

Articles

Accession of Pakistan to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees: 'Signing On Could Make All The Difference'

Marjoleine Zieck^φ

One of the means UNHCR uses to attract accessions is a brochure entitled: "The 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Signing on Could Make All the Difference". Accession to the 1951 Convention and its 1967 Protocol would indeed make a difference, but not just the one, or rather ones, intimated by UNHCR. This article identifies the other difference that 'signing on' could make by considering accession from the perspective of the current situation, that is, the Afghan refugee population in Pakistan. In essence, this difference constitutes a drawback, which poses a dilemma for Pakistan. This drawback is not, however, confined to Pakistan and is, moreover, related to a systemic flaw in the protective global regime that was created for refugees in the wake of the Second World War.

^φ Dr. Marjoleine Zieck is Professor of International Refugee Law at the Amsterdam Law School, University of Amsterdam, and Professor of Public International Law at the Pakistan College of Law, Lahore. The author would like to thank Isabelle Swerissen - research assistant - for her help in retrieving materials for this article. This article was completed on October 1, 2009.

CONTENTS

| | | |
|-----------|---|----|
| I. | INTRODUCTION | 3 |
| II. | THE IMPORTANCE OF ACCESSION | 6 |
| III. | A PARADOXICAL CONSEQUENCE | 9 |
| IV. | A SYSTEMIC DISPARITY | 12 |
| V. | THE PROBLEM OF DISPARITY IN BENEFICIARIES OF INTERNATIONAL PROTECTION..... | 14 |
| VI. | BRIDGING THE GAP IN PRACTICE | 16 |
| VII. | BEYOND DEFINITIONAL ISSUES: THE ADVANTAGE OF ACCESSION | 19 |
| VIII. | WHAT ACCESSION WOULD NOT SIGNIFY | 20 |
| IX. | CONCLUDING OBSERVATIONS..... | 20 |
| ANNEX. 1. | THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES | 23 |
| ANNEX. 2. | THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES | 49 |

I.

INTRODUCTION

Pakistan ranks as the premier refugee hosting state: on account of the number of (Afghan) refugees it hosts, and on account of the duration of their stay: almost three decades now. Pakistan is, in addition, a member of UNHCR's Executive Committee. Being a member of the Executive Committee means that Pakistan is actively involved in drafting the resolutions – they are known as 'conclusions'¹ – this Committee annually adopts. Apart from the fact that Pakistan is consequently responsible for the repeated call on states who are not yet parties to accede to the 1951 Convention relating to the Status of Refugees (hereinafter referred to as the 1951 Convention) and the 1967 Protocol relating to the Status of Refugees (hereinafter referred to as the 1967 Protocol),² this means Pakistan actively contributes to developing the substance of refugee law by means of conclusions which interpret the 1951 Convention and the 1967 Protocol.³ In the light of those facts, it is surprising, if not bewildering and paradoxical, that Pakistan never acceded to the 1951 Convention and the 1967 Protocol.⁴

¹ For a compilation of the conclusions which have been adopted by the Executive Committee, see <http://www.unhcr.org>. (last visited on 30 September, 2009).

² See, e.g. the following conclusions of UNHCR's Executive Committee: no. 74 (1995) sub (d); no. 77 (1995) sub (d); no. 79 (1996) sub (d); no. 81 (1997) sub (m); no. 85 (1998) sub (e); no. 87 (1999) sub (e); no. 90 (2001) sub (b); no. 95 (2003) sub (d); no. 99 (2004) sub (c); no. 102 (2005) sub (c), etc.

³ A few examples of conclusions which comprise interpretations of the substance of the 1951 Convention and the 1967 Protocol are the following conclusions of the Executive Committee: no. 69 (1992); no. 73 (1993) sub (d); no. 94 (2002) sub (c), etc. (the examples are confined to the period starting from 1988, the year that Pakistan became a member of the Executive Committee).

⁴ The text of both instruments is provided in the annexes that follow this article.

Both UNHCR and states party to the 1951 Convention and 1967 Protocol encourage states that have not yet done so to accede to the 1951 Convention and the 1967 Protocol.⁵ The Committee on the Rights of the Child, the treaty body of the 1989 Convention on the Rights of the Child to which Pakistan is a party,⁶ and the Committee on the Elimination of Racial Discrimination,⁷ the treaty body of the 1966 International Convention on the Elimination of all Forms of Racial Discrimination to which Pakistan is also a party, both explicitly recommend that Pakistan accede to those two instruments.

In view of the fact that Pakistan itself indicates, with reference to its role in hosting millions of Afghan refugees over the past 28 years, that it, despite not being a signatory of the 1951 Convention relating to the Status of Refugees, has “abided by all of its provisions”,⁸ the protracted discussions between the national Parliamentary Commission for Human Rights and UNHCR regarding amendments to the 1946 Foreigners Act which will enable accession are not comprehensible.⁹

⁵ See the Declaration of States Parties to the 1951 Convention and or Its Protocol Relating to the Status of Refugees, HCR/MMSP/2001/09: “Recognizes the importance of promoting universal adherence to the 1951 Convention and/or its 1967 Protocol [...]” (paragraph 3); “Encourages all States that have not yet done so to accede to the 1951 Convention and/or its 1967 Protocol, as far as possible without reservations” (paragraph 4). Similarly, UNHCR’s Executive Committee (see *supra* note 2) and UNHCR, see paragraph 2 *infra*.

⁶ UN doc. A/HRC/WG.6/2/PAK/2 paragraph 37.

⁷ CERD/C/PAK/CO/20 paragraph 15.

⁸ UN doc. A/HRC/8/42 (4 June 2008) paragraph 13.

⁹ UN doc. A/HRC/WG/2/PAK/1 (14 April 2008) paragraph 96. Apart from the fact that those discussions appear to have been initiated already more than five years ago (see A. Sharif, “UNHCR lobbying for law on refugees”, *Dawn*, 24 December 2004, available at <http://www.dawn.com/2004/12/24/nat18.htm>, (last visited on 30 September, 2009) no information on those discussions has been made publicly available.

One of the means UNHCR uses to attract accessions is a brochure entitled: "The 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Signing on Could Make All the Difference".¹⁰ Accession to the 1951 Convention and its 1967 Protocol would indeed make a difference, but not just the one, or rather ones, implied by UNHCR.¹¹ This article identifies and sketches the nature of this other difference.

The other difference that 'signing on' could make, can be made visible when some of the consequences of accession are viewed from the perspective of the current situation, that is, the Afghan refugee population in Pakistan including the obligations Pakistan incurred so far, predominantly in the form of bilateral agreements concluded between Pakistan and UNHCR regarding the Afghan refugees.¹² The difference will be demonstrated by highlighting the personal scope of the obligations Pakistan would incur upon accession to the 1951 Convention and 1967 Protocol. In view of the public encouragement to accede to the 1951 Convention and 1967 Protocol, it seems important to highlight the other difference - the one not listed by UNHCR - accession would make. In essence, this difference constitutes a drawback and it poses a dilemma for Pakistan. This drawback is not confined to Pakistan and is, moreover, related to a systemic flaw in the protective global regime that was created for refugees in the wake of the Second World War. Whether or not it should impede Pakistan from proceeding to accede to the 1951 Convention and 1967 Protocol is essentially a policy decision. From the point of view of refugees, and the international protection of refugees, it boils down to a choice between two options neither of which, assuming *tertium non datur*, is really an optimal one.

¹⁰ 1 August 2001, available at <http://www.unhcr.org>

¹¹ See paragraph 2 *infra*.

¹² For an overview of the relevant agreements, see M.Y.A. Zieck, *In the Aftermath of Voluntary Repatriation: the Fate of Afghan Refugees in Pakistan*, 3 PAKISTAN LAW REVIEW 2007, 1-51.

II.

THE IMPORTANCE OF ACCESSION

UNHCR favours and encourages accession to the 1951 Convention and 1967 Protocol. In the brochure which highlights “the benefits to governments of accession to the Refugee Convention”,¹³ drafted to attract more accessions, UNHCR raises the question “Why is it important for States to accede to the Refugee Convention and its Protocol?”. It answers this question as follows:

“Accession

- Demonstrates a country’s commitment to treating refugees in accordance with internationally recognized legal and humanitarian standards
- Improves the possibility of refugees finding safety
- Helps to avoid friction between States over refugee questions. If a particular country is already a party to the Convention, its act of granting asylum should be understood by the refugee’s country of origin as a peaceful, humanitarian and legal act, rather than a hostile gesture
- Demonstrates a country’s willingness to share responsibility for refugee protection
- Helps UNHCR to mobilize international support for protection of refugees”.

When applied to Pakistan, not all those advantages are convincing, particularly not the last three ones. To start with the last one: there is general recognition of the fact that Pakistan is the world’s foremost refugee hosting state. Yet fundraising has been very difficult, owing to donor fatigue, eloquently described by the Committee on the Rights

¹³ UNHCR also has a brochure that details the “Procedures for becoming a party to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees”, available at <http://www.unhcr.org>.

of the Child, in its considerations regarding the periodic report submitted by Pakistan:

“The Government of Pakistan has one of the most open and generous policies towards refugees and their settlement, and has done much more than should be expected of a country with limited resources. [...] International assistance which was forthcoming in the initial years of the Afghan refugee crisis has now nearly dried up and Pakistan has been left on its own to cater for the refugees from its meagre resources”.¹⁴

It is a pious hope that mobilizing international support will turn out to be easier when Pakistan accedes to the 1951 Convention and 1967 Protocol.

Accession, according to the penultimate advantage, would be a tangible demonstration of preparedness to share responsibility for refugee protection. Hosting millions of refugees for three decades speaks louder of such preparedness than the formal act of accession could ever do. The willingness to which reference is made, is known and resulted in Pakistan’s membership of UNHCR’s Executive Committee which requires “demonstrated interest in and devotion to the solution of the refugee problem” of prospective members.¹⁵

As to avoiding friction between states over refugee questions, the assumption is that the mere fact of accession turns the grant of asylum, which would, or rather could, otherwise be considered as a hostile gesture, into a peaceful, humanitarian and legal act. The legality of granting asylum does not depend on accession. Friction between Afghanistan and Pakistan has been a permanent feature of the foreign relations between those two states. One of the sources of this friction has been the location of refugee camps too close to the border with Afghanistan, a proximity that induced accusations of Pakistan knowingly allowing the use of refugee camps as recruiting

¹⁴ CRC/C/65/Add.21 (2003) paragraph 343; see also S. OGATA, *THE TURBULENT DECADE; CONFRONTING THE REFUGEE CRISIS OF THE 1990S*, (2005) at 293-294.

¹⁵ Statute of UNHCR, Art. 4.

grounds and bases for terrorist activities by the Afghanistan armed opposition.¹⁶

This particular source of friction can only be, and has been,¹⁷ removed by locating the camps further inland rather than by acceding to the relevant instruments.

As to improving the possibility of refugees finding safety, possibly yes, but states are already bound to observe the customary legal norm of *non-refoulement* – the prohibition of forced return – which is arguably wider in scope than the prohibition of *refoulement* comprised in Article 33 paragraph 1 of the 1951 Convention.¹⁸

Last but not least, accession would demonstrate a commitment to treating refugees in accordance with internationally recognized legal and humanitarian standards. Definitely so, but it has been observed, not just by Pakistan itself,¹⁹ that Pakistan already observes all the

¹⁶ See A. Tang, *Afghan President Lashes Out at Pakistan* in the Washington Post, 14 December 2006; Daily Times (site edition), *Pakistan to close down four Afghan refugee camps*, 17 January 2007; Daily Times (site edition), *NATO, Pakistan say Afghan refugees must return home*, 1 February 2007.

¹⁷ See UNHCR Islamabad press release, *Pakistan to close refugee camps in North Waziristan*, 13 May 2005; UNHCR Islamabad press release, *Government and UNHCR closing two refugee camps in Balochistan*, 17 June 2005; UNHCR Islamabad press release, *North Waziristan refugee camps close: 85 percent choose repatriation*, 30 June 2005; UNHCR Islamabad press release, *FATA refugee camps to close*, 4 August 2005; UNHCR Islamabad press release, *Three Refugee Camps To Close In April, Says Government*, 23 February 2006; UNHCR News Stories, *Pakistan, Afghanistan finalise camp closure plans*, 7 February 2007; UNHCR News Stories, *Top UNHCR official outlines options for camp closure in Pakistan*, 21 February 2007, etc.

¹⁸ Art. 33 paragraph 1 runs as follows: “No Contracting State shall expel or return (*‘refouler’*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”, a provision that substantively corresponds with the definition of refugee comprised in Art. 1 A (2) of the 1951 Convention.

¹⁹ Also by Saudi Arabia and Nigeria, see UN doc. A/HRC/8/42 (4 June 2008) respectively paragraphs 26 and 82, and UNHCR, in terms of ‘respecting the principles of international protection’, see <http://unhcr.org/cgi-bin/texis/vtx/page?page=49e487016> (last visited on 30 September, 2009) and UN doc. A/HCR/WG/6/PAK/2 paragraph 39.

provisions of the 1951 Convention. It is submitted this is not the case,²⁰ and accession would consequently signify incurring obligations that are currently not observed.

III.

A PARADOXICAL CONSEQUENCE

The legal status of the Afghan refugees currently hosted by Pakistan – and the focus will throughout be on the Afghan refugees – derives from a collective recognition of their status as refugees by Pakistan²¹ until it was decided, in 2001,²² that newly arriving Afghan

²⁰ The recommendation on the part of the Committee on the Rights of the Child that Pakistan consider ratifying the 1951 Convention and the 1967 Protocol, referred to earlier, was induced by the harsh conditions in Afghan refugee camps, the scarcity of food and water, the lack of shelter and medical care, and reports of ill-treatment of refugees by the police, UN doc. A/HRC/WG.6/2/PAK/2 paragraph 37, in short, by the hope that such conditions would improve by virtue of the obligation to observe the 1951 Convention and the 1967 Protocol upon accession. Other concerns include arbitrary arrests and detention, harassment and extortion by law enforcement personnel, violence against female refugees, violation of the prohibition of *refoulement*, absence of identity and travel documents, lack of access to courts, see *inter alia* Amnesty International, *Afghanistan, Out of Sight, Out of Mind: the Fate of Afghan Returnees*, June 2003; Amnesty International, *Afghanistan: Continuing Need for Protection and Standards for Return of Afghan Refugees*, July 2002; Human Rights Watch, *Afghan Refugees Mistreated in Exile, but Afraid to Go Home*, 25 February 2002; Human Rights Watch, *Afghanistan Unsafe for Refugee Returns*, 22 July 2002; Human Rights Watch, *Testimony from Afghan Refugees*, 25 February 2002; Human Rights Watch, *Afghanistan, Iran, and Pakistan, Closed Door Policy: Afghan Refugees in Pakistan and Iran*, February 2002; UN doc. E/CN.4/2000/68/Add. 4 (13 March 2000) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Pakistan and Afghanistan, paragraph 40 *et seq.*

²¹ See UN doc. E/CN.4/2000/68/Add.4 paragraph 41 (the *prima facie* collective recognition was formalized in the Handbook on Afghan Refugees Management issued by the Government of Pakistan in 1981); UNHCR, *Return to Afghanistan 2002* at 5; UNHCR, *Searching for Solutions: 25*

refugees would be subjected to eligibility assessment ('screening'). It was only then that the definition of refugee which had so far only tacitly formed the premise of the reasoning that led to the conclusion that the Afghans who sought refuge in Pakistan were refugees, was made known. The definition was included in the so-called 'screening agreement' concluded between Pakistan and UNHCR, a shorthand designation of the Agreed Understandings for the Screening Process for Afghans in Jalozai makeshift camp, Nasirbagh camp and Shamshatoo camp to Determine which Persons are in Need of International Protection and Which are Not (2001),²³ and runs as follows:

"any person who is outside his/her country of origin and who is unwilling or unable to return there or to avail him/herself of its protection because of (i) a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or (ii) a threat to life or security as a result of armed conflict and other forms of widespread violence which seriously disturb the public order".²⁴

Its scope contrasts markedly with the refugee definition comprised in the 1951 Convention and 1967 Protocol:²⁵

"the term 'refugee' shall apply to any 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,

Years of UNHCR - Pakistan Cooperation on Afghan Refugees, June 2005 at 17.

²² Possibly earlier, see *ibid.*, UNHCR, *Return to Afghanistan* at 5; *ibid.*, UNHCR, *Searching for Solutions* at 17, mentioning the year 2000 respectively 1999 as the year Pakistan declared it would no longer grant refugee status on a collective basis.

²³ Text on file with the author.

²⁴ Art. 2 sub (a).

²⁵ To make any sense, accession could not be confined to the 1951 Convention but should encompass the 1967 Protocol on account of the fact that the root cause of flight in the original definition is temporary limited to events occurring before 1 January 1951. The 1967 Protocol removed that limitation, see Article I of the 1967 Protocol.

is outside the country of his 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, is unable or, owing to such fear, is unwilling to return to it".²⁶

The main difference between the definition currently applied by Pakistan and the one comprised in the 1951 Convention and 1967 Protocol is the second part of the first-mentioned definition: a threat to life or security as a result of armed conflict and other forms of widespread violence which seriously disturb the public order. This part of the definition is not exceptional in that other instruments comprise comparable definitions, the most notable of which is the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter referred to as the 1969 OAU Convention) which contains, besides the 1951 Convention definition, also the following definition:

"The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality".²⁷

Accession to the 1951 Convention and 1967 Protocol would signify that Pakistan would be bound to the rather narrow definition of refugee, quoted above, these two instruments contain. If this definition would have been applied to Afghan refugees, arguably most of the Afghan refugees who sought refuge in Pakistan would not have qualified as refugees.

The fact of diverging definitions – and corresponding obligations – extends well beyond differences among states varying along with the treaties to which they are parties to a systemic disparity which, in the

²⁶ Arts. 1 A (2), 1 B (1), 1951 Convention; Art. I paragraph 2, 1967 Protocol.

²⁷ 1969 OAU Convention, Art. 1 para. 2.

case of Pakistan, has been less visible and tangible by virtue of a specific agreement it concluded with UNHCR.

IV.

A SYSTEMIC DISPARITY

When the refugee law regime was created in the wake of the Second World War, the idea was that states would bear the primary responsibility for refugees on their territory – preferably governed by the 1951 Convention – and that UNHCR would have a supplementary task consisting of supervision and liaison. The assumption was that the efforts of both, states respectively UNHCR, would benefit identical beneficiaries, that is, refugees defined identically in the 1951 Convention and the Statute of UNHCR.²⁸ Both instruments actually do contain a virtually identical definition, but the Statute comprises an additional, broader, definition, and that entailed, from the outset, that the beneficiaries would no longer necessarily be identical. The competence of the High Commissioner, according to this additional definition, shall extend to:

“Any [...] person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence”.²⁹

²⁸ See M.Y.A. ZIECK, *UNHCR AND VOLUNTARY REPATRIATION OF REFUGEES; A LEGAL ANALYSIS*, 1997 at 63-64.

²⁹ Statute, Art. 6 (B).

Unlike the 1951 Convention definition, this definition does not contain a temporal limit.³⁰ In other respects, it is obviously comparable to that comprised in the 1951 Convention and 1967 Protocol. It has, however, throughout the years been expanded, gradually, by means of, in particular, General Assembly resolutions.³¹ The definition of refugee currently used by UNHCR has been phrased as follows:

“all persons who are refugees within the meaning of the 1951 Convention as well as those who are outside their country of origin or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order, and who, as a result, require international protection”.³²

The definition UNHCR uses is, in short, comparable to that included in the 1969 OAU Convention quoted above. This in turn signifies that there is a – huge – discrepancy between refugees as defined for the purpose of UNHCR’s competence and those defined by the 1951 Convention and 1967 Protocol. Is this problematic? Yes it is. It means that the obligations of states parties to the 1951 Convention and 1967 Protocol are predicated on a much narrower definition, and do not include those who are “unable to return [to their country of origin or habitual residence] owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order, and who, as a result, require international protection”. In short, there is a huge gap between the beneficiaries of protection by states on the basis of the 1951 Convention and the 1967 Protocol on the one hand, and the beneficiaries of UNHCR on the basis of its extended mandate

³⁰ The temporal limit referred to, was accompanied by the option to limit the scope of the Convention to Europe, see Art. 1 B (1) sub (a); a limitation still retained by, for instance, Turkey; See *supra* note 25.

³¹ See Statute, Art. 3 (“The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council”).

³² UNHCR RESETTLEMENT HANDBOOK, 8 June 2009, Chapter 3.

ratione personae, a categorically larger group, on the other. Should this gap be considered to be problematic? Yes, it should.

V.

THE PROBLEM OF DISPARITY IN BENEFICIARIES OF INTERNATIONAL PROTECTION

There is a gap, an increasingly widening one moreover, between the beneficiaries of UNHCR and those who fall within the scope of the 1951 Convention and 1967 Protocol. Put differently, there is considerable disparity between the personal scope of the obligations of states with respect to refugees by virtue of the 1951 Convention and 1967 Protocol and the mandate *ratione personae* of UNHCR. Obviously the yardstick to measure the extent of this disparity is the original – when the Convention and Statute were drafted – concept of a normative continuum: the obligations of states and the supplementary protection of UNHCR that would benefit identically defined refugees.

The cause of this disparity is paradoxical: widening the personal scope of the mandate of UNHCR requires and has obtained the consent of states³³ – represented in the General Assembly, the Economic and Social Council of the United Nations, and the Executive Committee of UNHCR – a consent usually given in order to enable UNHCR to provide protection and assistance to those who earlier fell outside the confines of its competence. At the same time, however, those states – with notable exceptions such as states party to the 1969 OAU Convention – did and do not extend the personal scope of their own obligations regarding refugees with a view to matching

³³ See the reference to requests by the General Assembly and “endorsement by the international community” which prefaces the definition of refugee used by UNHCR quoted above in Chapter 3.

the extension of the personal scope of UNHCR's mandate to which they consented.

The question is why this disparity is, as claimed, problematic. The answer is relatively simple: UNHCR is a non-state entity, it in particular lacks territory, and that means UNHCR cannot itself host refugees. UNHCR's exercising its function of providing international protection is dependent on states, more in particular, on the international obligations of states regarding refugees. The moment those obligations apply only to X whilst UNHCR's mandate comprises both X and Y (jointly usually referred to as 'mandate refugees'),³⁴ the legal status and entitlements of Y are problematic and become dependent on human rights obligations deriving from treaties,³⁵ customary international law including *ius cogens* norms, and general humanitarian considerations.³⁶ However, although human rights treaties and customary international law comprise obligations

³⁴ "Persons who meet the eligibility criteria of the UNHCR Statute and the 1951 Convention or who fall within UNHCR's broader protection mandate as established by subsequent General Assembly and ECOSOC resolutions, qualify for the protection of the United Nations provided by the High Commissioner [...]", UNHCR, Handbook *supra* note 32, Chapter 3.

³⁵ Pakistan is a party to the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 Covenant on Economic, Social and Cultural Rights, the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, the 1979 International Convention on the Elimination of All Forms of Discrimination Against Women, the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1990 Convention on the Rights of the Child, the 2008 Convention on the Rights of Persons with Disabilities, the 2002 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, and the 2002 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

³⁶ A more elaborate analysis of this disparity, how it developed, and its consequences will be addressed in M.Y.A. ZIECK, UNHCR'S PARALLEL UNIVERSE, MARKING THE CONTOURS OF A PROBLEM (will be published in April 2010 by the Vossius Press/Amsterdam University Press) and the extent and consequences for the international protection of refugees in M.Y.A. ZIECK, THE INTERNATIONAL PROTECTION OF REFUGEES: UNHCR'S PARALLEL UNIVERSE (will be published in 2012 by Edward Elgar Publishers).

that may yield temporary relief from expulsion,³⁷ neither of those two sources of law are meant to control the entry and residence of aliens in another state. The fact that persons are considered by UNHCR to be refugees in the sense of its extended mandate (the category earlier identified as Y) and qualify for its protection,³⁸ does not detract from or affect this common characteristic.³⁹

VI.

BRIDGING THE GAP IN PRACTICE

In practice, UNHCR concludes agreements with states hosting refugees. More in general, it attempts to conclude agreements with all states where it has or desires a physical presence even if, from a formal point of view, states themselves have to indicate the need for a presence of UNHCR in the field.⁴⁰ Those agreements, not surprising considering their *ratio*, are in essence host state agreements, and they predominantly address the traditional questions which are the substance of host state agreements, to wit, privileges and immunities of premises and personnel.

³⁷ Of particular relevance are *non-refoulement* provisions comprised in general human rights instruments (that is, not specifically written for refugees or any other well-defined category of persons), see, for instance, the prohibition to subject a person to inhuman and degrading treatment or punishment as comprised in Article 7 of the 1966 Covenant on Civil and Political Rights. Pakistan has signed this particular treaty on 17 April 2008 but has not yet ratified it. Signature in itself, however, entails the obligation not to defeat the object and purpose of the treaty; see 1969 Vienna Convention on the Law of Treaties, Art. 18.

³⁸ 'Mandate refugees' "qualify for the protection of the United Nations provided by the High Commissioner, regardless of whether they are in a country that is a party to the 1951 Convention and/or the 1967 Protocol [...] or whether they have been recognised by the host country as refugees under either of these instruments", UNHCR, Handbook, *supra* note at 32.

³⁹ Put differently, refugee status thus conferred is not opposable to the host state which is bound to more limited obligations.

⁴⁰ See Statute of UNHCR, Art. 16.

A remarkable feature of those host state agreements is, however, that they, unlike other host state agreements, indicate the purpose of a physical presence in the host state – UNHCR’s providing international protection and humanitarian assistance – as a result of which the technical matters of privileges and immunities turn into instrumentalities, means to enable achieving a particular, substantive, other goal: international protection of and assistance to those of concern to UNHCR. Beyond stating the ultimate goal of the agreement, the host state agreements establish how this particular goal is to be effectuated and realized: by means of cooperation between UNHCR and the host state. Cooperation is central to the host state agreements UNHCR concludes and that may explain why those agreements are known as ‘cooperation agreements’ rather than as ‘host state agreements’.

‘Cooperation’ with UNHCR is included in the 1951 Convention and 1967 Protocol,⁴¹ but the obligation to cooperate also derives from the Charter of the United Nations.⁴² However, both the obligation to cooperate with UNHCR which may be derived from the Charter and that comprised in the 1951 Convention and 1967 Protocol differ from the cooperation that is called for in the cooperation agreements UNHCR concludes with host states. Whereas the former obligation requires cooperation with UNHCR in the assistance of its functions, the cooperation called for in the latter – the cooperation agreements – turn the requisite cooperation into a joint venture between UNHCR and the host state: UNHCR and the host state are to secure the envisaged international protection and humanitarian assistance *jointly*.

The beneficiaries of the protection and humanitarian assistance envisaged in the cooperation agreements are “refugees and others of concern to UNHCR”. Put differently, those who fall within UNHCR’s extended mandate *ratione personae* rather than merely those who are refugees in the sense of the 1951 Convention and 1967 Protocol. By predicating the requisite cooperation on a categorically larger group, the divergence between beneficiaries (earlier indicated as X and Y) is bridged, nominally at least.

⁴¹ See 1951 Convention, Art. 35, para.1; 1967 Protocol, Art. II.

⁴² See in particular Art. 2, para. 5, and Arts. 55, 56.

In addition, the cooperation called for in the cooperation agreements is provided with a normative framework: the cooperation agreements indicate on the basis of what norms international protection and humanitarian assistance should be provided:

“Cooperation between the Government and UNHCR in the field of international protection of, and humanitarian assistance to, refugees and other persons of concern to UNHCR shall be carried out on the basis of the Statute of UNHCR, of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs and of article 35 of the Convention relating to the Status of Refugees of 1951 and article 2 of the Protocol relating to the Status of Refugees of 1967 [...]”⁴³

The provision on cooperation in the cooperation agreements thus serves to bridge the gap between those who fall outside the personal scope of the obligations of the state of refuge but within UNHCR’s extended mandate. Put differently, this particular provision provides UNHCR with the functional equivalent of territory and secures the protection of those who are its concern. Obviously, the possibility of bridging the gap in this manner only exists in those states, such as Pakistan, with whom a cooperation agreement has been concluded: in case no such agreement has been concluded, the fate of those who fall outside the personal scope of the obligations of states but within the mandate of UNHCR, is either governed by the rules and regulations regarding entry and stay pertaining to aliens that apply in the pertinent host state or, perchance, by specific – temporary - arrangements negotiated by UNHCR and the state of refuge concerned. A well-known example of such an arrangement is the temporary stay granted to Indo-Chinese refugees (‘boat refugees’ originating in particular from Vietnam) in various states – Hong Kong, Indonesia, Thailand,

⁴³ UNHCR’s Model Cooperation Agreement, Art. 3, para. 1. A truncated version of this provision is included in cooperation agreements that are concluded with states which are not parties to the 1951 Convention and 1967 Protocol, *i.e.* the relevant provision ends after the word “organs”. The cooperation agreement UNHCR concluded with Pakistan in 1993 includes the truncated version of this particular provision.

and the Philippines - pending resettlement in third states in the 1970's.

VII.

BEYOND DEFINITIONAL ISSUES: THE ADVANTAGE OF ACCESSION

The device of cooperation agreements, if applicable, is a useful means to bridge the gap between the beneficiaries of UNHCR's extended mandate ('mandate refugees') and refugees in the sense of the 1951 Convention and 1967 Protocol, but it does have a drawback: it is too little specific. It does not, for instance, provide answers regarding the legal status and entitlements of those who are the concern of UNHCR but properly speaking not that of the state of refuge. Leaving the cooperation agreements aside, specificity of obligations in general is desirable.

Specificity of obligations would be a significant, arguably the outstanding, advantage of accession to the 1951 Convention and 1967 Protocol. When compared to the blanket designation of obligations comprised in the cooperation agreements – and that includes the cooperation agreement that was concluded with Pakistan – the advantage treaty obligations yield is comparable with the 'structural defect' that favours treaties to customary international law: the lack of both clarity and certainty.⁴⁴

The bonus of clarity and certainty is not confined to states since the pertinent obligations correspond with rights. The advantage of accession consequently signifies well-defined rights for refugees.

⁴⁴ Sir Arthur Watts, *Codification and Progressive Development of International Law* in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, 2009 (December 2006).

VIII.

WHAT ACCESSION WOULD NOT SIGNIFY

Accession signifies obligations Pakistan would incur from the moment of accession onwards, it is in that sense oriented to the future. If Pakistan would decide to grant refugee status and corresponding entitlements to those who satisfy the definition comprised in the 1951 Convention and 1967 Protocol, that could not adversely affect the legal status of the Afghan refugees it currently hosts.⁴⁵

IX.

CONCLUDING OBSERVATIONS

UNHCR advocates accession to the 1951 Convention and the 1967 Protocol in terms of 'signing on could make all the difference'. A difference it highlights by enumerating a number of advantages. Apart from the fact that some if not most of those benefits are far from convincing when applied to Pakistan, signing on could make a categorically other difference than highlighted by UNHCR. One that certainly cannot be ranked as another advantage or benefit of accession but rather as a drawback that would make itself particularly felt in Pakistan for which accession would signify endorsing a definition of refugee it has not so far applied, *i.e.* a narrow definition that stands in stark contrast with the definition it has applied for several decades now. This means that Pakistan is faced with a dilemma: to either proceed as it currently does, that is, applying a categorically wider refugee definition than the one comprised in the

⁴⁵ A legal bar that has a counterpart in Islam, see Muddathir 'Abd al-Rahim, *Asylum: A Moral and Legal Right in Islam*, 27 REFUGEE SURVEY QUARTERLY 2008, 15-23 at 21 (stating that *aman*, once granted, cannot be revoked or withdrawn).

1951 Convention and 1967 Protocol albeit without incurring the specific obligations those instruments comprise, or to discard its generous practice in favour of accession to those two instruments which means enhanced and well-defined protection to a much smaller group, leaving the responsibility for mandate refugees (here taken to designate those who fall outside the refugee definition of Convention and Protocol) to UNHCR who may secure their protection in dependency on Pakistan and the latter's obligation to cooperate with UNHCR by virtue of the cooperation agreement concluded in 1993. This would mean a bifurcated state of affairs that hitherto did not exist.

In view of the consequence of accession, the fact that the discussion between the Pakistan Parliamentary Commission for Human Rights and UNHCR, which comprises discussion of the refugee definition that should be inserted in the Foreigners Act,⁴⁶ is of a protracted nature is not any more surprising. Particularly not if an attempt is made to create a third option that consists of predicating the rights of refugees as listed in the 1951 Convention and 1967 Protocol on a more generous refugee definition comparable to the one currently applied by Pakistan to the Afghan refugees. In view of the fact that Pakistan itself claims it already provides the treatment for which the 1951 Convention provides to those who are not covered by the terms of the Convention, this third option may turn out to be a possibility Pakistan could consider, possibly inspired by a (unanimously adopted) recommendation inserted in the Final Act by the conference of plenipotentiaries on the status of refugees and stateless persons which completed the drafting of what became the 1951 Convention:⁴⁷

⁴⁶ UN doc. A/HRC/WG/2/PAK/1 (14 April 2008) paragraph 96.

⁴⁷ Another source of inspiration may be the centrality of flight and asylum in Islam: flight from persecution – *hijrah* – marks the beginning of the Islamic calendar, asylum – *ijara* – is granted to all to all those who ask for protection rather than only those who are persecuted for specific reasons, see K. Elmadmad, *Asylum in Islam and Modern Refugee Law*, 27 REFUGEE SURVEY QUARTERLY 2008, 51-63 at 54-55; See also Abd al-Rahim, *supra* note 45 at 20-21.

“The Conference expresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides”.⁴⁸

This possibility - *tertium datur* - can not, however, detract from the fact that the current global system in place to protect refugees suffers from a structural defect in the form of a tangible discrepancy between the extensive mandate *ratione personae* of UNHCR and the much less extensive personal scope of obligations incurred by states parties to the 1951 Convention and 1967 Protocol. A defect to which states have contributed by consenting, time and again, to extensions of UNHCR’s mandate *ratione personae* without matching these extensions with corresponding obligations on their part. Pakistan, as a member of UNHCR’s Executive Committee, is well placed to elicit recognition of the paradoxes involved and initiate a fundamental debate about this discrepancy.

⁴⁸ Recommendation E, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. Initially the text had been proposed for inclusion in the preamble to compensate for the geographical limitation then inserted in the definition. It was transferred to the Final Act at the suggestion of the representative of the United Kingdom, UN doc. A/CONF.2/107. The ratio of the recommendation “was to cover those classes of refugees who were altogether outside the scope of paragraph A of article 1” (the reference to Article 1 was generalized at the request of France and resulted in the present wording), UN doc. A/CONF.2/SR.35 (3 December 1951) at 43-45.

ANNEX 1**THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES***Preamble*

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

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

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

Chapter I. General Provisions

Article 1. Definition of the Term 'Refugee'

A. For the purposes of the present Convention, the term 'refugee', shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and 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 his 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.

In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be

lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words 'events occurring before 1 January 1951' in article 1, section A, shall be understood to mean either

- (a) 'events occurring in Europe before 1 January 1951'; or
- (b) 'events occurring in Europe or 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.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily reacquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. General Obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3. Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4. Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5. Rights Granted Apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6. The Term ‘in the Same Circumstances’

For the purposes of this Convention, the term “in the same circumstances”, implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7. Exemption from Reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8. Exemption from Exceptional Measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9. Provisional Measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10. Continuity of Residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11. Refugee Seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II. Juridical Status

Article 12. Personal Status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13. Movable and Immovable Property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14. Artistic Rights and Industrial Property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15. Right of Association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16. Access to Courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III. Gainful Employment

Article 17. Wage-Earning Employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- (a) He has completed three years' residence in the country;
- (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;
- (c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18. Self-Employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19. Liberal Professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV. Welfare

Article 20. Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21. Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22. Public Education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States 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, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23. Public Relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24. Labour Legislation and Social Security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
 - (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.
2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.
3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded

between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

Chapter V. Administrative Measures

Article 25. Administrative Assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph I shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26. Freedom of Movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27. Identity Papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28. Travel Documents

1 . The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29. Fiscal Charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30. Transfer of Assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31. Refugees Unlawfully in the Country of Refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is

regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32. Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. Prohibition of Expulsion or Return (*'Refoulement'*)

1. No Contracting State shall expel or return (*'refouler'*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34. Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Chapter VI. Executory and Transitory Provisions

Article 35. Co-operation of the National Authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

- (a) The condition of refugees,
- (b) The implementation of this Convention, and
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36. Information on National Legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37. Relation to Previous Conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Chapter VII. Final Clauses

Article 38. Settlement of Disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39. Signature, Ratification and Accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40. Territorial Application Clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41. Federal Clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to

this extent be the same as those of parties which are not Federal States;

- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42. Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.
2. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43. Entry into Force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44. Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45. Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46. Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;
- (b) Of signatures, ratifications and accessions in accordance with article 39;
- (c) Of declarations and notifications in accordance with article 40;
- (d) Of reservations and withdrawals in accordance with article 42;
- (e) Of the date on which this Convention will come into force in accordance with article 43;
- (f) Of denunciations and notifications in accordance with article 44;
- (g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

SCHEDULE

Paragraph 1

1. The travel document referred to in article 28 of this Convention shall be similar to the specimen annexed hereto.⁴⁹
2. The document shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

⁴⁹ This specimen travel document is available at the web site of UNHCR: <http://www.unhcr.org>.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.
2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.
3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX II

THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I. General Provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term 'refugee' shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words 'As a result of events occurring before 1 January 1951 and ...' and the words '... as a result of such events', in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.

Article II. Co-operation of the National Authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III. Information on National Legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV. Settlement of Disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V. Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI. Federal Clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII. Reservations and Declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs I and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII. Entry into Force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX. Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X. Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI. Deposit in the Archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit

certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.