

I. INTRODUCTORY NOTE

The subject "The Rights of Refugees" had originally been referred to the Asian-African Legal Consultative Committee for its consideration by the Government of the United Arab Republic in 1964. The Committee, after due consideration, had made its recommendations in the form of Draft Principles at its Bangkok Session held in 1966. However, following upon a request from the Government of Pakistan to reconsider some of the aspects of the Committee's Report on this subject a decision was taken at the Karachi (Tenth) Session to reopen discussion on this topic.

At the Karachi Session discussion on the subject primarily centred around the proposals made by the Delegations of Pakistan and Jordan regarding amendments to the definition of the term 'refugee' as adopted by the Committee in the Bangkok Principles. The Committee also generally discussed questions relating of asylum, travel documents, the standard of treatment for refugees, the right to return, the right to compensation and the question of possible establishment of tribunals which would decide on the right of return and the right to compensation in cases of dispute. The Committee also took note of certain new developments in the sphere of international refugee law by reason of the adoption of the O.A.U. Convention, the U.N. Declaration on Territorial Asylum and the entering into force of the 1967 Protocol on the 1951 U.N. Refugee Convention. Further, a great deal of discussion took place on the question of Palestinian Arab Refugees and the possibility of including such persons within the legal definition of refugees. The representative of the U.N.H.C.R. in this connection pointed out that it might not be possible to deal with the cases of various categories of "refugees" within one set of principles. Similar views were also expressed by some of the

Delegates. At the end of the discussions, two resolutions were adopted: Resolution No. X (7) which dealt specifically with the question of Palestinian Arab Refugees was transmitted to the Secretary-General of the United Nations and the Committee was informed that the matter was being brought to the notice of the Security Council; Resolution X (8) was concerned with giving of directions to the Secretariat of the Committee for further collection of material on the subject so that it could be discussed more fully at the Eleventh Session of the Committee.

In pursuance of the directions contained in Resolution No. X (8) the Secretariat of the Committee collected further material and analysed the various instruments and resolutions which had been brought to the Committee's notice at the Tenth Session. The U.N.H.C.R. also in response to the Committee's request prepared notes dealing with these instruments and resolutions. All these materials were placed before the Eleventh Session of the Committee.

The two basic issues which were before the Committee at its Eleventh Session held in Ghana in January 1970, consisted of: (a) a review of the principles concerning treatment of refugees as adopted by the Committee at its Eighth Session in Bangkok in the light of the developments in the field since the Bangkok Session; and (b) the question of giving appropriate expression to the general principles governing the right of return, the restoration of property and compensation to Palestinian Arab Refugees and other displaced persons and to formulate the same as a set of principles. There were prolonged discussions on both these issues. The Committee decided, as regards the first question, to postpone its consideration to a subsequent Session, and on the second question, it adopted an 'Addendum' to the Principles concerning Treatment of Refugees formulating therein a set of principles pertaining to the status and rights of displaced persons.

II. STUDY PREPARED BY THE SECRETARIAT OF THE COMMITTEE

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CHAPTER I INTRODUCTORY NOTE

The subject of "the Rights of Refugees" came up for consideration before the Asian-African Legal Consultative Committee on a reference made under Article 3(b) of its Statutes by the Government of the United Arab Republic in 1963. The Committee discussed the subject in detail at its Sixth, Seventh and Eighth Sessions held in Cairo, Baghdad and Bangkok in 1964, 1965 and 1966 respectively. At its Bangkok Session, the Committee adopted its Final Report containing certain principles concerning treatment of refugees (hereinafter, in the present study, referred to as the "Bangkok Principles").

Immediately after the Bangkok Session, the aforesaid report was submitted to the Member Governments of the Committee. The Government of Pakistan suggested that, before the final adoption of the report together with the Bangkok Principles, the Committee, should review them in the light of certain comments made thereon by the said government.¹

1. The comments made by the Government of Pakistan on the Bangkok Principles were :—

- (i) The term 'refugee' in Article I should be enlarged by adding a new clause viz. "(c) Leaves or being outside is unable or unwilling to return to his homeland, the sovereignty over which or the international status of which is disputed by two or more States and hostilities have taken place" in Article I after clause (b).
- (ii) Article II should have consequential amendment in the light of the amendment of the definition of refugee in Article I.
- (iii) In Article IV a provision for the constitution of a tribunal for determining any controversy on the right of return of refugees, should be made.
- (iv) In Article V a provision for payment of compensation to refugees who are desirous of returning to their country should be made, and

The office of the United Nations High Commissioner for Refugees also made inquiry as regards the possibility of the subject coming up for a reconsideration by the Committee in the light of developments which had taken place in the field of international refugee law since the adoption of the Committee's report and the Principles. They also pointed out some problems which might be examined by the Committee in the course of such review.²

Pursuant to these suggestions, which were accepted by all the Member Governments of the Committee, the subject was

the refugees should be accorded the standard of treatment of nationals of the country of asylum. However, certain reservations should be made, namely, until the refugees are given full citizenship they (i) cannot enter into Government service, (ii) cannot become member of the Parliament or hold political office in the country, (iii) cannot vote as a citizen in the elections of the country and (iv) their movements can be restricted in the interests of public order and security of the State".

2. *Extract from UNHCR's letter dated 26.3.68:*

"I have also given some further thought to the question whether it would be useful if your Committee were once again to place the question of refugees on its agenda and wonder whether the best approach might not be for the Committee to review the recommendations adopted by the African Conference on Refugees in Addis Ababa in October last year. This would automatically include the question of the new Protocol relating to the Status of Refugees of January 1967 and the Declaration on Territorial Asylum adopted by the United Nations General Assembly in November 1967. This would also make it possible to resume the discussions on item 5 of the list of problems submitted to the Committee by the Government of the United Arab Republic. I do not know whether your Committee would think it suitable to deal with all the problems listed under that item, but there is certainly one question with regard to which the Committee could certainly play a useful role, i.e. item 5A (travel documents and visas). When dealing with cases of individual refugees in Asia this office is frequently faced with the problem caused by the absence of an internationally recognised travel document for such persons. I could also imagine that the Committee might usefully have a more detailed discussion on the question of repatriation. The suggestion made by the Pakistan High Commission in New Delhi are quite interesting in this respect. The "Addis Ababa Recommendations" on this matter also contain some rather useful suggestions."

placed before the Committee once again at its Tenth Session held at Karachi in January 1969.

The Committee, after a general discussion of the subject, adopted two resolutions, No. X(7) and X(8) at its Karachi Session. In the operative part of the resolution No. X(7), the Committee decided to recommend to Member Governments to make every effort to secure both the right of return to their homeland of the Palestine Arab Refugees and other displaced Arabs and their right to restoration of properties. In its resolution No. X(8), the Committee requested the Secretariat to put the item concerning "Rights of Refugees" on the agenda of its Eleventh Session including all the proposals made at the Tenth Session by the Delegations of Pakistan and Jordan and in the meantime, in order to facilitate the work of the Committee, to prepare, in cooperation with the United Nations High Commissioner's Office for Refugees, a detailed analysis of the above mentioned instruments and recommendations³. The proposals referred to in the said resolutions and other suggestions made at the Karachi Session can be broadly classified under the following heads :

- (i) The definition of "refugee", including the question of enlarging the definition so as to cover thereunder, or else to provide separately for, the situations of people expelled from their homeland by an alien occupying power and other types of uprooted people;
- (ii) Right to territorial asylum;
- (iii) Travel documents and visas;
- (iv) Right of return or repatriation, including the question of constitution of a tribunal for determining controversies relating to the right of return;

3. The instruments referred to in the resolution include the 1951 Refugee Convention, the Protocol relating to the Status of Refugees of 31 January 1967, the U.N. Declaration on Territorial Asylum of 14 December 1967; the Recommendations made by the Addis Ababa Refugee Conference of October 1967 and the O.A.U. instrument concerning refugees.

- (v) Right to compensation, including the question of constituting a compensation tribunal;

- (vi) Standard of treatment of refugees; and

- (vii) Duties of a refugee.

The above classification also forms the basis of the scheme of treatment of the subject, adopted in the present study. In regard to each of these matters which are examined in separate chapters, the present Study proceeds to analyse the relevant article or articles of the Bangkok Principles; the proposals for amendment of such article or articles; relevant provisions of international conventions, treaties, declarations, draft conventions; views expressed by the Delegations and Observers attending the Eighth (Bangkok, 1966) and Tenth (Karachi, 1966) Sessions of the Committee; proceedings and conclusions of international conferences, wherever relevant; and the views expressed by jurists in legal articles or other writings on the matter concerned.

HISTORICAL BACKGROUND

The refugee problem is as old as human history. However, the first international step towards assistance to refugees was taken only in 1921, when the League of Nations created the office of the League of Nations High Commissioner for Russian Refugees. The said office was made responsible for helping about one million Russian refugees, who left their country during the Bolshevik revolution, in matters of their resettlement and other necessary relief. Dr. Fridtjof Nansen, a Norwegian, was appointed to the High Commissioner's post. Later, other refugees, including Bulgarian, Greek and Armenian refugees displaced during and after the First World War, as also those created as a result of the Greco-Turkish War of 1922 and the Spanish Civil War, were also placed under his care.

Since most of the above-mentioned refugees had lost their former nationality and found themselves without valid travel documents, they experienced difficulties in travelling to, and finding a shelter in, another country. This problem was sought to be solved by a number of Arrangements adopted as a result of efforts within the League. The first of these Arrangements, which was concluded on 5 July 1922, provided for issuance of Certificates of Identity to Russian refugees. It was adopted by 53 States. This was followed by the Arrangement of 31 May 1924 for the issue of Certificates of Identity to Armenian refugees. Both of the aforesaid Arrangements were supplemented and amended by the Arrangement of 12 May 1926 for the issue of Certificates to Russian and Armenian refugees, which, by the Arrangement of 30 June 1928 was extended to Turkish, Assyrian, Assyro-Chaldean and assimilated refugees. These certificates, which came to be known as "Nansen passports", were in the

form of an identity document, issued by the country of residence, on a simple piece of paper, on which entry and transit visas could be affixed by other countries.

Since the position of refugees, who had lost their national protection, became an anomaly in international law, it was felt that their legal status should be defined. A number of Arrangements to this effect were concluded on Dr. Nansen's initiative. The first among these was the Arrangement of 30 June 1928 relating to the legal status of Russian and Armenian refugees. It contained provisions dealing, *inter alia*, with expulsion, personal status, exemption from reciprocity and the right to work. This was followed by the Convention relating to the International Status of Refugees signed at Geneva on 28 October 1933. The Convention was applicable to Russian, Armenian and assimilated refugees, the so-called "Nansen refugees". The task of legal and political protection of the refugees was the responsibility of the League of Nations High Commissioner for Refugees, which task, after Dr. Nansen's death in 1930, was undertaken by the League's Secretariat. The relief and assistance functions were discharged by the International Labour Office between 1924 and 1929, and thereafter were entrusted to the newly created Nansen International Office.

The rise of Nazism in Germany created the problem of German refugees, whose responsibility was entrusted, in 1933, to the newly formed High Commissioner's Office for German Refugees. The said office became a part of the League of Nations in 1936, after withdrawal of Germany from the League. The German refugee problem also led to signing of the provisional Arrangement concerning the Status of Refugees coming from Germany on 4 July 1936,¹ and the Convention concerning the Status of Refugees coming from Germany on 10 February 1938. Also in 1938, the functions of both the Nansen International Office and the High Commissioner for German Refugees were assumed by the office of High Commissioner for

1. Extended in 1939 to refugees coming from Austria.

Refugees created under the auspices of the League of Nations. Further in 1938, an Inter-Governmental Committee for Refugees was created at an international conference held at Evian, to deal principally with the resettlement of German refugees. During the Second World War, the co-ordination between the League of Nations High Commissioner's Office and the Inter-Governmental Committee came about in the person of Sir Herbert Emersson, who assumed functions of Heads of both of these organizations. The competence of the Inter-Governmental Committee was extended to cover other Europeans, who became refugees as a result of political and military situations during the War.

After the War, the responsibility for the care of refugees, mainly with a view to their repatriation, was taken over by the United Nations Relief and Rehabilitation Administration (UNRRA). In 1947, the United Nations Commission for Human Rights adopted a resolution expressing the wish that "early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any Government, in particular the acquisition of nationality, as regards their legal and social protection and their documentation". The United Nations also created a specialized agency, which existed, first as a Preparatory Commission, and later between 1947 and 1952, as the International Refugees Organization (IRO), entrusted with the tasks of the UNRRA in the field of care, maintenance, repatriation and resettlement, and those of the Inter-Governmental Committee and the League of Nations High Commissioner in the field of legal and political protection of refugees. Although only 18 Governments of the 54 member States of the United Nations participated in the establishment of the IRO, they contributed more than 400 million dollars over a period of four and half years. An important policy of the IRO was that emigration of refugees was not compulsory. The task of the organization was "facilitation".

Even before the IRO was liquidated in 1952, certain Governments had decided to continue work in the interest of organized migration of nationals as well as of refugees. This organization—Intergovernmental Committee for European Migration (ICEM)—while international in scope, was established, outside the framework of the United Nations, at Brussels in November 1951, at a conference convened by the Belgian Government. The organization effects the movement of refugees to countries offering resettlement opportunities, and aids European countries in solving population problems, and seeks to aid the development of overseas countries lacking essential man-power. As of 1966, the organization was comprised of 30 member governments with 8 observer governments.

The legal work of the United Nations concerning the problem of refugees emanates from the 1947 resolution of the United Nations Commission for Human Rights, quoted above. The UN Secretary-General, pursuant to a recommendation of the Economic and Social Council, prepared a study of the existing situations regarding the protection of refugees and stateless persons and of national legislations and international agreements and conventions relating to the subject. He also recommended to the Council the conclusion of international conventions concerning the legal status of refugees and stateless persons, whether *de jure* or *de facto*, and the creation of an international organ for their protection. This led to: (i) the creation by the U.N. General Assembly, by Resolution 428(V) of 14 December 1950, of the Office of the United Nations High Commissioner for Refugees; (ii) the adoption in Geneva by a U.N. Conference of Plenipotentiaries of a Convention relating to the Status of Refugees on 28 July 1951; and (iii) the adoption in New York of a Convention relating to the Status of Stateless Persons on 24 September 1954.

"The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), adopted by the

United Nations General Assembly on 14 December 1950 states that the High Commissioner shall assume the function of providing international protection to refugees falling under the competence of his Office and of seeking permanent solutions to their problems by facilitating their voluntary repatriation or resettlement. He may also engage in such additional activities as the General Assembly may determine, within the limits of the resources placed at his disposal. He is authorized to provide international protection and to co-ordinate international action on behalf of refugees. Under the Statute, he is required to carry out his functions with the co-operation of governments and the voluntary organizations recognized by them. His functions include :

- (i) Promoting the conclusion and ratification of, or accession to, international conventions and agreements concerning the legal position of refugees ;
- (ii) supervising the application of these international instruments, and proposing amendments thereto ;
- (iii) encouraging national legislation and administrative measures benefiting refugees, and
- (iv) in co-operation with governments concerned to watch over the application of these measures of international protection.

The UNHCR also provides legal assistance to refugees in individual cases where they require advice or representation in court, and can neither pay for such services nor obtain them free of charge. In general, the UNHCR seeks to help refugees to obtain a final solution to their problems, i.e. either the return to the home country or a treatment as close as possible to that accorded to nationals of the country of asylum and eventually their complete integration in the country of asylum through naturalisation."

The 1951 Convention relating to the Status of Refugees² defines the term "refugee" for purposes of the Convention³ and provides that a refugee has duties to the country in which he finds himself, in particular, that he conforms to its laws as well as to measures taken for the maintenance of public order.⁴ The provisions of the Convention are to be applied without discrimination.⁵ Under the heading "Exemption from reciprocity", it is provided that, except where the Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.⁶ Provisional measures may be taken against a refugee in time of war or other grave and exceptional circumstances, where essential to national security.⁷ Other provisions of the Convention relate to the personal status of a refugee, including his personal status, rights with respect to property including artistic and industrial property, right of association, and access to courts.⁸

Another group of articles treats of rights with respect to gainful employment.⁹ Other articles deal with rationing systems, housing, public education, public relief, labour legislation and social security.¹⁰ Still others provide in regard to administrative assistance, freedom of movement, identity papers, travel documents, fiscal charges, transfer of assets, illegal entry, expulsion, and naturalization.¹¹ As of 1st

2. 189 UNTS, Page 130. The Convention has been ratified or acceded to by 36 States as of 1st September 1969.

3. Article 2.

4. Article 2.

5. Article 3.

6. Article 7.

7. Article 9.

8. Articles 12 to 16.

9. Articles 17 to 19.

10. Articles 20 to 24.

11. Articles 25 to 34.

September 1969, the Convention had been ratified by 56 States. The UNHCR has been given the task of supervising the application of the Convention. In the view of Mr. Kwasi Gyekye-Dako, "the provisions of the 1951 Convention were designed to suit the refugee situations as they then existed in Europe".¹²

The situation created in Palestine in 1948 and in subsequent years resulted in large number of people being rendered homeless. The special problem of Palestinian Arab 'Refugees' has been the subject matter of several resolutions adopted both by the General Assembly and the Security Council. The General Assembly Resolution No. 194 (XI) of 1948 recognized the right of return of Palestine Arab Refugees and called upon the parties concerned to respect this right and to facilitate the return to their homes. By Resolution No. 302 (IV) of 1949 the United Nations Relief and Works Agency (UNRWA) was created for the purpose of assisting Arab 'Refugees' from Palestine. The United Nations Conciliation Commission for Palestine has also been concerned with this problem. Several resolutions including in particular Resolution No. 237 (1967) and Resolution No. 2452 (1968) have been passed by the Security Council reiterating the right of the Palestinian Arab 'Refugees' to return to their homes.

The Asian-African Legal Consultative Committee considered the question of the "Rights of Refugees" at its Sixth, Seventh, Eighth and Tenth Sessions, held in Cairo, Baghdad, Bangkok and Karachi in 1964, 1965, 1966 and 1969 respectively. At its Bangkok Session, held in 1966, the Committee adopted a report containing the "Principles concerning the Treatment of Refugees". These Principles, known as the "Bangkok Principles", provide for (i) minimum standard of treatment which a refugee should enjoy in the country which

12. In his article on "Some Legal and Social Aspects of African Refugee Problem"—See AALCC Brief on "Rights of Refugees" for the 10th Session, P. 321.

has granted him asylum; (ii) the principle of *non-refoulement* of asylum seekers; (iii) the principle of provisional asylum; (iv) the principle of respect by other States of the grant of asylum; (v) the right of return; (vi) the right of compensation; and (vii) the prohibition of subversive activities.¹³ At its Karachi Session, the Committee considered the question of reconsideration of the Bangkok Principles, with a view to enlarging the definition of "refugee" to cover the situations faced by the Palestinian refugees and other uprooted people, and in the light of developments in the field which have taken place since the adoption of these Principles.

In Africa, almost the entire continent has been plagued with the refugee problem. The Council of Ministers of the Organization of African Unity (O.A.U.) by its resolution CM 19(11) of January 1964 of its Second Ordinary Session, established a Commission on the Problems of Refugees for examining the refugee problem in Africa and the question of ways and means of maintaining refugees in their country of asylum. By its resolution CM 36(11) of July 1964, the Council invited "the Commission to draw up a draft convention covering all aspects of the problem of refugees in Africa". The draft convention prepared by the Commission was submitted for examination by a Committee of Legal Experts appointed by the Council of Ministers. The said Committee prepared a revised draft Convention, which was circulated among the Member States of the O.A.U. for their comments and observations thereon. On receipt of comments from the Governments of Ethiopia, Camerouns and Sierra Leone, the O.A.U. Secretariat prepared a revised draft of the Convention containing provisions which were complementary to the 1951 U.N. Convention on Refugees. The O.A.U. Refugees Commission, at its meeting in Addis Ababa in June 1968, adopted the said draft, after making necessary modifications therein, in the form of the O.A.U. Convention Govern-

13. The Bangkok Principles have been dealt with in detail in the present Study.

ing the Specific Aspects of the Problem of Refugees in Africa. The aforesaid Convention was adopted by the OAU Assembly and Heads of State and Government on 8 September 1969.

Efforts of the African countries outside the OAU towards a solution of the refugee problem include (i) the Agreement concluded between the Congo (Kinshasa) and Sudan on the repatriation of the Congolese and Sudanese refugees to their country of origin, at Kinshasa on 7 February 1967; (ii) the joint communique issued by the Delegations of Burundi and Rwanda on refugee situation dated 2 February 1967; and (iii) the Declaration made at Goma on 20 March 1967 by the Heads of State of the Congo, Burundi and Rwanda. These agreements provide for mutual exchange of information concerning the names, lists and location of refugees. Some of them provide for (i) measures to be taken in order to prevent refugees from engaging in terrorist activities, and (ii) indemnity clauses in regard to assurance of safety to the refugees returning to their home country. Further, a conference jointly organized by the Economic Commission for Africa, the OAU, the U.N. High Commissioner for Refugees and the Dag Hammarskjöld Foundation, at Addis Ababa in October 1967, adopted recommendations, not only on problems of material assistance and education for refugees, but also on legal questions such as the definition of "refugees", the right of asylum, the social rights of refugees, issuance of travel documents to refugees and their voluntary repatriation.

On 31 January 1967, the United Nations General Assembly adopted the Protocol relating to the Status of Refugees in order to remove the limitation *ratione personae* in the 1951 U.N. Convention, so as to make its provisions applicable to new refugee situations as well. By September 1969, 33 States had become parties to the Protocol. Certain other States have completed legislative or administrative measures

necessary under their domestic laws for accession but have not as yet deposited the instruments of accession. On 14 December 1967 the General Assembly unanimously adopted the U.N. Declaration on Territorial Asylum.