

Office of the United Nations High Commissioner for Refugees. The Committee had the benefit of the views expressed by the Deputy High Commissioner for Refugees, who attended the Session. The Committee after a general discussion decided to direct the Secretariat to collect further material on the subject, particularly on the issues relating to compensation, the minimum standard of treatment of a refugee in the State of asylum and the constitution of international tribunals for determination of compensation that can be claimed by a refugee. The Secretariat, in accordance with the directions of the Committee, had prepared a revised note on the subject including certain draft articles on the rights of refugees to serve as a basis of discussion in the Committee. The Secretariat had also placed before the Committee considerable material on the subject, including the text of the Agreement of 28th July, 1951 relating to the Status of Refugees.

The Committee gave detailed consideration to this subject at its meetings held on 23rd, 24th, 25th, 27th, and 28th March, 1965. The Committee had the benefit at this Session also of the views of the Deputy High Commissioner for Refugees in consideration of the subject. The Committee decided at this Session to formulate certain general principles on the rights a refugee should have, and the principles adopted on this subject are set out in the form of articles in *Annexure* to this Report.

The Committee decided to postpone consideration of the question as to whether any provision should be made for ensuring the implementation of the right to return and the right to compensation which have been provided for in the articles on the rights of refugees.

The Committee could not, for lack of time, give detailed consideration to the provisions of the United Nations Refugee Convention of 1951, and accordingly it decided to postpone its recommendation on the question as to whether a State should endeavour to afford to the refugee treatment in conformity with the principles contained in that convention.

The Committee was also not in a position to consider a proposal made by the Delegation of India to incorporate a provision in the articles relating to the rights of refugees. The text of the Draft

Article suggested by the Delegation of India was in the following terms:—

“A refugee shall lose his status as a refugee if he does not return to the State of which he is a national, or, if he has no nationality, to the State of which he was a habitual resident, or to avail himself of the protection of such State even after the circumstances in which he became a refugee ceased to exist.”

The Committee, having regard to the urgency of the problem, decided to draw up this Interim Report and to submit the same to the Governments with a view that their comments and observations may be available before the next session of the Committee, when it proposes to give further consideration to this subject.

The Committee records its deep appreciation of the assistance rendered to the Committee by the Deputy High Commissioner for Refugees in the study of this subject.

Sd/—
(SHAKIR AL-ANI)
President.
1-4-1965.

ANNEXURE

PRINCIPLES CONCERNING TREATMENT OF REFUGEES

Article I

Definition of the term 'Refugee'

A "Refugee" is a person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, political belief or membership of a particular social group:

- (a) leaves the State of which he is a national, or, if he has no nationality, the State of which he is a habitual resident; or,
- (b) being outside such State, is unable or unwilling to return to it or to avail himself of its protection.

Exceptions: (1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any of the States of which he is a national. (2) A person who has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purposes and principles of the United Nations shall not be a refugee.

Explanation: The dependants of a refugee shall be deemed to be refugees.

Explanation: The expression "leaves" includes voluntary as well as involuntary leaving.

NOTES

(i) The Delegations of Iraq, Pakistan and the United Arab Republic expressed the view that, in their opinion, the definition of the term 'Refugee' includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to occupying the State.

(ii) The Delegation of Ceylon and Japan expressed the view that in their opinion the expression "persecution" means something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilized nations.

(iii) The Delegation of Japan expressed the view that the word 'and' should be substituted for the word 'or' in the last line of paragraph (a).

Article II

Loss of Status as Refugee

A refugee shall lose his status as refugee if—

- (i) he voluntarily returns to the State of which he is a national or, if he has no nationality, to the State of which he is a habitual resident; or
- (ii) he voluntarily acquires the nationality of another State and is entitled to the protection of that State.

NOTE : The [Delegation of Iraq and the United Arab Republic reserve their position on paragraph (ii).

Article III

Asylum to a Refugee

A State has the sovereign right to grant or refuse asylum to a refugee in its territory.

Article IV

Right of Return

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

Article V

Right to Compensation

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

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 authorities of the State, public officials or mob violence.

Article VI

Right of Movement and Residence

1. Subject to the conditions imposed for the grant of asylum in the State and subject also to the local laws, regulations and orders, a refugee shall have the right—
 - (i) to move freely throughout the territory of the State; and
 - (ii) to reside in any part of the territory of the State.
2. The State may, however, require a refugee to comply with provisions as to registration or reporting or otherwise so as to regulate or restrict the right of movement and residence as it may consider appropriate in any special circumstances or in the national or public interest.

Article VII

Personal rights

Subject to local laws, regulations and orders, a refugee shall have the right—

- (i) to freedom from arbitrary arrest;
- (ii) to freedom to profess and practise his own religion;
- (iii) to have protection of the executive and police authorities of the State;
- (iv) to have access to the courts of law; and
- (v) to have legal assistance.

Article VIII

Right to property

Subject to local laws, regulations, and orders and subject also to the conditions imposed for the grant of asylum in the State, a refugee shall have the right to acquire, hold and dispose of property.

Article IX

Expulsion and Deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not ordinarily 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 to a State where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

Article X

Conflict with Treaties or Conventions

Where the provisions of a treaty or convention between two or more States conflict with the principles set forth herein, the provisions of such treaty or convention shall prevail as between those States.

INTRODUCTORY NOTE

The subject of 'Relief against Double Taxation and Fiscal Evasion' was referred to the Committee by the Government of India under the provisions of Article 3(c) of the Statutes of the Committee for exchange of views and information between the participating countries.

The Committee took up the subject for consideration at its Fourth Session and appointed a Sub-Committee to examine in what manner the Committee should treat the problem of avoidance of double taxation and fiscal evasion. The Committee discussed the subject on the basis of a General Note prepared by the Secretariat of the Committee. The Committee, accepting the recommendations of the Sub-Committee, decided that the Secretariat should request the governments of the participating States to forward to the Secretariat the texts, if any, of agreements on avoidance of double taxation and fiscal evasion concluded by them and the texts of the provisions of their municipal laws concerning the subject. The Committee also directed the Secretariat to draw up the Topics of Discussions (Questionnaire with short comments) and send the same to the Governments of the participating countries.

In accordance with the directions of the Committee, the Secretariat invited the governments of the participating States to send their comments on the Topics of Discussions.

At the Sixth Session of the Committee, the subject was further considered, and a Sub-Committee was appointed to go into the question. The Sub-Committee had before it a memorandum from the U.A.R. Delegation and also a note from the Delegation of Ceylon containing its supplementary answers to the U.N. Questionnaire on Double Taxation. The Sub-Committee after a preliminary exchange of views concluded that though bilateral Double Taxation agreements provided a practical solution to the financial problems which arose from the economic intercourse of nations, for the conclusion of a model multilateral convention it was desirable to have an exchange of views on the techniques employed by the participating States, their experiences and practices in similar circumstances. Since the views of some of the States were not before the Sub-

Committee, the Committee accepting the recommendations of the Sub-Committee, decided to postpone consideration of the subject to the Seventh Session and directed the Secretariat to complete the compilation of rules, regulations and practices of the participating States and the agreements concluded by them.

At the Seventh Session held in Baghdad, the subject was again considered by a Sub-Committee appointed for the purpose. The Sub-Committee faced the same difficulty as its predecessors, but having regard to the importance of the subject to the developing Asian-African countries, it deemed proper to make a beginning by formulating certain broad principles on the subject in a report which it drew up for consideration of the Committee. The Committee took note of that report and decided to give consideration to the same at the next Session.

REPORT OF THE SUB-COMMITTEE APPOINTED AT THE SESSION

INTRODUCTION

This subject was referred to the Committee by the Government of India under Article 3 (c) of the Statutes for exchange of views and information between the participating countries. The subject was considered by two Sub-Committees appointed at the Fourth and Sixth Session, but the matter was deferred until this session for lack of complete information regarding the laws, practices and bilateral agreements of the participating States. This Sub-Committee was also hampered in its deliberations because of incomplete information. The subject is too complex to admit of easy solution. The conflicting interests of the countries, variegated pattern of their taxing laws, differing tax structures and absence of a universally acceptable system of tax distribution among various countries make the task of proposing any model agreement on this subject difficult. Nevertheless, having regard to the vital importance of the subject to the developing countries for economic cooperation, expansion of trade and business, exchange of technical knowledge and cultural activities, flow of capital and business enterprises, the Sub-Committee thought that a beginning should be made by formulating certain broad principles for consideration of the Governments of the participating States. In formulating these principles, the Sub-Committee found the material collected by the Secretariat very useful and informative. The Sub-Committee wishes to place on record its appreciation of the labours of the Secretariat.

GENERAL PRINCIPLES

In order to solve the problem of double taxation in an effective way, it is necessary to lay down certain general principles which should govern the tax law of all the countries. These principles are universally accepted in most of the bilateral agreements entered into by the member countries and other non-member countries. These may be stated in general terms as follows:—

- (1) The taxation of income shall be governed by the laws of the country except where provision to the contrary is made by express agreement.

- (2) National Treatment Clause—The Contracting States shall not impose upon nationals of other countries more burdens of taxes than they impose upon their own nationals.
- (3) The laws should contain a provision empowering the Government to enter into bilateral or multilateral agreements to grant relief against double or multiple taxation, unilaterally or on reciprocal basis.
- (4) The most practical method for providing relief against double or multiple taxation is by entering into bilateral agreements which take care of the special relations between the two countries, but an attempt should be made to evolve a common pattern for economic development of all the participating countries on cooperative basis.
- (5) In order to minimise the evil of double or multiple taxation on the same income, the participating countries should endeavour to enter into arrangements on the basis of:—
 - (a) Allocation of sources of income in respect of the categories of activities where the loss and gain would be substantially equal, having regard to the state of trade relations between the two countries.
 - (b) In other cases where the same income is taxable in two countries, systems of tax credit or tax rebates should be introduced.
- (6) In granting the tax credits, any special tax concessions, tax holidays or development rebates granted by one country as an incentive to industrial development or export trade, should not be taken into account and full credit should be given to the tax which is normally payable but for such special concessions. Otherwise the whole object of granting special concessions would be nullified and one taxing country would get undue advantage at the expense of the other.
- (7) The participating countries should exchange information available to them under their respective laws in the normal

course of administration to enable the contracting parties to carry out their obligations under bilateral agreements and prevent tax evasion. The information should be treated as secret and shall not be disclosed to any person other than those concerned with assessment and collection of tax. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

- (8) Any tax payer may make representation to the competent authorities of the contracting State of which the taxpayer is a resident if the action of the taxation authority of the other contracting State has resulted in double taxation contrary to the provisions of the agreement. The competent authority shall have a right to present his case to the appropriate authorities of the taxing State, and every endeavour should be made to come to an agreement with a view to avoid double taxation and ensure fair implementation of the agreement.

PRINCIPLE OF ALLOCATION OF TAX JURISDICTION

The Sub-Committee is of the view that the most satisfactory method of granting relief against double taxation is exclusive allocation of specific sources of income to the country to which the source is allocated. This is because the participating countries are approximately at equal level of economic development and the contracting country would give up substantially the same amount of tax revenue which it would gain through the corresponding relinquishment by other country. The psychological effect of exempting foreign income from the allocated sources would facilitate trade and business abroad with corresponding augmentation of invisible exports and exchange of resources. The Experts Committee appointed by the League of Nations, the International Chamber of Commerce, and the Secretariat of the Asian-African Legal Consultative Committee have favoured the principle of allocation of sources. This system has the added advantage of simplification of procedure by allocation of income to the country where it has originated. This system of allocation of sources cannot, of course, be all pervasive in respect of all types of income, but to start with it can be applied to certain specific categories which would not unduly deprive the State of any

substantial revenue but ensure fair, equitable distribution and at the same time grant relief against double taxation.

The Sub-Committee recommends that initially the following categories of income should be allocated to the countries mentioned in the following paragraphs:—

- (i) Income from immovable property including rents, royalties and gains from sale, exchange or transfer. This source should be allocated to the country of situs, that is, where the property is situate.
- (ii) Royalties and profits from operating of mine, quarry and other natural resources. This should be allocated to the country where the operation is carried on.
- (iii) The income from operation of international flights and shipping should be allocated exclusively to the country where the air corporation or the shipping company is incorporated and or has its head office with substantial control and management. In the case of air corporations and shipping companies, ordinarily the country of incorporation and the country in which the head office is situate happen to be the same. If, however, this allocation is considered disadvantageous to certain participating members, the source should be allocated to the countries in which the income has originated.
- (iv) The salaries, wages, pensions paid out of Government funds to its nationals in respect of services rendered to such Government shall not be subjected to tax in any other country. This exemption, however, shall not apply to services rendered in connection with trade or business carried on by such Governments for purposes of profit.
- (v) Salaries and remuneration paid for personal services shall be taxed by the country where the services are performed except if the services are rendered for a period not exceeding six months on behalf of the resident of other country.
- (vi) Salary or remuneration earned by an individual, who has been invited by a Government of other country or univer-

sity, college or other educational institution for a period not exceeding two years, shall not be subject to tax of the inviting country.

- (vii) The remittances, grants, scholarships and other allowances to the students at recognised university, research institutions, religious or charitable organisations etc. shall be exempt from tax in the receiving country.
- (viii) The royalties and profits earned by copyright, patent, trade mark, trade name, etc. should be allocated to the country where the profits are earned.

These categories of income have been allocated to the respective countries of sources in almost all the bilateral agreements entered into by member countries and other countries, and it appears to this Sub-Committee that it will be a useful pattern to follow in all future agreements.

TAX ON TRADE, BUSINESS, INDUSTRY AND OTHER PROFITS

The most important source of income, however, relates to trade, business and industry. Because of the diversity of business and industrial operations and the tax structure of different countries it is impossible to devise a single system to cover all aspects. Various methods of allocation of income, tax exemption, tax rebate, tax credit, etc. will have to be examined to arrive at an acceptable solution. In the absence of fuller information on the laws and practices of the participating countries the Sub-Committee recommends that this aspect of Double Taxation should be deferred till the next session of the Committee, and the Secretariat should be requested to collect further material and formulate its proposals on this matter.

RECOMMENDATION

It is earnestly hoped that the participating countries would favourably consider the above proposals as a step forward towards international fiscal cooperation in minimising the undoubted evil of double taxation and furnish their views as also the necessary

information to assist the Committee in the task of formulating agreed proposals to achieve further progress in this direction.

Sd/—

Mr. G.A. Shah (India) Chairman
Mr. K. Gyeke-Dako (Ghana)
Dr. Hassan Al Haddawy (Iraq)
Mr. A. Watanabe (Japan)

Sd/—
(SHAKIR AL—ANI)
President
1-4-1965.

THE RECOGNITION AND RECIPROCAL
ENFORCEMENT OF JUDGMENTS, SERVICE
OF PROCESS AND RECORDING OF
EVIDENCE IN CIVIL AND CRIMINAL CASES
