

It has been pointed out above that primary responsibility for issuing travel documents rests with the country of first asylum. The necessity of sharing the burden of the country of first asylum has also been recognized. Certain provisions of the Schedule to the 1951 U.N. Refugee Convention are directed towards lightening the burden of the country of first asylum. These are :

Paragraph 11

“When a refugee has lawfully taken up residence in the territory of another contracting State, the responsibility for the issue of a new document under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply”.

Paragraph 12

“The authorities issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document”.

The OAU Convention on Refugees, in paragraph 2 of Article VI, provides that “where an African country of second asylum accepts a refugee from a country of first asylum the country of first asylum may be dispensed from issuing a document with a return clause”. The said provision has been regarded by the Office of the UNHCR as an innovation. It has been stated by the said Office that this “provision is meant to facilitate the resettlement of groups of refugees from countries of first asylum which, due to their geographic situation, have to bear a heavy burden because of the influx of refugees”.¹⁸ *The Committee may consider including in the Bangkok Principles a provision along the lines of paragraph 2 of Article VI of the OAU Convention on Refugees.*

18. In a note on “Recent Developments in the Field” prepared at the request of the Committee’s Secretariat, *Ibid.*, at p. 66.

It has been suggested (as noted earlier) that refugees should be provided with identity documents, which should in certain 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 to be 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. The Committee may consider the advisability of providing for the cases of group movements of refugees from the country of first asylum to the country of second asylum along the lines mentioned above.

6. Recognition of travel documents issued under previous agreements

The OAU Convention on refugees in paragraph 3 of Article VI provides:

“Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by Member States in the same way as if they had been issued pursuant to this Article”.

The agreements referred above include the Arrangement of 5 July 1922 concerning Issue of Certificates of Identity to Russian refugees, the Arrangement of 31 May 1924 relating to Issue of Certificates of Identity to Armenian refugees, the Arrangement of 12 May 1926 for the Issue of Certificates of Identity to Russian and Armenian refugees, the Arrangement of 30 June 1928 for Issue of Certificates of Identity to these and other refugees, the Geneva Convention relating to the International Status of Refugees of 28 October 1933, the Provisional Arrangement concerning the Status of Refugees coming from Germany of 4 July 1936, the Convention concerning the Status of Refugees coming from Germany of 10 February 1938, and the London

Agreement of 15 October 1946 on the Adoption of a Travel Document for Refugees.

The Committee may consider including in the Bangkok Principles a provision along the lines of paragraph 3 of Article VI of the OAU Convention on Refugees.

CHAPTER VII

RIGHT OF RETURN OR REPATRIATION

1. Provision relating to the right of return or repatriation in the Bangkok Principles

Article IV of the "Principles concerning Treatment of Refugees" adopted by the Committee at its Eighth (Bangkok, 1966) Session provides as follows, in regard to the right of return:

"A refugee shall have the right to return if he so chooses to the State of which he is a national or to the country of his nationality and in this event it shall be the duty of such State or country to receive him".

2. Comments on the aforesaid provision

Reference to the word "country" in the above provision was added to the Baghdad draft of Article IV, at the Eighth (Bangkok, 1966) Session of Committee at the suggestion of the Delegate of Iraq. The purpose of amendment, according to him, was "to enable the refugee to have the right to return to his country of origin without recognising the political entity in the country of origin". He pointed out "that there are some countries which are not States recognised by international law". He stated: "For example, a refugee from Rhodesia has been received in the neighbouring countries, he wants to return to Rhodesia. So it is not possible to accept the term 'State' only.....In Africa, for example, we have Angola; the Angolans are under the mandate; the Portuguese recognize the authority of the State of Angola as a Portuguese State". He also regarded the amendment to be necessary in view of similar amendments accepted in regard

to Articles I and II of the Bangkok Principles.¹ The Delegates of Ceylon, India and Japan agreed with this view. The amendment was accepted by the Committee.

Regarding the expression "if he so chooses" in Article IV of Bangkok Principles, the Delegate of Ceylon stated that the same emphasizes the "principle that no refugee should be repatriated against his own will" and that the said words "sufficiently bring out the idea of voluntariness".² The Delegate of Japan expressed a similar view. The Delegate of Thailand was of the view "that a State has no right, or at any rate the right is not recognized under international law, to expel its own nationals. There is only the right to expel aliens and, therefore, there is no right not to accept the return of its own nationals provided they remain nationals of that State."³

At the Bangkok Session, the Committee also considered the question as to whether any provision should be made for implementation of the right of a refugee to return to the State or country of his nationality. The Delegate of Ceylon expressed the view that it was neither possible nor necessary to make any provision for implementation of the right. The Delegate of Japan was of the view that the circumstances were not ripe for making any recommendation on this question. The Delegate of Pakistan was of the opinion that it was not practicable at the said session, to make any provision in this regard. The Delegates of Ghana, India, Indonesia and Thailand were of the view that this question should be kept pending and might be examined by the Committee at a suitable time.

3. General comments on the right of return or repatriation

At the Tenth (Karachi, 1969) Session of the Committee, the Delegate of Jordan called the right of a refugee to return or

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

2. *Ibid.*

3. *Ibid.*

repatriation "as a fundamental human right under the Charter".⁴ Paragraph 2 of Article 13 of the Universal Declaration of Human Rights provides: "Everyone has the right to leave any country, including his own and return to his country".

After the Second World War, responsibility for the care of refugees with a view mainly to their repatriation was undertaken by the United Nations Relief and Rehabilitation Administration (UNRRA), and between 1947 and 1952, by the International Refugee Organization (IRO). After the creation of the Office of the UNHCR, responsibility for these functions was assumed by the said Office. Insofar as the Palestine Arab 'Refugees' are concerned, similar functions were conferred on the United Nations Relief and Works Agency (UNRWA).

At the Tenth (Karachi, 1969) Session, the Observer for the Office of the UNHCR pointed out that "it has been emphasized on many occasions in the United Nations General Assembly (that) voluntary repatriation is one of the basic solutions of the refugee problem. In fact, the integration of refugees in countries of asylum is only a solution for situations in which voluntary repatriation is not feasible. The refugees' choice between repatriation and provisional or final settlement in another country must be truly free, but all possible ways and means should be exhausted to promote the repatriation of refugees who want to return home".⁵ The 1967 Conference on the Legal, Economic and Social Aspects of African Refugee Problem expressed the opinion that the best solution to the problem lay in encouraging voluntary repatriation. It noted "that voluntary repatriation is the best solution to refugee problem".⁶

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

5. *Ibid.*

6. In Recommendation IV. 6 F. AFR/REF/CONF. 1967/No. 4 and 7.

4. Proposals for amendment of Article IV of Bangkok Principles

(i) As already pointed out the question of implementation of the right of return was discussed at the Eighth (Bangkok, 1966) Session of the Committee. Some doubt was expressed as to the practical effect of a provision in that regard, and for that reason the Committee, at the said Session, did not accept any specific provision for safeguarding the implementation of the right of return or repatriation. Later, in their letter of 5 January 1968, addressed to the Committee's Secretary, the Government of Pakistan suggested that a provision for the constitution of a tribunal for determining any controversy on the right of return of refugees, should be made in Article IV. The Office of the UNHCR regarded the suggestion to be quite interesting.⁷

(ii) The office of the UNHCR expressed the view "that the Committee might usefully have a more detailed discussion on the question of repatriation.....The "Addis Ababa Recommendations" on this matter also contain some rather useful suggestions".⁸

5. Cases in which return or repatriation is possible

At the Eighth (Bangkok, 1966) Session of the Committee, the Delegate of India expressed the view that "If refugees are not to be equated with other aliens inasmuch as they do not enjoy the effective protection of the State of their nationality, the ultimate realistic objective should be to facilitate their return to their State of origin, to the extent this is practicable". He further stated: "We agree that his return to the State of origin must be voluntary, but if he does not voluntarily return to where he came from, after the circumstances which led to his becoming a refugee have

7. UNHCR letter dated 26 March 1968.

8. *Ibid.*

ceased to exist, he should also lose the special treatment he would otherwise be entitled to in the State of asylum. We think that this is a reasonable limitation on a general principle".⁹ This matter is covered by paragraph 2 of Article II of the Bangkok Principles.

At the Tenth (Karachi, 1966) Session, the Delegate of Jordan expressed the opinion that "Our first concern and effort should be concentrated on repatriation". In his view, "just saying that 'wherever repatriation is not possible, we should take recourse to integration', makes it very easy and convenient for people who have wilfully and by premeditation created the problem of refugees".¹⁰ In this regard, it may be stated that in the matter of return or repatriation of a refugee, we cannot afford to ignore or avoid the principle of "voluntary repatriation".

Cases in which return or repatriation of refugees is possible have necessarily to be only the cases of voluntary repatriation. However, voluntary return or repatriation of refugees can be encouraged through providing them with all the necessary facilities and creating favourable environments for their return. These involve (a) appeal for return, (b) proper arrangements for return, (c) international co-operation in the matter, (d) proper resettlement in their country of origin on their return, and (e) prohibition of penalization on their return. These matters have been discussed below in this Chapter.

6. Prohibition of return or repatriation of refugees against their will

The OAU Convention on Refugees, in paragraph 1 of Article V provides :

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

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

“The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.”

Article IV of the Bangkok Principles embodies the principle of voluntary return or repatriation to the extent it refers to a choice by the refugee concerned, whether or not to exercise the right of return. It does not expressly provide for the specific duty of the State of asylum to repatriate him against his will.

7. Appeal by the country of origin for return of refugees

The OAU Convention on Refugees, in paragraph 4 of Article V, provides :

“...Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and properly explained to them by their country of asylum.”

Such a provision would cover certain activities of the country of origin with the object of inducing the refugees to return. A White House press release, dated 24 May 1956 points out that the “Soviet Government and its satellites in Eastern Europe have shown unusual interest in inducing the return of refugees from these countries, particularly those resident in Western Europe and more recently those in the United States. The formation of repatriation committees, proclamations by the various governments of amnesties for citizens who have escaped, and personal contact on the part of official Soviet bloc representatives abroad are manifestations

of this concern”.¹¹ These activities may be distinguished from prohibited activities of the country of origin designed to bring undue pressure on refugees to return. The latter includes blackmail, e.g. the threat to reveal to the Immigration Department of the country of asylum information leading to deportation of the refugees, or death sentences on the refugees refusing to return or imposition of savage and inhumane penalties on any relative of the refugees remaining in the country of origin. These would be clearly repugnant to the principle of voluntary repatriation of refugees, and would not be covered by persuasive methods, such as appeal, to induce the refugees to return.

8. International co-operation in regard to return of refugees

At the Tenth (Karachi, 1969) Session of the Committee, the Delegate for Thailand stated that the “refugee problem should not be left to countries involved in the same, but the international community should assume more active role in a satisfactory solution thereof, providing assistance for their repatriation and providing facilities in the State of asylum”.¹²

The OAU Convention on Refugees, in paragraph 5 of Article V, provides :

“Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every necessary assistance by the country of asylum, the country of origin, and by voluntary agencies, the international and inter-governmental organisations to facilitate their return.”

11. XXXIV Department of State Bulletin No. 884, 4 June 1965, p. 939.

12. Verbatim Record of Discussions on the subject for the Tenth (Karachi, 1969) Session of the Committee, for the meeting of 23 January 1969.

The 1967 African Conference on Legal, Economic and Social Aspects of African Refugee Problem, in its Recommendation IV, recalled "the efforts and bilateral or multilateral agreements concluded between various African States to facilitate the voluntary repatriation of refugees". The Conference also recommended "that inter-governmental Committees for aid to returning refugees should be set up, consisting of representatives of countries of origin and of countries of asylum and also representatives of refugees and of international organisations, with the approval of the governments concerned".¹³

9. Arrangements for return of refugees

The OAU Convention on Refugees, in paragraph 2 of Article V, provides :

"The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of the refugees requesting repatriation".

The 1967 Conference on Legal, Economic and Social Aspects of African Refugee Problem recommended that "an Inter-African Committee for African Refugee migration should be set up to deal with the transport of refugees from one country to another".¹⁴

10. Resettlement of refugees, by their country of origin, on their return

The OAU Convention on Refugees, in paragraph 3 of Article V provides :

"The country of origin, on receiving back refugees shall facilitate their resettlement and grant them the

13. Cf. AFR/REF/CONF. 1967/No. 4 and 7,

14. *Ibid.*

full rights and privileges of nationals of the country, and subject them to the same obligations".

The aforesaid obligation of the country of origin would include its obligation in regard to economic reestablishment of the aforesaid persons. The 1967 African Conference on Legal, Economic, and Social Aspects of African Refugee Problem recommended that "every possible step should be taken to eliminate the causes, whatever they may be, which have forced refugees to leave their country". It also recommended that "the country of origin should help returning nationals to resettle and take up a normal and peaceful life, with the help of international organisations where necessary, and that all the planning and executive facilities contemplated for the integration of refugees in their country of asylum should, wherever possible, be made equally available to them when they return to their homes. Further, the Conference recommended that "the United Nations General Assembly should adopt a resolution broadening the terms of reference of the UNHCR to enable it to assist governments in their endeavour to aid former refugees who have returned to their homeland".¹⁵

At the Eighth (Bangkok, 1966) Session of the Committee, the Observer for the Arab League expressed the view that "the right to return to their country of origin implies also that there has not been a complete qualitative transformation in the area which is called the country of origin, because the right to return to the country of origin means to a large extent the right to return to the conditions preceding their eviction..... the right to return to the framework which obtained at the time of eviction.....might not be the right to identical framework, but it does mean the broad character of the framework".¹⁶

15. *Ibid.*

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

11. Prohibition of penalization of former refugees on their return

The OAU Convention on Refugees, in paragraph 4 of Article V, provides :

“Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. . . .”

12. Cases in which repatriation is not possible

In cases where repatriation is not possible, the only possibility is that of integration. At the Tenth (Karachi, 1969) Session of the Committee, the Observer for the Office of the UNHCR expressed the view that “the integration of refugees in countries of asylum is only a solution for situations in which voluntary repatriation is not feasible. The refugees’ choice between repatriation and provisional or final settlement in another country must be truly free, but all possible ways and means should be exhausted to promote the repatriation of refugees who want to return home”.¹⁷

Article 34 of the 1951 U.N. Refugee Convention requires the Contracting States to “facilitate the assimilation and naturalization of refugees” as far as possible. The 1967 Conference on Legal, Economic and Social Aspects of the African Refugee Problem recommended “that every African Government should agree to take a certain number of refugees so as to relieve the few countries of first asylum which appear to be overloaded and faced with all kinds of difficulties”.¹⁸

At the Eighth (Bangkok, 1966) Session of the Committee, Dr. E. Jahn of the Office of the UNHCR pointed out that

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

18. CF. AFR/REF/CONF, 1967/No. 17.

“in most of the situations which our Office has had to deal, more recently political circumstances have so far directly prevented repatriation or have made the individual refugee hesitant to choose to return to his home country. In fact, although our Office is engaged in assisting individual repatriation movements throughout the world, the number affected is very limited”. He further stated: “Whenever a solution of refugee problems by means of repatriation is not feasible, efforts are made to ensure otherwise that refugees do not remain a perpetual burden to the countries where they have found shelter and to the international community which cannot remain indifferent to the sacrifices of countries of first asylum. History has shown the dangers that may result from the stagnation of refugee situations. Unless action is taken promptly, they may become a source of friction, of economic, social and political instability, which ultimately will prove far more costly and difficult to resolve than if speedy and effective action is taken at the outset”.¹⁹

In regard to the practicability of the repatriation of refugees, the Delegate of India was of the view that “this is essentially a political question, because the return of a refugee to his State of origin could be facilitated only by a change of the political situation in that State. If that is not possible, a solution will have to be found, as the statement of the UNHCR made it clear yesterday, either by means of integration in the asylum State or by resettlement in other States”.²⁰

13. Question of implementation of the right of return or repatriation

As stated in proposal number (i), discussed under item 4 of the present Chapter, the Government of Pakistan, in their letter of 5 January 1968, addressed to the Secretary of the Committee, suggested inclusion in Article IV of the

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

20. *Ibid.*