

2. Comments on the aforesaid provision

Article VI of the Bangkok Principles was based on a draft prepared by the Delegates of Ceylon, Ghana and India at the Bangkok Session. The said draft replaced earlier Draft Articles VI, VII and VIII as provisionally adopted at the Baghdad (Seventh) Session. Those articles in the Baghdad draft incorporated the provisions of the Committee's Principles on the Treatment of Aliens, with the consequence that the rights stipulated therein were subject to local laws, regulations and orders, and some of them subject also to the conditions imposed at the time of granting asylum. The Observer for the UNHCR asked the Committee to consider whether it was logical to grant a right so broadly defined that the exception may nullify the right itself. He stated: "There are, after all, certain principles which it would seem are of somewhat higher order, and should not be made subject to specific laws... They seem important for the refugees who, as distinct from other aliens, just cannot return to the home country if they do not like the conditions in their country of residence, as is the case with a normal alien, and who generally also have no choice between various countries of asylum. Furthermore, I wonder if it is at all useful to pick out certain rights, certain individual rights, and to leave out others which are at least of equal importance".²

There was a great deal of discussion on the matter raised by the Observer for the Office of the UNHCR. Majority of the Delegates were of the view that the standard of treatment for the refugees should be such treatment that is generally accorded to aliens in similar circumstances. According to the Delegate of India, the "better course to adopt would probably be for us to state the general proposition that the treatment of a refugee in a State of asylum will generally be in conformity

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

with the treatment of an alien in similar circumstances. But at the same time we could elaborate some of these principles of the treatment of refugees in the State of asylum". He further stated that "if we just say that he will be treated like an alien, it will be reducing his position. So the best way perhaps would be to say that his status will not be less than that of an alien. It may be more depending upon the policies that are followed by the State of asylum, and in this matter I suggest that it might be desirable to mention a few of more important rights".³ The Delegate of Japan said that he was "quite prepared to accept the proposal to retain only the general proposition and delete Articles VI, VII and VIII"⁴ of the Baghdad Draft. The Delegate of Ghana wanted the Committee to be careful about ensuring that a refugee "does not get treatment less favourable than the alien, at least the minimum standard for the refugee is to be the treatment of an alien.....And when we come to Article XI, it may well stand as it is giving a higher standard to a refugee, if the State so desires, and by so doing a refugee will not be in a worse position than an alien in the country".⁵

The Delegates of Pakistan and Iraq, however, expressed the view that the standard of treatment for a refugee should be similar to that of a national of the country as the refugee stood in a position different from other aliens. The Observer for the Office of the UNHCR stated that if a refugee were to be given the same standard of treatment as an alien, there may be difficulties as laws relating to aliens in many countries provide for conditions of reciprocity, and there may be cases where a refugee will not be in a position to fulfil various conditions prescribed in the laws relating to aliens. He asked "Would it be proper to say, yes, we give the refugee in our country the right to work provided that in the country of his origin our national is given the same right. In this context,

3. *Ibid.*

4. *Ibid.*

5. *Ibid.*

the refugee is somewhat in a special position and the condition of reciprocity should not apply".⁶ The Delegate of India wanted the Committee to provide for "the principle of exemption from the application of reciprocity and the prohibition on taking of exceptional measures in relation to refugees because of humanitarian considerations".⁷

The Observer for the Office of the UNHCR also wanted the general proposition in regard to minimum standard of treatment of a refugee, to "be supplemented by a reference to the (UN) Refugee Convention, that may well lead to a clear and satisfactory solution".⁸ However, the Delegate of India stated that, at that time, "we don't wish to express any view whether or not reference should be made in our Principles to the 1951 Convention, because our intention was that after we have adopted these principles, we may go over to the Convention, if necessary, to see whether they accord well with the provisions of the Convention".⁹

According to Dr. E. Jahn, in Article VI "the Committee decided to establish a 'minimum standard of treatment of refugees' and to leave it to the participating States to regulate the status of refugees in a more detailed manner, be it by multilateral or bilateral arrangements or by their own municipal laws". He further stated, "While the African participants were in favour of a mere reference to the 1951 Refugee Convention, there was considerable reluctance on the part of the Asian participants to undertake explicit obligations in this matter".¹⁰

6. *Ibid.*

7. *Ibid.*

8. *Ibid.*

9. *Ibid.*

10. 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.

The Committee also adopted Article IX, which provides:

"Nothing in these articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees."

The aforesaid "article makes it quite clear that the Principles should not result in a diminution of the rights of refugees and is in line with the general policy of the Committee that it would be up to the Government of each participating State to decide how it would give effect to the Committee's recommendations".¹¹

3. Proposal for amendment of Article VI of Bangkok Principles

In their letter of 5 January 1968 addressed to the Secretary of the Committee, the Government of Pakistan suggested that "the refugees should be accorded the standard of treatment of the nationals of the country of asylum. However, certain reservations should be made, namely, until the refugees are given full citizenship they (i) cannot enter into Government service, (ii) cannot become members of the Parliament or hold political office in the country, (iii) cannot vote as a citizen in the elections of the country, and (iv) their movements can be restricted in the interests of public order and security of State".

4. Views regarding standard of treatment

Mr. Frank E. Krenz states that according "to customary international law, the asylum seeker's status is chiefly governed by the fact that he now falls under the territorial jurisdiction of the receiving State. Generally speaking, he occupies the position of any normal alien, with the proviso that he may not be expelled to his home-country unless there are grave reasons for doing soAs an alien, the

11. According to Dr. E. Jahn, *Ibid.*

refugee is entitled to treatment in accordance with the rule of law, as well as to the benefits of the "minimum treatment" rule. He may not be treated as an outlaw nor confined in disregard of the law. However, the refugee cannot claim rights not otherwise granted by legislation to foreigners, such as permission to work, assistance under public or social schemes, free education and the like. In addition he has to submit to the rules pertaining to alien administration".¹²

It is submitted that while determining the standard of treatment of refugees, considerations that should be kept in view are (i) human rights aspects, and (ii) integration aspects. The fact that refugees cannot return to their country of origin due to peculiar circumstances in which they are placed has to be borne in mind. At the Eighth (Bangkok, 1966) Session of the Committee, the Observer for the Office of the UNHCR pointed out that "experience has shown that integration of refugees is often hampered by legal obstacles resulting from the application to them of the "treatment of aliens" concept and in particular of regulations designed to protect national labour. The legal problems of refugees are thus seen in the context of a group of ordinary foreigners temporarily tolerated in a given country until the time when they can be returned. Today we know how unsatisfactory and dangerous it may be to apply this concept to refugees and how easily it may lead to human suffering, to economic burdens for the State concerned and for the international community, to social and economic problems, or even to political tension. The fact can no longer be overlooked that the refugee differs from the ordinary alien. We now know that legal instruments dealing with the status of refugees should be seen not only in the context of a somewhat modified aliens law but also against the background of possible permanent solutions. These should

12. In his article on "The Refugee as a subject of International Law"; (1966) *International & Comparative Law Quarterly*, at p. 109.

help to ensure that refugees may become useful members of their new communities and that international action for the solution of refugee situations may become effective".¹³

The Observer for the Arab League stated that in the case of "the Arab States hosting the Arab refugees from Palestine, the question of integration does not arise and the question of continuous integration does not arise. Their integration ultimately means the dissolution of their entity and of their right to return".¹⁴

The 1967 Conference on the Legal, Economic and Social Aspects of African Refugee Problem recommended that "wherever possible refugees should enjoy the same rights and privileges as nationals of the country of asylum so as to promote the integration and assimilation of refugees". As regards the social rights of refugees, the Conference recalled "that the Universal Declaration of Human Rights and the 1951 United Nations Refugee Convention contain the essential basic provisions in this matter". The Conference also recognized "that the granting of social rights, more particularly as regards gainful employment and education, may help to ensure that refugees do not become a burden to their country of asylum and may enable them to contribute to its economic and social well-being". Dr. P. Weis has also expressed the view that assimilation and integration of refugees should as far as possible be facilitated.¹⁵

In regard to the problem of standard of treatment, Mr. Frank E. Krenz points out "that unless the country of

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

14. *Ibid.*

15. 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. 1-2, 1968.

asylum, in the exercise of its rights to afford refuge, adopts special provisions regulating his status and legal capacity, the refugee may find himself in difficult circumstances. The law is indeed particularly vague on this point, and all depends on the arrangements made by the individual States".¹⁶

Standard of treatment, in case of refugees, has necessarily to vary from case to case, depending on (i) particular classification to which a refugee belongs, (ii) the duration of his stay in the country of asylum, and (iii) the possibilities of a refugee's return to his country of origin, or of his final resettlement in a second country of asylum in the near future. Where a person is a "refugee", in the accepted sense of the term and has resided sufficiently long in the country of asylum, and where there are no possibilities in the near future of his return to his country of origin or of his final resettlement in another country of asylum, the case of his assimilation and integration in the country of asylum may be considered strong and he might be given rights similar to those of nationals of the country of asylum. On the other hand, where a person is not a "refugee", in the proper sense or where he belongs to a group or has resided in the country of asylum only for a short period, or else is likely to return to his country of origin or to find his final resettlement in another country of asylum, he may have to be treated on a different footing.

As already stated the Government of Pakistan, in their letter of 5 January 1968, have suggested that "the refugees should be accorded the standard of treatment of the nationals of the country of asylum". However, the Government of Pakistan itself has suggested that certain reservations should be made, namely: until the refugees are given full citizenship, they (i) cannot enter into government service, (ii) cannot become members of Parliament or hold political office in the

16. In his article on "The Refugee as a subject of International Law", *International & Comparative Law Quarterly* (1966), p. 110.

country, (iii) cannot vote as a citizen in the elections of the country, (iv) their movements can be restricted in the interests of public order and security of State. At the Eighth (Bangkok, 1966) Session of the Committee also, the Delegates of Pakistan and Iraq expressed the view that the standard of treatment for the refugee should be similar to that of a national of the country of asylum, as the refugee stood in a position different from other aliens. The Delegate of Pakistan stated that the provisions of Article VI, as adopted by the Committee, were not acceptable to him, as in his view a refugee should be accorded the standard of treatment applicable to a national of the country of asylum. He said: "It has been my personal experience that after becoming a refugee subject to local laws that were made for the treatment of the refugees, all the rights and liabilities that the refugees in fact obtained were absolutely the same as that of nationals in that country. So why keep him in suspense, still comparable to an alien and still the fear of his being turned back as an alien. Why don't we try to have him absorbed in the normal life of the country of his refuge by according him all the rights and responsibilities that would be available to a national in the country of his selection."¹⁷ The Delegate of Iraq pointed out that in his country, under the existing laws, a refugee was accorded the national standard of treatment subject to a few exceptions.¹⁸

In a note prepared at the request of the Committee's Secretariat, the UNHCR has commented upon the proposal of the Pakistan Government, contained in their letter of 5 January 1968. It has been pointed out that the proposal "corresponds to the views already put forward by the Delegations of Iraq and Pakistan at the Bangkok Session. The proposal is also in line with the recommendations adopted at the "African Conference on the Legal, Economic and Social Aspects of African

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

18. *Ibid.*

Refugee Problem” and, in particular, with the view expressed that the granting to refugees of the same rights and privileges as nationals of the country of asylum is the best means to promote the integration and final settlement of refugees. As stated in Recommendation VI of the Addis Ababa Conference, the granting of social rights, in particular, may help to ensure that refugees do not become a burden to the country of asylum and may enable them to contribute to its economic and social well-being”.¹⁹

The Delegate of Japan to the Tenth (Karachi, 1969) Session dealt with the problems involved in according national standard of treatment to refugees. He agreed that his Government was not giving the standard of national treatment. He said : “To assure to refugees the same treatment which our nationals have in the fields of labour, employment, social security, education etc., will entail too heavy financial and other responsibilities upon our Government, and, in one sense, the refugee will have more favourable treatment than the ordinary foreign residents in my country. These points make us very reluctant to accede to the suggestion of the United Nations High Commissioner for Refugees”.²⁰

In the note prepared by the Office of the UNHCR, it was stated that while “the granting to refugees the same rights and privileges as nationals of the country of asylum would, from the humanitarian point of view, be the most welcome solution, it should at least be recognized that the standard of treatment, for which the United Nations Refugee Convention provides, constitutes the basic minimum. The acceptance of these principles is reflected by the relatively high number of

19. See Brief of Documents prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session, at p. 71.

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

accessions to the Refugee Convention (54 countries)²¹ and it is interesting to note that nearly half the number of parties to the Convention are independent African countries.....The Committee might, however, wish to take a position with regard to the principles enunciated in the 1951 Convention and the 1967 Protocol, which have now been widely accepted as representing the minimum standard of treatment of refugees”.²² At the Eighth (Bangkok, 1966) Session of the Committee, the Observer for the Office of the UNHCR stated : “I am sure that the distinguished members of this Committee will agree that the minimum standards adopted in the Convention are still valid today and that we should not now apply to new refugees standards inferior to those adopted more than 15 years ago. The application of such lower standards in new refugee situations would, in fact, mean discrimination against new refugees as compared with old refugees.”²³ In this regard Mr. Kwasi Gyekye-Dako has expressed the view that the “adoption of a less favourable instrument will impair the value of the universal international instrument with the consequent reduction of the scope and application of international law in this humanitarian field.....”²⁴

Commenting upon the provisions of the 1951 U. N. Refugee Convention in this regard, the Observer for the Office of the UNHCR stated at the Tenth (Karachi, 1969) Session of the Committee that the “Convention does not provide for national treatment, but for a standard which is somewhat between that of an alien and a national. I also would like to stress that governments which find it difficult to implement one

21. 56 countries as of 1 September 1969.

22. See Brief of Documents on the subject prepared by the Committee's Secretariat for the Tenth (Karachi, 1969) Session of the Committee at pp. 71 and 72.

23. *Ibid.*, at pp. 149 and 150.

24. In his article on “Some Legal and Social Aspects of African Refugee Problems”, *Ibid.*, at p. 348.

or the other provisions of the Convention may make reservations to it".²⁵

5. **A comparison between the standard of treatment provided in the 1951 U. N. Refugee Convention and standard of treatment under Article VI of the Bangkok Principles**

- (i) Under the 1951 U. N. Refugee Convention, refugees are to be *treated on an equal footing with the nationals of the State of asylum* as regards freedom to practise their religion and the religious education of their children;²⁶ as regards wage-earning employment, in the case of refugees who have completed three years' residence in the contracting State concerned or who have a spouse whom they have not abandoned or two or more children possessing the nationality of that country,²⁷ as regards rationing,²⁸ elementary education,²⁹ public relief and assistance,³⁰ labour legislation and social security,³¹ fiscal charges and taxation,³² and with respect to protection of industrial property, such as inventions, trade marks and trade names, and rights in literary and scientific works;³³ and access to courts of law, including legal assistance and exemption from security for costs.³⁴

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

26. Article 4.

27. Article 17 (2).

28. Article 20.

29. Article 22 (1).

30. Article 23.

31. Article 24.

32. Article 29.

33. Article 14.

34. Article 16.

Under the provisions of Article VI of the Bangkok Principles, the refugees are accorded aliens' treatment in regard to freedom to profess and practise their own religion;³⁵ access to the courts of law and legal assistance;³⁶ wage-earning employment;³⁷ and taxation and duties.³⁸

At the Tenth (Karachi, 1969) Session of the Committee, the Observer for the Office of the UNHCR stated: "How can the problem of these individual refugees, mostly qualified workers and intellectuals, be solved if they are not given the right to participate in the economic life of the country of asylum or, wherever applicable, in its educational facilities?"³⁹ The Observer for the Democratic Republic of Congo pointed out that "since the very beginning, the Angolan refugees in the Congo, ever since their arrival, enjoy exactly the same rights as the Congolese citizens despite the fact that the problems of employment and education are difficult to solve even for the Congolese themselves. No discrimination whatever is made against the Angolans in this matter".⁴⁰ The Observer pointed out that his Government "houses these people. It provides them with work, furnished living quarters, land to build on with funds for the purpose, and fields to cultivate. The illiterate Angolan children and adults attend school under the same conditions as the citizens of the Congo. They have access to the hospitals and enjoy other direct substantial and cash contributions which the Government of the Congo gives them. In brief, the refugees from Angola have the same

35. Paragraph (ii) of Article 8 of the "Principles concerning Treatment of Aliens" adopted by the Committee.

36. *Ibid.*, paragraphs (iv) and (v) of Article 8.

37. *Ibid.*, Article 9.

38. *Ibid.*, Article 13.

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

40. *Ibid.*, for the Meeting held on 28 January 1969.

status as the Congolese citizens except for the national civil service (in which they can nevertheless be employed as technicians if they show sufficient capacity and competence) and for purely political rights reserved for nationals alone".⁴¹

- (ii) Under the 1951 U. N. Refugee Convention, *most favoured-nation treatment* is provided for in regard to their right to form and join non-political and non-profit making associations and trade unions;⁴² and the right to engage in wage-earning employment in case of refugees not fulfilling the conditions for national treatment.⁴³

Under the provisions of Article VI of the Bangkok Principles, a refugee is entitled only to aliens' treatment in regard to wage-earning employment.⁴⁴

- (iii) Under the 1951 U. N. Refugee Convention, refugees are entitled to *treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally* in regard to acquisition of movable and immovable property, property rights and interests;⁴⁵ the right to engage on their own account in agriculture, industry, handicrafts and commerce, and to establish commercial and industrial companies;⁴⁶ to practise the liberal professions;⁴⁷ to obtain housing;⁴⁸ and to benefit from higher education,

41. *Ibid.*

42. Article 15.

43. Article 17 (1).

44. Article 9 of the "Principles concerning Treatment of Aliens", adopted by the Committee.

45. Article 13.

46. Article 18.

47. Article 19.

48. Article 21.

remission of fees and charges and the award of scholarships.⁴⁹

Out of these matters, in regard to the right to acquire, hold and dispose of property;⁵⁰ and professional or business activities,⁵¹ the Bangkok Principles also, under the provisions of Article VI, allow aliens' treatment to refugees.

At the Eighth (Bangkok, 1969) Session of the Committee, the Observer for the Office of the UNHCR expressed the view that "it is not possible to integrate refugees if they are not given the right to work. It is not feasible to foresee projects for agricultural development if refugees are not allowed to acquire property".⁵²

- (iv) Under the 1951 U. N. Refugee Convention, refugees are entitled to aliens' treatment in regard to administrative assistance⁵³ and freedom of movement.⁵⁴

Under the provisions of Article VI of the Bangkok Principles also, refugees are entitled to alien treatment in regard to freedom of movement.⁵⁵

- (v) Under the 1951 U. N. Refugee Convention, refugees, on certain conditions, are exempt from the requirement of reciprocity, especially legislative reciprocity.⁵⁶

49. Article 22 (2).

50. Articles 11 and 12 of "Principles concerning Treatment of Aliens", adopted by the Committee.

51. *Ibid.*, Article 9.

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

53. Article 25.

54. Article 26.

55. See Article of "Principles concerning Treatment of Aliens", adopted by the Committee.

56. Article 7.

This is provided for also in the Bangkok Principles, in paragraph 4 of Article VI.

- (vi) Under the 1951 U. N. Refugee Convention, the refugees are exempt from exceptional measures imposed on aliens, solely on the ground of their nationality.⁵⁷ There is no corresponding provision in the Bangkok Principles.
- (vii) Under the 1951 U. N. Refugee Convention, personal status of a refugee is to be governed by the law of his country of domicile or residence.⁵⁸ There is no similar provision in the Bangkok Principles.
- (viii) Under the 1951 U. N. Refugee Convention, refugees once admitted to legal residence are protected against expulsion, subject to the considerations of national security and public order.⁵⁹ In this regard, Article VIII of the Bangkok Principles provides :
 - “1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not expel a refugee.
 2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary.
 3. A refugee shall not be deported or returned to a State or country where his life or liberty would be threatened for reasons of race, colour,

57. Article 8.

58. Article 12.

59. Article 32.

religion, political belief or membership of a particular social group”.

Article 16 of the “Principles concerning Treatment of Aliens”, adopted by the Committee at its Fourth Session, provides for expulsion and deportation of aliens. However, these shall be subject to the provision of Article VIII of the Bangkok Principles, in so far as they are applicable to refugees.