

UNITED NATIONS

GENERAL
ASSEMBLY



NOV 6 1985

Distr.
GENERAL



A/AC.96/671
9 October 1985

Original: ENGLISH

EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME

Thirty-sixth session

REPORT OF THE SUB-COMMITTEE OF THE WHOLE ON INTERNATIONAL PROTECTION
(Tenth Meeting)

1. The Sub-Committee of the Whole on International Protection met on 30 September and on 1 and 4 October 1985 prior to the opening of the Executive Committee's thirty-sixth session under the chairmanship of His Excellency Mr. F. Mebazaa (Tunisia). The following agenda was adopted:

- (i). Refugee women and international protection (EC/SCP/39);
- (ii). Military attacks on refugee camps and settlements in southern Africa and elsewhere (EC/SCP/38);
- (iii). Problems relating to the rescue of asylum-seekers in distress at sea (EC/SCP/42);
- (iv). Voluntary repatriation (EC/SCP/41);
- (v). Irregular movements of asylum-seekers and refugees (EC/SCP/40);
- (vi). Any other business;
- (vii). Adoption of the report to the Executive Committee.

2. In an introductory statement, the High Commissioner observed that since its establishment ten years ago, the Sub-Committee had dealt with a wide range of problems concerning the protection of refugees. Through its conclusions adopted on a variety of subjects, which were subsequently endorsed by the Executive Committee, the Sub-Committee had played a vital role in the elaboration of international standards for the protection of refugees.

3. At its present meeting the Sub-Committee would be considering several important issues. One of these was the question of the so-called irregular movements of asylum-seekers and refugees which was causing increasing difficulties for governments and UNHCR in the international protection field. It was very much to be hoped that in the spirit of international co-operation and burden-sharing the Sub-Committee would be able to arrive at some practical conclusions on this matter. These Conclusions should not only deal with the problem where it manifested itself but should also seek to remove or mitigate the causes which impelled refugees and asylum-seekers to resort to irregular movements.

4. As regards military or armed attacks against refugee camps and settlements in southern Africa and elsewhere, the High Commissioner recalled that this issue had been debated for several years by the Sub-Committee and he reiterated his hope that it would now be possible to identify a set of conclusions reflecting the concerns of the international community on this grave subject. For his part, the High Commissioner declared that he would not hesitate to continue to condemn such attacks when they affected the lives of refugees of his concern.

5. Another aspect of physical safety related to the subject of rescue of asylum-seekers in distress at sea. The High Commissioner observed that a variety of measures had been undertaken by his Office in close co-operation with States concerned, including the implementation since May, 1985 of the Resettlement at Sea Resettlement Offers (RASRO) scheme and he expressed his gratitude to those States which, through their valuable support, had made it possible for this scheme to be launched by UNHCR.

6. Voluntary repatriation, wherever feasible, was, of course, the most desirable solution to any refugee problem. Over the last several years voluntary repatriation had taken on a particular importance in so far as it represents the only reasonable durable solution in various refugee situations, notably those involving a large-scale influx of refugees. In an effort to explore new avenues and approaches for achieving voluntary repatriation, this subject had been examined in depth by UNHCR and by a representative group of experts in the field from all parts of the world at a meeting recently held in co-operation with the International Institute of Humanitarian Law in San Remo. A report containing the Conclusions of this meeting had been submitted for the consideration of the Sub-Committee. The High Commissioner stated that he attached particular importance to the issue of voluntary repatriation, and hoped that it would be possible to formulate a set of conclusions on the subject to assist his Office in pursuing this most desirable of all durable solutions.

7. Finally, while in most circumstances, male and female refugees experienced the same difficulties and problems with respect to their protection, there were, nevertheless, also situations in which refugee women faced special protection problems, some of which were described in a note on the subject of refugee women and international protection which had also been submitted to the Sub-Committee. The High Commissioner hoped that a set of conclusions could be drawn up by the Sub-Committee which would further the work of UNHCR in favour of strengthening the protection of refugee women.

REFUGEE WOMEN AND INTERNATIONAL PROTECTION (ITEM I)

8. Introducing this subject, the Director of International Protection stated that refugee women and young girls now constituted most of the world's refugee population and an understanding of their special problems and their social condition was necessary to enable the international community to provide them with equal and adequate protection. Although refugee men and women often found themselves in similar difficult situations, refugee women were frequently confronted with particular hazards due to the simple fact that they were women. In many instances, the physical safety and integrity of refugee women were threatened or violated.

9. UNHCR had now developed programmes in response to the special needs of refugee women including income-generating and self-sufficiency projects. The Office had also developed projects for securing better protection for refugee women and providing counselling for victims of rape and other violence. More action was, however, necessary. With respect to the violation of the physical integrity and safety of women, measures should be taken to support and strengthen UNHCR's presence in border areas and on flight routes. Concerning refugee women at risk of being mistreated in countries of asylum, Governments were urged to examine the situation in consultation with UNHCR in order to determine what specific remedial measures could be taken. Here again, it would be appropriate to ensure a UNHCR presence in areas where refugee women were exposed to such dangers. Governments were urged to consider interpreting the term "particular social group", in the refugee definition in the 1951 Convention, in such a manner as it would encompass women who face harsh and inhuman treatment because they have transgressed the social mores of their society.

10. In the ensuing discussions, all representatives expressed their appreciation to the High Commissioner for his initiative in placing this important subject before the Sub-Committee. A number of representatives also paid tribute to the High Commissioner for having organized the Round Table on "Refugee Women" in April 1985. A number of speakers stated that in their respective countries refugee women received the same treatment as refugee men in accordance with national legislation and every effort was made to ensure that refugee women were adequately protected. Several speakers recalled that their governments had made specific provisions in their resettlement programmes for refugee women who were exposed to special difficulties.

11. All speakers, however, recognized that refugee women were in a particularly vulnerable situation. It was noted that for a woman, the fact of becoming a refugee often involved particular hardship due to the breakdown of the family unit. The special difficulties with which refugee women are faced in seeking to reconstitute the family unit, was mentioned by one speaker. One speaker drew attention to the fact that in certain refugee situations, refugee women, in order to provide for themselves and their children, were forced to undertake undignified and degrading work and were sometimes exposed to sexual exploitation.

12. Several speakers stressed that urgent action was necessary to ensure that the physical integrity and safety of refugee women was safeguarded and that refugee women received equal treatment. One representative considered that the objectives to be pursued should not merely be anti-discriminatory but that a positive and affirmative approach was necessary to meet refugee women's needs in the protection field. Several representatives pointed out that the standards defined in the international refugee instruments were general and applied equally to refugee women and refugee men and did not, therefore, take account of the special protection problems with which refugee women were confronted. One representative suggested that a new international instrument be drafted to deal specifically with refugee women.

13. Various views were expressed regarding the most appropriate means of ensuring that refugee women received adequate protection. Many representatives were of the opinion that specific projects should be identified and implemented, and that women refugees should be actively

involved in both processes. Such projects should include the reinforcement of UNHCR presence along borders areas and in camps. The anti-piracy programme was acknowledged as beneficial to women refugees, and speakers urged that it be continued, improved, and given wide support. Several representatives, while fully endorsing UNHCR's efforts to improve the protection of refugee women, stressed that this was the primary responsibility of governments, and in particular governments of host countries, which should elaborate and implement appropriate programmes to protect refugee women. UNHCR was requested to assist in this process and to bring forcefully to the attention of governments all instances of violation of refugee women's rights. Some representatives believed that rather than placing the emphasis on specific programmes for the benefit of refugee women, it would be more appropriate to take a "global approach" to the problem and strengthen overall protection and assistance programmes for refugees. This, it was argued, could go far in attenuating the problems of refugee women.

14. Some speakers underlined the need to develop projects to alleviate the special burdens of refugee women, in particular to provide them with the necessary means to defend their legitimate interest with respect to both protection and assistance. Some representatives expressed also the view that programmes should be developed which would focus on the socio-economic status of women, and on their important role in the development process and should also take account of the special needs of children. In this regard, UNHCR and States were called upon to develop appropriate educational and employment opportunities for refugee women, with particular attention being paid to refugee women who were single heads of family. While one representative considered that the Sub-Committee, when examining this item, should distinguish between protection and assistance issues, another representative expressed the view that this distinction was often difficult to make and that many assistance projects did, in fact, offer protection to refugee women. In this regard, governments were called upon to keep the situation of refugee women in mind while designing ICARA II projects.

15. The representatives of a number of countries gave examples of specific action, other than support for UNHCR programmes, which they had taken in favour of refugee women. In one country, a Migrant Women Co-ordinator had been appointed to scrutinize the needs of migrant and refugee women upon arrival. In another country, a study on the position of refugee women in that country who had previously been victims of sexual violence had been undertaken and submitted to Parliament.

16. There was widespread agreement on the need for further statistical and sociological data, in order to be able to analyse the needs of refugee women and to identify and implement appropriate mechanisms to ensure their effective protection. One representative considered that anthropological studies would also be required. A number of representatives strongly urged, however, that the collation of such data should not delay the implementation of specific protection. It was stressed that present and future action in favour of refugee women should be taken at both the national and international levels and that, concerning the latter, programmes elaborated by UNHCR should be actively supported by governments.

17. A number of representatives requested the High Commissioner to report regularly to members of the Executive Committee on the situation of refugee women and on specific action taken and proposed to improve the international

protection they received. One representative suggested that a "focal point" for programmes for refugee women be established within UNHCR and that the High Commissioner issue an overall policy statement on the matter. The Director of International Protection informed the meeting that there was a focal point for refugee women within UNHCR and he expected that the activities of this focal point would be increased. As requested, UNHCR would report regularly on the situation of refugee women in regard to international protection.

18. The question as to whether women who face harsh or inhuman treatment, because of the fact that they are considered to have transgressed the social mores of the society in which they live, should be considered as refugees was also discussed. Reference was made by a number of speakers to the Resolution on the application of the 1951 United Nations Refugee Convention adopted by the European Parliament on 13 April 1984 which considered that women in this situation could be regarded as belonging to a "particular social group" within the meaning of the refugee definition and which called upon States to apply the 1951 Convention and the 1967 Protocol in this sense. Several representatives were of the opinion that such an approach involved an unduly wide interpretation of the refugee definition while others believed that the concept of "transgressing social mores" was difficult to apply as it involved a delicate value judgment. A number of representatives felt that the matter should be the subject of further study. Other representatives stated that the interpretation in the Resolution of the European Parliament was already being applied in their respective countries. The view was also expressed by other speakers that the interpretation given in the Resolution of the European Parliament was a permissible one and that the matter should be left to the sovereign decision of individual States. Some speakers noted that in their countries even if women in this situation were not formally recognized as refugees, they, nevertheless, were permitted to remain on humanitarian grounds with an appropriate legal status.

19. At the close of the discussions, the Sub-Committee recommended that the Executive Committee adopt the following conclusions on Refugee Women and International Protection :

- (a) Welcomed the initiative of the Office in organizing the Round Table on Refugee Women in Geneva in April 1985;
- (b) Welcomed further the recommendations regarding the situation of refugee and displaced women adopted by the World Conference to review and appraise the achievements of the United Nations Decade for Women held in Nairobi (Kenya) in July 1985;
- (c) Noted that refugee women and girls constitute the majority of the world refugee population and that many of them are exposed to special problems in the international protection field;
- (d) Recognized that these problems result from their vulnerable situation which frequently exposes them to physical violence, sexual abuse, and discrimination;

- (e) Stressed the need for such problems to receive the urgent attention of governments and of UNHCR and for all appropriate measures to be taken to guarantee that refugee women and girls are protected from violence or threats to their physical safety or exposure to sexual abuse or harassment;
- (f) Noted with satisfaction the measures already undertaken by UNHCR to address the protection problems of refugee women and to ensure that they are adequately protected;
- (g) Called upon States to continue to support UNHCR programmes established with a view to securing protection for refugee women, and UNHCR assistance programmes for refugee women, especially those aimed at helping refugee women become self-sufficient through educational and income-generating projects;
- (h) Recommended that, States individually, jointly and in cooperation with UNHCR, redefine and reorient existing programmes and where necessary establish new programmes to meet the specific problems of refugee women, in particular to ensure the safeguard of their physical integrity and safety, and their equality of treatment. Women refugees should participate in the formulation and implementation of such programmes;
- (i) Stressed the importance of a more detailed knowledge and understanding of the special needs and problems of refugee women in the international protection field and of gathering statistical, sociological and other data concerning refugee women and girls in order to identify and implement appropriate mechanisms to ensure their effective protection;
- (j) Requested the High Commissioner to report regularly to members of the Executive Committee on the needs of refugee women, and on existing and proposed programmes for their benefit;
- (k) Recognized that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention;

MILITARY ATTACKS ON REFUGEE CAMPS AND SETTLEMENTS IN SOUTHERN AFRICA AND ELSEWHERE (ITEM II)

20. The item was introduced by the Permanent Representative of Switzerland to the United Nations Office at Geneva, Ambassador Anton Hegner, who had headed the working group established by the Chairman of the 35th session of the Executive Committee to explore the possibilities of reaching a consensus on this subject. Ambassador Hegner presented a set of Draft Conclusions which had been the subject of discussions within the working group (Document no. EC/SCP (1985) CRP.1).

21. In presenting his text, Ambassador Hegner recalled that during the 35th session of the Executive Committee all speakers had insisted on the need to clarify the respective responsibilities of host countries, countries of origin

and of refugees themselves in avoiding military attacks. Since that session a new and important element had been the adoption of UN General Assembly Resolution 39/140 which "condemns all violations of the rights and safety of refugees and asylum-seekers in particular those perpetrated through military or armed attacks on refugee camps and settlements". This Resolution was referred to in paragraph 1 of the Draft Conclusions.

22. Ambassador Hegner also pointed out that the new text contained a number of paragraphs on which there had seemed to be a consensus during the Executive Committee's 35th session. Even though certainly not satisfactory to all delegations on every point, the present text once adopted could constitute an important step forward in favour of refugee protection.

23. In the ensuing discussions, many speakers paid tribute to Ambassador Hegner's efforts to draw up a new set of Draft Conclusions, and a number of representatives expressed the belief that it might now be possible to achieve a consensus. Two speakers expressed their full support for the text in its present form.

24. Several speakers, however, voiced concern that the text did not contain a clear condemnation of military attacks on refugee camps and settlements. One speaker considered that this was necessary since such attacks were contrary to international law, in so far as they (i) violated the physical safety of refugees and their right to protection and (ii) constituted an act of aggression against the sovereignty of the host country. Several speakers also believed that this issue was not adequately met by the reference to UN General Assembly Resolution 39/140. The view was also expressed that the wording of this Resolution was inappropriate in so far as it could be taken to imply that military or armed attacks on refugee camps and settlements could, under certain circumstances, be justified. The reference to "such violations" in paragraph 2 of the Draft Conclusions was, therefore, unsatisfactory.

25. The requirements in paragraph 5 (b) (regarding the civilian and humanitarian use of refugee camps) and in paragraph 5 (d) (regarding the need to ensure their civilian and humanitarian character) were open to similar objections. One speaker, nevertheless, felt that the present wording of paragraph 5(d) should be maintained. A further speaker stressed the need to include a provision underlining the responsibility of asylum countries to ensure that the civilian and humanitarian character of such camps is maintained and that UNHCR be given access to them. Several speakers considered that the Draft Conclusions imposed too many restrictions and responsibilities on asylum countries without sufficiently defining the responsibilities of the perpetrators of such attacks. One speaker felt that these responsibilities should also be reflected in operative paragraph 5 of the Draft Conclusions. One representative mentioned the failure of the Resolution to address the problem of military attacks by South African forces which he believed should also be reflected in the Conclusions.

26. At the close of the debate, the Chairman noted that there were still divergences of view and believed that further discussions within the working group were necessary to arrive at a consensus. In response to the Chairman's request, Ambassador Hegner agreed to continue his consultations before and, if necessary, during the Executive Committee's 36th session. At his suggestion, the working group was enlarged so as to enable all representatives to submit their proposals before the meeting of the Executive Committee.

PROBLEMS RELATING TO THE RESCUE OF ASYLUM-SEEKERS IN DISTRESS AT SEA (ITEM III)

27. Introducing this item, the Director of International Protection noted with satisfaction that the rate of rescue of Indochinese asylum-seekers in distress at sea had significantly increased over the past year. The proportion of rescues to arrivals for the period 1 September 1983 to 31 August 1984 was only 9 per cent. The rescue rate had, however, increased to 14 per cent for the period 1 September 1984 to 31 August 1985. From 1 May 1985, the beginning of the Rescue at Sea Resettlement Offers - RASRO scheme, to 31 August 1985, the rescue rate was 20.5 per cent (the highest recorded rescue rate was 21.8 per cent in 1980). While the rescue rate had thus increased significantly, the number of total boat arrivals was 3 per cent less than for the same period last year. The rescue at sea programme had, therefore, not acted as a "pull factor".

28. This welcome reversal of the trend of declining rescues witnessed in the previous two years was attributable to a number of factors, including the commencement of the RASRO scheme. The scheme was the core of new efforts to promote rescue of asylum-seekers in distress at sea. Other contributing factors were the continued effective operation of the DISERO scheme, the reinforcement of the Rescue at Sea Reimbursement Project, the issue to shipmasters of a revised version of the booklet "Guidelines for the Disembarkation of Refugees", and personal messages from the High Commissioner in the forum of "CQ" radio messages and commendatory cables and awards to shipmasters.

29. Despite the significant increase in the rescue rate, many ships continue to pass by refugees in distress at sea and humanitarian efforts to maintain and increase the rescue rate must, therefore, continue. As a further means of encouraging rescue at sea, governments of countries with maritime interests in the South China Sea should remind their shipowners and shipmasters of their duty to rescue all persons in distress at sea. Finally, in an effort to distribute equitably the burden of resettlement of rescued asylum-seekers, it was hoped that those governments which were still examining the question of their joining the RASRO scheme would reach a favourable decision in the near future.

30. In concluding his statement the Director of International Protection expressed the gratitude of the Office to those Governments who, through their contributions to DISERO and RASRO, had enabled UNHCR further to facilitate the rescue of asylum-seekers in distress at sea. The authorities of all first asylum countries in East and South East Asia were also to be thanked for having facilitated the rapid disembarkation of refugees. Gratitude was also due to government agencies, shipmasters, shipowners, shipowner associations and other maritime organizations as well as the Maritime Protection and Indemnity Clubs for their co-operation.

31. In the ensuing discussion all speakers expressed satisfaction at the significant increase in the rescue rate in 1985, while at the same time voicing concern that there were still cases in which ships disregarded asylum-seekers in distress at sea. The range of measures taken by UNHCR to promote rescue at sea were commended by all speakers who took part in the debate. There was wide agreement that the main reason for the increase in the rescue rate were actions taken over the past years by UNHCR. In particular,

the RASRO and DISERO schemes were considered to be both effective and welcome examples of international solidarity and burden-sharing. A number of representatives appealed to those countries not yet participating in RASRO to join as soon as possible. The representatives of Belgium and the Federal Republic of Germany indicated their countries were actively considering participating in the scheme. One representative recalled that in promoting rescue at sea the RASRO and DISERO schemes helped to protect asylum-seekers from the dangers of the elements and from piracy attacks. In this respect the RASRO and DISERO schemes were complimentary to the anti-piracy arrangement.

32. A number of speakers expressed the hope that the RASRO scheme would continue after the one-year "trial period". Divergent views were expressed as to whether the RASRO and DISERO schemes should be merged. One representative stated that his government would not be in favour of such a merger. Another representative believed that UNHCR should report on this matter and on the possible fusion of the RASRO and DISERO schemes with overall arrangements for the resettlement of Vietnamese refugees, at the end of the trial period. In regard to the extension of the RASRO scheme several speakers asked UNHCR to provide details as to what future arrangements were envisaged, including the number of places required. Two representatives mentioned certain technical difficulties which had arisen in regard to the implementation of the scheme, viz. the response by governments to UNHCR requests for resettlement, the criteria for the admission of "non-link" cases presented to resettlement countries, and the use of refugee processing centres when the transfer of the refugees concerned to their country of destination was not feasible within three months. In reply, the Chief of the Resettlement Section stated that such technical problems could be resolved during the trial period. As regards future plans for the scheme, he stated that while it was difficult to provide details at this stage, it would probably not be necessary to increase the pledges to the scheme next year.

33. There was agreement that all the measures taken to promote rescue at sea need to be maintained, improved and widely supported by States. With regard to resettlement, one representative expressed his government's satisfaction that under the RASRO scheme there was no longer a direct link between the fact of being the flag state and having resettlement responsibility for rescued refugees. Two representatives, however, pointed out that the principle of flag state responsibility was applied by their respective countries and considered that this principle should be upheld. A third representative expressed the view that the principle of flag state responsibility was of particular importance in the burden-sharing context. A number of representatives referred to "mercy ships" which had sailed to the South China Sea with the specific purpose of looking for and rescuing refugees in need of assistance. While it was acknowledged that those involved were motivated by the highest of humanitarian considerations, the fear was expressed that the operation of "mercy ships" might act as a "pull factor", causing more persons to leave their country of origin and to risk their lives at sea. One representative stated that such "mercy-ships" had, at the same time, contributed to the increase in the rescue rate in 1985 and that several countries had resettled persons rescued by the "mercy-ships" on the basis of family reunion.

34. Some speakers expressed caution about giving wide publicity concerning the rescue at sea programme so as to avoid creating a "pull factor". One representative noted that many shipowners and masters were still unfamiliar

with UNHCR's rescue at sea programmes and how they worked. He suggested that countries which had not already done so, mount public information programmes on rescue at sea for their flag carriers. The Chief of the Resettlement section stated that information on the various schemes was being disseminated to government officials and members of the shipping community, but not to the general public. One representative stated that, in response to a request from the High Commissioner, his government would soon inform shipmasters of their duty to rescue and of the details of the DISERO, RASRO, and reimbursement schemes. One representative mentioned that some countries, in an effort to promote rescue at sea, gave their own awards to rescuers, and commended others to do likewise.

35. At the close of the discussions the Sub-Committee recommended that the Executive Committee adopt the following conclusions on Problems related to the Rescue of Asylum-seekers in Distress at Sea:

- 1) Reaffirmed the fundamental obligation under international law for shipmasters to rescue all persons, including asylum-seekers, in distress at sea;
- 2) Recalled the Conclusions adopted by the Executive Committee at previous sessions recognizing the need to promote measures to facilitate the rescue of asylum-seekers in distress at sea;
- 3) Expressed satisfaction that the rescue of asylum-seekers in distress at sea has increased significantly in 1985 but at the same time expressed concern that many ships continued to ignore asylum-seekers in distress at sea;
- 4) Welcomed the fact that the provision of an appropriate number of resettlement places had made it possible for the Rescue at Sea Resettlement Offers (RASRO) scheme to commence on a trial basis as from May 1985;
- 5) Welcomed the wide ranging initiatives undertaken by UNHCR to promote the rescue of asylum-seekers in distress at sea and the support given to these initiatives by States;
- 6) Strongly recommended that States maintain their support of UNHCR action in this area and, in particular, that they:
 - (a) join or renew contributions to the DISERO (Disembarkation Resettlement Offers) and to the RASRO (Rescue at Sea Resettlement Offers) schemes, or to either of them, as soon as possible;
 - (b) request shipowners to inform all shipmasters in the South China Sea of their responsibility to rescue all asylum-seekers in distress at sea.

VOLUNTARY REPATRIATION (ITEM IV)

36. Introducing this item the Director of International Protection recalled that the subject of Voluntary Repatriation was previously considered by the Sub-Committee in 1980, subsequent to which the Executive Committee had adopted

conclusion No. 18 (XXXI) which identified a set of principles relating to voluntary repatriation. Since that time voluntary repatriation as a solution to refugee problems had received increased attention from the international community. At its thirty-fifth session in 1984, the Executive Committee had asked the High Commissioner to continue his efforts to realize durable solutions for refugee problems with particular emphasis on voluntary repatriation.

37. In response to this request, the High Commissioner, in consultation with a number of governments and the Chairman of the Executive Committee, arranged for the holding of a Round Table on voluntary repatriation under the auspices of the International Institute of Humanitarian Law in San Remo (Italy) in July 1985. The report and conclusions of the Round Table had been submitted to the Sub-Committee in document EC/SCP.41. The Round Table had underlined the need to develop and strengthen international co-operation to facilitate voluntary repatriation of refugees which was universally recognized as the best solution to any refugee problem and the importance of co-ordinated action among the parties concerned to encourage voluntary repatriation. Of equal importance was the need to have regard to the root causes of refugee problems, the awareness of which was essential in promoting solutions including voluntary repatriation. It was also necessary for States directly concerned with refugees to display sufficient political will to address such issues as respect for human rights, the non-use of force, the peaceful settlement of disputes and economic and social development. The responsibility of States towards their own nationals and the responsibility of other States to assist in promoting conditions favourable to voluntary repatriation were also recognized by the Round Table.

38. The Round Table had expressed the view that the existing mandate of the High Commissioner was sufficient to allow him to promote voluntary repatriation in its broadest sense. The High Commissioner could thus seek to promote a dialogue between all main parties, facilitate communication between them and act as an intermediary or channel of communication. The High Commissioner should moreover be fully involved from the outset in both the planning and the implementation stages of voluntary repatriation. The High Commissioner also had a legitimate concern as to the consequences of repatriation particularly if this was brought about as a result of an amnesty or other form of guarantee of safe return. To this end it was necessary for UNHCR to have direct and unhindered access to returnees to ensure fulfilment of all amnesties, guarantees, or assurances.

39. The Round Table had also recognized the need for the High Commissioner to be able to deal with any entity, even one not recognized internationally, if this would help in facilitating voluntary repatriation. The practice of establishing tri-partite commissions involving the country of origin, the country of asylum and UNHCR was also endorsed by the meeting which also recommended the setting up of informal ad hoc consultative groups whenever the High Commissioner, in consultation with the Chairman of Executive Committee, considered this to be necessary.

40. The attention of the Sub-Committee was also drawn to a recommendation of the Round Table which called for consideration by the international community of the possibility of elaborating a multilateral framework governing voluntary repatriation. The Round Table believed that such a framework should move away

from the emphasis of existing international instruments on external settlement as a solution to refugee problems and place more emphasis on reconciliation, restoration of confidence, and return.

41. In concluding his statement the Director of International Protection expressed the hope that through its deliberations the Sub-Committee would be able to recommend a further set of principles for adoption by the Executive Committee to complement those contained in Conclusions No. 18 (XXXI). This would facilitate the Office of the High Commissioner to play a more active role in the field of voluntary repatriation.

42. In the ensuing discussion, all representatives expressed their appreciation for the initiative of the High Commissioner in arranging for the holding of the San Remo Round Table which had helped to focus attention on voluntary repatriation as the best of all durable solutions to refugee problems.

43. A large number of speakers considered that the report and the conclusions of the Round Table had provided a new direction in the field of voluntary repatriation and expressed the hope that this would help in revitalizing international efforts to promote this solution. They also expressed their general agreement with the Round Table's Conclusions.

44. A number of speakers placed particular emphasis on the right of an individual to return to his country of origin as the fundamental basis for the promotion of voluntary repatriation. All other considerations followed from this basic premise. Concomitant to this was the principle of free, voluntary and individual nature of all repatriation movements.

45. There was widespread agreement that the High Commissioner's mandate to promote voluntary repatriation was sufficiently broad to enable him to take all appropriate initiatives in this regard including efforts to promote conditions favourable to this solution. A number of speakers believed that the High Commissioner had a responsibility to initiate dialogues with the country of origin, the country of asylum and the refugees as soon as possible. One speaker felt that the High Commissioner's involvement in repatriation efforts would generate confidence in refugees to return. A number of other speakers, however, considered that when undertaking such initiatives the High Commissioner should exercise caution so as not to become involved in political issues. Another speaker felt that the High Commissioner should not undertake any initiative in this regard unless necessary preconditions were met which included the ending of foreign occupation and aggression. The same speaker also felt that the High Commissioner should not undertake any voluntary repatriation exercise until he had received the consent of all the parties concerned. One speaker suggested that in some instances it might be preferable for the High Commissioner to refer certain cases to the Secretary-General of the United Nations so that he could take the necessary initiatives.

46. A majority of the speakers, in supporting another conclusion of the Round Table, believed that the High Commissioner had a legitimate concern as to the consequences of any voluntary repatriation movement, particularly if such a movement had been brought about as a result of an amnesty or other form of guarantee of safe return. One speaker, however, felt that the High

Commissioner's involvement with returnees might create legal difficulties vis-à-vis the authorities of the country of origin. It might, therefore, be useful to seek a specific mandate in this regard through a United Nations General Assembly resolution.

47. A number of representatives emphasized the primary responsibility of the country of origin to remove the root causes of refugee problems and to create conditions conducive to the return of refugees. Other representatives stressed the duty of all parties concerned to promote conditions favourable to return. This included the country of asylum which should ensure that no obstacles were placed in the way of voluntary repatriation. One speaker cautioned that the High Commissioner should not be placed in a situation where he might have to concern himself with non-humanitarian issues. The emphasis given by the Round Table to the need for identifying the root causes of refugees movements and their removal was generally welcomed.

48. The recommendation of the Round Table regarding the setting up of ad hoc informal consultative groups whenever considered appropriate by the High Commissioner, received general support. Certain speakers felt that this suggestion required further consideration. One speaker, however, felt that such further consideration, which might take a certain time, could unduly limit the High Commissioner's freedom of action. Another speaker believed that membership of the ad hoc consultative group should be limited to members of the Executive Committee who, due to their long experience, were in the best position to provide appropriate advice to the High Commissioner. Certain other speakers, however, believed that the countries most directly concerned, namely the country of origin and the country of asylum, should always be involved even if they were not members of the Executive Committee. One representative suggested, that if in particular circumstances the High Commissioner found that the appointment of, or consultation with, an ad hoc consultative group would involve UNHCR in political issues, he could request the United Nations Secretary-General to take over responsibility in the matter. This might provide an extra guarantee of the strictly humanitarian nature of UNHCR's role.

49. Several speakers expressed support for the Round Table recommendation regarding the elaboration of a multilateral framework governing voluntary repatriation while others felt that the matter required further consideration. A certain number of speakers sought further clarifications as to the precise implications of this recommendation.

50. One speaker recalled the successful initiative of the High Commissioner in the setting up of a Tripartite Commission to promote the voluntary repatriation of Ethiopian refugees from Djibouti and expressed the hope that a similar solution would be tried in other situations. He felt that the situation in Central America was particularly ripe for this and called upon the High Commissioner to undertake immediate initiatives in this area. In regard to South East Asia, he believed that the appearance and the substance of the solution of voluntary repatriation must be maintained despite the difficulties which were known to exist. This was important so as not to make it appear that resettlement was the only solution. He urged the High Commissioner to redouble his efforts in the region and suggested the appointment once again of a Regional Co-ordinator to promote durable solutions in South East Asia. Another speaker expressed the hope that the Office would continue its efforts at a high level, to obtain the approval of the Laotian

authorities to facilitate the safe return of those Laotian refugees who wish to return to Laos. A further speaker recalled that several delegations, including his own, had urged the setting up of a separate unit for durable solutions within UNHCR.

51. Two speakers expressed specific support for the conclusions of the San Remo Round Table that the High Commissioner could deal with any entity, whether recognized or not by the international community if he believed that this would help in promoting voluntary repatriation. One speaker, however, felt that the High Commissioner should exercise extreme caution before deciding to deal with an entity which was not well-established and which had no international standing.

52. One speaker expressed the satisfaction of his delegation that in recent years, the Office had been able to organize successful repatriation programmes in different areas including Argentina, Ethiopia, Laos, and Uruguay. Another speaker asked that the Office provide regular statistics on its voluntary repatriation efforts particularly to Laos and Vietnam.

53. In responding to the debate, the Director of International Protection stated that making arrangements for voluntary repatriation was an integral activity of the Office. The need to promote voluntary repatriation had become increasingly urgent in today's world because of the large number of refugees for whom either local integration or third country resettlement was not feasible. He felt that the existing mandate of the High Commissioner was sufficient in this regard and there was no need to approach the General Assembly for specific authorisation.

54. For the Office of the High Commissioner the primary consideration was that any repatriation arrangement whether for individuals or groups should be based on the free will of the individual to return. It was evident that some situations were inherently political and in such situations it was important for the Office of the High Commissioner to have the support of the countries directly concerned with the specific refugee problem and of the international community as a whole. In certain cases the Office felt that given the underlying political context it was preferable to leave the initiative to the Secretary-General of the United Nations. In this connection he mentioned that the Office of the High Commissioner was presently co-operating with the Secretary-General's Special Representative in his efforts to obtain a solution to the Afghanistan crisis which included the problem of the substantial number of Afghan refugees who found themselves in neighbouring countries. It should, of course, be added that the fact that the political situation in a particular country had not changed, did not preclude voluntary repatriation on an individual basis which the Office was always available to facilitate.

55. The fact that a large number of representatives had recognized the legitimate concern of the High Commissioner regarding the consequences of the return of refugees to their country of origin was a source of satisfaction. In order to implement any repatriation programme successfully it was important for the Office to be able to monitor returns, and in this connection mention could be made of the Office's experience in monitoring the return of refugees to Zaire at the request of the authorities of that country.

56. The Director of International Protection further stated that in order to be able successfully to initiate a voluntary repatriation programme it was important for the Office to have sufficient funds and resources at its disposal. The Office's involvement in arrangements for rehabilitation in the country of origin was sometimes essential for the successful implementation of voluntary repatriation programmes. Responding to the suggestion of one speaker that the Office undertake further efforts to promote voluntary repatriation in Central America, he stated that the Office was presently co-operating in the establishment of a Voluntary Repatriation Commission involving Honduras and El Salvador and hoped to be able to do likewise with respect to Honduras and Nicaragua.

57. In his concluding remarks the Chairman, on behalf of the Sub-Committee, thanked the International Institute of Humanitarian Law at San Remo and its President, Professor Patronogic, for the holding of the Round Table on Voluntary Repatriation.

58. At the close of the discussion the Sub-Committee recommended that the Executive Committee adopt the following conclusions on voluntary repatriation:

The Executive Committee, reaffirming the significance of its 1980 Conclusion on voluntary repatriation as reflecting basic principles of international law and practice adopted the following further conclusions on this matter:

1. The basic rights of persons to return voluntarily to the country of origin is reaffirmed and it is urged that international co-operation be aimed at achieving this solution and should be further developed;
2. The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected;
3. The aspect of causes is critical to the issue of solution and international efforts should also be directed to the removal of the causes of refugee movements. Further attention should be given to the causes and prevention of such movements, including the co-ordination of efforts currently being pursued by the international community and in particular within the United Nations. An essential condition for the prevention of refugee flows is sufficient political will by the States directly concerned to address the causes which are at the origin of refugee movements;
4. The responsibilities of States towards their nationals and the obligations of other States to promote voluntary repatriation must be upheld by the international community. International action in favour of voluntary repatriation, whether at the universal or regional level, should receive the full support and co-operation of all States directly concerned. Promotion of

voluntary repatriation as a solution to refugee problems similarly requires the political will of States directly concerned to create conditions conducive to this solution. This is the primary responsibility of States;

5. The existing mandate of the High Commissioner is sufficient to allow him to promote voluntary repatriation by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them, and by acting as an intermediary or channel of communication. It is important that he establishes, whenever possible, contact with all the main parties and acquaints himself with their points of view. From the outset of a refugee situation, the High Commissioner should at all times keep the possibility of voluntary repatriation for all or for part of a group under active review and, the High Commissioner whenever he deems that the prevailing circumstances are appropriate, should actively pursue the promotion of this solution;
6. The humanitarian concerns of the High Commissioner should be recognised and respected by all parties and he should receive full support in his efforts to carry out his humanitarian mandate in providing international protection to refugees and in seeking a solution to refugee problems;
7. On all occasions the High Commissioner should be fully involved from the outset in assessing the feasibility and thereafter in both the planning and implementation stages of repatriation;
8. The importance of spontaneous return to the country of origin is recognized and it is considered that action to promote organized voluntary repatriation should not create obstacles to the spontaneous return of refugees. Interested States should make all efforts, including the provision of assistance in the country of origin, to encourage this movement whenever it is deemed to be in the interests of the refugees concerned;
9. When, in the opinion of the High Commissioner, a serious problem exists in the promotion of voluntary repatriation of a particular refugee group, he may consider for that particular problem the establishment of an informal ad hoc Consultative Group which would be appointed by him in consultation with the Chairman and the other members of the Bureau of his Executive Committee. Such a group may, if necessary, include States which are not members of the Executive Committee and should in principle include the countries directly concerned. The High Commissioner may also consider invoking the assistance of other competent United Nations organs;
10. The practice of establishing tripartite commissions is well adapted to facilitate voluntary repatriation. The tripartite commission, which should consist of the countries of origin and of asylum and UNHCR, could concern itself with both the joint planning and the implementation of a repatriation programme. It is also an effective means of securing consultations between the main parties concerned on any problems that might subsequently arise;

11. International action to promote voluntary repatriation requires consideration of the situation within the country of origin as well as within the receiving country. Assistance for the reintegration of returnees provided by the international community in the country of origin is recognized as an important factor in promoting repatriation. To this end, UNHCR and other United Nations agencies as appropriate, should have funds readily available to assist returnees in the various stages of their integration and rehabilitation in their country of origin;
12. The High Commissioner should be recognized as having a legitimate concern for the consequences of return, particularly where such return has been brought about as a result of an amnesty or other form of guarantee. The High Commissioner must be regarded as entitled to insist on his legitimate concern over the outcome of any return that he has assisted. Within the framework of close consultations with the State concerned, he should be given direct and unhindered access to returnees so that he is in a position to monitor fulfilment of the amnesties, guarantees or assurances on the basis of which the refugees have returned. This should be considered as inherent in his mandate;
13. Consideration should be given to the further elaboration of an instrument reflecting all existing principles and guidelines relating to voluntary repatriation for acceptance by the international community as a whole.

IRREGULAR MOVEMENTS OF ASYLUM-SEEKERS AND REFUGEES (ITEM V)

59. Introducing this item, the Director of International Protection recalled that the problem of irregular movements of asylum-seekers and refugees was first raised in the Executive Committee at its 35th session. Following a request by several members of the Executive Committee to prepare a study on the subject, the High Commissioner appointed as Consultant, Mr. Gilbert Jaeger, to undertake the task. In consultation with the Chairman, a governmental Working Group was established to consider the results of the study. In April 1985, the Working Group, initially composed of 14 governments, met in Geneva to discuss a background paper prepared by the Consultant, and to provide the Consultant with suggestions on how to proceed with his study. Following the submission of the study prepared by the Consultant, the Working Group met for a second time, on Friday 27 September. On that occasion its composition was broadened to include all Member States of the Executive Committee. In light of the views expressed at that meeting and in subsequent consultations, a set of Draft Conclusions had been elaborated which was circulated as document EC/SCP/40/Rev.1.

60. In the Draft Conclusions, it was stated at the outset that irregular movements comprise refugees, whether they have been formerly identified as such or not, who have found protection in one country but who, nevertheless, move in an irregular manner to another country to seek asylum or a durable solution. The term "Irregular movements", does not, therefore, cover refugees who arrive directly from a country in relation to which they allege fear of persecution or to refugees who have not yet found protection in another country, including refugees in an orbit situation. Irregular movements, defined in this manner, have given rise to growing concern by governments and UNHCR, because they have tended to destabilize structured efforts to provide appropriate durable solutions for refugees.

61. The Draft Conclusions also took note of the fact that the motivation for irregular movements was to be found primarily in the uncertain situation of the persons concerned and/or the absence of educational and employment possibilities as well as the non-availability of long term durable solutions. The problem of irregular movements called for action by concerned governments and UNHCR to remove or reduce the causes which impelled refugees to leave by irregular means from countries where they had already found protection. Such action should be primarily directed to providing appropriate and adequate durable solutions for refugees and asylum-seekers in such countries. It needed to be taken in the context of international co-operation and burden-sharing by all concerned states i.e. states where refugees have found protection, resettlement countries, donor countries and others. To achieve a fundamental impact in regard to the irregular movements, it was of primary importance for appropriate measures to be taken at the source of the problem.

62. In principle, refugees and asylum-speakers who have found protection in a particular country should not move from that country in an irregular manner particularly when there were durable solutions available to them there. When refugees in this latter situation, nevertheless, moved to another country in an irregular manner, they might be returned to the country in which protection was originally found on two conditions - that they were protected against refoulement in that country and that they were permitted to remain there and be treated in accordance with recognized human standards until a durable solution was found for them. Should the persons concerned allege fear of persecution or danger to their physical safety or freedom in the country where they originally found protection, their case should be given favourable consideration even if they moved from that country in an irregular manner.

63. The Draft Conclusions also described irregular movements as involving entry into the territory of another country without the prior consent of the national authorities or without an entry visa, or with no or insufficient documentation normally required for travel purposes. They also referred to the use by a growing number of refugees and asylum-seekers of fraudulent documentation and their practice of wilfully destroying or disposing of travel or other documents in order to mislead the authorities of the country of arrival. Such practices were characterized as fraudulent and may weaken the case of the person concerned. On the other hand, there could be circumstances which compelled persons who had already found protection in one country to have recourse to fraudulent documentation because their physical safety or freedom in that country was endangered. If this was not the case, however, the use of fraudulent documentation was unjustified. The wilfull destruction or disposal of travel or other documents in order to mislead national authorities as to their stay in another country, was also unacceptable and States should make appropriate arrangements to deal with this phenomenon.

64. In conclusion, the Director of International Protection stressed the need for the subject to be addressed in a true spirit of international co-operation and burden-sharing in keeping with the traditions of the Sub-Committee.

65. In the ensuing discussion a number of representatives expressed appreciation for the preparatory work that had been undertaken by UNHCR. Particular reference was made to the study of the Consultant as well as to the efforts undertaken by UNHCR in order to arrive at the Draft Conclusions

contained in document EC/SCP/40/Rev.1. Several representatives considered the Draft Conclusions as adequate, well-balanced, and as reflecting the legitimate interests of refugees and concerned States. One representative, however, stated that his government could only accept the Draft Conclusions subject to the following modifications being introduced. In paragraph (f) replace (i) and (ii) by the following: "(i) if they are protected there in accordance with art. 33 of the Geneva Convention against refoulement and (ii) they are during their stay there treated in accordance with the minimum standards laid down in art. 42 of the Geneva Convention (art. 1, 3, 4, 16 (1), 33) until a durable solution is found for them."; and in paragraph (g) insert after the words "...safety or freedom are endangered" the words "for reasons mentioned in art. 1a2 of the Geneva Convention".

66. Particular attention was drawn by one representative to paragraph (b) of the Draft Conclusions according to which irregular movements of refugees and asylum-seekers who have already found protection in a country were, to a large extent, composed of persons who feel impelled to leave, due to the absence of educational and employment possibilities and the non-availability of long term durable solution by way of voluntary repatriation, local integration and resettlement. He believed this enumeration was more appropriate for refugee situations in Europe and was of lesser relevance to other regions such as Asia where refugees entered countries with the clear objective of proceeding to another country of destination. He therefore believed that the enumeration contained in paragraph (b) should be broadened so as to cover cases of refugees who leave their present country of asylum for other reasons such as to be reunited with relatives living elsewhere.

67. At the request of one representative it was confirmed by the Chairman that the figures contained in the study submitted by the Consultant on the number of refugees in various countries were for the most part provided by the governments of those countries.

68. One representative expressed the view that movements of refugees and asylum-seekers who were only in transit in another country should not be considered as irregular movements. The Director of International Protection stated that in the light of the discussions and the wording of the Draft Conclusions it was clear that these did not apply to refugees and asylum-seekers who were merely in transit in another country.

69. Finally, one representative expressed concern that the proposed text could be seen as further restricting asylum and stressed the need for problems of irregular movements and those concerning refugees in orbit to be solved in the context of burden-sharing and the humanitarian principles established for the protection of refugees. The need for adequate burden-sharing arrangements to deal with the problem of irregular movements was stressed by a number of other speakers. One representative, expressing support for the Draft Conclusions, drew attention to the destabilizing effect of irregular movements of refugees and asylum-seekers from the standpoint of established arrangements for organised resettlement and the provision of durable solutions.

70. At the close of the discussions the Sub-Committee recommended, subject to the reservations mentioned in paragraph 65 above, that the Executive Committee adopt the following conclusions on the problem of refugees and asylum-seekers who move in an irregular manner from a country in which they have already found protection:

- (a) The phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern. This concern results from the destabilizing effect which irregular movements of this kind have on structured international efforts to provide appropriate solutions for refugees. Such irregular movements involve entry into the territory of another country, without the prior consent of the national authorities or without an entry visa, or with no or insufficient documentation normally required for travel purposes, or with false or fraudulent documentation. Of similar concern is the growing phenomenon of refugees and asylum-seekers who wilfully destroy or dispose of their documentation in order to mislead the authorities of the country of arrival;
- (b) Irregular movements of refugees and asylum-seekers who have already found protection in a country are, to a large extent, composed of persons who feel impelled to leave, due to the absence of educational and employment possibilities and the non-availability of long term durable solutions by way of voluntary repatriation, local integration and resettlement;
- (c) The phenomenon of such irregular movements can only be effectively met through concerted action by governments, in consultation with UNHCR, aimed at (i) identifying the causes and scope of irregular movements in any given refugee situation, (ii) removing or mitigating the causes of such irregular movements through the granting and maintenance of asylum and the provision of necessary durable solutions or other appropriate assistance measures, (iii) encouraging the establishment of appropriate arrangements for the identification of refugees in the countries concerned and, (iv) ensuring humane treatment for refugees and asylum-seekers who, because of the uncertain situation in which they find themselves, feel impelled to move from one country to another in an irregular manner;
- (d) Within this framework, governments, in close cooperation with UNHCR, should (i) seek to promote the establishment of appropriate measures for the care and support of refugees and asylum-seekers in countries where they have found protection pending the identification of a durable solution and (ii) promote appropriate durable solutions with particular emphasis firstly on voluntary repatriation, and when this is not possible, local integration and the provision of adequate resettlement opportunities;
- (e) Refugees and asylum-seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country through action taken by governments and UNHCR as recommended in paragraphs (c) and (d) above;

- (f) Where refugees and asylum-seekers nevertheless move in an irregular manner from a country where they have already found protection, they may be returned to that country if (i) they are protected there against refoulement and (ii) they are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them. Where such return is envisaged, UNHCR may be requested to assist in arrangements for the readmission and reception of the persons concerned;
- (g) It is recognized that there may be exceptional cases in which a refugee or asylum-seeker may justifiably claim that he has reason to fear persecution or that his physical safety or freedom are endangered in a country where he previously found protection. Such cases should be given favourable consideration by the authorities of the State where he requests asylum;
- (h) The problem of irregular movements is compounded by the use, by a growing number of refugees and asylum-seekers, of fraudulent documentation and their practice of wilfully destroying or disposing of travel and/or other documents in order to mislead the authorities of their country of arrival. These practices complicate the personal identification of the persons concerned and the determination of the country where he stayed prior to arrival, and the nature and duration of his stay in such country. Practices of this kind are fraudulent and may weaken the case of the person concerned;
- (i) It is recognized that circumstances may compel a refugee or asylum-seeker to have recourse to fraudulent documentation when leaving a country in which his physical safety or freedom are endangered. Where no such compelling circumstances exist, the use of fraudulent documentation is unjustified;
- (j) The wilfull destruction or disposal of travel or other documents by refugees and asylum-seekers upon arrival in their country of destination, in order to mislead the national authorities as to their previous stay in another country where they have protection, is unacceptable. Appropriate arrangements should be made by States, either individually or in cooperation with other States, to deal with this growing phenomenon.

OTHER BUSINESS (ITEM VI)

71. No other business was examined.