee instruments, States will be confronted by refugee arrivals. The presence on their territory of refugees from neighbouring countries is likely to be a subject of bilateral consultations with their neighbours. But tensions will be eased if the granting of asylum is seen as part of international obligations rather than an act of pure sovereignty. The latter might be interpreted by neighbouring countries as a provocation while the former can always be justified on the ground of international relations.

Refugee instruments insist on the peaceful and humanitarian nature of asylum.

Finally, in situations of mass influx, the refugee instruments are flexible enough to allow group determination coupled with temporary refuge, and avoid individual refugee determination.

9. How can accession be presented to a concerned local populace?

The answer to these concerns will naturally depend on the specific context of each country.

Some domestic concerns are linked to a misreading and/or a misconception of the Convention and the Protocol. Obligations imposed on States are not as constraining as States often perceive them to be. The Convention and the Protocol are nothing more than a general legal framework, which has to be respected and on which States can build their refugee policy.

There is always a risk to deal with refugee issues in an “ad hoc” or pragmatic manner. To tolerate refugees, instead of giving them legal existence, might create a grey zone, which can turn into a serious security problem.

It is also better to deal with the refugee question before it becomes a priority. Hasty answers provided during emergencies are often detrimental to State interest.

10. Does accession have a cost?

Accession, in itself, does not expose a country to any charges or costs. Hosting refugees – especially in situations of mass influx – will naturally place burdens of different sorts on the countries of asylum. However, States often find themselves hosting refugees, irrespective of accession. There are clear examples of States not parties to the refugee instruments which have found themselves hosting hundreds of thousands of refugees. Accession greatly facilitates UNHCR’s task of mobilising international support and funds and triggers off international solidarity and co-operation.

11. Some States might be reluctant to accede to the 1951 Convention and the 1967 Protocol for purely political reasons, arguing that accession might mean the indirect recognition or the legitimisation of their “adversaries”.

The Preamble of the 1951 Convention recognises the social and humanitarian nature of the problem of refugees. Because of their humanitarian/human rights links, the 1951 Convention and its 1967 Protocol cannot be invoked as a justification for intervening, directly or indirectly, in the internal or external affairs of another State. The application of refugee law does not affect the legal status of the parties to a dispute or a conflict.

Furthermore, States can, upon accession, make a declaration clarifying their position in this regard.

12. Some States might have the perception that the 1951 Convention and its 1967 Protocol are somehow outdated and do not address present-day refugee problems

Attention is drawn to Section II on “the relevance of the 1951 Convention to contemporary refugee problems” (see p. 7-10).

13. Is a State party obliged to give land or jobs to all refugees who arrive on its territory?

Neither the Convention nor the Protocol requires States parties to give preferential treatment to refugees with regard to the acquisition of property or access to work

⇒ (See article 13 and 17 of the Convention).

VI. UNHCR AND THE 1951 CONVENTION/1967 PROTOCOL

The Office of the United Nations High Commissioner for Refugees (UNHCR) was set up by the United Nations General Assembly in 1950. Since 1 January 1951, UNHCR has been responsible for providing international protection to refugees and for promoting lasting solutions to the problem of refugees. UNHCR's Statute makes it clear that the organisation's work is humanitarian and entirely non-political.

UNHCR further serves as the "guardian" of the Convention and Protocol and States, pursuant to Article 35 of the former and article 2 of the latter, undertake to co-operate with UNHCR in its supervision of the application of the provisions of these instruments.

An important function of the Office is to promote refugee law, which includes promoting accession to the international instruments protecting refugees, as well as the adoption of legislation to give effect to their provisions in national legal orders.

The Executive Committee of the UNHCR Programme was formally established in 1958 and today consists of 53 States. One of its functions is to advise the High Commissioner on her international protection responsibility, and to set criteria and guidelines for States' practice in the protection of refugees. In 1989, the Executive Committee adopted a Conclusion stressing the importance of applying the provisions of the 1951 Convention and the 1967 Protocol in a manner fully consistent with the humanitarian objective of these instruments. The Executive Committee also asked States parties to provide UNHCR with detailed information regarding the implementation of the Convention and Protocol.

The tasks of the High Commissioner as set out in the Statute include:

- 1. Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments;**
- 2. Promoting measures to improve the situation of refugees and to reduce the number requiring protection;**
- 3. Assisting efforts to promote voluntary repatriation or assimilation within new national communities;**
- 4. Promoting the admission of refugees to the territories of States. UNHCR can help play a role in the determination of refugee status, if governments so request; UNHCR can share its experience with governments regarding the determination of refugee status and the general handling of refugee problems;**
- 5. Endeavouring to obtain permission for refugees to transfer their assets;**
- 6. Obtaining from governments information concerning the numbers and conditions of refugees in their territories, and the relevant laws and regulations;**
- 7. Keeping in close touch with governments and intergovernmental organisations;**
- 8. Establishing contact with private organisations dealing with refugee questions;**
- 9. Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees;**
- 10. Being at the disposal of States for any assistance they might require in relation to acceding to the Convention and Protocol, including further clarification of the implications of accession.**

VII. PROCEDURES FOR BECOMING PARTY TO THE 1951 CONVENTION AND THE 1967 PROTOCOL

1. Accession to the 1951 Convention

States may accede to the 1951 Convention at any time by depositing an instrument of accession with the Secretary-General of the United Nations. The instrument of accession must be signed by the Foreign Minister or the Head of State or Government, and is then usually transmitted through the Representative of the acceding country accredited to the United Nations Headquarters in New York. A model instrument of accession to the 1951 Convention can be found in **Annex I**.

States are required, when acceding to the 1951 Convention, to make a declaration whether they choose alternative (a) or (b) of Article 1B(1). Article 1B(1) states:

“For the purpose of this Convention, the words “events occurring before 1 January 1951” in Article 1A shall be understood to mean either:

- (a) “events occurring in Europe before 1 January 1951”, or
- (b) “events occurring in Europe and elsewhere before 1 January 1951”,

and each contracting State shall make a declaration at the time of signature, ratification or accession specifying which of these meanings it applies for the purpose of its obligations under this Convention”.

Nearly all States parties to the Convention have accepted the wider alternative which, it is assumed, will also be accepted by future acceding

States. The majority of States which had originally introduced the geographical limitation as per alternative (a) have withdrawn it. As of 1998, only six countries maintain the geographical limitation.

2. Accession to the 1967 Protocol and simultaneous accession

Regarding accession to the 1967 Protocol, States follow the same procedure as when acceding to the 1951 Convention, as indicated above, Accession to the 1967 Protocol implies an understanding to apply its provisions without any geographical limitation. A model instrument for accession to the Protocol is attached as **Annex II**.

States may accede simultaneously to both the Convention and Protocol, as most do. Upon simultaneous accession, however, a formal declaration as to the geographical application under Article 1B(1) of the Convention is still required.

3. Succession

New States resulting from the partition or disintegration of States are not automatically bound by treaties to which the predecessor State had acceded. These new States have the options, either to succeed to the predecessor State's obligations, to accede *de novo*, or to indicate their intention not to be bound by the treaties concluded by the predecessor. Model instruments of succession, corresponding to the first option, to the Convention and Protocol can be found in **Annexes III and IV**.

4. Reservations

In order to take account of special conditions prevailing at the time of accession or succession, the Convention and the Protocol allow Contracting States to make reservations to certain of their provisions. However, in accordance with Article 42, reservations may not be made to several of the fundamental provisions of the Convention. These provisions are: Article 1 (definition of the term “refugee”); Article 3 (non-discrimination); Article 4 (freedom of religion); Article 16(1) (access to courts); Article 33 (*non-refoulement*) and Articles 36 to 46 inclusive (the final clauses).

Upon accession to the Protocol, reservations may be made in respect of any article(s) of the 1951 Convention with the same exceptions mentioned above. Reservations may, in addition, be made to Article IV of the 1967 Protocol, which corresponds to Article 38 of the 1951 Convention (settlement of disputes). On the other hand, no reservations may be made to Article II of the Protocol concerning co-operation with UNHCR.

With time, and in response to changes in the circumstances, some States have decided to withdraw reservations made at the time of accession.

**VIII. CHECKLIST OF PROCEDURES FOR ACCESSION TO THE 1951
CONVENTION AND THE 1967 PROTOCOL**

1. Prepare and execute instruments of accession (or succession, as the case may be) in accordance with the model instruments in Annex, ensuring that a declaration concerning geographical scope has been made in accordance with Article 1B of the Convention and that the instruments have been duly signed and sealed. Ensure that any reservations made comply with the limitations contained in Article 42 of the Convention and VII of the Protocol.
2. In accordance with Articles 39 of the Convention and V of the Protocol, the instrument(s) of accession/succession have to be deposited with the Secretary-General of the United Nations in New York. The instruments can be deposited with the Secretary-General either in person by the Head of State, Head of Government or Foreign Minister, or by your country's Permanent Mission to the United Nations in New York, or indeed, by mail.
3. Ensure compliance with any domestic processes including constitutional requirements concerning the accession to international instruments and the domestic entry into force of such instruments. The measures required to give domestic effect to the Convention and the Protocol will vary according to these domestic requirements. Mere accession may be sufficient to give the Convention and the Protocol domestic force. Alternatively, it may be necessary to go through a process of ratification or to enact the provisions of the Convention and the Protocol into domestic legislation.

ANNEXES

ANNEX I

MODEL INSTRUMENT OF ACCESSION

TO THE 1951 CONVENTION

ANNEX II

MODEL INSTRUMENT OF ACCESSION

TO THE 1967 PROTOCOL

ANNEX III

MODEL INSTRUMENT OF SUCCESSION

TO THE 1951 CONVENTION

ANNEX IV

MODEL INSTRUMENT OF SUCCESSION

TO THE 1967 PROTOCOL

ANNEX V

CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951

ANNEX VI

**FINAL ACT OF THE 1951 UNITED NATIONS
CONFERENCE OF PLENIPOTENTIARIES
ON THE STATUS OF REFUGEES AND STATELESS PERSONS**

ANNEX VII

PROTOCOL RELATING TO THE STATUS OF REFUGEES OF 31 JANUARY 1967

ANNEX VIII

LIST OF STATES PARTIES TO THE 1951 CONVENTION AND 1967 PROTOCOL

ANNEX IX

EXECUTIVE COMMITTEE OF UNHCR'S PROGRAM (1988):

CONCLUSION N° 51 (XXXIX)

ON THE PROMOTION AND DISSEMINATION

OF REFUGEE LAW

ANNEX X

GENERAL ASSEMBLY

RESOLUTION A/RES/53/125

OF 9 DECEMBER 1998

OFFICE OF THE HIGH COMMISSIONER FOR REFUGEES

(EXTRACTS)