

asylum of those referred to in Article 14 of the Universal Declaration on Human Rights as also of those struggling against colonial domination, with the State of refugee being given the authority to evaluate the grounds for the grant of asylum. It also provides for *non-refoulement* and for grant of provisional asylum; calls for a spirit of international solidarity in lightening the burden of the State of refuge; and prohibits activities by asylees contrary to the purposes and principles of the United Nations. The Human Rights Commission of the U.N. Economic and Social Council, which adopted the draft of the Declaration, was 'divided into two groups: the first (consisting mainly of representatives of Afro-Asian countries) pleaded for the maintenance of the State's sovereignty and its right to be free in granting or refusing asylum for reasons of its own security and welfare, while the other group (mostly European States) stressed the humanitarian duties of the State which should oblige them to deviate only in exceptional cases from the principle of *non-refoulement*.⁸

The OAU Convention, in Article II, calls for the best endeavours by Member States to receive all refugees and secure their settlement; provides that grant of asylum is not to be regarded as an unfriendly act by any State; provides for the principle of *non-refoulement*; calls for international cooperation in lightening the burden of a State granting refuge; provides for temporary asylum; and requires settlement of refugees at a reasonable distance from the frontier of the country of origin.

The International Law Commission is expected to consider the problem of the right of asylum sometime in the near future.

For refugees, the right to asylum is the most important right. The Observer for the Office of the UNHCR has pointed

8. *Bulletin of the International Commission of Jurists*, No. 11, Dec. 1960, p. 53.

out that "the enjoyment of all the basic rights by refugees is conditional upon their being granted refuge in a particular country and, in particular, their being protected against measures of expulsion or return to a country where they may face persecution. Various efforts have been and continue to be made on the international level to give the so-called "right of asylum" more concrete expression".⁹

Mr. Frank E. Krenz has stated, "While the principle of not returning refugees to their country of origin can be held as an established axiom of the civilized world, governments have shrunk from accepting the obligation to grant quasi-permanent admission to refugees into their territory. Fears still remain that an influx of asylum-seekers may not only bring political handicaps, but also impose unforeseen burdens on the national population and endanger its homogeneity and welfare. On the other hand, the experience gained after the two World Wars has proved, in human as well as in factual terms, that these fears are unfounded. Allowing for certain periods of crisis, the proportion and distribution of refugees have been such as to allow for comparatively easy and rapid absorption".¹⁰

4. Proposals for improvement of provision relating to "asylum" in the Bangkok Principles

- (i) In a note prepared by the Office of the UNHCR, at the request of the Secretariat of the Asian-African Legal Consultative Committee regarding recent developments,¹¹ it has been pointed out that *Article 1, paragraph 3, of the UN Declaration on Territorial Asylum provides that "it shall rest with the State*

9. Before the Eighth Session of the Committee held at Bangkok in 1966.

10. In this article on "The Refugee as a subject of International Law". *15 International and Comparative Law Quarterly*, pp. 115 and 116 (1966).

11. See Brief of Documents prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session, p. 59.

granting asylum to evaluate the grounds for the grant of asylum". It has been suggested that a clause in Article III of the Bangkok Principles along those lines might be useful.¹²

- (ii) It has also been pointed out in the said note that the Bangkok Principles do not contain a provision comparable to Article 2 of the UN Declaration which provides that "the situation of persons seeking asylum is of concern to the international community" and that, therefore, "States should consider, in the spirit of international solidarity, appropriate measures individually or jointly or through United Nations, to lighten the burden of a State which finds difficulty in granting or continuing to grant asylum". The note suggests inclusion of a similar clause under Article III of the Bangkok Principles.¹³
- (iii) It has been further pointed out in the said note that the Bangkok Principles do not contain a provision similar to Article 4 of the UN Declaration, which provides that "States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations".

The said note mentions that Article VII of the Bangkok Principles does provide for an obligation of the refugee not to engage in subversive activities. The note goes on to say; "It may be useful, however, to clarify that it is also an obligation of States not to permit any subversive activities of the kind described in Article IV of the United Nations Declaration, because compliance by States with that obligation will help ensure that the grant

12. *Ibid.*, at p. 69.

13. *Ibid.*, at p. 70.

of asylum will be respected by other States and not be regarded as an unfriendly act."¹⁴

(iv) The note also refers to paragraph 5 of Article II of the OAU Convention which provides that where a refugee "has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his final resettlement". The note suggests inclusion of a similar provision in Article III of the Bangkok Principles. It states: "Such a clause may be of very practical importance for the solution of cases of individual refugees who, for one reason or another, have not succeeded in finding a country of asylum. According to the experience gained by the UNHCR, however, endeavours to promote the settlement of such cases frequently have little chance of success unless there is a country willing to give temporary shelter and to provide the refugees with a travel document once a country of resettlement has been found."¹⁵

5. Grant of asylum, whether the State's or the individual's right

Commenting upon the provision relating to "asylum" in the Bangkok Principles, the Delegate of India to the Tenth (Karachi, 1969) Session of the Committee states: "Although the sovereign right of a State to grant or refuse asylum was recognized, it has also been provided that a State would not reject a refugee at the frontier but grant him provisional asylum and should not return or expel a refugee to a territory where his life or liberty may be in danger. The only exception was overriding reasons of national security."¹⁶ In regard to the right to asylum, the Delegate of Ghana to the Eighth

14. *Ibid.*, at p. 70.

15. *Ibid.*, at pp. 70 and 71.

16. See Verbatim Record of Discussions on the subject at the Tenth (Karachi, 1969) Session of the Committee, for the Meeting of 23 January 1969.

(Bangkok, 1967) Session of the Committee said: "It is not actually a right bestowed on the refugee. It is a right which has been conferred on the receiving State..."¹⁷

The Baghdad draft of Article III had merely provided that "A State has the sovereign right to grant or refuse asylum to a refugee in its territory". The Delegate of Ghana at the Eighth Session had moved certain amendments seeking to circumscribe the aforesaid right of a State by (i) the principle of *non-refoulement*; and (ii) duty to grant provisional asylum. Certain Delegates were in favour of an unfettered discretion of a State in the matter, excepting that the refugee should be afforded an opportunity to seek asylum elsewhere, if he is refused admittance.¹⁸ However, the aforesaid amendments of the Delegate of Ghana were adopted by the Committee, and incorporated in Article III of the Bangkok Principles as paragraphs 3 and 4 respectively.

Traditional international law recognizes only "the right of the State to grant asylum in the exercise of its territorial sovereignty"¹⁹, and not the right of a refugee to be granted asylum. The practice of most of the States also implies that the States enjoy complete discretion whether to afford territorial asylum or not. These include Australia, the U.K., the U.S.A., Japan, Belgium, Czechoslovakia, Peru and India.²⁰

Mr. Frank E. Krenz says that "with the spectre of an uncontrolled influx of refugees, unknown both in their quality and number, looming high before the guardians of public

17. Record of Discussions on the subject at the Eighth (Bangkok, 1966) Session of the Committee.

18. *Ibid.*

19. P. Weis in his article on "Recent Developments in the Law of Territorial Asylum". *Revue Des Droits de l'Homme* (Human Rights Journal), Vol. 1-3, 1968.

20. See discussion on "Legal Aspects of the Problem of Asylum" in the *Report of the 51st Conference of the International Law Association*, held at Tokyo in 1964.

policy and order, governments have barricaded themselves, so it seems, behind a distinction between extradition and non-admission, or between asylum seekers, "admitted" and those "not-admitted". On this principle, refugees not admitted are not granted the benefit of the protection which asylum affords and no rights may be derived from mere physical presence... The recognition of refugee status has, therefore, been considered as being a declaratory, rather than a constitutive, act".²¹ However, the Delegate of Thailand to the Eighth (Bangkok, 1966) Session of the Committee expressed the view that "if we say that a State has the sovereign right to grant or refuse asylum to a refugee in its territory, it means that the refugee is already in its territory, and then the asylum is granted later. Now, that does not correspond with international law at all. It fact, international law allows a State to grant asylum which is territorial asylum the moment the refugee enters its territory, and not after the refugee is in its territory".²²

The Observer for the Office of the UNHCR referred to the growing tendency for the inclusion, for humanitarian reasons, of the principle of *non-refoulement* in the instruments recognizing the right of asylum to be the sovereign right of a State to grant asylum at its discretion.²³ The 1939 Montevideo Convention on Political Asylum and Refugees provides that "the State which grants asylum does not thereby incur an obligation to admit the refugees in its territory, except in cases where they are not given admission by other States".²⁴ The principle of *non-refoulement* has been provided for in Article 33 of the 1951 U.N. Refugee Convention. The State practice and the national constitutions of a considerable number of

21. In his article on "Refugee as a subject of International Law", *International & Comparative Law Quarterly*, p. 105 (1966).

22. See Record of Discussions on the subject held at the Eighth (Bangkok, 1966) Session of the Committee.

23. *Ibid.*

24. Hudson, *International Legislation*, Vol. 8, p. 405.

States recognize "the non-extradition of political offenders and/or...the grant of asylum to persons who fear persecution in their country of origin".²⁵

Can it be said that the aforesaid category of persons have come to acquire a right to territorial asylum under international law? Dr. P. Weis is of the view that "while in this field (the existence of a right of asylum) international law would seem to be in the process of development, it is, of course, difficult at any given stage to affirm either that a rule of customary law has been modified or that a new rule has come into existence".²⁶ It is only in the context of human rights that such a right has not become universally enforceable as against States so far. According to Dr. C. A. Dunshee de Abranches of Brazil, the "right of asylum constitutes the only possibility of international protection of the citizen against the abuse of States in the case of political and religious persecution. Freedom of opinion, thought and religion vanishes if the grant of asylum remains as an exclusive right of sovereign States".²⁷ Article 14, paragraph 1 of the Universal Declaration of Human Rights (1948) provides: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Professor Lauterpacht has regarded this phraseology to be "artificial to the point of flippancy" as it recognizes a right to seek, but not a right to be granted asylum.²⁸ According to him, "there was no intention to assume even a moral obligation to grant asylum".²⁹ Moreover, the UN Covenant on Civil and Political Rights, which includes the right of asylum, has been ratified, or acceded to, by a very few States. The U.N. Refugee Convention of 1951 does not provide for any obli-

25. See *Report of the International Law Association, for the 51st Conference* held at Tokyo in 1964, at p. 288.

26. *Ibid.*, at p. 267.

27. *Ibid.*, at p. 234.

28. H. Lauterpacht, "The Universal Declaration of Human Rights", *25 British Yearbook of International Law* (1948), p. 374.

29. H. Lauterpacht, *International Law and Human Rights* (1950), 421-423.

gation upon the contracting States to grant asylum, but merely provides for the treatment to be enjoyed by refugees once asylum has been granted. However, the Convention, in Article 33 provides: "No contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of particular social group or political opinion" save for reasons of national security.

Article 1, paragraph 1 of the UN Declaration on Territorial Asylum of 1967 provides: "Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States." Paragraph (iii) of the said Article provides: "It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum." Paragraph (i) of Article 3 of the Declaration provides: "No person, referred to in Article 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution." Paragraph (iii) of Article 3 merely requires a State to "consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State".

Dr. P. Weis has expressed the view that an "individual right to asylum is recognized under the municipal laws of a considerable number of countries; but rules of municipal law which show a certain degree of uniformity do not yet create international law".³⁰ References in this connection may be made to Article 129 of the Constitution of the USSR, Article

30. In his article on "Recent Developments in the Law of Territorial Asylum": *Revue des Droits de l'Homme* (Human Rights Journal), Vol. 1-3, 1968.

10 of the Constitution of Italy, Preamble of the French Constitution and Article 31 of the Yugoslav Constitution.

Mr. Frank E. Krenz points out that in some quarters, it has been postulated not only that the traditional right of States to grant asylum to political persecutees has changed into a legal duty, but also that refugees have themselves a right to be granted this protection.³¹ Article 1 of the Draft Convention on Territorial Asylum considered by the Committee on the Legal Aspects of the Problem of Asylum, at the 53rd (Buenos Aires) Conference of the International Law Association provides for a legal obligation on the part of the contracting parties to grant asylum to refugees. It states that "the High Contracting Parties undertake to grant asylum in their territory to persons who are persecuted for political reasons or offences, or for mixed offences for which extradition shall not be granted or on grounds of race, religion, nationality, membership of a particular social (or economic) group or political opinion". According to Mr. Krenz, the "law on asylum is in the process of achieving a transformation. While originally constituting no more than a right of States to grant or refuse extradition, this institution has more than tended to invest the individual asylum seeker with certain rights enforceable against the State of refuge. Although a general State usage to grant asylum may now undoubtedly be established, a necessary element in the formation of a customary legal norm, i. e., the so-called *opinio juris* on the part of States, appears to many as still lacking. It would seem, therefore, that the realization of an individual right to asylum is still lacking. It would seem, therefore, that the realisation of an individual right to asylum is still to await some kind of general recognition".³²

31. In his article on "The Refugee as a Subject of International Law", *15 International & Comparative Law Quarterly*, p. 92 (1966).

32. *Ibid.*, at p. 115.

6. Evaluation of the grounds for asylum

Paragraph 3 of Article 1 of the UN Declaration on Territorial Asylum of 1967 provides: "It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum". As stated in proposal number (i), set out under item 4 of this Chapter, the Office of the UNHCR has suggested inclusion of a similar provision in Article III of the Bangkok Principles. It may be stated in this regard that paragraph 1 of the said Article provides for the sovereign right of a State to grant or refuse asylum, and, as such, a provision along the lines of paragraph 3 of Article 1 of the UN Declaration may be superfluous.

It is for consideration whether it would be desirable to provide for certain criteria to which a State, deciding upon the question of asylum may be required to conform. The first of these criteria is the principle of non-discrimination in matters relating to grant of asylum. Article 3 of the 1951 UN Refugee Convention provides that the "contracting Parties shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin". Article IV of the draft of the OAU Refugee Convention, as revised by the OAU General Secretariat, also made a similar provision. The Preamble of the UN Declaration on Territorial Asylum of 1967 refers to the need for "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".

The second criterion in this regard may be a provision similar to clause 1 of the Resolution on "Asylum to Persons in Danger of Persecution" of the Council of Europe, which provides: "They should act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory." In its preamble, the Resolution refers to "the liberal practices based on humanitarian considerations already

followed in regard to asylum by the governments of the member States".³³

7. Cases in which asylum cannot be granted

Paragraph 2 of Article 1 of the UN Declaration on Territorial Asylum provides :

"The right to seek and to enjoy asylum may not be invoked by any person with regard to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes."

Paragraph 2 of Article 14 of the Universal Declaration of Human Rights provides that the "right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

Article 1 of the Convention on Political Asylum concluded at the Seventh International Conference of American States in 1933 provides that "It shall not be lawful for the States to grant asylum in legations, warships, military camps or airships to those accused of common offences who may have been duly prosecuted or who may have been sentenced by ordinary courts of justice, nor to deserters of land and sea forces".

The Committee may consider the question of desirability of including a provision concerning the above-mentioned cases in which asylum should not be granted, in Article III of the Bangkok Principles, and in case it deems it desirable to do so, it may also consider the contents of such a provision.

33. Resolution (67) 14, of 29 June 1967, adopted by the Committee of Ministers of the Council of Europe.

8. The principle of 'non-refoulement'

As stated above, under item 5 of the present chapter, the principle of *non-refoulement* was incorporated as paragraph 3 in Article III of the Bangkok Principles, on the proposal of the Delegate of Ghana. The word used in the said paragraph is "should", and it was stated by the Delegate of India, "that what is sought in the proposal of the Distinguished Representative of Ghana is a moral obligation and not a legal obligation, but a moral obligation or a moral compulsion will affect certainly the legal right set out in Article III. It will mean that a State must always grant asylum to any refugee seeking asylum except for overriding reasons of national security or safeguarding the population".³⁴ However, the fact that there is ambiguity in regard to interpretations of the word "should" cannot be denied. It may be interesting to note that in the corresponding provisions contained in Article 33 of the 1951 UN Refugee Convention, Article 3 of the UN Declaration on Territorial Asylum of 1967, paragraph 3 of Article II of the OAU Convention on Refugees, or paragraph 2 of the 1967 Resolution on Asylum to Persons in Danger of Persecution of the Council of Europe, the word used is "shall" which is unambiguously mandatory.

The Committee may consider the question of making the provisions of paragraph 3 of Article III of the Bangkok Principles mandatory for the States, by substituting the word "shall" for the word "should".

9. Provisional asylum

Paragraph 4 of Article III of the Bangkok Principles provides :

"In cases where a State decides to apply any of the above-mentioned measures (such as rejection at the frontier,

34. See Record of Discussions on the subject at the Eighth (Bangkok, 1966) Session of the Committee.

return or expulsion) to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country."

This paragraph was included in Article III on the proposal submitted by the Delegates of Ceylon and Ghana. It provides for grant of provisional asylum in cases where a State decides to apply any of the measures such as rejection at the frontier, return or expulsion.

Further, the use of the word "should" in paragraph 4 of Article III discloses that the provision is merely recommendatory, and not mandatory. The Delegate of Thailand stated that "it is a moral obligation, that is to say, a State should consider the possibility of the grant of provisional or, as some Delegates have observed, temporary asylum".³⁵

Paragraph 3 of Article 3 of the UN Declaration on Territorial Asylum provides :

"Should a State decide in any case that exception (only for overriding reasons of national security or in order to safeguard the populations, as in case of mass influx of persons, as stated in paragraph 2) to the principle (of *non-refoulement*) stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State."

Dr. E. Jahn is of the view that the provision concerning "temporary asylum" in the Bangkok Principles is "formulated even more strongly than that in the UN Declaration".³⁶

35. *Ibid.*

36. In his article on "The work of the Asian-African Legal Consultative Committee on the Legal Status of Refugees", published in *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, Vol. 27, Nos. 1-2, July 1967.

It may be interesting to note in this connection the provision of paragraph 5 of Article II of the OAU Convention on Refugees, which reads :

"Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph."

As stated in proposal number 4, set out under item 4 of the present chapter, the Office of the UNHCR has suggested inclusion in Article III of the Bangkok Principles a provision along the lines of the aforesaid provision of the OAU Convention. It has been stated that "such a clause may be of very practical importance for the solution of cases of individual refugees who, for one reason or another, have not succeeded in finding a country of asylum. According to the experience of the UNHCR, however, endeavours to promote the settlement of such cases frequently have little chance of success unless there is a country willing to give temporary shelter and to provide the refugee with a travel document once a country of resettlement has been found".³⁷ Mr. P. Weis has also stressed the "duty of admitting refugees for such period, however temporary, as may be necessary for their protection".³⁸ Mr. Whiteman has expressed the view that temporary asylum "may be granted in cases where, for example, the continued presence of a political refugee would adversely affect relations between the host State and the State from which the refugee has fled, or where the host State feels

37. In the "Note prepared by the United Nations High Commissioner for Refugees at the request of the Secretariat regarding recent developments in the field" ; See Brief of Documents on the subject prepared for the Tenth Session of the Committee, at pp. 70 and 71.

38. In his article on "Recent Developments in the Law of Territorial Asylum"; *Revue des Droits de l'Homme*, Vol. 1-3, 1968.

unable to control the activities of the political refugee. Temporary asylum includes, of course, asylum that is temporary in character for whatever reason".³⁹

The Committee may also consider inclusion of a provision along the lines of Article 31 of the 1951 UN Refugee Convention which provides :

- "1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The 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 regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

The former draft of the OAU Convention on Refugees also contained similar provisions.⁴⁰

10. Grant of asylum, to be respected, and not to be regarded as an unfriendly act, by other States

This is provided for in paragraph 2 of Article III of the Bangkok Principles, which was included on the proposal of the Delegate of Thailand. The UN Declaration on Territorial

39. In *Digest of International Law* (1967), Vol. 8, at p. 676.

40. See Article 22 of the draft prepared by the Committee of Legal Experts; and Article XIII of the draft as revised by the OAU General Secretariat.

Asylum of 1967, in its preamble, recognizes that the grant of asylum by a State "cannot be regarded as unfriendly by any other State". In paragraph 1 of Article I, it provides that asylum granted by a State shall be respected by all other States. The OAU Convention on Refugees provides, in paragraph 2 of Article II that the "grant of asylum to refugee is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State". Article I of the Convention on Territorial Asylum, signed at Caracas on 28 March 1954 provides : "Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without, through the exercise of this right, giving rise to complaint by any other State."

11. Where the grant of asylum may place undue burden on the State of refuge

At the Tenth (Karachi, 1969) Session of the Committee the Observer for Cambodia stated that "all the burdens are on the back of the country which is giving them asylum. Our resources are not unlimited".⁴¹ At the Eighth (Bangkok, 1966) Session of the Committee, the Observer for the Office of the UNHCR pointed out that in "Africa, as a result of decolonisation or of ethnic strife the number of refugees of concern to our Office has risen to over 650,000...this...alone shows the vast scale of refugee problems in that area imposing a serious strain on the resources of countries which have just become independent".⁴²

As stated in proposal number (ii) set out under item 4 of the present Chapter, the Office of the UNHCR has suggested inclusion of a provision, in Article III of the Bangkok

41. Verbatim Record of Discussions on the subject held at the Tenth (Karachi, 1969) Session of the Committee.

42. See Record of Discussions on the subject held at the Eighth (Bangkok, 1966) Session of the Committee.

Principles, comparable to Article 2 of the UN Declaration on Territorial Asylum of 1967, which provides :

- “1. The situation of persons referred to in Article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.
2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.”

In its Preamble, the 1951 U.N. Refugee Convention recognizes that the grant of asylum may place unduly heavy burden on certain countries and that a satisfactory solution of the problem cannot be achieved without international cooperation.

Paragraph 4 Article II of the OAU Convention also contains a provision to this effect, which reads as follows :

Where a member State finds difficulty in continuing to grant asylum to refugees, such member State may appeal directly to other member States and through the OAU, and such other member States shall in a spirit of African Unity and international cooperation take appropriate measures to lighten the burden of the member State granting asylum.

The 1967 Resolution on “Asylum to Persons in Danger of Persecution” of the Council of Europe, in paragraph 4, provides that “where difficulties arise for a member State in consequence of its action in accordance with the above recommendations, governments of other member States should, in a spirit of European solidarity and of common personality in this field consider individually or in cooperation, particu-

larly in the framework of the Council of Europe, appropriate measures in order to overcome such difficulties”.⁴³

The Committee may consider inclusion of a provision in Article III of the Bangkok Principles, along the lines of Article 2 of the UN Declaration on Territorial Asylum of 1967, or paragraph 4 of Article II of the OAU Convention on Refugees.

12. Where to settle the refugees

Paragraph 6 of Article II of the OAU Convention on Refugees provides :

“For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.”

This seems to be a useful provision designed to reduce the chances of subversive activities by the refugees against their country of origin. *The Committee may consider including a similar provision in Article III of the Bangkok Principles.*

13. Duty to prevent refugees from engaging in subversive activities

As stated in proposal number (iii), set out under item 4 of the present chapter, the Office of the UNHCR has suggested inclusion of a provision in Article III of the Bangkok Principles along the lines of Article 4 of the UN Declaration on Territorial Asylum of 1967 which provides :

“States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.”

The Office of the UNHCR has observed that Article VII of the Bangkok Principles does provide for a corresponding obligation of the refugee himself in this regard. It, however,

43. Resolution (67) 14 of 29 June 1967 of the Committee of Ministers of the Council of Europe.

suggests that "it may be useful to clarify that it is also an obligation of States not to permit any subversive activities of the kind described in Article IV of the United Nations Declaration because compliance by States with that obligation will help ensure that the grant of asylum will be respected by other States and will not be regarded as an unfriendly act".⁴⁴

Article VII of the Bangkok Principles provides :

"A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations."

The said article was included in the Bangkok Principles on the proposal of the Delegate of Ghana, as modified at the suggestion of the Delegates of Thailand and Japan. The Delegate of Iraq suggested that "the provision should cover also the national security of the country of origin".⁴⁵ According to the Delegate of Thailand, the provision did not prohibit genuine activities towards liberation of a dependent country.⁴⁶

The Chairman of the International Law Commission stressed also the need of "not endangering the security or not acting against other countries".⁴⁷

Article III of the OAU Convention provides, in paragraph 2, that "Signatory States shall undertake to prohibit refugees residing in their respective territories from attacking any Member State of the Organisation of African Unity especially through arms, press and radio, which may cause tension between member States".

44. See Brief of Documents prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session at p. 70.

45. See Record of Discussions on the subject held at the Eighth (Bangkok, 1966) Session of the Committee.

46. *Ibid.*

47. *Ibid.*

Paragraph 3 of the Resolution on "Asylum to Persons in Danger of Persecution" of the Council of Europe also refers to the need to "safeguard national security or protect the community from serious danger".⁴⁸ Article IX of the Convention on Territorial Asylum signed at Caracas on 28 March 1954 provides :

"At the request of the interested State, the State that has granted refuge or asylum shall take steps to keep watch over, or to intern at a reasonable distance from its border, those political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it."⁴⁹

Article 11 of the Treaty on Political Asylum and Refugees, signed on 4 August 1939 at Montevideo, provides that "it is the duty of the State to prevent the refugees from committing within its territory, acts which may endanger the public peace of the State from which they come".⁵⁰

The Committee may consider including in Article III of the Bangkok Principles, an appropriate provision providing for the duty of the State of refuge in regard to matters mentioned above. If the Committee favours inclusion of such a provision in Article III, then Article VII may have to be deleted.

48. Resolution (67) 14, of 29 June 1967 of the Committee of Ministers of the Council of Europe.

49. Tenth Inter-American Conference, Caracas, Venezuela, March 1 to 28, 1954.

50. Hudson, *International Legislation*, Vol. VIII, pp. 404 and 409 to 410.

CHAPTER VI

TRAVEL DOCUMENTS AND VISAS

1. Bangkok Principles

"The Principles concerning Treatment of Refugees" adopted by the Committee at its Eighth (Bangkok, 1966) Session do not make provision concerning travel documents and visas for refugees.

2. General comments

An old Russian proverb says that "a man without a passport is a man without a soul". Dr. P. Weis points out that, after the Bolshevik revolution, the Russian refugees, who "were deprived of their nationality . . . found themselves without passports or valid documents, which impeded their freedom of movement and their possibility of finding a country of settlement".¹ The problem of issuance of travel documents to these refugees was the matter of first concern to the League of Nations. The result of the efforts of the League in this direction was the Arrangement of 5 July 1922 concerning the Issuance of Certificates of Identity to Russian refugees, adopted by 53 States. Under the arrangement, an identity document issued by the country of refuge on a simple piece of paper, on which other countries could issue entry and transit visas, popularly known as "Nansen passport" was created. This document and the "London travel document" issued under the London Agreement of 15 October 1946, have now been superseded by the travel document provided for in the 1951

1. In his article on "The office of the United Nations High Commissioner for Refugees and Human Rights", *Revue des Droits de l'Homme* (Human Rights Journal), Vol. I-2, 1968.

U.N. Refugee Convention, the latter being universally recognized.

In a note concerning recent developments in the field, prepared by the Office of the UNHCR at the request of the Committee, it has been pointed out that "endeavours to promote the settlement of (refugees) frequently have little chance of success unless there is a country willing to give temporary shelter and to provide the refugee with a travel document once a country of resettlement has been found".² The Conference on the Legal, Economic and Social Aspects of African Refugee Problem held at Addis Ababa in 1967 recognized "that the provision of travel documents is of importance to refugees enabling them to visit other countries for purposes of study, temporary employment or resettlement and may thus relieve the burden on countries of first asylum".³ The Conference also stressed "the need for providing refugees with suitable documentation so that their problems may be solved, in a spirit of international solidarity, on a regional level, thereby alleviating the burden on certain countries of asylum in Africa. Negotiations—either bilateral or multilateral—between African States would be required in order that countries more favourably placed geographically may share the burden, for instance, by offering permanent residence to a certain number of refugees in respect of whom they would not request the faculty of return to the country of first asylum, or would limit this option to a very short period".

In another note on "Travel Documents for Refugees", prepared by the Office of the UNHCR at the request of the Committee,⁴ it has been pointed out that in "Africa, while the majority of the refugees have been placed in rural settle-

2. See Brief of Documents on the subject prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session.

3. In its Recommendation V. CF. AFR/REF/CONF-1967/No. 5.

4. Included in the Notes prepared by the Office of the UNHCR.

ment, there is a considerable number for whom placement on land does not provide a solution, and for whom a second country of asylum must be sought or who need to travel to another country in order to further their education. For these persons a travel document is of the greatest importance. A similar need arises in Asia, where the laws of many States do not normally make special provision for the issuance of travel documents to aliens who cannot obtain passports from their country of origin—which is of course the case for refugees. The UNHCR frequently receives requests for assistance from refugees in Asian countries where difficulties have arisen because of the lack of a travel document”.

3. Proposals for provisions in regard to travel documents and visas

The note regarding recent developments in the field, prepared by the Office of the UNHCR at the request of the Committee, points out that “When the item on the Rights of Refugees was placed on the agenda of the Committee in 1964 the memorandum of the Government of the United Arab Republic suggested that the question of travel documents should be dealt with. The need for a solution of this problem has become increasingly apparent and the Committee therefore may wish to include in the “Principles” a special article dealing with the subject”.⁵

At the Conference on the Legal, Economic and Social Aspects of African Refugee Problem, apart from the suggestions concerning (a) the 1951 U.N. Refugee Convention Travel Documents, (b) competence for issuing travel documents, (c) extra-territorial effects of issue of travel document, and (d) the return clause, the following proposals were made

5. See Brief of Documents on the subject prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session of the Committee at p. 73.

in regard to ways and means of relieving the burden on the countries of first asylum.

- (i) That when a refugee leaves a country of first asylum permanent resettlement in a second country which is prepared to admit him, that second country should waive the requirement of a return clause in his travel document. The responsibility for issuing a new document for subsequent travel would then be transferred immediately to the second country;
- (ii) That refugees should be provided with identity documents by the country of first asylum, which should in the circumstances be recognized by another State as sufficient for the admission of the holders. Such a solution would be more appropriate for group movements and would of course depend on arrangements made by the two countries concerned. It does not appear suitable for individual travel, or where countries of transit are involved. Moreover, the question of the right of return would still have to be decided; and
- (iii) That a country of asylum, willing to accept a specific refugee, should issue him, through its diplomatic or consular representative in the country of first asylum, a travel document enabling him to leave that country and take up his residence in the issuing State. This is normally the procedure adopted in the cases of granting of diplomatic asylum. An extension of this idea concerns refugees who are going to a third country for the purpose of study; the country which will ultimately receive them as residents will issue them with a travel document while they are in the country of first asylum A—enabling them to travel to country B where they will pursue their studies, and finally travel to the country C which issued the documents for permanent residence.

4. Identity papers and international travel documents

As stated above, under item 2 of the present Chapter a travel document issued to a refugee is a substitute for a national passport. It enables the refugee to travel outside the country in which he finds himself. It is normally the country of his first asylum, which issues him a travel document. "Most governments have administrative arrangements whereby stateless persons or aliens, unable to obtain a national passport, may be issued with a travel document. Such documents (aliens passports, *laissez-passer*, *feuilles de route*), in which it is usually specified that the bearer is not a national of the issuing country, vary in form from a sheet of paper to a bound booklet and in most cases they do not carry an automatic right of return to the country of issue. Sometimes such documents are recognized by the authorities of other countries as an appropriate document on which a visa may be affixed, but sometimes they are not so recognised".⁶

In regard to the identity papers and travel documents to be issued to a refugee, the 1951 U.N. Refugee Convention provides :

Article 27 (Identity Papers)

"The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document."

Travel 28 (Travel Documents)

"1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such

6. Note on "Travel Documents for Refugees" prepared by the Office of the UNHCR at the request of the Committee's Secretariat.

documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the contracting States in the same way as if they had been issued pursuant to this article".

Article 29 (Fiscal Charges)

- "1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers."

The Schedule to the Convention provides that "Children may be included in the travel documents of a parent or, in exceptional circumstances, of another adult refugee";⁷ the "document shall be valid for the largest possible number of countries";⁸ the "document shall be valid for either one or two years, at the discretion of the issuing authority";⁹ the "fees charged for the issue of the document shall not exceed the lowest scale of charges for national passports";¹⁰ the

7. Paragraph 2 of the Schedule.
8. Paragraph 4 of the Schedule.
9. Paragraph 5 of the Schedule.
10. Paragraph 3 of the Schedule.

status of the refugee in regard to his nationality is neither determined nor affected by the document or the entries made thereon so that a refugee is neither under, nor entitled to, diplomatic protection of the country of issue;¹¹ and the renewal or extension of the validity of the document is under discretion of the issuing country, who, in appropriate cases, may exercise the same through their diplomatic or consular authorities. However, the issuing country has been required to give sympathetic consideration to application for renewal or extension.¹²

A specimen of the travel document is annexed to the Convention. The Office of the UNHCR, "in consultation with governments, has aimed at achieving uniformity of appearance for this document wherever it is issued and has produced a model document for this purpose in booklet form—with stiff blue covers—resembling a national passport. Most of the States issuing the document have adopted this model, with the result that the blue Convention Travel Document has become universally known".¹³

In addition, the UNHCR has made available to a number of governments a small supply of blank travel documents, in conformity with the 1951 Convention, printed in English and French, which the authorities complete with the name of the issuing country, and deliver to refugees in their territory. The UNHCR is prepared to consider extending this service to any State party to the 1951 Convention or 1967 Protocol which, because of the small number of refugees in its country, or for other administrative reasons, does not itself wish to undertake the printing of a special travel document for refugees.

Dr. P. Weis points out that refugees "are entitled to identity documents and refugees lawfully staying in the country

11. Paragraphs 15 and 16 of the Schedule.

12. Paragraph 6 of the Schedule.

13. UNHCR's Note on "Travel Documents for Refugees".

are entitled to special passport-type travel documents enabling them after travel abroad to return to the issuing country".¹⁴ At any time a refugee wants to visit another country temporarily, the latter country, before issuing him an entry visa, would insist on his possessing a document giving him the right to return to his country of asylum beyond the intended date of his stay. Even in case of his intended settlement in the other country, his possession of the aforesaid right of return is generally insisted upon. In regard to the said right, paragraph 13 of the Schedule to the 1951 UN Refugee Convention requires the Contracting States to allow re-admission to refugees holding a travel document, during the period of its validity, on their compliance with formalities prescribed in that regard. As such, the holder of a travel document would be entitled to return without the need of obtaining a re-entry visa. The duration of the document's validity is normally one or two years, except in exceptional cases, where the right of return may be restricted to a shorter period, which is not less than 3 months. Thus, a refugee travel document resembles a national passport in regard to many advantages it confers on the holders.

The possession of the aforesaid document is evidence of the facts that the holder is a refugee and that he resides in the issuing country and has the right to return there after his travel abroad. Paragraph 7 of the Schedule of the 1951 Refugee Convention requires the Contracting States to recognize the validity of the aforesaid travel document. It may be interesting to note that the said document is "internationally recognized, even by certain States not signatories to the Convention".¹⁵ Practically all the countries, to which refugees have

14. In his article on "The Office of the United Nations High Commissioner for Refugees", see *Revue des Droits de l'Homme* (Human Rights Journal), Vols. 1-2, 1968.

15. According to Mr. Frank E Kreuz, in his article on "The Refugee as a subject of International Law"; 15, *International and Comparative Law Quarterly* (1966).

wished to travel, have so far accepted the said document for visa purposes. However, visa is, almost without exception, issued only to a refugee holding a travel document giving him a right of return to the issuing country. Paragraph 8 of the Schedule to the Convention provides for affixation of a visa to a refugee travel document, in case the country, which the refugee intends to visit, is "prepared to admit him and if a visa is required". Paragraph 9 provides for transit visas to "refugees who have obtained visas for a territory of final destination". Paragraph 10 provides for fees to be charged for issuance of visas, which are not to "exceed the lowest scale of charges for visas on foreign passports". Certain governments have authorised their diplomatic and consular representatives abroad to issue visas on Convention travel documents without consultation with the Central authorities. Furthermore, certain bilateral and regional international agreements have been concluded between States whose nationals enjoy visa-free travel, whereby refugees holding Convention travel documents issued by these States are authorized to travel to such other States for temporary visits without the necessity of a visa, thus assimilating refugees to nationals to a limited extent".¹⁶

The OAU Convention on Refugees provides for travel documents in terms of provisions of the 1951 U.N. Refugee Convention in that regard. In paragraph 1 of Article VI, the Convention states :

"Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise

16. See Brief of Documents on the subject, prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session of the Committee at p. 123.

require. Member States may issue such travel documents to any other refugee in their territory."

The Committee may consider including a provision in the Bangkok Principles along the lines of paragraph 1 of Article VI of the O.A.U. Convention. This will take care of the proposals number (a), (b), (c) and (d) set out under item 3 of the present Chapter.

5. Travel documents in case of second asylum of a refugee

As pointed out under item 11 of Chapter V of the present Study, the 1951 U.N. Refugee Convention in its Preamble has recognized "that the grant of asylum may place heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation". It was also pointed out that Article 2 of the U.N. Declaration on Territorial Asylum of 1967 provides that the situation of refugees is "of concern to the international community" and that "where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden of that State".

The requirement in regard to return clause in a travel document under the 1951 U.N. Refugee Convention has led many countries of first asylum to fear that the refugees to whom the travel documents are issued would become their permanent liability. However, experience has shown that the great majority of refugees who were admitted for resettlement to a second country of asylum remained there permanently. The return clause incorporated in the Convention Travel Documents—of great value in encouraging other countries to admit refugees—has only rarely been made use of where migration for settlement was concerned.¹⁷

17. *Ibid.*, at p. 124.