

ARTICLES

THE LEGAL PROTECTION OF REFUGEES IN MALTA

KATRINE CAMILLERI

The aim of this paper is to examine the scope of the protection provided by Malta's new Refugees Act, in order to determine the extent to which the Act will effectively improve the situation of refugees and asylum-seekers in Malta. It concludes that the Refugees Act is a milestone in the history of refugee protection in Malta, as it marks a qualitative shift, from a system based largely on humanitarianism and governmental discretion, to one that offers legal protection to refugees and asylum-seekers and affords some guarantees of respect for their rights. However, on a practical level, the Act will bring few real improvements to the situation of refugees and other protected persons in Malta, as they already enjoy most of the benefits granted by the Act. The major difference will be that once the Act comes into force they become legal entitlements not simply benefits. The rights contained in the Act are extremely basic, and fall far below the basic minimum recommended by the 1951 Convention. Moreover, the Act fails to tackle a number of issues of fundamental importance. The most important of these issues are without doubt those relating to internal freedom of movement of asylum-seekers and to the right to work or to be assisted in order to be able to live with dignity.

The calamity of the rightless is not that they are deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion – formulas which were designed to solve problems within given communities – but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them.

Hannah Arendt¹

1. Introduction

Last year, the Maltese Parliament approved the Refugees Act, 2000². This legislation, which is expected to enter into force by June 2001³, establishes domestic procedures for the determination of applications for refugee status and lays down the rights of refugees and asylum-seekers in Malta.

At present three hundred and sixty one persons are enjoying some form of protection in Malta. Of these one hundred and seventy five are UNHCR Mandate Refugees or Persons of Concern to UNHCR. The rest are asylum-seekers or persons enjoying some form of temporary protection. These persons come from various countries, however the largest groups are from ex-Yugoslavia, Iraq, Palestine and Algeria.⁴

In contrast to the trends witnessed in some European countries, the refugee⁵ population in Malta has decreased in size over the past few years. The highest number of refugees ever recorded was nine

¹ The Origins of Totalitarianism, Andre Deutsch, 1986, pgs 295-296.

² The Refugees Act, 2000 (Act XX of 2000, Chapter 420 of the Laws of Malta) was approved by Parliament on July 25, 2000.

³ Section 1(2) of the Refugees Act provides that: "This Act shall come into force on such date as the Minister responsible for immigration may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act".

⁴ These statistics were published by Emigrants' Commission, Valletta, and represent the situation as of July 31, 2000.

⁵ In this context the term 'refugee' refers to all persons enjoying some form of protection in Malta and not simply to UNHCR mandate refugees.

hundred and eighty one, in December 1993. At the time Malta experienced an unusually large influx, at least by Maltese standards, of Iraqi refugees. Since then the number of refugees in Malta has dwindled considerably⁶. This is primarily due to the fact that many of them were accepted for resettlement in a third country.

To date the recognition and protection of refugees in Malta is not regulated by domestic law, in spite of the fact that Malta signed the 1951 Convention relating to the Status of Refugees and the 1967 Protocol to the Convention in 1971⁷. Once it comes into force, the Refugees Act will therefore constitute a major milestone in the history of refugee protection in Malta. It will mark a qualitative shift, from a system based largely on humanitarianism and governmental discretion, to one that offers legal protection to refugees and asylum-seekers and affords some guarantees of respect for their rights.

As a result of the manner in which refugee protection has been regulated, up to the present day refugees and asylum-seekers in Malta are forced to survive in a grey area outside the protection of the law, excluded from effective participation in Maltese society. It is submitted that the ultimate test of any legislation enacted to regulate the recognition and protection of this class of migrants is whether it enables them to do more than just survive, whether it enables them to live with dignity. This end can only be achieved by providing effective guarantees of respect for the rights of these people.

The aim of this paper is to examine the scope of the protection provided by the Refugees Act, in order to determine the extent to which the Act will effectively improve the situation of refugees and asylum-seekers in Malta. The starting point is a brief outline of Malta's existing obligations towards refugees in the light of the various conventions to which Malta is a party and in the light of

⁶ According to statistics published by the Emigrants' Commission, Valletta, for the period from 1992 to 1999 the number of refugees, i.e. persons enjoying some form of protection in Malta, at the end of each year were as follows: 871 in 1992, 981 in 1993, 822 in 1994, 698 in 1995, 538 in 1996, 448 in 1997, 486 in 1998 and 378 in 1999.

⁷ Malta acceded to the 1951 Convention on the Status of Refugees on June 17, 1971 and to the 1967 Protocol on September 15, 1971.

developments in customary international law. The purpose of this section is to highlight the sources of these obligations, rather than to provide a detailed analysis of their extent and scope.

2. Malta's international legal obligations towards refugees

The absence of specific domestic legislation regulating the recognition and protection of refugees and asylum-seekers in Malta does not mean that Malta has no legal obligations towards these persons. As a signatory to the 1948 Universal Declaration on Human Rights, Malta agrees that, in principle,

*“Everyone has the right to seek and enjoy in other countries asylum from persecution”.*⁸

In actual fact, however, the obligations assumed by the Maltese government towards persons seeking protection from persecution fall short of this generous standard.

2.1 *The 1951 Convention on the Status of Refugees and the 1967 Protocol to the Convention*

Malta is a party to both the 1951 Convention on the Status of Refugees and the 1967 Protocol, which to date constitute the most widely accepted standard for the recognition and protection of this class of migrants. These international legal instruments are therefore the most obvious starting-point in any examination of Malta's international legal obligations towards refugees.

As a party to these instruments, Malta has not only recognised that refugees are a distinct category of migrants worthy of special protection but has also assumed certain definite, albeit limited, obligations towards these persons.

When acceding to these instruments, the Maltese government retained the geographical limitation contained in the 1951 Convention. As a result, to date, the definition of the term ‘refugee’ for the purposes of Malta's obligations under the Convention is limited to any person who

⁸ Article 14(1) of the 1948 Universal Declaration of Human Rights.

*“As a result of events occurring in Europe and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...”*⁹

Moreover, besides effectively limiting its formal obligations under the Convention and Protocol to refugees from European countries, Malta also made reservations with regard to a number of articles of the Convention¹⁰. All of these reservations and the geographical limitation were retained when Malta acceded to the 1967 Protocol.

Thus, Malta is not obliged to provide public relief and assistance to refugees within its territory, nor is it obliged to issue refugees with identity papers or a travel document. A host of other obligations, including that of allowing refugees within its territory the right to work, whether as an employee or a self-employed person, and that of facilitating the assimilation and naturalisation of refugees, “apply to Malta compatibly with its own special problems, its peculiar position and characteristics”¹¹.

As may be seen, it was amply clear from the outset that, even with regard to the relatively small category of refugees for whom it had assumed formal responsibility, Malta did not consider itself a country of resettlement. Refugees would be allowed to remain in Malta until a permanent solution could be found for them elsewhere, but little more than that¹².

⁹ Article 1A(2) of the 1951 Convention on the Status of Refugees, the emphasis on the words “as a result of events occurring in Europe” is mine.

¹⁰ On deposit of its instrument of accession to the 1951 Convention, the Maltese government, in terms of article 42, declared that article 7 paragraph 2, and articles 14, 23, 27 and 28 would not apply to Malta, and article 7 paragraphs 3, 4 and 5, and articles 8,9,11,17,18,31,32 and 34 would apply to Malta “compatibly with its own special problems, its peculiar position and characteristics”. (Source: Refworld, UNHCR, Geneva)

¹¹ Refworld, UNHCR, Geneva.

¹² For a more detailed discussion of the rationale behind Malta’s reservations to the 1951 Convention and the 1967 Protocol see Buttigieg, Charles, (1997), “Refugee Rights: A Small Nation’s Perspective,” Mediterranean Social Sciences Review, Vol. 2. No.1., pp. 67-78.

In spite of these reservations, which severely limit the civil and socio-economic entitlements of refugees present in Malta, it must however be said that the 1951 Convention and the 1967 Protocol do afford these persons some measure of protection, the most fundamental of which is the prohibition of *refoulement*.

The extent of the protection provided by these instruments is set to increase upon the coming into force of the Refugees Act. There has been a firm commitment on the part of the government of Malta to formally lift the geographical limitation to its obligations under the Convention once the Act enters into force. Thus the obligations Malta assumed under the Convention will extend to European and non-European refugees alike. It should also be stated at this juncture that the definition of the term 'refugee' contained in the Refugees Act makes no reference to 'events occurring in Europe', thus effectively removing the geographical limitation. Moreover, section 3 of the Act makes specific reference to the obligations assumed by Malta under the Convention, stating that:

"This Act incorporates the obligations assumed by Malta under the Convention, and in its interpretation regard may be had to the provisions of the Convention."

2.2 Malta's treaty obligations under the various human rights instruments to which it is a party

Malta has also signed a number of international human rights instruments which, though not directly concerned with the treatment and protection of refugees, have a direct bearing on the manner in which governments may or may not treat refugees and asylum-seekers within their territory.

These instruments, which provide fundamental guarantees for the protection of the human rights and fundamental freedoms of all persons within the Maltese government's effective jurisdiction, including refugees and asylum-seekers, are particularly significant. This is primarily due to the fact that Malta's obligations under these instruments extend to all refugees and asylum-seekers present within Maltese territory, as opposed to those assumed under the 1951 Convention which, to date, are limited to European refugees. Moreover, as Malta is party to most of the major international

human rights conventions¹³, the rights protected by these instruments are extremely wide-ranging. As a result, the effect of the many reservations that Malta made to its obligations under the 1951 Conventions is to some extent mitigated.

The guarantees contained in these conventions, which address the particular vulnerability of refugees and asylum-seekers most effectively, are undoubtedly those prohibiting the forcible return of persons to a country where they would face persecution.

Article 3 of the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly states that

“No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms requires the Contracting Parties to ensure that no one within their jurisdiction be subjected to torture, or inhuman or degrading treatment or punishment. This article has on occasion been used to provide protection from *refoulement* to persons who would face a real risk of being subjected to treatment contrary to article 3 if removed to another state.

The European Convention is a particularly effective tool for the protection of refugees and asylum-seekers in Malta as, unlike other human rights conventions, it is part of Maltese law and can therefore be invoked before and enforced by local courts¹⁴.

¹³ The following are some of the international human rights conventions to which Malta is a party: Malta signed the International Covenant on Economic Social and Cultural Rights in 1990, the International Covenant in Civil and Political Rights in 1990 and the two Optional Protocols to the said Covenant in 1990 and 1994 respectively, the International Convention on the Elimination of All Forms of Racial Discrimination in 1971, the Convention on the Elimination of All Forms of Discrimination against Women in 1991, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1990 and the Convention on the Rights of the Child in 1990.

¹⁴ Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was in fact invoked on two occasions by individuals faced

2.3 Customary International Law

There is considerable support for the view that the principle of protection from *refoulement*, for persons who would qualify as refugees in terms of the 1951 Convention, has crystallised into a norm of customary international law. This norm thus binds all members of the international community whether or not they are parties to the 1951 Convention on the Status of Refugees.

During the last twenty years there has been much debate regarding the extant scope of this principle in customary international law. Goodwin-Gill maintained that customary international law has extended the principle of *non-refoulement* beyond the narrow confines of Article 1 of the 1951 Convention. He suggests that the “essentially moral obligation to assist refugees and provide them with refuge or safe haven” has developed into a legal obligation “albeit at a relatively low level of commitment” (Goodwin-Gill, 1986: 103). In his view, the principle of *non-refoulement* requires states to offer at least temporary refuge from imminent danger to persons fleeing events which could cause them serious harm and which are completely beyond their control, such as civil disorder or violent conflicts. Other scholars¹⁵ have rejected this thesis as overly optimistic, while at the same time conceding that “an intermediate category of refugee protection does now exist” at a lower level of commitment than that suggested by Goodwin-Gill (Hathaway, 1991: 26).

It is therefore clear that Malta’s international legal obligations towards that category of refugees, European or otherwise, who come within the scope of the 1951 Convention definition, are more far-reaching than is immediately apparent. Moreover, Malta is obliged

with removal to another state. Neither of these cases reached judgment stage as in one case the petitioner absconded from Malta and in the other an amicable solution was reached and the petitioner was allowed to remain in Malta on humanitarian grounds.

¹⁵ For an overview of the debate on the existing scope of the principle of *non-refoulement* refer to Goodwin-Gill, Guy S., “Non-refoulement and the New Asylum Seekers” and Hailbronner, Kay, “Non-refoulement and “Humanitarian” Refugees: Customary International Law or Wishful Legal Thinking?”, both published in *The New Asylum Seekers: Refugee Law in the 1980s*, (1986) The Netherlands, Martinus Nijhoff Publishers, pp.103-158, and Hathaway, James C., (1991), *The Law of Refugee Status*, Canada, Butterworths, pp.24-27.

to provide protection against *refoulement* to a wider category of persons at risk of treatment that would violate their rights as protected by the various international instruments to which Malta is a party.

However, with few exceptions, notably the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, until very recently these international obligations were never incorporated into domestic legislation. As a result to date there are no formal structures in place to examine and determine applications for refugee status, in order to identify those persons who are in need of protection and to guarantee protection of and respect for the rights of refugees and asylum-seekers.

This is not to say that Malta has completely disregarded its international obligations towards these persons. However, as will be seen, to date the protection of refugees in Malta has been characterised by piecemeal solutions, by policies and practices created to deal with situations as they arose. In practice, the absence of clearly defined legal standards has led to the informal creation of various categories of protected persons enjoying different levels of protection. The next section examines the procedures and practices which were created to deal with applications for refugee status, and the various forms of protection provided under the present arrangements. It also looks at the protection that the Refugees Act will provide to those persons enjoying some form of protection in Malta at present as well as to persons who will apply for protection under the new regime.

It must be emphasised that the treatment of asylum-seekers and refugees in Malta is regulated on a purely discretionary basis by the authorities concerned. As a result there is a dearth of clearly enunciated rules or other official information on the subject. Any assessment of governmental policy must therefore ultimately be based on an appraisal of the facts, as they are determined from publicly available information.

3. Procedures for the determination of applications for refugee status and other forms of protection

Refugees in Malta may, for the purposes of this examination, be broadly divided into two categories: those of European origin, for the most part persons coming from the countries which made up

the former Yugoslavia, and those coming from non-European countries. Due to the fact that Malta has assumed some, limited, obligations under the Convention to refugees of European origin, the procedures and practices which were developed for the recognition and protection of these persons differ from those developed to deal with refugees of non-European origin.

3.1 Applications from refugees of non-European origin

As, to date, Malta has not assumed formal responsibility for refugees of non-European origin; there are no national eligibility procedures or mechanisms in place for the determination of applications for refugee status from these persons. The Emigrants' Commission, a local NGO that has an 'operational-partner' agreement with the UNHCR, therefore receives applications from refugees of non-European origin. Personal interviews are conducted with all applicants after they have completed a standard application form. The information thus collected is then passed on to the UNHCR Branch Office in Rome for consideration and final determination of the application.

While they are waiting for the outcome of their application, asylum-seekers are allowed to remain in Malta. Those who are recognised as mandate refugees by UNHCR or are declared to be 'persons of concern to UNHCR' are allowed to remain in Malta until they are permanently resettled in a third country or until they can safely and voluntarily return to their country of origin, whichever happens first.

Over the years another category of 'semi-protected' persons has emerged. This group is made up of persons of non-European origin who remained in Malta for one reason or another, in spite of the fact that their application for refugee status was rejected by the UNHCR. Most of these persons claimed, then as now, that they could not be sent back to their country and they were therefore allowed to stay on humanitarian grounds. They remained included in the 'Refugee List'¹⁶ and as such still receive some nominal

¹⁶ The list of persons enjoying some form of protection in Malta, which is kept by the Emigrants' Commission, Valletta.

protection from forced return to their country of origin. Some of these persons have been in Malta for up to ten years, and, at this stage, it is hardly likely that they could be expected to return to their country of origin. It must be stated that not all asylum-seekers whose applications have been rejected remain included in the 'Refugee List', but only those who are deemed to require some sort of protection.

3.2 Applications from refugees of European origin

Although Malta has assumed responsibility for the protection of refugees of European origin, to date there are no formal procedures in place for the determination of applications for refugee status from these persons. Over the last decade, in view of the turmoil experienced by a number of European countries particularly those forming part of the former Yugoslavia; a significant number of persons of European origin sought refuge in Malta. In the circumstances, arrangements were made with the Emigrants' Commission to receive applications from these persons with a view to providing protection in deserving cases. Once they have applied, these persons are registered on the 'Refugee List' of the Emigrants' Commission, and are recommended for "temporary protection" (Calleja, 1995). The persons allowed to stay in Malta under these arrangements are never officially recognised as refugees and the protection they are granted in practice amounts to little more than permission to remain in Malta until they can safely and voluntarily return to their country.

3.3 Refugee status and other forms of protection under the Refugees Act, 2000

The Refugees Act, which provides for the setting up of a central, competent authority to hear and determine applications for refugee status, will no doubt introduce a measure of consistency and uniformity to the procedures employed for the purpose. All applications will be examined and determined by the same authorities and if accepted the applicant will be granted one of two forms of protection envisaged by the Act.

The following is a brief outline of the procedures prescribed by the Act for the determination of applications for protection. A detailed examination of these procedures is beyond the scope of this

paper, which is more concerned with an analysis of the rights and benefits conferred by the Act upon persons who qualify for some form of protection. This short description is intended simply to give a general idea of the manner in which such applications will be determined once the Refugees Act comes into force.

Section 4 of the Act provides for the appointment of a Refugee Commissioner who will receive and examine all applications for refugee status. On the basis of such examination, the Commissioner must then recommend to the Minister the acceptance or otherwise of the application (section 8(5)). Section 8(6) provides that, where the Commissioner recommends the acceptance of the application, the Minister may appeal from such recommendation or make a declaration that the applicant is a refugee.

Although the law does not expressly provide that in the case of a negative decision the applicant is entitled to appeal, section 7 of the Act which makes provision for appeals to the Refugee Appeals Board¹⁷, indicates that an appeal may in fact be lodged by the said applicant. Section 7(2) states that "...where an appeal is entered by the applicant a copy of the appeal shall be served on the Minister and the Commissioner". Moreover, section 7(5) provides that "An appellant shall have the right to free legal aid under the same conditions applicable to Maltese nationals." This is a further indication that in fact the applicant may lodge an appeal, as it is highly unlikely that the legislator would have seen fit or necessary to make such a provision for the benefit of the Minister.

The decisions of the Refugee Appeals Board will be final and binding, and may not be challenged before any court of law. The only exception in terms of section 7(9) is the possibility of filing an

¹⁷ In terms of Section 5 of the Refugees Act, 2000, the Refugee Appeals Board shall consist of a chairperson and two other members appointed by the Prime Minister, of which at least one must have practised as an advocate in Malta for a period of not less than seven years. Section 7(1) states that: "The Board shall have the power to hear and determine appeals against a recommendation of the Commissioner". The decision of the Refugee Appeals Board is final and binding (section 7(9)), and if the Board finds in favour of the applicant the Minister must issue a declaration accordingly (section 7(10)).

application before the Courts alleging a violation of the applicant's human rights as protected by the Constitution of Malta and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Should the Board decide in favour of the appellant, the Minister must issue a declaration accordingly (section 7(10)).

The Act provides also for another, subsidiary, form of protection in cases where, the Commissioner is of the opinion that the asylum-seeker is in need of protection, in spite of the fact that he or she does not qualify as a refugee in terms of section 2 of the Act. This 'humanitarian protection' is defined as:

“special leave to remain in Malta until such time when the person concerned can return safely to his country of origin or otherwise resettle safely in a third country”

It would seem from section 8(8) that the minister has no right to appeal from such a recommendation, and must grant the applicant 'humanitarian protection' once the Commissioner has recommended it. This section states that:

“When such recommendation is made the Minister shall grant such humanitarian protection”.

No mention is made of any right of the applicant, who is granted 'humanitarian protection' rather than full refugee status, to appeal from a recommendation not to recognise him as a 'fully-fledged' refugee.

It is, no doubt, positive to include the possibility of an alternative form of protection granted to a wider category of persons than those defined in section 2 of the Act as this will help to ensure that every person who needs protection is in fact granted it. However as will be seen this status confers on the holder less rights and benefits than refugee status. The difference between the two forms of protection is far from cosmetic, as it is only refugee status, which confers upon the holder any legally recognised rights in terms of the Refugees Act. In reality it could be many years before a person granted 'humanitarian protection' is able to return safely to his country of origin. The form of protection that is granted to an asylum-seeker is a matter of fundamental importance for the person concerned as it is what will ultimately determine the quality of life he will enjoy in Malta.

3.3 Status of persons enjoying some form of protection at present in terms of the Refugees Act

Section 20 of the Act, which will regulate the transition from the present to the future system of protection, provides that:

- (b) Without prejudice to the provisions of any other law, a person in Malta who before the commencement of this Act had already been recognised as a refugee by the High Commissioner¹⁸ shall upon his request continue to be regarded as such, and the provisions of this Act, where relevant, shall apply also to him.
- (c) A person in Malta who before the commencement of this Act, although not recognised by the High Commissioner as a refugee, enjoys humanitarian protection granted to him by the said High Commissioner, or whose case is one classified by the Commissioner as one of concern, shall upon his request continue to be regarded as such and shall enjoy humanitarian protection in Malta as defined under this Act.

By virtue of this section therefore, persons recognised as UNHCR mandate refugees or as 'persons of concern to UNHCR' under the present arrangements will make a more or less smooth transition from one regime to the next.

Two categories of persons who are at present enjoying some form of protection seem to fall through the cracks. The first are persons of European origin, who are supposed to be enjoying the protection of the Government of Malta. These persons cannot be said to be enjoying "humanitarian protection granted by the High Commissioner". The second category comprises those 'semi-protected' persons referred to in Section 3.1 above. As they were not recognised as refugees or as 'persons of concern to UNHCR' at the time of application, they too cannot be said to be enjoying "humanitarian protection granted....by the High Commissioner".

¹⁸ The term "High Commissioner" here refers to the UNHCR not to the Refugee Commissioner. The latter is in fact referred to as the Commissioner not the High Commissioner.

As these persons have remained included on the 'Refugee List' of the Emigrants' Commission, it is clear that this agency deems all of these persons to be in need of some form of protection, and that it has continued to regard them as refugees for the purposes of its activities. These persons cannot be presumed not to need protection simply because they are not in possession of a UNHCR certificate declaring them to be refugees or 'persons of concern'. Some of these persons never had the opportunity to apply for such protection from the UNHCR as they were meant to be receiving it from the Maltese government. Moreover, all or some of these persons, especially those who have been in Malta for a considerable period of time, could well be unable to return home safely at this stage.

In order to ensure that the rights of these people are safeguarded it is indispensable that each case is viewed on its merits, in order to guarantee that each person in need of protection is identified and granted the protection required.

Having identified the categories of persons who will be granted protection in terms of the Refugees Act, we will now describe the rights that the said Act confers upon them.

4. The rights of asylum-seekers, refugees and persons granted humanitarian protection in terms of the Refugees Act

Each of these categories of persons is granted a different standard of protection by the Act. The protection provided to each particular category will be briefly outlined hereunder.

The one right that applies across the board to all three categories is that of protection from *refoulement* which is contained in section 9 of the Act. This section substantially reproduces the prohibition contained in article 33 of the Convention. It is clear that, in interpreting the scope of the protection provided by this section, Malta's obligations in terms of the international conventions to which it is a party and under customary international law must be taken into account.

There is general agreement that the principle of *non-refoulement* must be scrupulously respected at all times, not only with respect to those refugees and asylum-seekers who are already present

within state territory, but also at the frontier¹⁹. To exclude persons presenting themselves at the frontier from the scope of this principle would make the protection it affords asylum-seekers and refugees more dependant on luck than on merit.

4.1 *The rights of asylum-seekers*

Section 8(1) of the Act states in passing that persons seeking asylum in Malta have a right to apply for a declaration of refugee status. It also states that they are entitled to consult a representative of the UNHCR and to have legal assistance during all the phases of the asylum procedure.

In addition to the protection provided to asylum-seekers by section 9, which prohibits *refoulement*, section 10(1) provides that

“Notwithstanding the provisions of any other law to the contrary, an asylum-seeker shall not be removed from Malta before his application is finally determined in accordance with this Act, and such applicant shall be allowed to enter or remain in Malta pending a final decision of his application...”

A margin of executive discretion will still be retained by the immigration authorities, who shall, in terms of section 8(1) of the Act, interview each asylum-seeker who arrives at the border seeking protection. The Act does not state the purpose of the prescribed interview, which places the immigration official concerned in the position of being able to effectively block the asylum-seekers' access to the status determination procedures. This is, to some extent, counter-balanced by the fact that the Act imposes on the interviewing officer an obligation to inform the asylum-seeker of his right to apply for asylum and to consult a representative of the UNHCR or a legal adviser. However it will be very difficult to

¹⁹ The need to protect asylum-seekers from *refoulement* 'both at the border and within the territory of a state' was affirmed by the UNHCR Programme Executive Committee (EXCOM) Conclusion number 6 (XXVIII) 1977 on *Non-refoulement* and the UNHCR EXCOM Conclusion No 22 (XXXII) 1981 on the *Protection of Asylum Seekers in Situations of Large Scale Influx*.

monitor whether or not all the persons seeking protection are in fact allowed access to the determination procedure.

In spite of this apparent chink in the armour, the Refugees Act constitutes a substantial improvement upon the present system. This is not so much because at present asylum-seekers are not allowed to enter or remain in Malta, on the contrary, as was previously stated, by and large asylum-seekers are allowed to remain in Malta until their application is determined even at present. However, the fact that the rights of persons seeking asylum are clearly laid down and guaranteed by law, is, in itself, a major development.

Apart from the rights outlined above, asylum-seekers are also granted the right of free access to state educational and medical services while they are waiting for the outcome of their application.

4.2 The rights of refugees

Section 11 of the Act lays down the rights to be accorded to those persons who are determined to be refugees in terms of its provisions. It states that refugees will be entitled to remain in Malta. They will also be granted personal documents, including a residence permit. Moreover refugees will be granted not only freedom of internal movement, which is enjoyed by all persons granted some form of protection under the present system, but also a Convention Travel Document, which will allow them to leave and return to Malta without the need of a visa. In addition, refugees, like asylum-seekers, will be entitled to free access to state educational and medical services.

The Refugees Act falls short of granting even recognised refugees the right to family re-unification. Section 11(2) of the Refugees Act entitles "dependent members of the family of a person declared to be a refugee, if they are in Malta at the time of the declaration or if they join him in Malta" to the same rights as the refugee. However it does not grant them the right to join him in Malta.

In effect, most of the benefits outlined above are already granted to refugees in Malta, albeit on a purely discretionary basis. The fact that now refugees are entitled to them by right is in itself a step forward. By virtue of these provisions, refugees are no longer simply the objects of Malta's charity but the subjects of legally guaranteed rights. The only real innovations are the granting of

a residence permit and a Convention Travel Document to recognised refugees. The latter is doubtlessly the measure that will be most warmly welcomed by the refugees who are in Malta at present. To date these persons have been virtually prisoners on the island, unable to leave Malta legally, except to travel to a country of resettlement.

4.3 The rights of persons granted humanitarian protection

Section 2 of the Act defines 'humanitarian protection' as

“special leave to remain in Malta until such time when the person concerned can safely return to his country of origin or otherwise resettle safely in a third country”

Apart from this definition the Act makes absolutely no mention of the rights or benefits which this status will confer on its holders. It therefore seems that such persons will receive little more than the permission to remain in Malta temporarily, as the Act does not confer upon them even the basic rights granted to the other categories of protected persons. They are not even granted the right to freedom of internal movement, i.e. release from custody if they are being detained only for a breach of immigration regulations, once they are granted humanitarian protection.

Moreover, section 8(8) of the Act provides that humanitarian protection “shall cease if the Minister is satisfied, after consulting the Commissioner, that such protection is no longer necessary”. The person concerned has no right to appeal from such a decision. A refugee, by comparison, is entitled, in terms of sections 15, 16 and 17 of the Act, to appeal from a decision to revoke or cancel his status, or to expel him from Malta.

It seems likely that persons enjoying humanitarian protection in terms of the Refugees Act will be in exactly the same position as all refugees and other protected persons in Malta are today – allowed to remain but effectively denied any legal protection of their rights.

It must be stated that, although the persons granted humanitarian status are by far the least protected, the rights the Act confers upon all the categories of protected persons are extremely basic. More worryingly, the Act fails to address a number of issues, which are of fundamental importance for refugees,

asylum-seekers and other persons granted protection in Malta. The next section discusses three of these issues.

5. Protection issues left unresolved by the Refugees Act

The matters discussed in this section were selected not because they are the only issues the Act fails to resolve, but because they are three of the most serious problems faced by refugees and asylum-seekers in Malta today. All of them, to a greater or lesser extent, constitute a denial of the core rights of refugees as contained in the 1951 Convention. The issues discussed are the following: the detention of asylum-seekers, the right to work and the provision of some sort of financial assistance for all categories of protected persons.

5.1 Detention of asylum-seekers

In terms of the 1951 Convention, Malta is bound not to restrict the internal freedom of movement of refugees within its territory more than is strictly necessary. Article 26 of the Convention clearly states that:

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

With regard to refugees ‘unlawfully’ present in state territory, which also includes those asylum-seekers whose status has not yet been regularised (Hathaway and Dent, 1995: 18-19), article 31 provides in paragraph 2 that:

“Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or until they obtain admission into another country”.

In terms of article 31(1) the term ‘unlawfully’ refers to a person present in state territory without the necessary authorisation. Although article 31(2) does not specify which restrictions would

qualify as necessary, when read in conjunction with article 31(1) it emerges clearly that illegal entry into state territory cannot in itself justify the detention of an asylum-seeker (Hathaway and Dent, 1995: 19). In fact article 31(1) states that:

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

The Executive Committee of the UNHCR, in Conclusion No. 44 (XXXVII) – 1986, which deals with detention of refugees and asylum-seekers in some depth, states unequivocally that, in view of the hardship it involves, detention should normally be avoided. It stresses that the fact that an asylum-seeker is in possession of false or insufficient documentation should not in itself lead to automatic detention, unless there is a clear intention to mislead the authorities.

5.1.1 Present government policy on the detention of asylum-seekers

Maltese law says nothing about the reasons for which asylum-seekers may be detained. As a rule, asylum-seekers who enter Malta legally are not detained. It is only those who are refused admission into Malta or who enter or are otherwise present in Malta illegally who are, at times, detained.

By virtue of the Immigration Act, which deals with matters relating to immigration into Malta, persons who are considered ‘inadmissible’ and refused leave to land in Malta, may be detained until they can be removed from Malta (section 10). While in custody such persons will be deemed not to have landed in Malta (section 10(3)). Persons, who are found guilty by the competent Court of entering or staying in Malta illegally, shall be issued with a removal order in terms of section 14 of the Immigration Act. Until the said removal order can be executed the person concerned shall be kept in custody. As the Immigration Act makes no special provision for differential treatment to be provided to asylum-seekers who are in this situation, it would therefore seem that their position in terms of Maltese Law is identical to that of any other immigrant in the

same situation. Moreover, it would appear that asylum-seekers are not protected from the consequences of illegal entry or stay in Malta.

In practice, however, asylum-seekers, who are refused admission into Malta or who enter or are present in Malta illegally, do not receive the same treatment as other irregular migrants. As a rule, asylum-seekers are allowed to remain in Malta until their claim is determined, as is required in order to ensure that they are protected from *refoulement*. Moreover, while asylum-seekers refused entry into Malta are as a rule detained, the provisions of the Immigration Act regarding the consequences of irregular entry or stay, are not applied to all asylum-seekers in these circumstances, i.e. asylum-seekers who enter or are present in Malta illegally are not always detained.

In the ultimate analysis, it would seem that it is not the illegality of entry or stay in Malta *per se* which determines whether or not an asylum-seeker will be detained, but rather the timeliness of that person's application for protection. If an application is lodged before the illegality of the person's entry or stay in Malta is discovered by the authorities concerned then, as a general rule, the asylum-seeker is not detained. An asylum-seeker who files an application after he has been apprehended by the authorities will usually²⁰ be detained, in special facilities earmarked for the detention of irregular migrants pending the final determination of his application.

Where the detained asylum-seeker's application for protection is rejected he is removed from Malta. Persons who are recognised as refugees or 'persons of concern to UNHCR' are released from detention. In cases where a removal order has been issued by the competent authorities, the person concerned must be granted a presidential pardon cancelling or revoking the said removal order, before he can be released from detention.

²⁰ There have been a number of exceptions, most notably in cases involving minor children. This is not to say that minor children and their primary care-givers or other accompanying adults are never detained, but rather that there have been occasions when they were not.

5.1.2 Detention of asylum-seekers under the Refugees Act

The Refugees Act does little or nothing to clarify the Maltese government's somewhat inconsistent approach to the detention of asylum-seekers who enter or are present in Malta illegally. The Act does not include a provision echoing the prohibition contained in article 31 of the Convention. Moreover, upon ratification Malta made a reservation to its obligations under article 31, stating that it would apply to Malta "compatibly with its own special problems, its peculiar position and characteristics". As a result the actual extent of Malta's obligations under the Convention in this regard is somewhat unclear.

That an asylum-seeker may in fact be detained in certain circumstances is indicated by section 10(2)(b) of the Refugees Act, which mentions, in passing, that an asylum-seeker "shall, unless he is in custody, reside and remain in the places which may be indicated by the Minister". The particular circumstances, which would justify such detention, are however not clearly stated. It is however clear, from references to persons "in custody in virtue only of a deportation or removal order" (sections 7(3) and 11(1)), that an asylum-seeker may be detained for breaching the provisions of the Immigration Act. Under Maltese law such orders are issued by the competent authorities, in terms of the Immigration Act (sections 14, 15 and 21), against aliens who are in Malta without leave from the Principal Immigration Officer or who are declared to be prohibited immigrants in terms of section 5 of the said Act.

It would therefore seem, although it is still too early to state this with any certainty, that the Refugees Act will not make any major changes to the Maltese government's present position on the detention of asylum-seekers. The Act will give certain practices the force of law, thus strengthening the protection provided. An asylum-seeker will have the right to "enter or remain in Malta pending a final decision of his application" (section 10(1)) and "shall not be removed from Malta before his application is finally determined". The operation of the provisions of the Immigration Act will be suspended until the applicant's claim is determined in terms of the Refugees Act. However, it must be said that, if anything, the Act will impose increased restrictions upon the movements of asylum-seekers in general, even those who are not detained, requiring them in section 10(1)(b) to:

“(b)...reside and remain in the places which may be indicated by the Minister.”

They will also be required to report to the immigration authorities at specified intervals. A breach of these provisions is considered an offence punishable by up to six months imprisonment.

It is clear that every sovereign state has the right to control irregular migration through its borders. Detention, it is often argued, is a means of control as it facilitates the removal of asylum-seekers whose application has been rejected and who have no claim to remain in the territory of the host-state. Moreover, detention is perceived as a powerful deterrent, and therefore an important tool in the fight against irregular migration.

While it must be admitted that there is an element of truth in the former assertion, it must be emphatically stated that detention is by no means the only way that a state can control the movements of asylum-seekers within its territory. There are other, far cheaper and equally effective, ways of doing so²¹. Moreover, the contention that detention is an effective deterrent completely ignores the fact that refugees and asylum-seekers are involuntary migrants, forced to flee not out of choice but out of necessity in search of protection.

Article 31 of the 1951 Convention acknowledges this reality. It is a fact that the luxury of a passport issued promptly upon request is little more than a dream for many persons living under oppressive and undemocratic regimes, or in situations where the structures of government have crumbled to the extent that they are no longer able to discharge their normal administrative functions. To make the protection of a person fleeing persecution conditional on his being able to obtain a valid passport or a visa to enter another a country would reduce the value of the 1951 Convention for such persons to less than that of the paper it is printed on. It is also submitted that to punish persons for a breach of immigration regulations which may have been committed out of necessity, in an extreme manner usually reserved for persons who have committed serious criminal offences, is, at best, completely disproportionate.

²¹ For a discussion of alternative measures see ECRE paper on “Alternatives to Detention. Practical Alternatives to the Administrative Detention of Asylum Seekers and Rejected Asylum Seekers (September 1997).

More so when the period of detention in some cases can stretch on for months.

The detention of asylum-seekers should be considered an extreme measure, resorted to only where it is absolutely necessary. Moreover, the conditions under which detention is considered justifiable or necessary should be clearly stipulated. Whether an asylum-seeker is made to spend months in what is little more than a prison should not be left to administrative discretion or to luck, as is the case at present.

5.2 *The right to work*

Article 17 (1) of the Convention requires the Contracting States to:-

“...accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage earning employment.”

Moreover paragraph 2 of the said article states that restrictive measures imposed on aliens for the purpose of the protection of the national labour market shall not be applied to a refugee who has completed three years residence in the country, or who has a spouse or children possessing the nationality of the country. The said article requires also that Contracting States give sympathetic consideration to assimilating the rights of all refugees with regard to wage earning employment to those of nationals.

Article 18 deals with self-employment, and provides that with regard to the right of refugees lawfully within their territory to engage in commercial business, the exercise of a trade or profession, etc, states should grant treatment as favourable as possible, and in any event, not less favourable than that granted to aliens generally in the same circumstances.

5.2.1 Present government policy on the employment of refugees

Malta's obligations under articles 17 and 18 of the 1951 Convention and 1967 Protocol are limited by a reservation which states that these articles “shall apply to Malta compatibly with its own special problems, its peculiar position and characteristics”.

Although the extent of this reservation is not clear from the

manner in which it is phrased, in practice until very recently it had been translated into a policy which made it virtually impossible for refugees and asylum-seekers to work legally for any length of time and discriminated between refugees and other foreign nationals.

The provisions of the Immigration Act regulate the employment of foreigners present in Malta. Sections 11 of the said Act requires foreigners to be in possession of a work permit issued by the Office of the Prime Minister in order to be able to engage in any form of wage earning employment. Such work permits are issued on a discretionary basis at the request of a prospective employer, on condition that a Maltese citizen cannot fill the post, which is to be allocated to the foreign national. These work permits are issued for one year and are renewable.

As opposed to other categories of migrants, until relatively recently refugees and asylum-seekers were only granted a three-month work permit, which was not renewable. On the 19th January 1999 the Minister for Home Affairs Dr Tonio Borg announced a change in government policy regarding the granting of work permits to refugees, bringing refugees on a par with other non-nationals.

From that date government policy on this matter has undergone a further transformation, and today recognised refugees, i.e. those who are in possession of a UNHCR certificate, are granted a work permit if an application is filed on their behalf. This is the case even if the post could technically speaking be filled by a Maltese citizen. Initially work permits granted refugees, like those granted to other aliens, authorised the holder to take up a specific post or job. More recently²² refugees are being authorised to undertake employment in Malta. They are simply bound to inform the relevant government department if they change job before the expiration of the permit, one year after it is issued.

Asylum-seekers do not benefit from this policy. Also excluded are persons enjoying temporary protection who are not in possession of a certificate issued by UNHCR, i.e. refugees of European origin. Paradoxically, it would seem that the very persons for whom Malta assumed responsibility are the ones who have the worst deal in the circumstances.

²² This latest development was introduced in March 2001.

In spite of these restrictions many asylum seekers and persons enjoying some form of temporary protection do in fact hold some sort of job. With the exception of recognised refugees who receive a small allowance from the UNHCR for a period of two years, refugees, asylum-seekers and persons enjoying temporary protection are not entitled to any form of assistance, financial or otherwise, from the authorities. In the circumstances these persons are left with little alternative but to resort to working illegally. The only other option available to them was to have to depend on charity in order to be able to survive. In view of the fact that many of these persons cannot work legally in Malta, they can claim none of the protection provided by law which every worker takes for granted, and they are therefore extremely vulnerable to exploitation. The jobs they manage to obtain are usually characterised by difficult working conditions, with salaries far below the average and at times below the legal limit. Even today, although recognised refugees are granted a work permit, they hardly ever progress from the bottom rung of the employment ladder to more skilled jobs, and are usually forced to accept jobs that are far below their qualifications.

The change in government policy regulating the employment of refugees is a very welcome development. Refugees are a special category of migrants and they should therefore be treated more favourably than other migrants where access to gainful employment is concerned.

5.2.2 The Refugees Act and the employment of refugees

It was hoped that the Refugees Act would grant refugees and other protected persons the right to work, whether as an employed or a self-employed person. However, not only does the Act not grant a right to work, it fails to even give the present government policy the force of law. Section 19(1)(f) of the Act simply authorises the Minister responsible for immigration to make regulations "regulating, with the concurrence of the Minister responsible for labour, the granting of work permits to recognised refugees", thus leaving matter firmly within the realm of policy and governmental discretion.

While there is no doubt that the present government policy is a vast improvement on the previous arrangements, it falls short of granting refugees a right to work. Governmental policies may be changed at any time at the discretion of the authorities concerned.

On the other hand, amending legislation, as opposed to policy, implies far greater levels of public scrutiny and parliamentary control.

This change in policy has not improved the lot of asylum-seekers and persons enjoying temporary protection, who are still forced to work illegally in order to be able to feed themselves and their families, in the absence of other means of subsistence. The wording of section 19(1)(f) with its emphasis on "recognised refugees" does not hold out much hope that the present policy will be extended to a wider category of persons in the near future. If anything, the Act has actually made the situation of asylum-seekers even more difficult. Although it was always a breach of the provisions of the Immigration Act for an asylum-seeker to work without obtaining the necessary permit, in practice asylum-seekers are not usually prosecuted for working illegally. The Refugees Act, however, states specifically in section 10(2) that asylum-seekers who "seek to enter employment or carry on business without the consent of the Minister", "shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of not more than six months".

It is interesting to note that many state parties to the 1951 Convention, particularly industrialised countries, grant the employment rights laid down in the Convention to recognised refugees, with many states actually granting them employment rights on a par with nationals. With regard to asylum-seekers, the practice is less uniform. Some states, such as Denmark and France, completely deny them the right to work, while others such as Canada, Belgium, New Zealand and the Netherlands grant them the right to work, subject to certain limitations in some cases (Hathaway and Dent, 1995: 26-27). In most cases the decision to allow asylum-seekers to work is based more on financial considerations than the desire to fulfil legal obligations on the part of the states concerned. It has been found to be far more profitable to allow asylum-seekers to work, than to have them depend on the state to provide them the means for subsistence, which would be the only alternative if they were not allowed to work to maintain themselves other than to leave them to starve (Hathaway and Dent: 25-26).

5.3 Public Relief and Assistance

Article 23 of the Convention obliges contracting states to grant refugees lawfully staying in their territory the same treatment that

they accord to their nationals with respect to public relief and assistance.

5.3.1 Present government policy regarding the granting of public assistance to recognised refugees

At present the only assistance which refugees, asylum-seekers and persons enjoying temporary protection receive from the government is access to free state medical and educational services. They do not receive any form of financial assistance from the state and, in terms of the law as it stands, they are not entitled to any. UNHCR does provide some financial assistance to the persons for whom it is responsible, however this assistance is granted for a period of two years, and it decreases progressively. The office of the UNHCR also provides parents with an allowance for each minor child. Most other assistance refugees and protected persons receive is provided by the Emigrants' Commission. This assistance includes housing and financial and material assistance, funded by church and private donations.

Most refugees require assistance, especially initially, as it is usually some time before they are able to secure employment. Adapting to a new society often implies having to learn a new language or acquire new skills, all of which take time. Moreover, as many of the jobs available to refugees and asylum-seekers are temporary or seasonal, they are often unemployed for long periods. It is therefore very difficult for these people to maintain themselves, and few of them ever achieve any sort of financial independence.

5.3.2 The Refugees Act and the provision of public assistance

The Refugees Act makes no provision for any sort of financial assistance to refugees, asylum-seekers and persons enjoying humanitarian protection. It simply authorises the Minister responsible for immigration to make regulations "extending... the provisions of the Social Security Act to persons falling under this Act" (section 19(d)). In view of the fact that most of the persons "falling under this Act" are prohibited from working it is hard to imagine how these persons are expected to survive.

When signing the Convention Malta entered a reservation to article 23, declaring that it would not apply to Malta. It is however indeed difficult to justify the stance taken by the Maltese government in the circumstances. A grant of refugee status or

humanitarian protection is an acknowledgement that the person concerned is in need of protection and should be allowed to remain in Malta. It stands to reason that if a person is to be allowed to remain in Malta, then he should also be given the means not only to survive, but also to live with dignity for the duration of his stay. It is unacceptable that people are forced to depend on charity in order to be able eat.

6. Conclusion

The major achievement of the Refugees Act, is without doubt the fact that the recognition and protection of refugees will no longer be regulated solely on the basis of governmental discretion. Once the Act comes into force, these persons become subjects of the law, vested with legally protected rights.

On a practical level, the Act will not bring any substantial improvement to the situation of refugees and other protected persons in Malta, as they already enjoy most of the benefits granted by the Act. The only difference will be that once the Act comes into force they become legal entitlements not simply benefits. On this level, the introduction of the Convention Travel Document for recognised refugees, is without doubt the most important improvement. It must be stated however that the rights contained in the Act are extremely basic, and fall below the basic minimum recommended by the 1951 Convention.

The Act should significantly increase the protection granted to asylum-seekers. Although by and large most of the rights contained in the Act were already provided on a discretionary basis, the fact that they have now been given the force of law strengthens the protection provided to this vulnerable category of persons by limiting the discretion of the authorities concerned.

The greatest shortcoming of the law is perhaps that it fails to tackle a number of issues which, for refugees and other protected persons are of fundamental importance and which have a huge impact on the quality of life they enjoy. The most important of these issues are without doubt those relating to internal freedom of movement of asylum-seekers and to the right to work or to be assisted in order to be able to live with dignity. The present government policy on these matters causes the persons concerned much unnecessary hardship and is an affront to the dignity of these

persons. It was therefore hoped that these matters would be resolved by the Refugees Act, in the manner recommended by the 1951 Convention.

In spite of its shortcomings, however, it must be said that the Act is in itself an important development, as it constitutes a basic standard of protection that the government must provide, and for which it can be held accountable. However it must be seen as the *alpha* rather than the *omega*, the first step towards the creation of a system of adequate legal protection for this special class of migrants.

Bibliography

- Buttigieg, Charles, (1997), "Refugee Rights: A Small Nation's Perspective," Mediterranean Social Sciences Review, Vol. 2. No.1. pp.67-78.
- Calleja, Philip, (1995) Refugees in Malta, (Lecture delivered at a seminar entitled "Caring for Refugees: Legal Protection and Search for Solutions" held in Valletta, Malta, in November 1995)
- ECRE, (September 1997) "Alternatives to Detention. Practical Alternatives to the Administrative Detention of Asylum Seekers and Rejected Asylum Seekers".
- Goodwin-Gill, Guy S., (1986), "Non-refoulement and the New Asylum Seekers", pp.103 – 121, in The New Asylum Seekers: Refugee Law in the 1980s, The Netherlands: Martinus Nijhoff Publishers.
- Hailbronner, Kay, (1986), "Non-refoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking?", pp. 123-158, in The New Asylum Seekers: Refugee Law in the 1980s, The Netherlands: Martinus Nijhoff Publishers.
- Hathaway, James C., (1991), The Law of Refugee Status, Canada: Butterworths Canada Ltd.
- Hathaway, James C., and Dent, John A., (1995), Refugee Rights: Report on a Comparative Survey, Canada: York Lanes Press, Inc.
- Refworld, UNHCR Centre for Documentation and Research (CDR), Geneva.
- UNHCR Programme Executive Committee (EXCOM) Conclusions: Conclusion number 6 (XXVIII) 1977 on Non-refoulement, Conclusion No 22 (XXXII) 1981 on Protection of Asylum Seekers in Situations of Large Scale Influx, and Conclusion number 44 (XXXVII) 1896 on Detention of Refugees and Asylum Seekers.