

which may be considered to be an effect of the traditional supremacy of States; and they have been affected by the development of the right of States to protect individuals *vis-a-vis* other States, which may be considered to be an off spring of the personal supremacy of States. As a matter of fact, the "law of refugees"—i.e. the rules of international law affecting the lives and fortunes of refugees—has its root at the inter-section or frontier between the personal and the territorial supremacy of States. Sometimes it is difficult to say whether a rule of international law is based on a 'general practice' (custom) or a 'general principle' (of law recognised by civilized nation) or both. The principle of self-preservation comes into play in connection with the rules relating to admission, sojourn, expulsion and forcible return of refugees, particularly in the case of mass-influx of asylum seekers. The principle of good faith may serve as a guide to the solution of the problem whether a State has a claim to 'protect' those of its nationals who have fled from its territory because of well-founded fear of persecution, and also to some other problems.

Bearing in mind the above it may be stated that if the State of asylum is a party to the 1951 Geneva Convention and its Protocol then a refugee would certainly enjoy the protection and rights enshrined in those instruments. But in many cases, some of the States of asylum are not party to the above instruments. Those States, while hosting refugees have granted them protection and rights in some cases no less than what has been prescribed under the Convention. This is mainly because the refugee law has developed on the foundation of customary international law and general principles recognised by civilized nations. These customs and general principles in fact are the foundation stone of the arch of refugees' protection and rights.

IV. Obligations of the Country of Asylum

The first country of asylum is required to provide two basic strategies for the protection of the refugees :

- (i) To provide adequate protection and sense of security to the refugee and his dependents, and
- (ii) To adhere strictly to the principle of *non-refoulement*.

These two fundamental strategies would thus help to allay the fear from the mind of the refugees, from whatever had caused them to leave their country of nationality or habitual residence.

The 1951 Convention provides that any contracting State including the first country of asylum would not expel or return forcibly a refugee to any territory where he would have the fear of being persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion. Thus a refugee should not be forced to the country of origin. His repatriation must depend on his voluntary decision to do so.

Further, the 1951 Geneva Convention in Article 32 provides that a refugee lawfully in the territory of a contracting State shall not be expelled "save on grounds of national security or public order". Such a refugee shall be expelled "only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security require otherwise, the refugee shall be allowed to submit evidence to clear himself, and to appeal and be represented for the purpose before the competent authority or a person or persons specially designated by the competent authority".

Beside these, the 1951 Geneva Convention also lays down certain basic conditions for the protection and welfare of the refugees such as :

- (i) Non-discrimination.
- (ii) Exemption from reciprocity.
- (iii) Exemption from exceptional measures.
- (iv) Identity and Travel documents.

Non-discrimination: Article 3 of the 1951 Geneva Convention lays down the principle of non-discrimination. It provides that "the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin".

Exemption from Reciprocity: The granting of civil rights to aliens, in principle, is a subject of reciprocity. This principle aims at safeguarding the rights of the country's own nationals abroad and at raising the standard of their treatment but is inapplicable in the case of refugees. For this reason, a principle was adopted in the 1951 Geneva Convention to exempt refugees from the application of this principle. Thus the Convention recognises this difficulty and provides in Article 7, that refugees shall after three years residence in the country, be exempt from legislative reciprocity and they shall continue to enjoy the rights and benefits to which they were entitled in the absence of reciprocity at the date of entry into force of the Convention.

The Convention further contains a recommendation to grant to refugees more far-reaching exemptions from reciprocity.

Exemption from Exceptional Measures: Refugees being aliens in their country of residence they would normally be subject to any measures consistent with International Law, which the State of residence decides to take against aliens and their property for reasons of national security, or for other reasons. In times of war refugees of enemy nationality may be liable to be considered as enemy aliens although they in fact are opposed to the belligerent Government of their country of nationality. Refugees could also be affected in peace time by exceptional measures taken against nationals of their country of origin (retortion and reprisals, particularly by locking or sequestration of property) although such measures will in fact not, in their case, lead to their desired result of compelling the home State to settle the dispute in question.⁵

However Article 8 of the 1951 Geneva Convention provides that exceptional measures taken against the person, property, or interests of nationals of a foreign State shall not be applied to a refugee who is a national of that State solely on account of his nationality. The provision constitutes an extension of the principle embodied in Article 44 of the Geneva Convention of 12 August 1949 concerning the protection of Civilian Persons in Times of War.

Administrative Assistance: In order to overcome the legal difficulties arising for refugees from the lack of assistance of diplomatic or consular representatives of his country of nationalities or habitual residence, the Convention requires such administrative assistance to be provided to them by the country of asylum. Article 25 of 1951 Convention provides that "when the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State shall arrange that such assistance be afforded to him by their own authorities, or by an international authority". These authorities "shall deliver or cause to be delivered under their supervision to refugees such documents or certificates as would normally be delivered to aliens by or through their national authorities".

Identity and Travel Documents: The 1951 Geneva Convention requires the Contracting States which is a country of first asylum to issue the identity papers to refugees in their territory who do not

possess valid travel documents (Article 27). Refugees lawfully staying in the territory of the Contracting States are also to be provided with travel documents for the purpose of travel outside their territory (Article 28) which should normally entitle them to the right to return.

V. Specific Rights of Refugees as under the 1951 Geneva Convention

While the Convention stipulates for refugees the same treatment as accorded to aliens generally, the Convention goes further with respect to refugees with regard to specific rights, in respect of which refugees are granted more favourable treatment than other aliens. The following four standards of treatment are established under the Convention :

- (i) National treatment i.e., the treatment accorded to nationals of the contracting state concerned;
- (ii) The treatment accorded to nationals of the country of habitual residence;
- (iii) Most-favoured-Nation treatment accorded to nationals of a foreign country; and
- (iv) Treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

(i) National Treatment

National treatment is granted to refugees as regards freedom to practise their religion and the religious education of their children (Article 4); with respect to their access to courts (Article 16, paragraphs 1 and 2); with respect to wage-earning employment of refugees who have completed three years residence in the country or who have a spouse or one or more children possessing the nationality of the country (Article 17, paragraph 2); as regards rationing (Article 20) and elementary education (Article 22, paragraph 1); with regard to the right to public relief and assistance (Article 23); and in matters of labour legislation and social security (Article 24) and taxation (Article 29).

- (ii) *The same treatment as is accorded to nationals of the country of their habitual residence,*

5. Weis, "International Protection of Refugees" *American Journal of International Law*, Vol. 48 (1954) p. 204.

This treatment is granted to refugees with regard to the protection of their industrial property, such as inventions, trade marks and trade names, and of their rights in literary, artistic and scientific works (Article 14), and also as regards access to courts, legal assistance and exemption from *cautio judicatum solvi* in countries other than that of their habitual residence (Article 16, paragraph 3).

(iii) *Most-Favoured-Nation treatment*

Most-favoured-nation treatment is granted to refugees as regards their right to create and to join non-political and non-profit making associations and trade unions (Article 15), and the right to engage in wage-earning employment, if the refugees concerned do not fulfil the conditions necessary for the enjoyment of national treatment (Article 17, paragraph 1).

(iv) *Treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally*

This principle is applied to refugees with regard to acquisition of movable and immovable property, property rights and interests (Article 13); the right to engage on their own account in agriculture, industry, handicrafts and commerce, and to establish commercial and industrial companies (Article 18), to practise liberal professions (Article 19); to obtain housing (Article 21); and to benefit from higher education (Article 22, paragraph 2).

VI. Some Specific Rights under the Bangkok Principles (1966)

In spite of its comprehensive nature, the 1951 Geneva Convention is silent about two major rights of a refugee such as : (a) *Right of Repatriation*; and (b) *Right of Indemnification*. In this context, a reference should be made to the "Principles concerning the Status and Treatment of Refugees" commonly known as *Bangkok Principles of 1966*, adopted by the Eighth Session of the Asian-African Legal Consultative Committee held in Bangkok in 1966 which recognises the right of repatriation and right of indemnification of a refugee.

Right of Repatriation:

The Bangkok Principles (1966) of the Asian African Legal Consultative Committee in Article IV states that :

"Right to 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."

In 1970 the AALCC adopted an "Addendum" to the Bangkok Principles.⁶ The Addendum contained an elaboration on the 'right to return' of any person who, because of foreign domination, external aggression or occupation had left his habitual place of residence. The Addendum resolves as follows :

1. Any person who because of foreign domination, external aggression or occupation, has left his habitual place of residence, or being outside such place, desires to return thereto but is prevented from so doing by the Government or authorities in control of such place of his habitual residence shall be entitled to return to the place of his habitual residence from which he was displaced.
2. It shall accordingly be the duty of the Government or authorities in control of such place of habitual residence to facilitate by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them.
3. This natural right to return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependants of all such persons as are referred to in paragraph 1 above."

Right of repatriation is more generally reflected in the Universal Declaration of Human Rights (1948). Article 13(2) states that "Everyone has the right to leave any country, including his own and to return to his country". As stated earlier, the Convention Relating to the Status of the Refugees (1951) and its Protocol (1967) thereto do not provide any specific provisions regarding the 'Right to Return' or 'Voluntary Repatriation' of refugees. In practice, however, the Office of the United Nations High Commissioner for Refugees (UNHCR) derives the authority to organize voluntary repatriation under paragraph 1 and paragraph 8(c) of the Statute of the Office of the United Nations High Commissioner for Refugees.⁷

6. Adopted at the Eleventh Session held in Accra (1970).

7. Paragraph 1 of the Statute States:

"The United Nations High Commissioner for Refugees, acting under the authority of the

It should also be pointed out that a refugee can claim right of repatriation from the State of origin on the ground of his nationality and on the ground of the existence of the duty of the State to re-admit its nationals and grant them the right to reside in its territory. But the legal position of a refugee is peculiar in the sense that although he may not have been deprived of his nationality by the State of origin, he does not, in fact, enjoy the protection of that State.

Right of Indemnification

The refugee also has the right to claim compensation from the country of origin if he is unable or chooses not to return. This principle has been enshrined in various legal documents and U.N. Resolutions. Notably among them are the General Assembly Resolution 194(III) of 11 December 1948 which, in general, recognises the principle that the refugees have the right to compensation for the loss or damage to their property. Recently, the General Assembly in its Resolution 36/148 of 16 December 1981 has emphasised the right of refugees to return to their homelands and reaffirmed the right of those who do not wish to return to receive adequate compensation. Further, in 1986 the report of the *Group of Governmental Experts on International Co-operation to avert New Flows of Refugees* also recommended that a refugee has the right "to receive adequate compensation ... those who do not wish to return".⁸

The AALCC in its Bangkok Principles adopted in 1966, in Article V reiterated the same right of the refugees.

Article V

Right to Compensation

1. A refugee shall have the right to receive compensation from the State or the country which he left or to which he was unable to return.

General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, of refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting the Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities."

Paragraph 8:

"The High Commissioner shall provide for the protection of Refugees falling under the competence of his Office by: (c) Assisting Governmental and private efforts to promote voluntary repatriation or assimilation within new national communities.

8. UN Doc. A/41/324, para 66.

2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependants of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authority of the State or country, public officials or mob violence.

Besides, the "Adendum" to the Bangkok Principles adopted in 1970 provides in paragraph 4 that:

"Where such person does not desire to return, he shall be entitled to prompt and full compensation by the Government or the authorities in control of such place of habitual residence as determined, in the absence of agreement by the parties concerned, by an international body designated or constituted for the purpose by the Secretary-General of the United Nations at the request of either party."

The above reference of the AALCC's Bangkok Principles, particularly the Right of Repatriation and Right of Indemnification were made to draw the attention to the need for improvement in the 1951 Geneva Convention.

VII. Duties of A Refugees

Among *duties* of refugees which are enshrined in the 1951 Convention, Article 2 States:

"General Obligations:

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order."

Among the primary duties of a refugee is not to have committed a common crime. For if he has he can be excluded from the country of refuge. The aim of the exclusion clause (Article 1F of the 1951 Convention)⁹ is to protect the community of a receiving country from

9. Article 1F of the 1951 Convention states:

"The provision of this Convention shall not apply to any person with respect to whom there are various reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations".

the danger of admitting a refugee who has committed a serious common crime and to ensure that he does not enjoy the benefit of refugee status so as to exonerate himself from justice. It also seeks to render due justice to a refugee who has committed a common crime of a less serious nature or has committed a political offence. Only a crime committed or presumed to have been committed by an applicant "outside the country of refuge prior to his admission to that country as a refugee" is a ground for exclusion.

A refugee committing a serious crime in the country of refuge is subject to due process of law in that country. Article 32 of the 1951 Geneva Convention provides that a refugee lawfully in the territory of a contracting State shall not be expelled "save on grounds of national security or public order". Such a refugee shall be expelled "only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority". Further Article 33 which prohibits expulsion or return however provides in paragraph 2 that under extreme circumstances a refugee may be expelled when "there are reasonable grounds for regarding (him) as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country".

VIII. Political and Subversive Activities of Refugees

Neither the UNHCR Statute nor the Geneva Convention (1951) contains any explicit reference to political or subversive activities of refugees. However, both the instruments contained exclusion clauses specifying various circumstances in which a person is not to be considered a refugee for the purpose of the Statute or the Convention. The relevant provisions are para 7(d) of the Statute and Article 1F of the Convention. These exclusion clauses are normally interpreted to refer to acts which took place before a person was admitted and recognised as a refugee and not to such acts committed in the country of asylum.

The 1951 Convention makes no references to the political activities of refugees and this is a matter within the jurisdiction of the State of residence. Article 2 of the 1951 Convention provides: "Every refugee has duties to the country in which he finds himself, which

require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order." In its comments on the draft of this Article, the *Ad hoc* Committee stated that :

"Article 2 states the obligation upon a refugee to comply with laws and regulations of the country in which he is. The Committee fully appreciated that the provision made in this Article was axiomatic and need not be explicitly stated. However, it was considered useful to include such a provision in order to produce a more balanced document as well as for its psychological effect on refugees and on countries considering admitting refugees.

The representative of France proposed a second paragraph to this Article, explicitly permitting Contracting States to restrict the political activity of refugees. The Committee felt that such a provision was too broad, and might be misconstrued as constituting approval of limitations on areas of activity for refugees which are in themselves unobjectionable. The Committee also felt that a provision of this kind was unnecessary and that in the absence of any provision to the contrary every sovereign government retained the right it has to regulate any activities on the part of an alien which it considers objectionable. The failure to include such a provision is not to be interpreted as derogating from the power of governments in this respect. In an effort to meet at least in part the view of the representative of France, the phrase "including measures for the maintenance of public order" was included."¹⁰

Thus Article 2 must be construed to mean that refugees not only must conform with the general laws and regulations of the country of their residence but are also subject to whatever curbs the country of asylum may consider necessary to impose on their political activity in the interest of the country's "public order". The phrase "*public order*" is the translation of the French "*Ordre Public*" which acquired a definite meaning in French and is also being used in international documents, for instance in Article 29 (2) of the Universal Declaration of Human Rights. It covers everything essential to the life of the country, including its security.

Moreover, Article 15 of the 1951 Geneva Convention dealing with the right of association provides: "As regards non-political and

10. Doc. No. E/1618 E/AC. 32/5 p. 41.

non-profit-making associations and trade unions the Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of foreign country, in the same circumstances."

Further Article 2 does not deal explicitly with the consequences of a breach of the obligations incumbent upon the refugees under Article 2. Theoretically it may be stated that when a refugee fails to comply with his obligations under Article 2 of the Convention, he would be subject to penalties as any other alien. Gross violations could lead to extreme penalties like expulsion under Article 32 of the Convention.

There are few instances where the first country of asylum has denied grant of asylum to persons seeking refugee status but has also handed them to the authorities of the country of origin. This is a clear violation of Article 33 of the 1951 Geneva Convention which prohibits expulsion of 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 a particular social group or political opinion".

Similarly even if a refugee failed to comply with the obligations under Article 2 and he is expelled under Article 32 of the 1951 Convention it is expected that the country of residence while expelling a refugee would not directly violate the principle of *non-refoulement* as mentioned in Article 33 of the Convention. It is desirable that the refugee to be expelled should be handed over to the UNHCR officials till the UNHCR finds an alternative country of asylum for that particular refugee.

Based on the above analysis it may be added that it is the *duty* of the refugee not to participate in any political or subversive activities from the soil of the country of residence. If he indulges in such activities the State of residence has the sovereign right to expel him.

In the Preamble to the 1951 Geneva Convention it is explicitly stated :

"that all States, recognising the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem becoming a cause of tension between States".

The political or subversive activities of refugees have often created problems and the States have often taken measures to ensure that such activities do result in their territories being used for acts

detrimental to other States. International law recognizes the principle that refugees should not be permitted to engage in political or subversive activities against the State of their former nationality or residence.

The Declaration on Territorial Asylum (1967) in Article 4 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".

Moreover the Charter of the Organisation of African Unity of 25 May 1963, Article III No. 5 provides for :

"Unreserved condemnation in all its forms of political assassination as well as subversive activities on the part of neighbouring States or any other States."

The OAU Convention Governing the Specific Aspects of Refugees Problems in Africa (1969) in Article III provides that:

Prohibition of Subversive Activities

1. Every refugee has *duties* to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.
2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States and in particular by use of arms, through the press, or by radio.

In spite of these international instruments, it may be observed that some States do not adhere to the letter and spirit of these instruments. Though Article 15 of the 1951 Geneva Convention provides "As regards non-political and non-profit-making associations and trade unions the contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances," it implicitly provides that a State may or may not regulate the formation and activity of the political associations of the refugees. That means a sovereign State has the discretion to regulate the political activities of refugees.