

It should however be noted that in some cases in Asia, Africa and Latin America the refugees have been involved in political activities including subversive activities as well as armed struggle against their country of origin. It has happened in a number of cases that the country of asylum has covertly trained and supplied arms to the refugees and encouraged them to carry on subversive activities against their country of origin.

Under these circumstances a refugee should not be solely to blame when the country of residence itself sponsors such subversive activities against the country of origin to achieve limited political gains. Here the refugees, willingly or unwillingly, have been used as a tool by the country of residence to gain political leverage. No country should however utilize a refugee as an instrument to gain any political mileage. The country of residence should not encourage any activities through refugees which would be contrary to the purposes and principles of the Charter of the United Nations as well as the spirit of good neighbourly relationship.

The Declaration on Principles of International law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations¹¹ in its Preamble States that :

the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of *any form of intervention* not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security.

The Declaration contains seven principles on friendly relations and cooperation. The first principle provides that "States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". It specifies that:

"Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

11. The above Declaration is an Annex to Resolution 2625 (XXV) of the United Nations General Assembly adopted on 24 October 1970.

when the acts referred to in the present paragraph involve a threat or use of force."

The third principle of the Declaration provides that the States have the "duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter". It specifies that :

"No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.... Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

The fifth principle contained in the Declaration highlights the "equal rights and self-determination of peoples". This principle provides that :

"Every State has the duty to refrain from any forcible action which deprives people ... of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their rights to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter."

This particular principle contained in the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations" has its genesis from previous United Nations General Assembly resolutions. The United Nations in 1960, bearing in mind the Asian, African and Carribean Peoples' struggle for national liberation from colonial yoke, adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples which states "All peoples have the right to self-determination."¹² This Declaration "regards the principle of self-determination as a part of the obligations stemming from the Charter, and is not a "recommendation, but is in the form of an authoritative interpretation of the Charter".¹³

12. UN General Assembly Resolution 1514 (XV) of 14 Dec., 1960.

13. Ian Brownlie, *Principles of Public International Law* (Third Edition), Oxford University Press

Recognised National Liberation Movement in countries under colonial domination, racist oppression or foreign occupation play a decisive role in struggle of the peoples in realising their right of self-determination. The United Nations General Assembly Resolution¹⁴ has urged all States "to provide material and moral assistance to the national liberation movements in colonial territories."

Bearing in mind the above analysis it may be suggested that except in cases of national liberation movement and right to self-determination, under normal circumstances the country of residence should not encourage a refugee, either overtly or covertly, to participate in any political or subversive activity.

IX. Conclusions

The rights and duties of a refugee in the first country of asylum have been elaborated above. In summary the refugees need three types of assistance for their protection under the 1951 Convention.

(1) *Care and maintenance*

Food, clothing, shelter, medical, educational, recreational and other welfare services; and employment (often with antecedent training or retraining) in order that they may once again provide their own care and maintenance.

(2) *Re-establishment*

Voluntary repatriation to countries of nationality or former habitual residence, absorption into countries of present location, or resettlement in other countries. All such measures of re-settlement require negotiations (usually protracted) with the Governments concerned, and require detailed procedure for handling all such movement.

(3) *Legal and political protection*

In countries of asylum and in countries of resettlement until firm re-establishment is attained—as much as possible of that representation of rights and legitimate interests as would otherwise be afforded by the diplomatic, and consular officials of the

(1979) p. 595 See also Himphery Waldock 106, *Hague Requiell* (1962, II) 33, Annual Report of the Secretary General (1961) p. 2.

14. United Nations General Assembly Resolution 2189 (XXI) of 13 December, 1966.

refugees' countries of nationality. Outstanding among the rights and interests to be protected are those of rations and social benefits, the issuance of identity and travel documents and the acquisition of settled residence status which may lead to a new citizenship.

For a complete enjoyment of rights which are provided to the refugee by virtue of the 1951 Convention and 1967 Protocol in the first country of asylum, it is obligatory on his part to perform the duties which are expected to be respected by all citizens. For if he claims rights he has to abide by his duties as well.

Viewed in this context and judged from the steps already taken in this direction by the international agencies, the refugee problem is international in scope and character and can only be solved through international cooperation.

V. Deportation of Palestinians in Violation of International Law, Particularly the Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews from Soviet Union in the Occupied Territories

(i) Introduction

The item entitled the "Deportation of Palestinians in Violation of International Law, particularly the Geneva Convention of 1949" was first taken up by the AALCC consequent upon a reference made by the Delagation of the Islamic Republic of Iran at the Twenty-seventh Session of the Committee, held in Singapore in March 1988. At that Session the Delegate of the Islamic Republic of Iran in his introductory statement pointed out that the Zionist entity (Israel) had deported a number of Palestinians from Palestine as a brutal response to the upheaval by the people in the occupied territory. The deportation, both in the past and in recent times, of people from the occupied territory constituted a severe violation of the principles of international law and also violated, in letter and spirit, the provisions of such international instruments and conventions as the Hague Conventions of 1899 and 1907, the Charter of the United Nations, 1945 and the Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949, all of which either implicitly

or explicitly prohibited deportation as a form of punishment or a deterrent factor especially in an occupied territory. The Islamic Republic of Iran's primary interest, at that stage, was related to two basic issues viz.

- (i) the enunciation of the duties, commitments and obligations of occupying forces, in accordance with international law; and
- (ii) their violation by the Zionist entity in Palestine.

It accordingly requested the Committee to consider the item. After a preliminary exchange of views at that Session the AALCC called upon the Government of the Islamic Republic of Iran to furnish the Secretariat with a memorandum which it (the Secretariat) might take as a basis to conduct its study and accordingly directed the Secretariat to conduct a study of the matter.

The Islamic Republic of Iran accordingly submitted a memorandum to the AALCC Secretariat whereby it called upon the Secretariat : (i) to study the fact that in accordance with international law, the deportation of the residents of the occupied territories is illegal and condemned; and (ii) requested the examination of the violations by the occupation regime which has not been recognised by many of the member States of the international community including Iran. The memorandum also requested the Secretariat to submit "an interim report to the member States before embarking on carrying out its comprehensive studies".

A preliminary report prepared by the Secretariat was accordingly considered at the Twenty-eighth Session of the AALCC held at Nairobi in 1989. That report while finding that deportation of Palestinians from occupied territories was in flagrant violation of international law invited attention to the following :

- (i) Contemporary international humanitarian law as codified in the four Geneva Conventions of August 1949 and the two additional protocols of 1977 thereto;
- (ii) The corpus of *opinio juris* which has over the years underscored the applicability, in the Palestinian territories occupied by Israel, of the provisions of the Geneva Convention relative to Protection of Civilian Persons in Time of War, 1949; and
- (iii) Consideration of the course of action for the future work of the Committee on the subject.

In the course of deliberations on the preliminary report the member States *inter alia*:

- (i) Agreed that the Israeli authorities were acting in flagrant violation of international law in deporting Palestinians from the occupied territories; and
- (ii) Affirmed the inalienable right of the Palestinian people to self-determination and the right to return to their land.

The Secretariat was also directed to forge cooperation between the AALCC and the PLO, the Organisation of Islamic Countries (OIC), the League of Arab States (LAS) and the Organisation of African Unity (OAU) in dealing with this plight, and to prepare an indepth study on legal aspects of the subject including the question of payment of compensation and to convene a meeting of Legal Advisors of Member States to examine and review the Report.

The Secretariat pursuant to the decision of the AALCC at its Twenty-ninth Session, prepared a brief which sought to establish that payment of compensation for deportation is both a matter of customary international law of State responsibility as well as an express stipulation of international humanitarian law as codified in the Hague Regulations of 1907, and the Fourth Geneva Convention of 1949.

In introducing the item, and the documents prepared by the Secretariat thereon, at the Twenty-ninth Session of the AALCC held at Beijing in March 1990, the Secretary-General expressed the view that the future work on the topic may require to be taken in progressive stages with regard to the undertaking of further studies as well as the examination of the relevant international instruments. Reference was also made to the massive immigration of Jews from the Soviet Union and their settlement in the Palestinian occupied territories.

In the debate that followed several delegates expressed the view that the Secretariat should focus on the legal aspects of Israel's immigration policy and the settlement of Soviet Jews in the occupied territories. At the closure of the debate on the matter it was decided that the Secretariat should make a comprehensive study taking into consideration all the legal aspects of the matter and the resettlement in violation of international law by the State of Israel of a large number of emigrants in Palestine.

Introducing the item at the Thirtieth Session of the AALCC held in Cairo in April, 1991, the Secretary General stated the Secretariat had prepared a brief which examined the Israeli settlement policy in

occupied territories as well as the question of massive emigration of Jews to Israel. The brief prepared by the Secretariat also examined the question of the right of return of the Palestinian people to their home and hearth.

The Secretary-General proposed that while considering the future work on the subject, the AALCC may, perhaps, wish to reiterate its decision to hold an inter-sessional meeting of Legal Advisers of Member States which may *inter alia* deliberate on such legal aspects of the problem on which the future work may require to be undertaken. The AALCC may also wish to direct the future work on the subject within the context of the preparation for the proposed International Peace Conference to be held at the end of the Decade of International Law, since the subject would be particularly pertinent for consideration at the proposed International Conference.

The AALCC at its Thirtieth Session having taken note of the Secretariat study on "The Deportation of Palestinians in Violation of International Law, particularly the Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territories" after due deliberation, expressed its concern at the continuing denial and deprivation of the inalienable human rights of the Palestinian people including the right of self-determination and right to return and the establishment of their independent State on their national soil. The Committee requested the Secretary-General to continue to monitor the events and developments in the occupied territories of Palestine. The AALCC also decided to include the item in the agenda of its Thirty-first Session.

(ii) Decisions of the Thirtieth Session (1991)

Agenda Item: "Deportation of Palestinians in violation of International Law, particularly the Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the occupied territory"

The Committee at its Thirtieth Session having taken note of the Secretariat study on "The Deportation of Palestinians in violation of International Law, particularly the Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territory";

- Expresses its concern at the continuing denial and deprivation of the inalienable human rights of the Palestinian people including *inter alia* the right of self-determination and right to return and the establishment of their independent State on their national soil;
- Expresses its appreciation to the Secretary-General of the Committee for the comprehensive brief prepared for the Session;
- Requests the Secretary-General of the Committee to continue to monitor the events and developments in the occupied territories of Palestine;
- Decides to convene an inter-sessional meeting of the Committee to consider Israel's policies of immigration and settlement if financially feasible or if an invitation to host such a meeting is received from a Member State.