



Summary Report
International Seminar on “Responding to Large Scale Refugee Movements”
AALCO in collaboration with UNHCR
Wednesday 18 – Thursday 19 April 2018

Inauguration Ceremony

1. The Secretary-General of AALCO, Prof. (Dr.) Kennedy Gastorn, in his opening remarks expressed immense pleasure to welcome the august gathering to the International Seminar on “Responding to Large Scale Refugee Movements.” Being aware of the huge number of people who have been and are still being forcibly displaced, he opined that it would be appropriate to take a stock in the Seminar of the approaches adopted and legal instruments resorted to in responding to the large scale refugee movements, and to analyze the milestones aspiring to be realized in the 2018 Global Compacts.

2. Ever since this topic was introduced in AALCO’s agenda in 1964, the Organization has been working in pursuance of its mandate, and has collaborated with the UNHCR via an MOU, signed between the two Organizations on 23 May 2002. AALCO had adopted the “Principles Concerning the Treatment of Refugees” in 1966 (Bangkok Principles), and the “Burden Sharing Principles” in 1987 as an addendum thereto. Most recently at the Fifty-Sixth Annual Session held in 2017, the AALCO Secretariat was mandated (Resolution AALCO/RES/56/S3) to collaborate and cooperate with UNHCR “to explore the possibility of organizing a joint seminar.” Also, the UNHCR was mandated by the New York Declaration for Refugees and Migrants 2016 to develop and initiate a multi-stakeholder approach that protects and promotes the rights of refugees as enshrined in International Law. The Declaration underlined the centrality of international cooperation and equitable sharing of burden to the refugee protection regime and recognized the burdens that large movements of refugees place on national resources, especially in the case of developing countries.

3. Taking note of the multi-stakeholder concerted outlook embedded in the Comprehensive Refugee Response Framework (CRRF) annexed to the Declaration, the Secretary-General took the opportunity to call for a collaborative approach to chalk out solutions. Thanking all present, he wished the gathering a productive Seminar.

4. Next, the Welcome Address was presented by H.E. Mrs. Florence Weche, High Commissioner of Kenya to India, on behalf of the President of AALCO. After thanking the Secretary General of AALCO for his opening remarks, which set the tone for the seminar, she spoke in brief on the current global crisis of large scale refugee and migrant movement that requires a collective effort

by the international community. She spoke on the perils of the journeys of such people on the move, the often unpreparedness and over-burdening of the host communities, less frequent implementation of the principles of burden-sharing, and the consequent implications for the social, economic and political landscape. She also spoke of the inadequate international responses, especially in emergency situations.

5. Thereafter, she focused on the African situation, stating that the sheer number of refugees that the continent continues to host, from outside as well as from within, is striking. With more than 15 million refugees and internally displaced persons (IDPs), African countries are home to nearly a quarter of the world's forcibly displaced population. As many as five million refugees and 11 million internally displaced persons (IDPs) live in Africa, with Uganda, Cameroon, Chad, Ethiopia, Kenya and the Democratic Republic of Congo hosting the largest numbers of forcibly displaced people.

6. The Heads of State and Government and High Representatives adopted the New York Declaration on 19 September 2016. This Declaration contains at the core the acknowledgment that protecting those forced to flee, and supporting countries that receive them, are shared international responsibilities that must be borne more equitably and predictably. The most significant features of the Declaration are the provision for the roll-out of the Comprehensive Refugee Response Framework (CRRF). The CRRF has 4 key objectives: a) ease pressure on host countries, b) enhance refugee self-reliance, c) expand third country solutions, and d) enable refugees to return to their home countries.

7. Focusing again on the measures taken up by Africa to manage refugee and migrant situations, she explained in brief the key features of the 1969 Organization for African Unity (OAU) Convention in this regard. She further explained the current CRRF roll-out status within Africa, as per the agenda of the African Union (AU) in this regard. She specifically noted and also explained in brief the Tripartite Agreement between the Republic of Kenya, Republic of Sudan and the UNHCR, for the safe and dignified voluntary repatriation of Sudanese refugees from the Republic of Kenya and their re-integration in Sudan. She further spoke in brief about the Kenyan National Action Plan. She also emphasized that Africa is prepared to honor all its humanitarian obligations, despite grave security challenges.

8. She noted that refugee laws as a subject matter cannot be studied in isolation. It is important to understand, for example, that how refugee laws and other branches of law such as international humanitarian law, human rights law and law of the sea interact with one another. She stated that the program of the present seems to be comprehensive, and hoped it would lead to some concrete proposals to solve the refugee problem.

9. This address was thereafter followed by the keynote address by Ms. Ellen Hansen, Senior Policy Adviser to the Assistant High Commissioner for Protection, UNHCR. Firstly, the speaker talked about the long-standing collaboration between AALCO and UNHCR, which dates as far

back as 1964. She spoke about the Bangkok Principles as truly pioneering, and being the first of a number of instruments that would apply the principles of refugee laws to specific regional contexts, such as the 1969 OAU Convention, and the 1984 Cartagena Declaration. She further spoke on AALCO's work on preparation of model refugee legislation, as well as, the work on internally displaced persons and statelessness.

10. She went on to speak in brief on the harrowing figures of the global forced displacement. She further detailed the most generous refugee-hosting countries presently, namely: Turkey, Pakistan, Lebanon, Islamic Republic of Iran, Uganda, Kenya, and Tanzania, all of which are AALCO Member States. She recalled that UNHCR believes that the countries hosting this large number of refugees truly are the largest contributors to the international refugee regime.

11. Next she mentioned the New York Declaration and the process leading to the Global Compact on Refugees as being a key milestone for global solidarity and refugee protection, as the Declaration had been unanimously adopted by the 193 Member States of the UN in September 2016. The Declaration reflects the common understanding between all nations today that refugee protection is a shared international responsibility that must borne more equitably and predictably by them. She talked about the two distinct processes that the New York Declaration set in motion. In this regard, while the High Commissioner for Refugees Filippo Grandi will propose a Global Compact on Refugees to the UN General Assembly in 2018, the Global Compact on Migration is led by two Co-facilitators, the Permanent Representatives of Switzerland and Mexico to the UN in New York. She further spoke about the "thematic discussions" initiated in 2017 for the proposal of the Global Compact. She mentioned that the "zero draft" and "first draft" of the Compact had already been released, and that the "second draft" should be released by the end of April. She also informed that the High Commissioner for Refugees is expected to place his final proposal for the Global Compact before the General Assembly at its 73rd session later in 2018. She, therefore, complimented the timely nature of the seminar, as it would complement the formal processes through contributing views, and promoting the Global Compact to the Member States of AALCO.

12. Thereafter she explained the CRRF in brief. She informed that the CRRF had been formally rolled out in 13 countries in Africa and Latin America. She stated that even other countries across Asia and Africa applied key elements of the CRRF in their policies and frameworks. Such experiences are informing the Global Compact on Refugees. The CRRF is based on a "whole of society" approach engaging a wide array of actors, including civil society, private sector, academia, refugees and host communities.

13. Next she talked about the progress made since the adoption of the New York Declaration, including the contributions made by countries, especially to support the CRRF roll-out. A number of States have changed laws and policies to support refugee self-reliance. Also, the role of private sector in refugee protection is being increasingly recognized and harnessed. A number of traditional resettlement States are expanding the number of refugees they resettle. The Global

Refugee Sponsorship Initiative supports re-settlement. Considerable progress has also been made in the development of complementary pathways re-settlement of refugees in third countries, like refugee student movements, and labor mobility programs.

14. Lastly, she stated that the main challenge ahead is to operationalize the commitment made in the New York Declaration – that of a more equitable sharing of burden in hosting and supporting refugees. UNHCR and organizations like AALCO continue to work in collaboration to meet this challenge.

Session 1

Global Overview of Refugee Situation

15. Opening remarks for the Session were made by the moderator, Dr. Burra Srinivas, Assistant Professor, South Asian University, New Delhi, who reminded the gathering of the challenges faced in the legal arena and otherwise, in matters relating to refugees and migrants over the last six-seven decades. Thereafter, he introduced the learned speaker for the Session and invited her to speak on the topic.

16. Ms. Yasuko Shimizu, Chief of Mission, UNHCR, India and Maldives, delved into the issues, extant and emerging, pertaining to the refugee situation by referring to historical trends as well as statistical analyses. Her presentation focused on the question: how the international system has adopted new approaches in order to respond to evolving refugee situations.

17. At the outset, after preliminarily perusing the definition of refugees under the 1951 Convention and highlighting that the definition hinges on the dual factors of the person being “outside” the country of origin and that the reason thereof is attributable to “a well-founded fear of being persecuted”, the aspect of forced displacement specifically attributed to refugee movements was highlighted. Ms. Shimizu proceeded to underline the facts and figures related to displacement, both internal and across borders. Referring extensively to the empirical research done by UNHCR, she presented the data pertaining to the top hosting countries and the countries of origin. In 2017, 55 percent of the refugees worldwide came from three countries: South Sudan, Afghanistan and Syria. The top six hosting countries are Turkey, Pakistan, Lebanon, Islamic Republic of Iran, Uganda and Ethiopia. 30 percent of the world’s displaced people are being hosted in Africa, followed by the MENA countries who host around 26 percent. The ratio of refugees and asylum seekers against total population in the hosting state has seen a surge in Uganda owing to the recent influx of refugees from South Sudan, and is as high as 18 percent in Lebanon. Apart from the protracted situations (i.e. in Burundi, Somalia, CAR, DRC, Nigeria, South Sudan), new conflicts have arisen (for example, in South Sudan), resulting in many more people seeking refuge/ asylum. She observed that the figures point out that only a small number

of countries host a large number of the refugees, thereby emphasizing on the need for solidarity and burden sharing in order to support refugee hosting countries. .

18. She illustrated the major situations in Africa, viz., Burundi, CAR, DRC, Nigeria, Somalia and South Sudan; the level three emergency declarations in the MENA region (Iraq, Syria and Yemen) which further worsened in 2017; and the instances of new displacement (Myanmar) and continued violence in Asia (Afghanistan).

19. Proceeding to adduce a historical overview of the international community's attitude towards the adoption of new approaches in dealing with refugee challenges over the past several decades, Ms. Shimizu referred to the waves of displacement which spurred the creation of UNHCR after the Second World War, and those which triggered the adoption of the 1967 Protocol to the Convention; whilst the process of decolonization of nations in Africa was going on. The 1970s saw prolonged refugee situations and a consequent increase in the number of refugees. Proxy wars in Africa, Asia and Central America influenced deliberations and formulation of numerous legal instruments, and marked the beginning of a multi stakeholder approach in refugee protection. Whilst the Cold war ended, the magnitude of internal displacements soared and inter-agency response mechanism to humanitarian situations (Cluster Approach) to humanitarian situations such as ones of Internally Displaced Persons (IDPs) was ushered in. Despite the existence of a seething anti-refugee sentiment, mainly as an aftermath to 9/11, the world community witnessed the adoption of New York Declaration in the year 2016.

20. Despite an enumeration of the emerging challenges in the field, viz., prolonged conflicts, limited access to persons in need for humanitarian assistance, complex mixed movements, shrinking protection space involving risk of refoulement, inadequate donor support, compounded with other humanitarian issues (drought, cholera outbreak, food insecurity), the speaker concluded in an optimistic note: adoption of a multi-stakeholder approach intertwined with strong elements of solidarity could lead humanity to take strong strides towards achieving an effective Global Compact.

21. In response to questions posed, Ms. Shimizu clarified that a more comprehensive and holistic approach is undeniably required to cater to the new challenges today. On the issue of solidarity in facing refugee challenge, she cited the example of Africa in general and Uganda in particular, which has a history of adopting multi-stakeholder approach. Concerted efforts are required to cater to developmental needs of the refugees and the host communities. The speaker also delved on the issue of climate refugees. She cited rising xenophobia after the 9/11 for heightened risks of refoulement. On being questioned on the potential of the Global Compact on Refugees to usher in more predictable responses from States with respect to burden sharing, she addressed the importance of commitment from all stakeholders.

Session 2

Comprehensive Refugee Response Framework and Global Compact on Refugees: Prospects and Challenges

22. The session was moderated by Dr. K.M. Parivelan, from the Tata Institute of Social Sciences, Mumbai, who briefly introduced the topic and also provided some interesting introductory insights into the challenges presently faced by the international refugee regime. The speaker, Ms. Ellen Hansen, Senior Policy Adviser to the Assistant High Commissioner for Protection, UNHCR, firstly spoke about the 2016 New York Declaration and what preceded it. She observed that the Asia and the Pacific have been hosting a large number of refugees for decades, but an increasing number of refugees in Europe (more than a million people had arrived in Europe by 2015) can also be understood as a motivation for the summit.

23. From the standpoint of international governance, there is a distinction between those people who are forced to move due to persecution—and thus qualify for protection as refugees—and others on the move. For the former, there has been an international refugee regime in place for more than 65 years, with established norms, procedures, and institutions. The same cannot be said for international migrants – those whose flight is prompted by causes not recognized by the international community as grounds for refugee designation. Hence the 2016 New York Declaration envisaged the formation and adoption of two separate Global Compacts on Refugees and Migrants respectively. She stated that informal consultations pertaining to both the Compacts have been convened, which will be followed by formal consultations that can finally culminate into a concrete proposal where States are able to see beyond the singular problematic picture of refugee flow, into a realm where their own self-interests may be involved in the appropriate and humanitarian management of refugee flows. Also, at the same time she emphasized that the challenges that refugees and migrants face en route may be quite similar. Hence international organizations such as UNHCR, IOM and others are working in collaboration to bring a sustainable solution to their problems.

24. Next she spoke in brief on the draft of the Global Compact on Refugees that is to be considered in the month of May in Geneva in the fourth of six formal consultations. With regards to the prospects of the Global Compacts she was cautiously optimistic.

25. Regarding the present “non-binding” character of the Global Compacts she stated that it was based on the international legal regime, but that the way forward continues to be the means of “persuasion” of States towards more predictable and equitable responsibility sharing for refugees.

26. Lastly, speaking about the continued relevance of the 1951 Convention on the Status of Refugees as well as its 1967 Protocol today, she particularly emphasized the refugee definition in the Convention as well as definitions available in regional instruments.

27. This was followed by an interesting round of question-answer session. One of the questions relating to the presentation was whether the Global Compact was substantially directed towards the refugees and migrants within Europe? That is, how would the Compacts essentially impact the continents of Asia and Africa, and would it increase the obligations that are currently there for host States? In this regard the speaker stated that the refugee influx into Europe simply acted as a catalyst for the New York Declaration and consequently the impending Global Compacts of 2018. She re-assured that the Compacts are going to be truly global in nature. For example, the focus would continue to be on supporting host States that are actually in need of the same. She further added that the Compacts would build on standards created and maintained over decades.

28. Regarding the issue of increasing obligations for host States, she stated that contrary to such an assumption the Compacts would in turn do more to support host States, like re-enforcing the principle of burden sharing. Another question related to the role of regional organizations such as AU, SAARC, ASEAN, etc., in the formation of the Global Compact. The speaker stated that such initiatives and their remarkable work certainly needs to be acknowledged by the world community, including those at the helm of affairs for formulating proposals for the Global Compacts. She also mentioned that this was something that was already being done, and encouraged stronger regional collaborations to assist the UNHCR's and world community's work in this regard.

29. Another question related to the "indicators" in the Global Compacts. The speaker explained such indicators with the example of an increase in the number of refugee children who were able to access education in a way that benefited both refugees and host communities. She informed the audience that the UNHCR would soon hold content-specific consultations on this issue. In this regard she further acknowledged as well as applauded the significant and positive developments in Africa in terms of adoption of various instruments, as well as their implementation, in managing and ameliorating the forced displacement situation in Africa.

30. Regarding a query on the position of stateless people in host States as well as in States of origin, the speaker responded that both the Compacts on refugees as well as migrants refer to and deal with cases of not only refugee stateless people, but also non-refugee stateless people.

31. In this regard she also spoke of the significance of the "#IBELONG" campaign, which is a 10 years global campaign launched by the UNHCR in 2014, to end the devastating legal limbo of statelessness, which affects millions of people around the world and makes their lives difficult.

32. Important discussions also took place in ASEAN and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, which has significant bearings on the global management of the refugee crisis.

Session 3

Efficacy of Regional Cooperation in Addressing Refugee Movements

33. The moderator, Dr. Surabhi Singh, Programme Associate, IOM, New Delhi, briefly introduced the topic and the speaker for the session, Dr. Srinivas Burra, Assistant Professor, South Asian University, Delhi. Dr. Srinivas began the session by emphasizing that his presentation would focus on the shortcomings faced by the International legal framework for the protection of refugees. The 1951 Convention and 1967 Protocol are at the centre of the legal framework on refugee protection. They are the embodiment of the age-old institution of asylum, and are universal and non-discriminatory.

34. His presentation was a critique of the existing legal framework for refugee protection. Firstly, he dealt with institutional legal challenges in the form of limitation of the 1951 Refugee Convention. He stated that the Convention was the fallout of the Second World War and the definition of refugees therein was contextualized accordingly. This definition was essentially restrictive, narrowly limiting the subsequent debates surrounding the discourse on the subject. The emergence of regional approaches was also a direct consequence of this limitation.

35. Secondly, he dealt with compliance challenges. His primary concerns were twofold- Criminalizing the movement of people across frontiers and strengthening of border security measures. These aspects ironically operate to defeat the spirit of the international refugee law mandate. Domestic legal frameworks on trafficking, smuggling and terrorism have resulted in weakening the humanitarian mandate of refugee protectionism. Similarly, border measures have resulted in creating additional barriers to the free movement of people across frontiers, and refugees were the most affected. He highlighted instances of walls erected between the United States and Mexico, Spanish territories and Morocco, Israel and Egypt, Greece and Turkey, Bulgaria and Turkey, Hungary and Serbia, Austria and Slovenia, and, most recently, Macedonia and Greece. These walls apart from acting as physical barriers have played a strong psychological role in segregating refugees from other welcome immigrants.

36. The predominance of the mainstream refugee narrative has also blurred the emergence of alternative approaches to the subject. While the Refugee legal framework prohibit States Parties from returning migrants to a country in which they are at risk of persecution or torture, it does not address how it is that these migrants should make their way into the destination countries in which they seek protection.

37. The centrality of States is important in the field of refugee protection. States should be the central point in dealing with refugee issues. Given the difficulty of enforcing rights against private parties, greater responsibility should be shouldered by States. Such an approach is likely to make the refugee protection framework more robust.

38. Lastly, the emergence of political populism has dictated the discourse on the subject. Xenophobia, economic protectionism and socio-cultural factors in recent times threaten to further weaken the execution of refugee protection norms.

39. A range of questions were put forth to the speaker after his presentation. The first question pertained to the central role of the State in refugee protection to which he reiterated his ideas made in the presentation on the importance of State activism as opposed to private sector activism in the field. A rights centric analysis necessarily requires a greater role for the State. The second question pertained to the efficacy of existing criminalization efforts in refugee law, to which he replied that the actual concern pertaining to “collective criminalization” was the tendency of criminalizing the movement of people across borders.

40. The act of entering a country is itself emerging as a crime, a normative reality in today’s times. The next question pertained to the use of “refugees” as a political tool by countries, the answer to which was explained by Ms. Hansen of UNHCR in light of the historical challenges faced by the international refugee regime. The solution to the Rohingya crisis, for example, according to Dr. Srinivas was a matter in the political realm of States. The peculiar problems faced by regional instruments, destination determination of refugees, and substantive non-refoulement violations were also dealt extensively by Dr. Srinivas in the addition to the potential harmony/conflict between the global and regional narratives of refugee protection in international law.

Session 4

Efficacy of Regional Cooperation in Addressing Refugee Movements

41. The moderator, Ms. Jessica Field, Assistant Professor, Jindal Global Law School, briefly introduced the topic and the speaker for the session, Dr. Sanoj Rajan, India Chair Visiting Professor, Chinese University of Hong Kong. Dr. Sanoj Rajan started the session by highlighting the broad contours of his presentation. He began with a pictorial slide that depicted images of contemporary humanitarian failures followed by an analysis of the vulnerability of refugees. The meaning and significance of regional cooperation in the field of refugee cooperation was elaborated with specific thrust on the semantics surrounding the definition of “region”. Interestingly, there is no universally accepted definition of region with definitions varying according to context. Australia and New Zealand are viewed as part of Western Europe as per some classifications whereas the Bali Process despite its Asian moorings has adopted thematic concerns of North American and European nations. While emphasizing the significance of regional co-operation, the legal standards of regional mechanisms are supposed to be given due care and attention.

42. Specially, three board standards need to be factored in namely, substantive, procedural and basic human rights. The nature of protection that can be afforded under regional human rights mechanisms was touched upon which could involve initiatives of civil society actors in addition to States. Lack of political will on the part of States in this regard was identified as a major impediment. The deep influence of political ideology is also a strong factor that determines the response of States on these issues. Attempts by States to subvert their legal obligations by deterring people from entering their borders, and interview at airports are being witnessed frequently.

43. On the question of State cooperation, there are four distinct questions that need an answer on the nature of the protection involved. *Firstly*, the efficacy of formally binding instruments. *Secondly*, the nature of providing temporary shelters, processing asylum claims and securing durable solutions for refugees. *Thirdly*, a comparative analysis between top-down and bottom-up approaches. *Fourthly*, an analysis of refugee protectionism under existing structures such as the Bali Process and ASEAN versus the need to evolve new mechanisms. Addressing complexities surrounding the Refugee Status Determination question lies at the heart of effectively resolving refugee concerns.

44. Pursuant to the same, Dr. Rajan specifically elaborated the practices existing under various regional mechanisms. Starting with Europe, Latin and Central America moving to Africa and Asia-Pacific, the diverse experiences of these regions were shared with the audience. The EU model, especially the Dublin Convention has been more robust than other regions and has been a success in providing a good model in this regard.

45. The moderator Ms. Jessica Field wound up the session with an overview of the presentation which was followed by a question and answer session. The first question pertained to the role of civil society groups operating in South-Asia and the role of SAARC in refugee protection. The second question pertained to the interplay between efficiency of co-operation in the context of political will of States. The third question pertained to the possibility of cross-regional cooperation in the field of refugee protection.

46. Responding to the questions, Dr. Rajan pointed out the critical importance of civil society actors and the need for a broader dialogue in the field. Dissemination of information, greater outreach by academia, and teaching sessions by organizations like UNHCR can go a long way in improving the ecosystem of refugee protection. Political will continues to remain a concern in SAARC countries which needs to be addressed. On the issue of regional cooperation, the Indo-China framework with its strong and cohesive framework for refugee protection is a fine example of refugee protection in this regard. A mixture of top-up and bottom up approaches taking the best learnings from all actors is needed. While the virtual space needs to be tapped in to spread awareness, it is observed that the role of social media in contemporary times is increasingly turning negative.

47. Addressing the final question pertaining to State sovereignty, Dr. Rajan highlighted the need to work around the accepted notions of sovereignty and address concerns. While every new conflict situation presents new challenges for refugee protection, it is important to constantly strengthen mechanisms in this regard.

Session 5

Interface between Refugee Law and International Humanitarian Law

48. The moderator for the session, Mr. Mohsen Baharvand, Deputy Secretary-General, AALCO heralded the discussion on a contemplative note: he noted that the principles of international law, particularly those pertaining to sovereignty and non-interference adversely impact the regime on protection of refugees. Thereafter, he proceeded to introduce the speaker, Mr. Fahad Ahmed, Legal Adviser, ICRC, New Delhi.

49. At the outset, Mr. Ahmed underlined the role of ICRC, as the custodian of the four Geneva Conventions, vis-à-vis the dissemination of International Humanitarian Law (IHL) in times of peace and ensuring that principles of IHL are abided by in times of conflict. An enumeration of the sources of IHL was followed by an elucidation of ICRC's traditional mandate with respect to IHL- operational as well as promotional. A large number of asylum seekers flee armed conflict and often violate norms of IHL. The interface between IHL and Refugee Law (RL) is perceived when the question of refugee status determination arises in such cases. Taking note of the narrow definition of the term "refugees" under 1951 Convention, regional refugee instruments have expanded their definitions to include persons fleeing armed conflict. A variety of measures have been developed and introduced by States in order to bestow a notion of temporary protection. Yet another point of intersection lies in the exclusion of the violators of IHL from entitlement of refugee protection.

50. Protection accorded to refugees during armed conflict is two-tiered: that accorded to civilians and that which accrues to aliens. Rules of IHL expressly prohibit displacement/ mass population transfers within territory or beyond borders, excepting situations when such evacuation of civilian population is in accordance with terms of necessity or for imperative security reasons. Further, IHL provides for protection from the effects of hostilities in order to prevent displacement and protection during displacement.

51. Thereafter, the speaker discussed the specific protection of refugees under IHL. Protection of refugees as aliens in the territory of a party to a conflict includes the entitlement to leave territory under certain conditions, continued entitlement to basic protections and rights granted to aliens, and guarantees with regards to means of existence. Certain additional protections are also bestowed upon refugees under Article 44 of GC IV and Article 73 AP I.

52. Thereafter, a comparison between the regimes of IHL and RL was portrayed in terms of applicability, ratification and the quantum of compromise between military necessity and humanity. Certain factors pose challenges to the applicability of the RL regime. One such factor is the mixed movement of populations which make the differentiation between the economic migrants, asylum seekers and people with legal claims to be a refugee difficult. The speaker advocated for subscription to the vulnerability approach in such circumstances. Other challenges are posed by the efforts to counter violent terrorism and the principle of non-refoulement. The speaker concluded with a detailed elucidation of the concept of non-refoulement.

53. The issues that were raised in the lecture prompted a number of participants in the seminar to raise questions and provide their comments, which focused on the role of IHL and the protection it can offer to refugees.

54. Apart from addressing the contemporary functions of the ICRC in the present refugee crises, questions were also raised regarding the application of the principles of military necessity and security concerns in the refugee protection regime, and how a balance may be achieved between the same.

55. Mr. Ahmed apprised the meeting that, although IHL permitted the internment of persons of alien nationality, it was only to be undertaken as the last resort in the interest of absolute military necessity. Further, he specified that forced displacement has long been outlawed in IHL, and hence IHL not only applies to providing protection to refugees but also addresses its root causes.

56. Finally, Mr. Ahmed explained that IHL not only applies in cases of an armed conflict of an international character, but also in cases where the armed conflict involves a non-State party. In his view this was a unique key feature that has proven effective in curbing the root causes of not only refugee movements but also internal displacement as well as all persons facing forced displacement. As regards the questions relating to the role of the ICRC in facing the challenges of the current refugee crisis in South Asia, Mr. Ahmed specified that the unique role of the ICRC comes into play due to its exclusive capacity to reach areas which are under the control of non-State entities. It is this unique capacity built on trust which enables the ICRC to play a major role in helping protected persons in all armed conflicts.

Session 6

Interface between Refugee Law, Migration Frameworks and Law of the Sea

57. The session was moderated by Mr. Mohsen Baharvand, Deputy Secretary-General, AALCO, who briefly introduced the topic to the audience. The speaker, Mr. Jeremy England, firstly acknowledged the long-standing relationship between UNHCR and AALCO. He stated that both the institutions have collaborated on various occasions, and that they entered into a formal

cooperation agreement in 2003. Thereafter, he re-iterated the position stated by the speaker in the previous session, Mr. Fahad Ahmed, that ICRC is basically a conflict response organization, and not really a migration organization. He stated that the humanitarian cost of migration is increasing every day, and, therefore, the primary objective of ICRC is that it doesn't want to lose sight of the humanitarian aspect of the phenomenon of people on the move. He further stated in this regard that migration as a phenomenon is quite broad in scope, and entails various categories of persons, including victims of trafficking, economic migrants, persons actually fleeing persecution etc. The policy of ICRC, therefore, is to focus on the "needs" of the individual, and not exactly their "status". That is, even though the definition of a "refugee" or a "migrant" may be significant for the purposes of long-term solutions, they do not drive ICRC's humanitarian responses. This, in other words is ICRC's "vulnerability approach" to migration.

58. Thereafter, he spoke briefly on the Rohingya crisis, as the world's fastest growing crisis in recent years. He emphasized on the magnanimity of the problem, and especially the growing challenges it poses on the host State, namely Bangladesh.

59. He thereafter emphasized on the principle of "non-refoulement", as being the foundational principle that applies to all migrants, whether or not they may be categorized as refugees. He mentioned that there was no treaty that covered all categories of people on the move, but that this was the principle that ran across all such categories, and was, therefore, a basic humanitarian protection applicable to all of them.

60. Next the speaker proceeded to focus upon the issue of interface between refugee law and law of the sea. He stated that even though ICRC as primarily a humanitarian organization was not as such involved in the matters of the law of the sea, off-late it had been involved in certain issues, particularly pertaining to maritime disputes and rescue at sea. He explained that in these cases IHL can fill in some very crucial gaps in the existing legal regime under UNCLOS, such as what is the future action to be taken once a migrant is rescued at sea. The speaker informed the audience of a very crucial role played by ICRC in such cases, such as namely, reminding Member States to take adequate precautions relating to their own national security, as well as of the vulnerable people on their territories; trying to re-unite the migrants with their families; and providing the migrants access to justice as well as other services. The speaker reminded the audience that these services provided by the ICRC had direct connection with the refugee-related tasks of States as well as other international organizations like UNHCR, such as establishing the identities of migrants, as without access to their families the establishment of the respective identities of the migrants could be a very difficult task.

61. Thereafter, the speaker focused on the issue of the recent trend of automatic detention of migrants in many States. That is, detention of migrants even before the establishment of their respective identities. He stated that these measures not only increases the vulnerabilities of people while on the move, but also are expensive, and therefore, should be the means of last

resort. Also, only when the migrants get an access to the right authorities can the process of status determination be expedited. This cannot be possible while the migrants are detained.

62. Regarding contribution of ICRC to the formation of the Global Compacts on Refugees and Migrants of 2018, he explained in brief how ICRC was involved and continues to be so in each step of the discussions that would culminate in the making of the Global Compacts.

63. Thereafter, he made a number of appeals to the audience, which included representatives from AALCO Member States, namely: a) to not lower the bar of humanitarian response to situations of refugee and migrant crises; b) to prevent forced displacement in States during armed conflicts by respecting international humanitarian law in those locations; c) while working on durable solutions for refugee and migrant problems to always bear in mind humanitarian needs, for example, to take into account the fact that detention as a measure does not always act as a deterrence, and instead is expensive and increases the vulnerabilities of the people on the move; d) that Asia may have a lot to learn from Africa in terms of structurally and effective implementation wise sound regional responses to the refugee and migrant situation, and to understand that it is for the benefit for their own people; e) to have a strong commitment for their States' humanitarian obligations, which is for their own interest as well as the global interest – this would include always respecting the principle of “non-refoulement”; and f) that use of force for stopping migration flows ought to be the last resort.

64. He further informed the audience of the four-yearly International Conference of the Red Cross and Red Crescent, which is the supreme deliberative body of the International Red Cross and Red Crescent Movement. It brings together all the components of the Movement and the States Parties to the Geneva Conventions to debate major humanitarian challenges. Lastly he stated that at this point when history is about to be re-created in refugee and migrant protection, AALCO's Member States have a greatly significant role to play as a lot will depend on the policies and strategies regarding these issues that these two continents adopt today.

65. The presentation was followed by an interesting and informative question and answer session pertaining to a number of issues taken up in the presentation. One of the questions pertained to the lack of best practices in regards to quick and efficient humanitarian responses to issues at sea. Regarding this issue the speaker said that best practices emerge from State obligations and actions, and that obligations in turn emanate from prior planning, for example, State agreements. He took the example of ASEAN, stating that the said organization has a structured response to natural as well as man-made disasters at sea. In the absence of such structures States tend to determine their responses to cases on the basis of what would suit them the best. ICRC too is an effective help in such cases, as it usually has the requisite data pertaining to such situations, example, forensic expertise etc.

66. Another question related to the question of protection of people in un-registered vessels. The speaker responded by stating that it is well accepted that there is an obligation to protect and

assist people whether they may be in a flagged or un-flagged vessel. The issue of flagging of vessels generally pertains to the obligations of that particular vessel relating to various factors. There were also important comments such as: the practical scenario of rescue at sea is not very disappointing, and that a lot would also depend to accentuating circumstances, like weather conditions. There was another comment that the concern of the international community pertains to only irregular migration, as regular and organized migration brings enormous benefits to the State.

Session 7

Good Practice across Asia and Africa.

67. Opening remarks for the session were made by the moderator, Prof. Nour Mohammed, Assistant Professor, Department of Law, Premier University, Bangladesh, who began by introducing the speakers Ms. Roshni Shanker, founder of the Migration and Asylum Project (MAP), New Delhi, as speaker 1 and Ms. Tsion Tedesse Abebe, Senior Researcher, at Migration Programme, Institute of Security Studies (ISS), Addis Ababa, Ethiopia, as speaker 2. He informed the meeting that Ms. Roshni Shanker, was the founder of the Migration and Asylum Project (MAP) a Non-Governmental Organisation (NGO) under the ARA Trust established in New Delhi, India and operational since 2013. After giving a brief account of her education qualifications, the meeting was informed that, she would be speaking on the theme in relation to India and shall be sharing her experience of working in New Delhi providing pro-bono legal protection to refugees.

68. On the other hand, Ms. Tsion Tedesse Abebe, was introduced as a Senior Researcher, at Migration Programme, Institute of Security Studies (ISS), Addis Ababa, Ethiopia. The meeting was informed by Prof. Mohammed that she would be speaking about the topic in relation to her home State, Ethiopia and would be sharing her experience that she received while working on a publication on the same topic, in Addis Ababa, Ethiopia. With these introductory words, the first Speaker Ms. Roshni Shanker, was invited to make her presentation on the topic “Best Practices in Asia”.

69. At the outset, Ms. Shanker informed the meeting about her organization, the Migration and Asylum Project (MAP), Centre for Refugee Law and Forced Migration Studies functioning with the support of the ARA Trust in New Delhi. She stressed upon the role of Civil Society Organisations in the various Member States of the AALCO, and mentioned that her organization was the first Refugee Law Centre in India and works across the length and breadth of the country with her team of ten lawyers and other staff. She also laid emphasis upon the provisions of the “New York Declaration: Global Refugee Response Framework” and the First Draft of the Global Compact on Refugees, that provide for the role of the Civil Society Organizations (CSOs) in the protection of refugees and calls upon the States to promote the work of these organizations.

70. She was also of the view that the UNHCR which is the largest promoter and supporter of the Civil Society Organizations in the field of Refugee Protection cannot be saddled with the task alone and requires the effective support and work from the CSOs, which is a multi-stakeholder approach. A number of tasks are required to be performed such as provision of education, healthcare, livelihood and support in terms of psycho-social therapy, which cannot be performed unless stakeholders from a number of different fields forge effective and meaningful partnerships. Toward this end, she highlighted some of the best practices in Asia wherein State actors, CSOs and corporate have come together to strengthen the refugee protection regime in various jurisdictions.⁷¹ She discussed the Regional Refugee and Resilience Framework implemented in Turkey, Jordan, Lebanon, Iraq, and Egypt, and emphasized on the need to replicate this model in other regions.

She also reflected upon her own experience and the experience of her organization that has been instrumental in implementing several innovative projects for refugees in India by raising funds through a diverse set of donors. She also talked about her organization's collaborative relationship with UNHCR India where both organizations have worked together on projects focusing on research and advocacy. In some instances, where UNHCR had a funding gap, M.A.P was able to raise funds for the projects with UNHCR's support from other donors. She also received support from global law firms that have provided both pro bono and financial support. She further highlighted the need to explore the partnerships with local corporate under India's CSR laws.

Looking at other examples within Asia, the speaker shed light upon legislations in other jurisdictions such as Turkey, Philippines, South Korea, Iraq and Indonesia, and highlighted the need for other countries in the regime to follow suit. She ended the talk with some interesting examples of fruitful collaborations between large global corporate (ex- IKEA, UNIQLO etc.) and UNHCR that have been successful in supplementing the limited resources available to refugee aid organizations.

72. Ms. Abebe, spoke on the topic, “Can Ethiopia use CRRF to Give Durable Solution to Mass Displacement of People?” The first part of her presentation provided an overview of the refugee situation in Ethiopia. She explained that Ethiopia is the second largest refugee-hosting country in Africa, sheltering over 900,000 refugees, 75% of which originate from South Sudan and Somalia. The rest came from Eritrea, Sudan and 15 other countries. In 2017, the country registered 110,000 new arrivals. She pointed out that if the current trend continues, the refugee population will cross the one million mark during 2018. She identified three major driving factors of refugee flows towards Ethiopia: (i) the conflict in South Sudan, (ii) conflict and

conflict-induced food insecurity in Somalia, and (iii) involuntary and open-ended military conscription in Eritrea.

73. Further, she stated that the Government of Ethiopia follows an open-door policy towards refugees and grants prima facie recognition to refugees coming from most of its neighboring countries. The country's National Refugee Proclamation was enacted in 2004, based on the 1951 Refugee Convention, its 1967 Protocol as well as the 1969 African Refugees Convention, Ethiopia's commitment to refugee protection is further enhanced during the UN Summit on Refugees and Migrants in 2016, where the government made nine pledges, representing a major shift in the way the country protects refugees. The pledges include providing work permits to refugees, facilitating local integration in instances of protracted displacement, and earmarking a percentage of jobs within industrial parks to refugees. She also pointed out that refugee protection regime of Ethiopia is appreciated by UNHCR, EU, and is referred to as a pillar of refugee protection in the Horn of Africa.

74. Then, she explained about Ethiopia's Comprehensive Refugee Response Framework (CRRF) policy and progress achieved so far in its implementation. In November 2017, Ethiopia launched the CRRF paving the way for the implementation of the nine pledges. The framework seeks to promote refugees' self-reliance through an improved and sustainable response that combines wider support to host communities, furthering peaceful coexistence and inclusion of refugees into national development plans. Long staying refugees are expected to benefit from the local integration, provided that they have been in the country for 20 or more years and have limited prospects for return and/or third country resettlement.

75. Lastly, she explained potential challenges to its implementation. First, she said that as Ethiopia has high levels of poverty, the "refugee integration" and job-creation components of the CRRF might not be viewed positively by Ethiopians. Secondly, she also explained the political implications of integrating South Sudanese refugees. . The majority of South Sudanese refugees are living in camps in the Gambella Regional State, where two ethnic groups, Annuak and Nuer are competing for power. More than 90% of the refugees in Gambella Regional State come from Nuer ethnic group, which threatens to disturb the demographic balance in the region, leading to conflict. Since 2017, the refugee population has overtaken the local population. Thus, integrating the South Sudanese refugees requires a lot of precautions.

She concluded by stressing the fact that Ethiopia is not alone in discharging its refugee protection responsibilities in the African continent. Currently, CRRF is also being rolled out in Rwanda, Uganda, Djibouti, and the Somalia situation. In 2010, Tanzania has also set a significant example by naturalizing more than 160,000 Burundian refugees.

76. In the question and answer session, the issue of security challenges connected to refugee movements was raised by the representative from Kenya, who highlighted the challenges her country faced from Al-Shabaab, a terrorist group based in Somalia. In response, Ms. Abebe

acknowledged the unfortunate damage Al-Shabaab has caused in Kenya. Then, she highlighted that the experience of Ethiopia is different since Al-Shabaab did not succeed in making major attacks in the country. Ms. Abebe strongly emphasized the importance of noting that refugees are not terrorists. She also stated that different research findings show that the link between terrorism and refugees/migrants remain to be anecdotal. A question was also raised in connection with the challenges in integrating Somali refugees, she replied that informal integration is already happening as there are not many restrictions on their movements outside camps. The representative of Kenya pointed out the security challenges connected to refugee movement faced by her country emanating from Al Shabab, a terrorist outfit based predominantly in Somalia. Ms. Abebe stated that Ethiopian experience has been different. The penetration of Al Shabab's network is comparatively less due to the strong security system in place in her country and, as a result, citizens of Ethiopia have been more welcoming. Further, Ms. Abebe was advised to look into the multifarious effects of the "pull factor" in the movement and concentration of refugee labourers due to creation of jobs through CRRF.

77. H.E. Prof. Dr. Kennedy Gastorn, Secretary-General, AALCO commenced the vote of thanks by thanking all the participants of the two day International Seminar. He thanked the UNHCR, for collaborating with AALCO on this International Seminar and for their help and contribution in making this event a success. Several meetings and consultations with UNHCR prior to the programme were an enriching experience for AALCO. Ms. Yasuko Shimizu and the all the staff of UNCHR were thanked in this regard.

78. He expressed his gratitude to the Republic of Kenya, which holds the Presidency of AALCO especially Her Excellency Mrs. Florence Weche, for her very insightful opening speech and the continued guidance that AALCO receives from the Republic of Kenya.

79. He appreciated and thanked Ms. Ellen Hansen, Senior Policy Advisor to the Assistant High Commissioner for Protection, who travelled all the way from Geneva to participate in the Seminar.

80. Furthermore, he recognized the contributions of the International Committee of the Red Cross (ICRC) towards this seminar and expressed his thanks to, Mr. Jeremy England, Head of the Regional Delegation of ICRC and his team for their continued cooperation with AALCO and establishing the interface between Humanitarian Law and Refugee Law in the Seminar.

81. Additionally, he also recorded his appreciation for the Speakers and Moderators from various countries who attended the Seminar. He also appreciated the participants from civil society and academia who supplemented the understanding of the topics by giving multi-sectorial and interdisciplinary perspectives that would help in the creation of durable solutions.

82. Finally, while thanking the DSG's and staff of AALCO for all the logistical and administrative work that led to the successful organization of the seminar, H.E. Prof. Dr. Kennedy Gastorn, highlighted the way forward for AALCO as a consultative organization in

International Law. The seminar would set the stage for further work on refugee law. The AALCO website is an important repository of information for future events and all participants were invited to visit the AALCO headquarters in Chanakyapuri, New Delhi.