

such time as a refugee could return home or become completely integrated in the country of asylum. The third group was refugees from countries under colonial domination or under a minority regime. With regard to this group, the question was to find temporary solutions which would enable the refugee to live in dignity for a particular period of time. Finally, there was the case of people expelled from their home country by an occupying power as was pointed out by the Delegate of Jordan. In the case of this group, he felt, the question was of implementation of the right of return and the right to compensation. He stressed the need of keeping the distinction between these various categories in clear perspective in determining what recommendations in the legal field would be useful to adopt in order to solve the problem.

Referring to recent developments in this field, the U.N.H.C.R. Observer mentioned that the most important international development relating to refugees was the entry into force of the 1967 Protocol. He wished the Committee to endorse that the principles enunciated in the 1951 Refugee Convention and the 1967 Protocol represented the minimum standard of treatment of refugees. He added that although the question of territorial asylum had already been considered by the Committee, the adoption by the U.N. of the Declaration on Territorial Asylum might be an incentive for reconsideration of that matter. He stressed the importance of the repatriation of refugees who wanted to return home and in this connection he referred to the recommendations of the Addis Ababa Conference of African Legal Experts in 1967 and the draft O.A.U. Refugee Instrument as containing most constructive suggestions.

On the question of setting up of compensation tribunals, he pointed out that such tribunals had been set up after World War I and the pattern of mixed conciliation commissions and mixed arbitral tribunals for the settlement of disputes between Germany and Poland could be considered as a pattern.

Lastly, the U.N.H.C.R. Observer mentioned that all the items in the list of topics on the Rights of Refugees originally referred by the Government of U.A.R. had not been considered by the Committee at its previous sessions, particularly those relating to travel documents, financial assistance and international co-operation in the field. He advised the Committee to tackle these matters also.

There was further discussion on this matter in the plenary meeting held on the 25th of January, 1969. The Delegate of Pakistan stated that discussion in the earlier meeting showed that there was consensus in the Committee that the problem of refugees was essentially humanitarian in character and therefore it had to be treated as such. He added that technical and legal objections should not stand in the way of such a grave problem in which human rights as set out in Article 3 of the Charter of Human Rights were involved. He pointed out that the amendment suggested by him and the Delegate of Jordan in the definition of refugee was only to make the principles applicable to the case of displaced persons from an occupied territory. The definition in the draft O.A.U. Convention did not take into account the particular predicament of the refugees from the territories occupied by Israel.

Thereafter, a draft resolution was tabled jointly by the Delegations of Pakistan and Jordan. The relevant extracts of the draft resolution are as under :—

“THE COMMITTEE DECIDED that the definition of the term ‘refugee’ as adopted in the Committee’s report on the principles concerning the treatment of refugees at the Eighth Session of the Committee at Bangkok be amended by adding a new sub-paragraph in Article I as follows :

“(c) leaves or being outside is unable or unwilling to return to his homeland—the

State, country or occupied territory from which he, his parents or grand parents had been displaced.”

THE COMMITTEE FURTHER DECIDED to adopt the following consequential amendments in Articles IV and V as a result of the amendment of the definition of the term ‘refugee’.

#### Article IV

- (i) the following words ‘or the territory from which he was displaced’ shall be added after the word ‘nationality’ and before the word ‘and’; and
- (ii) for the words ‘or country to receive him’ in the end a comma and the following shall be substituted :

“country or occupying power to receive him”.

#### Article V

Para 1 : The following words :

“or the occupying power in control of the territory” shall be added after the word ‘country’ and before the word ‘which’.

Para 2 :

After the word ‘country’ and before the comma and word “public” the following words :

“or the occupying power” shall be added.”

Supporting the joint draft resolution, the Delegate of Jordan stated that there were two different kinds of refugees, viz., political refugees who leave a country voluntarily and are deprived of the protection of their own Government, and other displaced persons who because of external aggression or

military occupation are driven out of their homes against their will. The latter class of refugees, he said, were not covered by the Bangkok definition. He urged the Committee to bring this class of refugees within the definition of the Bangkok Principles by accepting the joint draft resolution.

The Delegate of Ceylon felt that as the implications of the joint draft resolution needed careful consideration, his delegation required time for doing so.

The Delegate of Ghana after referring to what he considered to be the essential basis in the status of a refugee and the provisions of the draft O.A.U. Convention, stated that he found some difficulty with the definition proposed in respect of three matters, namely the word ‘homeland’, the word ‘displaced’ and the drafting of the proposal itself. He asked what was meant by ‘homeland’? He also felt that it had to be clarified whether the expression ‘country’ meant country of origin, country of nationality or the place of habitual residence. He said if the intention in the draft was that mere displacement of a person should bring him within the category of refugee, the implications might be far-reaching. These very important questions needed careful consideration.

As regards the plight of refugees in the Middle East, he felt that the problem primarily needed a social and economic solution, and the Committee could adopt a declaration in which it might express its sympathy and solidarity with the people of Jordan and call upon the Member Governments and the entire world to extend them the help they need. He added even if the definition was extended by the Committee to cover the exceptional cases mentioned by Jordan, the rest of the world might find it difficult to accept such a definition.

According to the Delegate of India, the task before the Committee was to examine whether the definition of ‘refugee’ as formulated at Bangkok was adequate, and if it was not, whether it could be enlarged to cover all the situations,

particularly the one mentioned by the Delegate of Jordan. He added that the Committee should consider the definition suggested in the draft resolution and try to evolve a consensus.

The Delegate of Indonesia expressed sympathy towards the draft resolution but felt that it needed careful consideration. She stated that had the Committee been a political or social body, she would have had no difficulty in accepting the draft resolution.

The Delegate of Iraq supported the draft resolution.

The Delegate of Japan felt that the proposal contained in the draft resolution related to substantive articles of the Bangkok Report and therefore it should be examined along with other important proposals and suggestions regarding the substantive matters concerning the rights of refugees.

The Delegate of Sierra Leone supported the objective behind the draft resolution, but suggested that since the Committee was concerned with juridical issues, the matter had to be examined from that angle. The amendment, he said, implied an extension of a substantive rule of International Law. Referring to the use of the terms 'homeland', 'territory' and 'State', he enquired as to how one interpreted the word 'homeland' in Article 2 as against the word 'territory' in Article 4. A number of drafting changes were suggested by him.

The Delegate of Thailand shared the views expressed by the Delegate of Japan. He suggested that although his delegation was conscious of the urgency of the problem, a postponement of the decision for a few days would contribute to reaching the consensus on the proposed amendment in the definition of 'refugee'.

The Delegate of U.A.R. accepted the principle contained in the draft resolution and agreed that it be carefully considered at a later meeting.

At the end of the plenary meeting, the Delegate of Jordan replied to some of the comments made by the Delegate of Ghana relating to the use of the term 'homeland'. He explained that the Committee was concerned with the definition of refugee for practical purposes, and, therefore, there could not be a fixed definition of 'refugee'. The criterion of judging the problem of refugees should be the miserable condition in which a refugee finds himself because of displacement from his homeland. In this connection, he referred to the letter and spirit of the U.N. Charter and the Universal Declaration of Human Rights and felt that non-enlargement of the definition of refugee would go contrary to modern trends of international law.

In the plenary meeting held on the 28th of January, 1969, the Delegate of Jordan introduced a new draft resolution in the form of an addendum to the Bangkok Principles. The text of the draft resolution is as under :

#### "ADDENDUM TO THE PRINCIPLES CONCERNING TREATMENT OF REFUGEES

WHEREAS it appears to the Committee on further consideration that the principles adopted at its Session held in Bangkok in 1966 mainly contemplate the status of what may be called political refugees who have been deprived of the protection of their own Government and do not provide adequately for the case of other refugees or displaced persons;

AND WHEREAS the Committee considers that such other refugees or displaced persons should enjoy the benefit of protection of the nature afforded by Articles IV and V of those principles;

NOW, THEREFORE, the Committee at its Tenth Session held in Karachi between the 21st and 30th of January, 1969, resolves as follows :

1. Any person who because of foreign domination, external aggression or occupation has left his habitual place of residence, or being outside such place, desires to go back thereto but is prevented from so doing by the Government or military authorities in control of such a place of residence shall be entitled to return to the place of his habitual residence from which he was displaced.

2. It shall accordingly be the duty of the Government or military authorities in control of such place of habitual residence to facilitate by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them.

3. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependents of all such persons as are referred to in paragraph 1 above."

The Delegate of Ceylon supported the draft resolution subject to some minor amendments. The Delegate of Iraq also supported the said resolution.

The Delegate of Ghana again referred to the distinction between the popular concept of refugees and the international concept, and stated that in his view the term as understood in the international concept could not be stretched to cover all persons under the popular concept. As regards the draft resolution moved by Jordan, he noted with satisfaction that several expressions used in the draft were the same as in the O.A.U. Instrument. He suggested that Member Governments should be given an opportunity to consider the question of definition of 'refugee' in the light of the new developments,

As regards other principles involved in the draft resolution, he felt that their implications were far-reaching and that they should be seriously considered by the Governments. The decision in such matters should rest with the Governments rather than with their Delegations.

The Delegate of India suggested that the question of finding a solution to the problem of Palestinian refugees and the broader question of enlargement of the definition of 'refugees' should be kept separate. He was prepared to join in the expression of solidarity of all Member States of the Committee on the question of making a recommendation for the urgent solution of the problem as it had developed in West Asia, but the larger question of reconsideration of the Bangkok Principles or the adoption of new principles ought to be done in accordance with the normal practice of the Committee, i.e. after due consideration of the implications by the Governments. The Committee should not be in a hurry to adopt any rule of general application by reference to a particular situation. He reminded the Committee that on the question of Palestinian refugees there were as many as 25 resolutions recognising the right of those refugees to return to their homeland which gave a legal basis for special treatment of this question. He observed that if there was a resolution or recommendation of the Committee to the effect that the Palestinian refugees will have the right to return to their homeland, he will fully support such a resolution or recommendation.

The Delegate of Indonesia expressed sympathy for the draft resolution moved by Jordan, but expressed the view that it should be an agreed text so as to have the support of all the Delegations.

The Delegate of Japan referred to the difference in the concept of 'refugee' and that of 'displaced person' and pointed

out that the first paragraph of the draft was misleading. The present draft contained many important elements which needed to be considered and therefore he was not in a position to commit himself on this proposal. He suggested that this resolution should be submitted to the Governments of Member States for their comments and the Committee should consider it at its next Session.

The Delegate of Pakistan said that the Jordanian proposal met all the juristic objections and was also the most appropriate in the given situation. If there was consensus in the Committee on this proposal, he would not press for the adoption of the earlier resolution moved jointly by himself and the Delegate of Jordan.

The Delegate of Sierra Leone supported the new resolution in principle.

The Delegate of Thailand said that the supplementary character of the draft resolution should be more clearly spelt out in order to eliminate any impression that the whole structure of the Bangkok Principles was being altered. He suggested that it might be proper to include in the definition of 'refugee' another situation such as 'internal armed conflict' in addition to foreign domination. Subject to these and some other comments that he made, the Jordanian proposal was acceptable to him.

The Jordanian Delegate pointed out that the Committee was an advisory body to its Member Governments and whatever recommendation or resolution was adopted by the Committee, it was done only in an advisory capacity; and nothing that the Committee said was *ipso facto* binding on the Member Governments. All that he wanted the Committee to consider was whether the formula put forward by him was legally feasible, and that it was for the Governments to adopt or not to adopt the recommendation of the Committee.

The Delegate of Ghana stated that the expression of views on the Jordanian proposal by other Delegations should not be taken or understood as being an opposition to his laudable efforts in chalking out a solution for the Palestinian refugee problem. He then moved the following resolution stating that this was not tabled as an alternative to the Jordanian proposal :

#### "DRAFT RESOLUTION NO. X

##### The Committee

*Considering that* the Government of the United Arab Republic by a reference made under Article 3 (b) of the Statutes had requested the Committee to consider certain questions relating to the Rights of Refugees ;

*And considering that* the Government of Pakistan had requested the Committee to reconsider its report on some of the aspects, which request had been supported by the Governments of Iraq, Japan, Jordan and the United Arab Republic ;

*Considering further* the recent developments in the field of international refugee law referred to by the Delegations of Ghana, Sierra Leone and others...and explained in the Note prepared by the United Nations High Commissioner's Office for Refugees at the request of the Secretariat ;

*Referring specially* to the Protocol relating to the Status of Refugees of 31 January 1967 (General Assembly Resolution 2198 (XXI) ) and to the United Nations Declaration on Territorial Asylum of 14 December 1967 (General Assembly Resolution 2312 (XXII) ) ;

*Referring further* to the recommendations made by the Addis Ababa Refugee Conference of October 1967

and the Draft O.A.U. Instrument concerning Refugees ;

*Considering* also that it was not possible for the Committee, at its Tenth Session, to give detailed consideration to the above-mentioned instruments and recommendations on account of limited time at its disposal ;

*Takes note with satisfaction* of the entry into force of the above-mentioned Protocol thus making the provisions of the 1951 Refugee Convention universally applicable ;

*Requests* the Secretariat to put the item concerning 'Rights of Refugees' on the agenda of its Eleventh Session and in the meantime, in order to facilitate the work of the Committee, to prepare, in co-operation with the United Nations High Commissioner's Office for Refugees, recommendations. The records of the Committee's debate on the Jordanian proposal should also be made available to the Governments."

Resuming the discussion on the subject in the plenary meeting held on the 29th of January, 1969, the Delegate of Pakistan stated that his Delegation would have been very happy if the draft resolution co-sponsored by him and the Delegate of Jordan had been accepted. He, however, added that in view of the fact that certain Delegations required sufficient time to consider the proposals, it had been agreed that the issues raised in the joint draft resolution might be deferred for fuller consideration at the next Session. In the meantime to meet the urgent problem that had arisen with regard to Palestinian refugees due to Israeli aggression, the following draft resolution was moved by him :

*"Recognising* that customary international law and the Hague and Geneva Conventions provide for the immunity of civilian life and property during hostilities ;

*Recognising* further that the United Nations Charter and the Universal Declaration of Human Rights guarantee to all human beings the right to life, liberty, property and security of person ;

*Noting* that the General Assembly of the U. N. has in paragraph 11 of its resolution 194 (III) of 1948 recognised the right of return of Palestine Arab Refugees and called upon the parties concerned to respect this right and to facilitate their return to their homes, which resolution has since been reiterated on several occasions including in particular resolution 237 (1967) adopted by the Security Council on 14th June 1967 and ending with its resolution No. 2452 dated 19.12. 1968 ;

*Noting* further that the principles concerning the treatment of refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session declared the right of return of refugees to their homeland ;

*Recognising* the right in international law of Palestine Arab refugees and other displaced Arabs to return to their homeland and the duty of the authorities in control to receive them and restore their property ;

*Seriously concerned* with the non-implementation so far of the various resolutions of the United Nations and the non-observance of rules of international law in regard to this urgent humanitarian problem ;

*The Committee decides to recommend to Member Governments to make every effort to secure both the right of return to their homeland of Palestine Arab Refugees and other displaced Arabs, and their right to restoration of properties ;*

*The Committee also decides to request the Secretary-General of the United Nations to use his good offices to achieve this end."*

This resolution was unanimously adopted by the Committee and numbered as X (7). The draft resolution moved by the Delegate of Ghana in the plenary meeting held on the 28th of January, 1969, was also adopted unanimously, subject, however, to incorporation of some minor amendments. It was numbered as X (8).

Annex - III

ON PALESTINIAN REFUGEES

## RESOLUTIONS ADOPTED AT THE TENTH SESSION

### Resolution No. X (7)

*Recognising* that Customary International Law and the Hague and Geneva Conventions provide for the immunity of civilian life and property during hostilities;

*Recognising* further that the United Nations Charter and the Universal Declaration of Human Rights guarantee to all human beings the right to life, liberty, property and security of person;

*Noting* that the General Assembly of the U. N. has in paragraph 11 of its resolution 194 (III) of 1948 recognised the right of return of Palestine Arab refugees and called upon the parties concerned to respect this right and to facilitate their return to their homes, which resolution has since been reiterated on several occasions including in particular resolution 237(1967) adopted by the Security Council on 14th June 1967 and ending with its resolution No. 2452 dated 19-12-1968;

*Noting* further that the principles concerning the treatment of refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session declare the right of return of refugees to their homeland;

*Recognising* the right in International Law of Palestine Arab Refugees and other displaced Arabs to return to their homeland and the duty of the authorities in control to receive them and restore their property;

*Seriously concerned* with the non-implementation so far of the various resolutions of the United Nations and the non-observance of rules of International Law in regard to this urgent humanitarian problem;

*The Committee decides* to recommend to Member Governments to make every effort to secure both the right of return to their homeland of Palestine Arab Refugees and other displaced Arabs, and their right to restoration of properties;

*The Committee also decides* to request the Secretary-General of the United Nations to use his good offices to achieve this end.

Sd/-  
Syed Sharifuddin  
President

### Resolution No. X (8)

#### The Committee

*Considering that* the Government of the United Arab Republic by a reference made under article 3(b) of the Statutes had requested the Committee to consider certain questions relating to the Rights of Refugees;

*And considering* that the Government of Pakistan had requested the Committee to reconsider its report on some of the aspects, which request had been supported by the Governments of Iraq, Jordan and the United Arab Republic;

*Considering further* the recent developments in the field of international refugee law referred to by the Delegations of Ghana, Sierra Leone and others.....and explained in the NOTE prepared by the United Nations High Commissioner's Office for Refugees at the request of the Secretariat;

*Referring specifically* to the Protocol relating to the Status of Refugees of 31st January 1967 [General Assembly Resolution 2198 (XXI)] and to the United Nations Declaration on Territorial Asylum of 14 December 1967 [General Assembly Resolution 2312 (XXII)];

*Referring further* to the recommendations made by the Addis Ababa Refugee Conference of October 1967 and the Draft OAU instrument concerning refugees;

*Considering also* that it was not possible for the Committee, at its tenth session, to give detailed consideration to the above-mentioned instruments and recommendations on account of limited time at its disposal;

*Takes note with satisfaction* of the entry into force of the above-mentioned Protocol, thus making the provisions of the 1951 Refugee Convention universally applicable;

*Requests* 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 co-operation with the United Nations High Commissioner's Office for Refugees, a detailed analysis of the above-mentioned instruments and recommendations. The records of the Committee's debate on this item shall also be made available to the Governments.

Sd/-  
Syed Sharifuddin  
*President*

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## VI. THE LAW OF TREATIES

## THE LAW OF TREATIES

### (1) Introductory Note

The results of the work of the U.N. Conference of Plenipotentiaries on the Law of Treaties, which met in Vienna in two Sessions during 1968 and 1969, pursuant to U.N. General Assembly Resolution No. 2166 (XXI) adopted on the 5th of December, 1969, have now been embodied in an international convention titled as "The Vienna Convention on the Law of Treaties".

The Conference of Plenipotentiaries on the Law of Treaties, to which all the Member Countries of the United Nations had been invited, was of special significance to Asian and African countries as this was the first time that these countries had a voice in the formulation of a uniform set of general principles on the Law of Treaties, a vital branch of International Law. Further, the fact that many of these countries had in the past been subjected to unequal treaties and had, on their independence, inherited treaty rights and obligations by reason of their being part of former colonial territories and empires, made their participation in the aforesaid Conference historically significant.

The text of the Draft Articles, adopted by the International Law Commission at its Eighteenth Session, formed the basic proposal for consideration of the Conference of Plenipotentiaries. The International Law Commission, during its First Session held in 1949, had decided that the Law of Treaties was one of the topics which was suitable for codification. Subsequently the Commission considered the subject at its various Sessions and drew up its final recommendations in the shape of Draft Articles during its Eighteenth Session held in May 1966.