

27. Some delegations, on the other hand, expressed the view that the formulation in respect of State liability to provide for compensation did not really cover the case of State responsibility and thus State liability for wrongful acts.

28. The other element in this part relates to the Fund itself. The Report of the *Ad hoc* Working Group of Legal and Technical Experts envisages the establishment of an International Fund which would be available both for compensation and for financing prompt response measures in emergency situations. The *Ad hoc* Working Group has recommended that these two aspects of the fund be operated in a compatible manner. It also proposed that the said Fund would be financed by appropriate levies from the persons involved in the generation, transboundary movement and disposal of wastes, such as generators, exporters, importers, carriers, disposers and/or States as well as from voluntary contributions. With regard to the question of imposing appropriate levies some delegations were of the view that levies on States should be assessed on the basis of the volume of their wastes that undergo transboundary movement. A view was also expressed that the fund could be financed by contributions from States Parties and that voluntary contributions may also be obtained from sources that States consider appropriate.

29. The *Ad hoc* Working Group has requested the UNEP Secretariat to undertake a study of factual issues that bear on the financing operation and management of the fund on the basis of some twenty-four questions identified by the Group. This set of questions which are addressed to both substantive and procedural aspects of the financing, operation and management of the Fund could be said to address themselves to the following aspects viz. (i) the personality of the fund; (ii) the Quantum of the Fund; (iii) the basis of levies and collection thereof; (iv) mechanism for assessing damage and compensation for damage; (v) claims; and (vi) accounting procedures among others. Several of these questions overlap.

30. Part Three of the elements which might be included in a protocol on liability and compensation entitled 'Procedures' identifies six elements relating to claims procedures; the jurisdiction of domestic courts; applicable law; mutual recognition and enforcement of judgement; relationship of the Protocol to other bilateral, multilateral and regional arrangements; and the date of application.

31. As regards claims procedures it has been proposed that claims for damage should primarily be made through domestic courts. It was

pointed out in this regard that the question of which body or entity can be given the legal capacity to act as a plaintiff for claims of damage, to the environment in areas beyond the national jurisdiction from the transboundary movement of hazardous wastes should be considered. A view was also expressed that claims may also be brought before an international tribunal and that claims between States other than those not involving State commercial activities should be addressed in accordance with Article 20 of the Basel Convention.

32. The *Ad hoc* Working Group has also recommended an internationalized approach for the assessment of clean ups and remedial action costs, as well as for a valuation of environmental damage e.g.

- (a) Domestic Courts assisted by an international technical advisory body to be consulted on an optional or a mandatory basis;
- (b) In the case of an international fund, the administration of the fund is to be guided by the recommendations of an international technical advisory body;
- (c) A combination of (a) and (b);
- (d) An international commission with exclusive jurisdiction.

Technical assistance from parties, provided bilaterally or multilaterally, could play a useful role.

IV. Status and Treatment of Refugees

(i) Introduction

The above topic was initially referred to the AALCC by the Government of Egypt in 1963. In its Memorandum referring the topic, the Government of Egypt while indicating the legal issues for consideration stated that apart from humanitarian considerations, the status and rights of refugees raised several issues of mutual interest to the member States of the AALCC and that, therefore, the AALCC's views would be invaluable in understanding the refugees problem.

At the sixth session of the AALCC held in Cairo (1964), the topic was taken up for consideration on the basis of a preliminary note presented by the Secretariat and a Memorandum furnished by the Office of the UNHCR. Subsequently, at its eighth session held in Bangkok (1966), the AALCC adopted certain principles concerning the status and treatment of refugees, commonly known as 'The Bangkok Principles (1966)'. These principles have since been widely applied in the practice of States and were taken into consideration in formulating the basis for the United Nations Declaration on Territorial Asylum adopted in 1967.

Subsequently, at its eleventh session held in Accra (1970), the AALCC considered and adopted an 'Addendum to the Bangkok Principles'. This addendum contains an elaboration of the right to return of any person who because of foreign domination, external aggression or occupation has left his habitual place of residence. In its continued efforts to improve upon the Bangkok Principles, the AALCC at its twenty-sixth session held in Bangkok (1987) adopted

the 'Burden Sharing Principles' as an additional set of principles to supplement the Bangkok Principles.

I. Addendum to the Principles concerning Treatment of Refugees

(as adopted by the Committee at its Eleventh Session in the Seventh Meeting held on the 27th January, 1970)

WHEREAS it appears to the Committee on further consideration that the Principles adopted at its Session held in Bangkok in 1966 mainly contemplated the status of what may be called political refugees who have been deprived of the protection of their own Government and do not provide adequately for the case of other refugees or displaced persons :

AND WHEREAS the Committee considers that such other refugees or displaced persons should enjoy the benefit of protection of the nature afforded by Articles IV and V of those Principles :

NOW THEREFORE, the Committee at its Eleventh Session held in Accra between 19th and 29th January 1970 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 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 of 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.

4. 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.

5. If the status of such a person is disputed by the Government or authorities in control of such place of habitual residence, or if any other dispute arises, such matter shall also be determined, in the absence of agreement by the parties concerned, by an international body designated or constituted as specified in paragraph 4 above.

sd/-

N.Y.B.Adade

President

NOTE The addendum was adopted by the Committee subject to reservations made by the Delegates of India and Ghana regarding the universal application of the principles contained in the Addendum as recorded in the minutes of the Sixth and Seventh Meetings of the Committee.

II. Addendum to the Status and Treatment of Refugees—Report of Committee

(As adopted at the Twenty-sixth Session of the AALCC in Bangkok on 13 January, 1987)

The topic 'Status and Treatment of Refugees' was originally referred to the Committee for consideration by the Government of the Arab Republic of Egypt in 1962. The subject was studied with the assistance and cooperation of the Office of the United Nations High Commissioner for Refugees and was deliberated upon at the Committee's Cairo (1964), Baghdad (1965) and Bangkok (1966) Sessions. At the Bangkok Session, the Committee made its final recommendations in the form of a set of eight principles (subsequently known as the Bangkok Principles) which *inter alia* contained the definition of the term 'refugee' and certain norms on the question of asylum, right of return, right to compensation, minimum standard of treatment, obligations of refugees, expulsion and deportation.

The topic was taken up for further consideration at the request of the Government of Pakistan at the Karachi Session in 1969 and then at the Accra Session in 1970 where the Committee adopted an 'addendum' to the Bangkok Principles. 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. At its seventeenth session in Kuala Lumpur in 1976, the Committee considered a related topic, namely, Territorial

Asylum in the context of preparations for a United Nations Convention. Thereafter some proposals were received from the Office of the United Nations High Commissioner for Refugees in 1980 that the Committee should revive consideration of the subject in the context of new developments that were taking place in the practice of States to deal with refugee situations.

At the Tokyo Session (1983) after a general exchange of views, it was decided that the AALCC's Secretariat should prepare in collaboration with the Office of the UNHCR a study on the principle of burden sharing as also another study on the doctrine of State responsibility in relation to the problem of refugees. A paper setting forth the evolution of the principles and norms on the question of burden sharing as developed through practice of States was accordingly placed before the Kathmandu Session and was discussed in the Plenary.

In the light of the exchange of views and the material placed before the Committee during the deliberations of the Kathmandu and Arusha Sessions the conclusion could be drawn that the principle of international solidarity in dealing with the refugee situations and the concept of burden sharing in that context appear by now to be firmly established in the practice of States. This development in the field of humanitarian refugee law is attributable largely to the international concern in the context of the United Nations Charter to preserve human life, to diminish human suffering, to provide for the well being of all men and to assist States in providing protection and assistance to refugees and in seeking solutions to the problem of refugees. Furthermore, there has been a growing trend towards finding durable solutions to the problem of refugees and for international assistance to relieve the burden of the States faced with large scale influx of refugees.

The Committee, having regard to the aforesaid considerations decides to make the following recommendations as additional principles to supplement those contained in the Bangkok Principles of 1966 :

- I. The refugee phenomenon continues to be a matter of global concern and needs the support of the international community as a whole for its solution and as such the principle of burden sharing should be viewed in that context.
- II. The principle of international solidarity and burden sharing needs to be applied progressively to facilitate the process of durable solutions for refugees whether within or outside a particular region, keeping in perspective that durable solutions in certain

situations may need to be found by allowing access to refugees in countries outside the region due to political, social and economic considerations.

- III. The principle of international solidarity and burden sharing should be seen as applying to all aspects of the refugee situation, including the development and strengthening of the standards of treatment of refugees, support to States in protecting and assisting refugees, the provision of durable solution and the support of international bodies with responsibilities for the protection and assistance of refugees.
- IV. International solidarity and cooperation in burden sharing should be manifested whenever necessary, through effective concrete measures in support of States requiring assistance, whether through financial or material aid or through resettlement opportunities.

sd/-

Vaikundha Samruatruamphol
President

During the period under review, i.e., 1987 to 1991, the focus of discussion within the Committee has been on the following two aspects of the topic viz.

- (i) Rights and Duties of a Refugee in the Country of Asylum—The Principle of Non-Refoulement; and
- (ii) The Establishment of Safety Zones in the Country of Origin for the Displaced Persons.

Rights and Duties of a Refugee in the First Country of Asylum—The Principle of Non-Refoulement

During the twenty-ninth session held in Beijing (1990) the AALCC directed the Secretariat to carry out a study of the rights and duties of refugees in the first country of asylum. Accordingly, the Secretariat prepared a study and presented it to the thirtieth session of the AALCC held in Cairo (1991). The study analysed in-depth the rights enjoyed by a refugee under the 1951 Convention relating to the Status of Refugees. Some specific rights such as the right of repatriation and the right to indemnification under the Bangkok Principles were also examined. In addition, the study also highlighted the obligations of the first country of asylum towards the refugees. On the question

of duties of a refugee, the study underscored the fact that it was the duty of a refugee to refrain from participating in any political or subversive activities. It also highlighted that the country of asylum should not encourage or sponsor any subversive activities against the country of origin or any other country to achieve limited political gains since this would be contrary to the purposes and principles of the Charter of the United Nations as well as the spirit of good neighbourly relations amongst States. However, the study did suggest an exception to this norm for the sake of national liberation movements and the right to self-determination of the oppressed peoples. The AALCC commended the Secretariat study and directed the Secretariat to prepare a further study on the rights and duties of a refugee in the first country of asylum with particular emphasis on the principle of *non-refoulement*.

Establishment of a Safety Zone in the Country of Origin for the Displaced Persons

During the twenty-fourth session of the AALCC held in Kathmandu (1985), the Delegate of Thailand at the conclusion of the discussion on the question of 'Burden Sharing' proposed that the AALCC should initiate a study on a closely related aspect, namely the possible establishment of safety zones for refugees or displaced persons in their country of origin. The Thailand Delegate reiterated his request at the twenty-fifth session held in Arusha (1986) and suggested that the establishment of safety zones for refugees or displaced persons in their country of origin would lessen the burden for the international community and to some extent might alleviate the refugee problem particularly if their safety in their country of origin was guaranteed and their well-being assured by the international community. He proposed that the study might focus attention in particular on the following issues :

- (i) The circumstances under which safety zones could be established in the home country of refugees or displaced persons;
- (ii) Whether neutral bodies like international organisations should be entrusted with the responsibility for management, food, medical care and security in the safety zone; and
- (iii) The status of the safety zones.

At the twenty-sixth session of the AALCC held in Bangkok (1987), the Secretariat presented a preliminary note on this topic based on the guidelines provided by the Thai Delegate. At the twenty-seventh

session of the AALCC held in Singapore (1988), a revised note was presented by the Secretariat reflecting therein the comments and observations made by other delegates at the Bangkok Session. At the Singapore Session, the Thai Delegate further elaborated on the proposal regarding the concept of safety zones. He expressed the view that a safety zone for displaced persons in their country of origin was legally feasible as there was no reason for not according them the same international protection as that granted to the refugees as defined in the existing Convention.

However, the Observer for the UNHCR felt that the concept raised complex issues in the areas of human rights and refugee law as well as from the view-point of humanitarian law. He pointed out that although the proposal was conceptually similar to the neutralized zone envisaged by Article 15 of the Fourth Geneva Convention of 1949 as extended by Article 60 of its Protocol I, there were differences when it came to an individual refugee. According to him, any notion that an asylum seeker or groups thereof, fleeing persecution in the country of origin should be required to delay the asylum request and to remain in the country where they had genuine fear of persecution ran contrary to the basic provisions of human rights and refugee law which, apart from the Universal Declaration on Human Rights, were reflected in the AALCC's Bangkok Principles. He was of the view that the proposal had so far been presented as an asylum option which was contrary to the institution of asylum. Protection granted to a foreign national against the exercise of jurisdiction by his national State was the key provision in refugee law. According to him, another point of practical significance was that while the proposal assumed that safety zones were for refugees, this was not consistent with the refugee law. A refugee was traditionally understood to be outside the country of his nationality and unable or unwilling to avail himself of the protection of that country. Consequently, persons for whom safety zones were intended would not be 'refugees' in the usual sense as they would be within their country of origin. He, therefore, expressed the view that the legal regime of rights, duties and protection to be applied to persons in the safety zones would need to be different from that prescribed in the basic refugee instruments.

Several delegates spoke in favour of the concept but expressed doubts about its viability. At the end of the deliberations, the Secretariat was directed to prepare a further study on this topic.

Accordingly, a further study providing a concrete framework containing the following 13 principles to concretize the concept of

safety zones was presented by the Secretariat to the twenty-eighth session of the AALCC held in Nairobi (1989). However, several delegates at that session expressed the view that since the question of safety zones involved many political issues, the item should be deferred to a future date, a decision was taken to that effect. However, during the thirtieth session held in Cairo (1991), the AALCC taking note of the current importance of the item decided to include the item once again on its work programme, and directed the Secretariat to prepare a study for submission at the next session.

The thirteen principles are as follows :

- (i) a Safety Zone may be established with the agreement of the State concerned, through a resolution or recommendation of the United Nations;
- (ii) the safety zone should be akin to a demilitarized zone or a neutral zone and immune from any type of hostile activities and may be established by notification of a specified geographical area or areas;
- (iii) the safety zone should be under the international supervision, control and management to provide international protection to the persons residing therein;
- (iv) the United Nations may be called upon to designate an international organisation for administration and supervision of the zone;
- (v) the participation of the State of origin and other neighbouring States, who are likely to receive the mass exodus, may also be associated in the supervision of the safety zone;
- (vi) the designated international agency shall be responsible for providing food, shelter and medical care and for this purpose shall invite voluntary organisations to render assistance to the extent necessary. The cost of operation shall be met through voluntary contribution of States, governmental and non-governmental humanitarian organisation;
- (vii) the armed forces and civilian authorities, particularly those within the State of origin shall fully respect the special status of the zone so created;
- (viii) the government of the state and all authorities shall respect the special status of the zone and afford all assistance to ensure the safety and security of the persons granted temporary asylum therein;

- (ix) a limited international security maintaining force may be created for the sole purpose of maintaining law and order in the safety zone;
- (x) the persons seeking asylum in the safety zone would be disarmed and they would not be allowed to participate in any type of military activities or guerilla warfare or insurgencies against any State and the residents in such zones should not be a military target of any State;
- (xi) the safety zone, thus established under international supervision would be of a temporary nature;
- (xii) the persons who have sought asylum in such zone, shall be provided with the facility to seek asylum in a different country;
- (xiii) if normalization is restored in the State of origin and the international agency in charge of the safety zone is satisfied that the conditions are favourable, the persons residing in such zones shall be provided with all facilities to return to their permanent place of residence.

AALCC-UNHCR: Workshop on International Refugee and Humanitarian Law in the Asian-African Region to be held in New Delhi

The AALCC in cooperation with the United Nations High Commissioner for Refugees (UNHCR) had arranged to convene a workshop in New Delhi in October 1991. The workshop was expected to be widely represented. Broad issues were likely to be considered relating to the contemporary refugee phenomena and a variety of specific concerns facing Governments in the two regions.

(ii) Decisions of the Thirtieth Session (1991)

Agenda Item "Status and Treatment of Refugees"

The Committee taking note of the study prepared by the Secretariat on the "Status and Treatment of Refugees; Rights and Duties of a Refugee in the First Country of Asylum" and further taking note with appreciation of the Statement of the Representative of UNHCR,

Decides that the Secretariat should continue its study on the question of Rights and Duties of a Refugee in the First country of Asylum with particular emphasis on the principle on *non-refoulement*,

Decides to place the item of Safety zones for Refugees on the agenda of its 31st session and directs the Secretariat to up-date the study on the topic,

Expresses the hope that the "Workshop on International Refugee and Humanitarian Law in the Asian-African Region" to be held in New Delhi with the co-operation of the Office of UNHCR sometime in September/October 1991 would be attended by all member-Governments,

And further decides to place the item "Status and Treatment of Refugees" on the Agenda of the Thirty-First Session of the Committee.

(iii) Secretariat Study : Status and Treatment of Refugees : Rights and Duties of a Refugee in the First Country of Asylum : A Preliminary Study

I. Introduction

The coming together of men in an organized society entails willingness to achieve a common purpose, the purpose of what Aristotle referred to as *living well*. This purpose helps men in fulfilment in the enjoyment of certain given conditions necessary for the development and realisation of human personality. For example, in the absence of opportunity for free expression of opinion, a man cannot realise his best self. In fact, *Rights* are the sum total of those opportunities which ensure enrichment and development of individual personality. Laski has observed that "Rights, in fact, are those conditions of social life without which no man can seek, in general, to be himself at his best".

Nevertheless, *Rights* may not be absolute always. Rights should be linked with socially desirable conditions. No man, for instance, has a right to murder or steal because in so doing he infringes on other persons' right to life and property. That means reasonable restrictions must be imposed on one's right so that a person does not trespass into the domain of another person's right. There has to be a mutual respect for each other's right. Consequently besides enjoying certain given rights, a person has also the duty to respect the other person's rights on an equal basis. Hence, the enjoyment of rights involves duty i.e. respectful observance of the fundamental canons of social justice. In other words, both Rights and Duties are the two sides of the same coin and go hand in hand.

The American Declaration of the Rights and Duties of Man, approved at Bogota in 1948 reads :

"PREAMBLE

"All men are born free and equal, in dignity and in rights and, being endowed by nature with reason and conscience, they should conduct themselves as brothers to one another.

"The fulfilment of duty by each individual is a prerequisite to the rights of all. Rights and duties are inter-related in every

social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

"Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

"In-as-much as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

"Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his powers.

"And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

Generally, Rights may be classified into two major sub-divisions: (1) Moral Rights and (2) Legal Rights. Bearing in mind the scope of the study emphasis will be laid on legal rights. Legal rights are those prerogatives enjoyed by citizens or aliens which may be enshrined in the State's constitution or sanctioned through the instrumentality of its legal code or which has become corpus of generally recognised principles of international law. Those legal instruments could be either the Constitution of the State or an international convention which the State has adhered to, or which reflect customary international law.

Further, Legal Rights may be classified into (i) Political and (ii) Civil Rights. Political rights are those prerogatives, recognised and guaranteed by the law of the State which ensure the participation of the citizens of the State in the exercise of the sovereign power of the State. Thus, it may be stated that Political Rights are the devices which entitle a citizen to share powers indirectly. In a democratic society the citizens exercise their power through the ballot which is a direct access to the sources of authority. For this reason most of the democratic Constitutions are introduced with the sentence "We, the people of....." which signifies that sovereignty lies with the nationals of the State. Therefore, right to vote, right to contest election, right to public office and right to petition are some of the notable political rights enjoyed by the citizens of the State. From the above it may be derived that political rights are meant exclusively for the citizens of the State which are the bed-rock of a democratic polity and entitles them to share the sovereign power of the State.

An alien, including a refugee, who is not part of the process of power sharing, directly or indirectly, in the State of residence is, therefore, not entitled to enjoy any political rights. They are only entitled to enjoy certain other rights to have a decent civic life. These civic rights are meant for the growth and development of the human personality transcending all national barriers. These prerogatives are known as "Civil Rights". Every human being, which includes citizens and aliens, is entitled to enjoy civil rights without which no person can attain his best self. The mental and spiritual development of a human being is possible only through the enjoyment of these rights.

Among the most important civil rights some may be mentioned such as right to life, right to liberty, right to education, right to freedom of thought and expression, right to property, right to contract, right to religion, right to freedom of association and right to equality. All these rights are enjoyed by the citizens and aliens in the State. But in many cases it is observed that the aliens including a refugee may not enjoy the civil rights to an extent a citizen of the State enjoys. For example a citizen under the right to freedom of association may form a political party and under right to freedom of thought and expression may criticize the government and its policy. On the other hand, an alien, including a refugee may be not in such a privileged position to do so at par with a citizen.

Certain reasonable restrictions may be imposed for an alien. An alien, including a refugee may only form a non-political association and air grievances which only concern them. For this reason it is said that a refugee is entitled to enjoy certain minimum civil rights. When we say minimum it implies that a refugee should enjoy the civil rights with certain reasonable restrictions. These minimum civil rights which a refugee is entitled to are enshrined in the 1951 convention Relating to the Status of Refugees.

For understanding the "rights and duties" which a refugee enjoys in the first Country of asylum, it would be useful to refer to the definition of the term 'refugee' as given in Article 1A (2) of the 1951 Convention Relating to Status of Refugees.

II. Definition of the term "Refugee"

Article 1A(2) of the 1951 Convention Relating to the Status of Refugees defines a 'Refugee' as a person who :

"As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of

race, religion, nationality, membership of a particular social group or political opinion, *is outside the country of his nationality*¹ and is unwilling to avail himself of the *protection* of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it."

The 1967 protocol relating to the Status of Refugees in Article I(2) omitted the time restriction "As a result of events occurring before 1 January, 1951 and" in Article 1A(2) of the 1951 Convention for determining the status of refugees. Further the Protocol has also in Article I(3) removed the geographic limitations for the application of the 1951 Convention. These two amendments have made the 1951 Geneva Convention on Refugees universal in character.

A refugee is thus a person who is outside the country of his nationality or who, not having a nationality is outside the country of his former habitual residence and lacks the protection of the country of origin.² When a person due to fear of persecution moves out from the protection of the State of his nationality or habitual residence and seeks asylum elsewhere, the State which grants him asylum (First Country of Asylum) and recognises his status as a refugee, is required to provide him the minimum protection as enshrined in the 1951 Geneva Convention. Consequently, in lieu of the Country of Origin the First Country of Asylum would provide and grant him basic or minimum civil rights. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) besides providing a much wider definition on "refugee" provides in some cases, better protection to the refugees in comparison with the 1951 Geneva Convention.

III. Measures and Strategies for the Protection of Refugees

A refugee whether he is in the first country of asylum or in transit, or in the receiving country for resettlement has the right to enjoy certain basic civil rights. Article 14(1) of the Universal Declaration of Human Rights states that : "Everyone has the right to seek and to enjoy in other countries asylum from persecution". The preamble

1. Emphasis added.

2. The term "Country of Origin" in this paper refers to the State from which a mass exodus has taken place.

to the 1951 Convention Relating to the Status of Refugees provides that : "The High Contracting Parties considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination... and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms". A victim of persecution or an individual possessing a "well-founded fear of being persecuted" has the right to seek asylum in other countries and claim the status of a "refugee" under the 1951 Geneva Convention. If the asylum-seeker fulfils the criteria contained in the definition of the 1951 Geneva Convention and its 1967 Protocol thereto, then the first country of asylum is required to recognise the person's status as a refugee and grant him the rights and protection as stated under the Convention.

The rights and protection to be afforded or granted to the refugee by a State are obligatory not only under the 1951 Geneva Convention but also under the customary international law and general principles recognised by the civilized nations. A State, party to the 1951 Geneva Convention and its 1967 Protocol thereto, is obliged to grant the protection and rights to the refugees as described in the instruments.³ Refugee problems of course existed prior to the 1951 Convention. Even then refugees enjoyed asylum and certain protection and rights from the State of asylum mainly under customary international law. The 1951 Geneva Convention has primarily codified the previous and existing international Conventions, international custom and general principles of law on the international legal rights and obligations of refugees. For this reason, the States which are not parties to the 1951 Geneva Convention and its 1967 Protocol thereto, and which host thousands of refugees, grant them due protection and rights under the customary international law and general principles of law recognised by civilized nations.

An important study on refugee law done by Atle Grahl-Madsen states that⁴ "Refugees have been inextricably involved in—and affected by—the development of certain branches of (customary) international law. They were involved in the development of the 'right of asylum',

3. Under Article 42 of the 1951 Geneva Convention a contracting State may at the time of signature, ratification or accession make reservations to Articles of the Convention other than to Articles 1, 3, 4, 16(1), 33, 36 to 46 inclusive.

4. Atle Grahl-Madsen - The Status of Refugees in International Law (Vol. I), (A.W. Sijthoff-Leyden, 1966), p. 42, 45-46.