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Subject: Guidelines for the harmonized application of the definition of refugee status in
Article 1A of the Geneva Convention

At its meeting on 3 and 4 May 1994, the Group continued discussing guidelines for the harmonized application of the definition of refugee status in Article 1A of the Geneva Convention. At this meeting the Group examined points 9 et seq. The Danish delegation entered a scrutiny reservation.

**Guidelines for the application
of the criteria for determining
refugee status in Article 1A
of the Geneva Convention**

The Member States ⁽¹⁾,

Considering the objective of harmonization of asylum policy set at the meeting of the European Council in Strasbourg on 8 and 9 December 1990;

Having determined, in keeping with their common humanitarian tradition, to guarantee appropriate ⁽²⁾ protection for refugees, in accordance with the provisions of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967;

Having established that the UNHCR Handbook is an important aid to the determination of refugee status in the Member States;

Considering that harmonized application of the criteria for determining refugee status is necessary in the interests of the harmonization of asylum policy in the Member States;

Have reached agreement on the following guidelines for the application of criteria for recognition and admission as a refugee:

⁽¹⁾ The wording of the preamble will need to be revised in the light of the discussions on the relevant part of the enacting terms.

⁽²⁾ Some delegations could agree to replacing "appropriate" by "adequate".

1. Recognition as a refugee

Determination of the status of refugee is based on criteria according to which the competent national bodies decide to grant an asylum-seeker the protection provided for in the 1951 Geneva Convention. This document relates to implementation of the criteria as defined in Article 1 of that Convention ⁽¹⁾.

2. Individual or collective determination of refugee status

Each application for asylum is examined individually on the basis of the facts and circumstances put forward in each individual case and taking account of the **objective** situation prevailing in the country of origin.

In practice whole groups of people may be exposed to persecution. Even in such cases, individual assessments are carried out, albeit in particular instances simply in order to establish whether the person belongs to the group in question.

3. Persecution

"Persecution" within the meaning of Article 1A of the Geneva Convention

The term "persecution" as it is used below refers to persecution within the meaning of Article 1A of the Geneva Convention. There is no universally accepted definition of the term in either the Convention itself or in the conclusions of the United Nations High Commission for Refugees.

⁽¹⁾ The question of right of residence will be examined in the context of the minimum guarantees afforded by the procedures for examining asylum applications.

The Geneva Convention refers to persons who justifiably fear persecution. The determining factor for granting refugee status is therefore the existence of persecution or the risk of persecution.

The fact that an individual has already been subject to persecution or direct threats of persecution is a serious indication of the risk of persecution, unless there is a radical change in conditions in his country of origin or in his relations with his country of origin.

[The fact that an individual, prior to his departure from his country of origin, was not subject to persecution or directly threatened with persecution in that country does not mean that he cannot in asylum proceedings claim a justified fear of persecution.] ⁽¹⁾

[In order to constitute "persecution" within the meaning of Article 1A, acts must:

- firstly, constitute by their nature and/or their repetition an attack of some seriousness which would render [normal life in the country of origin] ⁽²⁾ impossible ("normality" of life must be assessed having regard to the prevailing conditions in the country);
- secondly, be based on one of the grounds mentioned in Article 1A: race, religion, nationality, membership of a particular social group or political opinion. Grounds for persecution may overlap and several will often be applicable in one case. The fact that these grounds are genuine or simply alleged is immaterial.

Several grounds may be applicable in one case.] ⁽³⁾

⁽¹⁾ Scrutiny reservation by the French delegation.

⁽²⁾ Several delegations expressed doubts about this wording.

⁽³⁾ Scrutiny reservations by the German and Spanish delegations, which did not rule out the possibility of submitting alternative texts for the whole of this paragraph.

4. Origins of persecution

[Fear of persecution may arise from the actions of the State or of third parties. In certain cases the distinction between these two situations is clear, such as when the State authorities are persecuting an individual. In other cases in which the distinction is unclear, it will be necessary to look more closely ⁽¹⁾ at each of the elements whereby responsibility for persecution may be assigned.] ⁽²⁾

[Alternative text suggested by the Spanish delegation:

"4. Absence of protection

Fear of persecution must originate in a lack of protection by the State. This lack of protection may derive from direct action by the State, indirect action by the State or the inability of the State to provide protection.]

[Alternative text suggested by the German delegation:

"4. Origin of persecution

Persecution is generally the act of a State organ [central State or federal States, regional and local authorities] or of parties, movements or organizations which control the State. In such cases there is direct responsibility of the State itself. However, there may also be cases of persecution by third parties where no direct link with the State can be established. In such cases only indirect responsibility can be attributed to the State.

⁽¹⁾ The Portuguese delegation suggested that this part of the text be amended so as to specify that a closer examination would be necessary with a view to establishing who was responsible for the persecution.

⁽²⁾ Some delegations expressed doubts about this paragraph.

It may in practice prove difficult to distinguish between these two types of case. Where persecution deriving directly from the State cannot be established, the main concern must be to establish indirect responsibility for persecution by third parties.

Paragraph 5 refers to direct persecution by the authorities, while paragraph 6 refers to persecution by third parties."

5. Persecution by the State

Persecution is generally the act of a State organ (central State, federated States, regional and local authorities) or of parties or movements which control the State (for example in the case of one-party States).

[Text suggested by the French delegation ⁽¹⁾:

"In addition to cases in which persecution takes the form of the use of brute force in acts such as murder, torture, rape, abduction, false imprisonment, physical attack, looting, fire, etc., and where, provided such acts are related to the grounds mentioned in Article 1A, persecution is clear, it may also take the form of administrative and/or judicial measures [inter alia] ⁽²⁾ which either have the appearance of legality and are misused for the purposes of persecution, or are carried out in breach of the law.

⁽¹⁾ Some delegations expressed doubts about certain parts of the French proposal. The Spanish delegation did not rule out the possibility of submitting alternative texts. The Italian delegation suggested that the part on legal and administrative measures be condensed.

⁽²⁾ Suggested by the German delegation.

(a) legal and administrative measures

(i) general measures

The official authorities of a country may take general measures to maintain public order, safeguard State security, preserve public health [or promote general prosperity.] ⁽¹⁾ As required, such measures may include restrictions on the exercise of certain freedoms, but this in itself does not constitute sufficient grounds for granting refugee status to the individuals against whom the measures are directed. However, if it emerges that such measures are being implemented in a discriminatory manner on one or more of the grounds mentioned in Article 1A, they may give rise to a justified fear of persecution on the part of individuals who are victims of their improper application. Such is the case, in particular, where general measures are used to camouflage individual measures taken against persons who have been singled out for the authorities' attention. This may happen where there is a combination of factors which in themselves do not constitute grounds for conferring refugee status but which together objectively justify the fear of persecution.

(ii) measures directed against certain categories ⁽²⁾

Measures directed against one or more specific categories of the population may be legitimate in a society, even when they impose particular constraints or restrictions on certain freedoms. They cannot be considered in themselves discriminatory or justify fears of persecution where they correspond to an aim in the general interest ⁽³⁾ and are in proportion to their aim.

⁽¹⁾ The German delegation suggested that the text in square brackets be replaced by "etc.". X

⁽²⁾ The Portuguese delegation considered that these measures should be included in the general measures.

⁽³⁾ The German delegation suggested the addition of a phrase specifying that the "aim in the general interest" is recognized by the international community.

However, measures which do not correspond to any requirement of public interest ⁽¹⁾ but whose aim is to treat a certain group differently and less favourably than the population as a whole, which are manifestly disproportionate to the aims in view, or give rise to serious abuses in their implementation, may, depending on the circumstances, be regarded as persecution or constitute an important, if not decisive, element in assessing whether fears of persecution on the part of an asylum-seeker are well-founded.

(iii) individual measures

Any administrative measure taken against an individual ⁽²⁾ on one of the grounds mentioned in Article 1A whose aim or effect is [to render a normal life impossible] ⁽³⁾ may be regarded as persecution, provided it is intentional, systematic and lasting.

It is important, therefore, to take account of all the circumstances surrounding the individual measure reported by the asylum-seeker, in order to assess whether his fears of persecution are well-founded.

In all the cases referred to above, it should be considered whether there is an effective remedy or remedies which would put an end to the situation of abuse. It is a characteristic of persecution that no redress exists or, if there are means of redress, that the individual or individuals concerned are deprived of the opportunity of having access to them, that the decisions of the control authority are not impartial (see point) or have no effect or are deliberately ignored by the body responsible for the persecution. "]

⁽¹⁾ In connection with its suggestion for the previous paragraph, the German delegation requested that this phrase read "... any requirement to specify such public interest".

⁽²⁾ The German delegation suggested adding here that the principles in the preceding paragraph apply mutatis mutandis. The remainder of the paragraph up to "lasting" would then be deleted.

⁽³⁾ Several delegations were against the inclusion of these words.

(b) Prosecution

(i) Prosecution on the grounds of a universally applicable criminal law provision which may constitute persecution

Prosecution on the grounds of a universally applicable criminal law provision may constitute persecution in cases of:

– discriminatory prosecution

This concerns a situation in which the criminal law provision is applicable to all but where only certain persons are prosecuted on grounds of characteristics likely to lead to the award of refugee status. It is therefore the discriminatory element in the implementation of prosecution policy which is the deciding factor in the award of refugee status.

[The public authorities of a country may take general measures to maintain the public order and security of the State. These measures, even where they are not directly centred on grounds for persecution, may be discriminatory in their implementation and touch on grounds for persecution. This does not in itself suffice to justify the award of refugee status.] ⁽¹⁾ It is necessary that such measures taken by the State, by virtue of their discriminatory implementation, objectively justify individual fear of persecution. An essential element would be that the authority has concentrated its attention upon a person for one of the reasons likely to provoke persecution. This may in particular be the case where there is an aggregation of factors which, taken individually, would not be sufficient for the award of refugee status but which, taken together, objectively justify fear of persecution.

⁽¹⁾ The German delegation requested deletion of this part of the text in return for retention of the text on legal and administrative measures. The Netherlands delegation entered a scrutiny reservation on such a possibility.

- discriminatory punishment ⁽¹⁾

Punishment or the threat thereof on the basis of a universally applicable criminal law provision will be discriminatory [as regards the grounds for prosecution if] [if certain] persons who contravene the criminal law provision are punished but certain persons are subject to more severe punishment on account of characteristics likely to lead to the award of refugee status. It is the discriminatory element in the punishment imposed which determines the award of refugee status and not the severity of the punishment laid down in the criminal law provision.

- contravention of a criminal law provision by the asylum-seeker on account of the grounds for persecution

Intentional contravention of a universally applicable criminal law provision on account of the grounds for persecution must be evident from pronouncements or participation in certain activities in the country of origin or be the objective consequence of characteristics of the asylum-seeker liable to lead to the grant of refugee status. The determining factors are the nature of the punishment, the severity of the punishment in relation to the offence committed, the legal system and the general human rights situation in the country of origin. Consideration should be given to whether the intentional contravention of the criminal law provision can be deemed unavoidable in the light of the individual circumstances of the person involved and the situation in the country of origin.

⁽¹⁾ The French delegation suggested that the words in square brackets be deleted. The Netherlands delegation was in favour of retaining the last sentence.

– disproportionate punishment

Depending on the nature and seriousness of the consequences for the person concerned, this may constitute individual fear of persecution. Prosecution on the grounds of a universally applicable criminal law provision leading to excessively severe punishment in relation to the offence committed does not in principle constitute persecution if the person concerned is not simultaneously in one of the situations described in (a), (b) and (c) above.

(ii) Prosecution on the grounds of a criminal law provision applying only to certain categories of person or certain persons

Prosecution for contravention of a criminal law provision of this kind may constitute justified fear of persecution if the contravention is objectively the consequence of characteristics of the asylum-seeker likely to lead to the award of refugee status. The determining factors are the nature of the punishment, the severity of the punishment in relation to the offence committed, the legal system and the general human rights situation in the country of origin.

Consideration should be given to whether the intentional contravention of the criminal law provision can be deemed unavoidable in the light of the individual circumstances of the person involved and the situation in the country of origin. Depending on the nature and seriousness of the legal consequences for the person concerned, this may constitute individual fear of persecution.

6. Persecution by third parties ⁽¹⁾

People may also be persecuted by third parties. If an asylum-seeker is seriously threatened by his fellow citizens on account of one of the grounds for presuming persecution to the extent that his safety is jeopardized, and the government encourages, permits or deliberately tolerates such persecution, he may be eligible for refugee status. It is nonetheless necessary that he cannot reasonably be expected to have escaped such persecution by moving elsewhere in his country of origin (see point ...).

Where applicable the person concerned may also be eligible for refugee status if the public authorities are unable to provide adequate protection ⁽²⁾. In this connection the temporary absence of satisfactory protection is not sufficient in itself. A precondition will be that in general the measures taken by the State concerned to protect its nationals against persecution by third parties ⁽³⁾ have proved to be manifestly inadequate ⁽⁴⁾.

⁽¹⁾ The Netherlands delegation said it intended to submit an alternative text.

⁽²⁾ The German delegation suggested that the end of the sentence read: "do not use the means at their disposal".

⁽³⁾ The German delegation suggested adding: "in the event that the State is prepared to protect its nationals, have proved to be insufficient despite the will of that State".

⁽⁴⁾ Waiting reservation by the French delegation. Scrutiny reservations by several delegations, some of which suggested deletion of the second paragraph. The Italian delegation suggested differentiation between the following:

- persecution by the State
- persecution by third parties without State responsibility
- persecution by third parties involving State responsibility.

The French delegation proposed a distinction between:

- persecution by third parties encouraged by the State
- persecution by third parties not connected with the State.

7. Forms of discrimination by the government and/or third parties which constitute persecution

[Certain forms of discrimination by the government and/or third parties can constitute persecution in the cases referred to in Article 1A if the asylum-seeker has personally been subjected to such invasive and fundamental restrictions that life in the country of origin has objectively become unbearable, and he is unable to remedy the situation by moving to another part of the country (see point ...) ⁽¹⁾.]

8. Grounds of persecution ⁽²⁾

8.1. Race

The concept of race should be understood in the broad sense and include membership of different ethnic groups. As a general rule, persecution should be deemed to be founded on racial grounds where the persecutor regards the victim of his persecution as belonging to a racial group other than his own, by reason of a real or supposed difference, and this forms the grounds for his action.

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- ⁽¹⁾ The Working Party agreed to examine this point after it had finalized paragraph 5. The Netherlands delegation did not rule out the possibility that it would submit a text on this question.
- ⁽²⁾ The Working Party held a swift exchange of views on paragraph 8 and agreed to return to it at the next meeting.

8.2. Persecution on religious grounds

Persecution on religious grounds may take various forms, such as a total ban on worship and religious instruction, or severe discriminatory measures against persons professing a particular religion. For persecution to be the case, the restrictions on the right to profess a particular religion must be so severe as to lead to intolerable personal repression for those who profess that faith, thus rendering life in the country of origin objectively unbearable. ⁽¹⁾ ⁽²⁾

8.3. Nationality

This should not be confined exclusively to the idea of citizenship but should include membership of a specific group or a cultural or linguistic minority identifying itself as such.

⁽¹⁾ Text proposed by the Netherlands delegation.

⁽²⁾ The German delegation suggested the following text:

"Persecution on religious grounds may take various forms, such as a total ban on worship and religious instruction, or severe discriminatory measures against persons professing a particular religion. For persecution to occur, the interference and impairment suffered must be so severe and intensive as to violate human dignity. This applies where, over and above measures essential to maintain public order, the State also prohibits or penalizes religious activity in private life."

8.4. Political opinions

Holding political opinions different from those of the government is not in itself a sufficient ground for claiming refugee status; the applicant must thus show that:

- (1) he holds opinions which are not tolerated by the authorities;
- (2) the authorities know about those political opinions or attribute them to the applicant;
- (3) given the situation in his country of origin he would be likely to be persecuted or threatened.

8.5. Social group

The social group may be defined by means of objective criteria – income, occupation, way of life – even if the boundaries are not very clear; membership of a social group, for example, may simply be attributed to the victimized person or group by the persecutor.]

9. Relocation within the country of origin

Where it appears that persecution is clearly confined to a specific part of a country's territory or is not attributable to the central authorities, it may be necessary, in order to check that the condition laid down in Article 1A has been fulfilled, namely that the person concerned "is unable or owing to such fear (of persecution) unwilling to avail himself of the protection of (his) country", to ascertain whether the person concerned may not reasonably be expected to move elsewhere within the country of origin in order to avoid persecution. However, there must be reasonable guarantees that the alternative location can be reached safely and provides stability and safety.

If persecution is instigated by the government, it will generally be impossible to avoid it by moving to another area. However, situations do arise where this is possible, particularly if the persecution is on the part of local government rather than the central authorities. Whether the asylum-seeker can find acceptable objective safety in another part of the country is determined by factors such as the size of the country and whether certain areas are not under the control of the central authorities of the State.

[An assessment is made of whether it is possible for an asylum-seeker to settle in a different area of the country of origin when the request is being examined, particular account being taken of the situation existing at the time of departure from the country of origin.] ⁽¹⁾

10. Refugee "sur place"

The fear of persecution need not necessarily exist at the time of an asylum-seeker's departure from his country of origin. An individual who has no fear of persecution on leaving his country of origin may subsequently become a refugee "sur place". A well-founded fear of persecution may then be based on changes in the situation in his country of origin which have taken place since his departure or on his own actions. In any event the asylum-related characteristics of the individual or his activities since leaving the country should be such that the authorities in the country of origin know or could come to know of them before the individual's fear of persecution can be justified.

⁽¹⁾ Text proposed by the Italian delegation on which several delegations entered waiting reservations. The Belgian delegation was considering the possibility of submitting an alternative text.

(a) Persecution arising from a new situation in the country of origin after departure

Political changes in the country of origin ⁽¹⁾ may justify fear of persecution. There should be plausible arguments to show that the asylum-seeker would personally have grounds to fear persecution if he returned.

(b) Persecution on account of activities outside the country of origin

The activities which gave rise to his fear of persecution constitute the expression and continuation of convictions which he had held in his country of origin or are objectively the consequence of the asylum-related characteristics of the individual likely to give rise to eligibility for refugee status. If such a link cannot be established, such activities cannot in principle furnish grounds for admission as a refugee. ⁽²⁾ ⁽³⁾

⁽¹⁾ The German delegation suggested supplementing this with "(...) or the adoption of later measures against the asylum-seeker (...)".

⁽²⁾ The German delegation suggested that this last paragraph should continue:
"This is not the case where the person concerned, because of age or the level of development reached in the country of origin, was not yet able to establish strong convictions".

The Netherlands delegation would have preferred a more flexible text. The German delegation undertook to re-examine the proposed text.

⁽³⁾ The question relating to Article 33 of the Convention, which is linked to the residence permit, will be examined in the context of the minimum guarantees for asylum application procedures.

11. Special cases

Civil war and other internal armed conflicts ⁽¹⁾ ⁽²⁾

It is assumed here that an internal armed conflict is in progress, which has caused the State durably to lose *de facto* central control over the country or certain areas. Simply to invoke such a situation is not enough to justify an individual's fear of persecution. Persecution by the State or by third parties may arise if the attention of the authorities or of third parties is focused on the asylum-seeker to the extent that his safety is jeopardized as a result of presumed persecution, and he cannot move elsewhere within the country of origin (see point 10).

Refusal to perform military service and desertion

The fear of punishment for refusal to perform military service or desertion is in itself insufficient to justify refugee status.

⁽¹⁾ Scrutiny reservation from the German delegation, which was prepared to submit alternative texts.

⁽²⁾ The French delegation suggested the following version of this passage:

"Reference to a civil war and the dangers which it entails is not in itself sufficient to warrant recognition of refugee status.

Fear of persecution must in all cases be based on one of the grounds in the Geneva Convention and be individual in nature.

In a civil war, persecution may stem either from the legal authorities or third parties encouraged or tolerated by them, or from *de facto* authorities in control of part of the territory within which the State cannot afford its nationals' protection."

This point should be inserted after point 6.

Fear of prosecution for refusal to perform military service in countries where military service is compulsory or for desertion may be assessed in the first instance in the way described in paragraph 5 in respect of prosecution in general.

Deliberate refusal to perform military service or desertion will in any event be deemed acceptable and will constitute grounds for fear of persecution if it can be plausibly shown that they represent a conscious refusal to participate in military action of a kind which is condemned by the international community because of its inhumane nature or in accordance with generally applicable norms under international law. In such cases the asylum-seeker's political convictions, for which he is being persecuted by the authorities, [are in line with what is expected of him by the international community.] ⁽¹⁾

⁽¹⁾ The French delegation cast doubt on how this phrase was to be understood.

12. Loss of refugee status (Article 1C) ⁽¹⁾

Whether or not refugee status may be withdrawn on the basis of Article 1C is always investigated on an individual basis.

The Member States should make every effort, by exchanging information, to harmonize their practice with regard to the application of the cessation clauses of Article 1C wherever possible.

The circumstances in which the cessation clause in Article 1C may be applied should be of a fundamental nature and should be determined in an objective and verifiable manner. Information provided by CIREA and the UNHCR may be of relevance here.

⁽¹⁾ The Working Party discussed whether these points should be included in the document.

13. Article 1D of the Geneva Convention ⁽¹⁾

Any person who deliberately removes himself from the protection and assistance referred to in Article 1D is no longer covered by the Geneva Convention. In each individual case, it should be ascertained whether the asylum-seeker can reasonably be required to return to a place where he can receive protection from the relevant UN organ or agency. The asylum-seeker should be able to demonstrate, in a plausible manner, that he himself cannot expect such protection or that his ties with the country where he has submitted his asylum application are such that it is reasonable not to apply the exclusion clause.

⁽¹⁾ See footnote on page 22.

14. Article 1F of the Geneva Convention ⁽¹⁾ ⁽²⁾

In view of its serious consequences for an asylum-seeker, Article 1F of the Convention should be applied with care and after thorough investigation.

⁽¹⁾ See footnote on page 22.

⁽²⁾ The French delegation suggested the following wording:

* Article 1F

The clauses in Article 1F are designed to exclude from protection under the Geneva Convention persons who cannot enjoy international protection because of the seriousness of the crimes which they have committed.

In view of the serious consequences of such a decision for the asylum-seeker, Article 1F must be used with care and after thorough consideration.

(a) Article 1F(a)

The crimes referred to in this subparagraph are those defined in the international instruments concluded since the end of the Second World War, in particular the 1945 London Agreement and the charter of the Nuremberg International Military Tribunal as well as the resolutions and conventions adopted under UN auspices.

(b) Article 1F(b)

Serious non-political crimes generally concern particularly serious crimes or offences committed by the person concerned aside from his campaign against the authorities in his home country.

Particularly violent acts committed by members of opposition movements may, however, be classified as serious non-political crimes if, by virtue of their seriousness, they are criminal in nature and out of proportion with the alleged political objective.

Participation in the ordering, preparation or performance of acts of violence may thus be classifiable as a serious non-political crime and exclude the offender from the Geneva Convention's coverage.

(c) Article 1F(c)

The purposes and principles referred to in this subparagraph are those laid down in the Charter of the United Nations, which determines the obligations of the States party to it in their mutual relations, particularly for the purpose of maintaining peace, and with regard to human rights and fundamental freedoms.

It applies to cases in which those principles have been breached and is directed in particular at persons in senior positions in the State who, by virtue of their responsibilities, have ordered or lent their authority to action at variance with those purposes and principles as well as at persons who, as members of the security forces, have been prompted to commit such action."

Since Article 1F is applied in the Member States only in very exceptional cases, harmonization of the relevant paragraphs of the Handbook will be sufficient.

