



General Assembly

Distr.: General
2 August 2022

Original: English

Seventy-sixth session

Agenda item 65

**Report of the United Nations High Commissioner for
Refugees, questions relating to refugees, returnees and
displaced persons and humanitarian questions**

**Letter dated 2 August 2022 from the Permanent Representative of
Pakistan to the United Nations addressed to the Secretary-General**

In my capacity as the Chair of the Organization of Islamic Cooperation (OIC) Council of Foreign Minister, I have the honour to transmit a letter dated 11 January 2022, from the Permanent Mission of Pakistan in Geneva on behalf of the OIC Group addressed to the United Nations High Commissioner for Refugees.

It is requested that the enclosed letter be circulated as a document of the General Assembly at its seventy-sixth session under agenda item 65.

(Signed) Munir Akram



Annex to the Letter dated 2 August 2022 from the Permanent Representative of Pakistan to the United Nations addressed to the Secretary-General

11 January 2022

To the United Nations High Commissioner for Refugees

1. I write this letter in my capacity as Coordinator of the Organization of Islamic Cooperation (OIC) on Human Rights and Humanitarian Affairs in Geneva.

2. The OIC countries¹ deeply appreciate the invaluable protection work that the Office of the United Nations High Commissioner for Refugees (UNHCR) continues to undertake worldwide. The OIC Group commends your leadership in steering the organization, despite the growing displacement and dwindling resources.

3. Meanwhile, I wish to bring to your kind attention the OIC Group's concerns with regard to the UNHCR position with respect to individuals and groups based on their sexual orientation and gender identity. In this regard, I wish to recall the OIC statement delivered under agenda item 4 (a) on 7 October 2021 at the seventy-second session of the Executive Committee of UNHCR.

4. Following this statement, the Assistant High Commissioner for Protection reached out to me and explained the UNHCR perspective on this subject.

5. I take this opportunity to convey the following points on behalf of OIC member States:

(a) The UNHCR mandates and guidance is drawn from United Nations General Assembly resolutions and Executive Committee conclusions. The official documents of UNHCR, carrying official symbols/numbers, represent the official position of the organization, based on its legal mandate. These documents are presented before the Executive Committee for its attention, endorsement or action. Therefore, these documents should be drafted strictly in line with the UNHCR mandate and internationally agreed principles.

(b) The OIC Group takes note of what the Assistant High Commissioner for Protection mentioned in her email dated 27 October 2021, regarding efforts to distinguish between documents that Member States are requested to associate themselves with and those which they are not. The Group agrees that the distinction between the two types of document needs to be clear, so that there is no implication that Member States have endorsed what are intended to be the views of the High Commissioner. The Group therefore notes that a first step in this direction, as suggested by UNHCR, is to insert the subtitle "Report by the High Commissioner" in the 2021 note on international protection. However, more clarity is needed, and the Group reiterates its request to include a footnote in such documents clearly indicating that the document in question represents the views of the High Commissioner and does not represent the consensus views of Member States.

(c) With regard to the issue of UNHCR interaction with the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the Group recalls that this mandate, which was created by Human Rights Council resolution [32/2](#) (2016), was adopted by a narrow 23 votes in favour, 18 votes against and 6 abstentions. During the General Assembly's consideration of the matter, the OIC Group, with the exception of one member, and the African Group expressed their reservations and concerns regarding this mandate. The OIC Group, with the exception of one member, declared that it would not be

¹ Except Albania.

cooperating with this mandate. The Group therefore finds it unacceptable for UNHCR to be cooperating with this controversial and divisive mandate holder, in the absence of clear instructions from either the Executive Committee or the United Nations General Assembly.

(d) As for the UNHCR claim that such cooperation is “grounded in its mandate to protect persons who experience persecution”, the Group would like to recall that under article 1 (A) (2) the 1951 Convention relating to the Status of Refugees, there are five exclusive grounds for persecution, namely “reasons of race, religion, nationality, membership of a particular social group or political opinion”. These five grounds listed in this definition are the only recognized grounds of persecution.

(e) According to article 31 of the Vienna Convention on the Law of Treaties, “a treaty shall be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of their object and purpose”. According to article 32 of the Convention, the *travaux préparatoires* are a supplementary means of interpretation, to which recourse may be had when the text is ambiguous or obscure. According to the International Law Commission’s draft articles on the law of treaties with commentaries, it is not the function of interpretation “to revise treaties or to read into them what they do not expressly, or by implication, contain” (*Yearbook of the International Law Commission*, 1966, Vol. II, pp. 219–220).

(f) There is no evidence in the plain and ordinary meaning of the text of the 1951 Convention that the groups mentioned in paragraph 30 of the UNHCR note on international protection are covered under the five grounds of persecution, neither is there any indication of this in the parties’ intention as evidenced in the *travaux préparatoires*. The Group therefore does not share the UNHCR interpretation, reflected in its “Guidelines on international protection No. 9”, which are not binding on member States,² and will continue to assess asylum claims on a case-by-case basis in accordance with the well-established principles of international refugee law. In addition, the Group is not bound by the jurisprudence of the domestic courts of other countries or of regional courts to which our States are not parties.

(g) In addition to the above, paragraph 30 of the UNHCR note on international protection (A/AC.96/1211) implies that additional programming and assistance should be provided to these various groups. This goes even beyond the claim that they should be entitled to international protection, and endows them with additional entitlements, over and above those granted to other refugees. While international human rights law recognizes various categories of persons in vulnerable situations that may require special assistance, the OIC Group would like to recall that, for such purposes, it only recognizes the categories that enjoy international consensus.

6. Given the humanitarian character of the UNHCR mandate, which should enjoy broad consensus by all member States, the OIC Group once again calls on UNHCR to avoid using divisive language and preferring certain interpretations and instead use general, inclusive and consensual language in its documents presented to the Executive Committee and its Sub-Committee. Such all-encompassing and general language achieves the purpose of providing protection for all categories of refugees, without discrimination, while avoiding divisions among the membership on issues currently being discussed at other forums.

² According to a leading authority, Guy S. Goodwin-Gill “UNHCR’s decisions on refugee status, although possessing an international character, do not have the same binding character as, say, the ‘housekeeping’ or technical resolutions of international organizations, which may directly create obligations for member States” (*The Refugee in International Law*, 2nd Ed. (OUP, 1996), p. 370, n. 170).

7. The OIC Group further underlines that the mandate and operations of UNHCR should remain apolitical and based on the universally agreed humanitarian principles of objectivity, neutrality, impartiality and humanity. Bringing in politically sensitive and controversial notions, concepts and explicit preference for certain interpretations at the cost of others can raise questions about the neutral character of UNHCR.

8. Finally, the OIC Group reaffirms its commitment to the protection and assistance of all refugees and asylum seekers, without discrimination. The OIC countries have a long tradition of guaranteeing political asylum and providing protection and assistance to refugees in accordance with Shari'ah law.³ The OIC countries host more than two thirds of the world's refugee population and contribute generously towards their protection. The OIC countries therefore have a legitimate expectation that their concerns, interests and priorities in the matters of UNHCR are duly reflected and respected.

9. The OIC Group takes this opportunity to reiterate its commitment to the principle of non-refoulement and to assisting UNHCR in discharging its mandate.

(Signed) Khalil Hashmi

³ The UNHCR comparative study entitled "The right to asylum between Islamic Shari'ah and international refugee law" (2009) affirms that Shari'ah is a "foundation of contemporary refugee law (p. 5)".