

which Governments may require on problems which may occur in the implementation of the Convention, including determination of eligibility.

Right of Asylum

8. The Convention does not impose obligation on a Contracting State with regard to the granting of Asylum and no article on admission is included in the operative part of the Convention. However, Article 32 contains safeguards concerning the expulsion of refugees who have been admitted and are lawfully in the territory of a Contracting Party, while Article 33 prohibits the expulsion or return of any refugee to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion; the benefit of Article 33 cannot, however, be claimed by a refugee who is a danger to the security of the country in which he is, or a danger to the community of that country.

Specific rights of the refugee in country of residence

9. The Convention provides that, where it does not contain more favourable provisions, a Contracting State shall grant refugees the same treatment which is accorded to aliens generally but in regard to specific rights, refugees are granted more favourable treatment than other aliens. Four standards of treatment are established:

- (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, *i.e.* 'the most favourable 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'.

10. *National treatment* is to be granted to refugees as regards freedom to practise their religion and the religious education of their children (Article 4); as regards 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 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).

11. *The same treatment as is accorded to nationals of the country of their habitual residence* is to be 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 in countries other than that of their habitual residence (Article 16, paragraph 3).

12. *Most-favoured-nation treatment* is to be 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).

13. *Treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally* is to be given to refugees with regard to acquisition of property, property rights and interests (Article 14); the right to engage on their own account in agriculture, industry, handicrafts and commerce to establish commercial and industrial companies (Article 18); to practise the liberal professions (Article 19); to obtain housing (Article 21); and to benefit from higher education (Article 22, paragraph 2).

Articles which relate to the special situation of the refugees

14. To cover the particular situation of the refugee as an unprotected alien, certain special articles were included in the Convention, viz. Article 7, which provides that a refugee shall be granted certain concessions with out regard to reciprocity as in his case conditions of reciprocity have no meaning ; Article 8, which provides that refugees shall be exempted in appropriate cases from exceptional measures taken against nationals of the State to which they formerly belonged, even though the refugees may in law still have the nationality of that State; Article 12, which provides that the personal status of a refugee shall be governed by the law of his country of domicile or residence; Article 25, which provides that where a refugee requires administrative assistance such as the provision of documents, which would, in the case of a normal alien, be provided by the authorities of his country of nationality, such assistance shall be afforded to him by the country of residence or by an international authority; and Article 28, which provides for the issue of a travel document to refugees lawfully staying in the country. A schedule is annexed to the Convention giving the text of this travel document as well as details concerning its issue.

III

NOTE CONTAINING SOME SUGGESTIONS REGARDING MODIFICATION OF THE 1951 U. N. CONVENTION

1. The 1951 Convention marks an important stage in the development of international law relating to refugees. As from the end of the first World War, a series of international instruments were adopted in regard to successive waves of refugees, e.g. Russian, Armenian, Assyrian, Assyro-Chaldean Turkish, and refugees from Germany and Austria. Some of these earlier instruments dealt only with the issue of travel documents ("Nansen passyorts"),¹ while others contained more comprehensive provisions dealing, for example, with deportation, the right to work and the law governing a refugee's personal status.² As compared with these earlier instruments, however, the 1951 Convention defines specific rights for refugees in a comprehensive manner and lays down minimum standards for their treatment. These rights, freedoms and standards are also in many respects more favourable than those defined in earlier instruments. The earlier instruments moreover dealt with specific categories of refugees. The 1951 Convention, however, contains a definition of the term "refugee" which, despite certain limitations referred to below, is universal in character.

1. Arrangement of 6 July 1922, League of Nations, *Treaty Series* Vol. 13, p. 355. Arrangement of 31 May 1924 League of Nations, Document CL. 72(a). Arrangement of 12 May 1926, League of Nations, *Treaty Series*, Vol. 89, No. 2004, Arrangement of 30 June 1928, *Ibid.* Vol. 89, No. 2006.
2. Arrangement of 30 June 1928, League of Nations, *Treaty Series* Vol. 89, No. 2004. Convention relating to the International Status of Refugees of 28 October 1933, *ibid.* Vol. 159, No. 3663 Provisional Arrangement of 4 July 1936, *ibid.* Vol. 171, No. 3952. Convention of 10 February 1938, *ibid.* Vol. 198, No. 4634.

2. Although the Convention thus represents a considerable degree of progress as compared with earlier instruments, this does not mean that it is all-inclusive and leaves no room for further improvement. It would seem that any efforts to improve the Convention should be concerned with the following aspects: (a) Removal of existing limitations on the Convention's personal scope, (b) Supplementing the Convention in regard to matters for which it does not provide, and (c) Raising the standards which states are required by the Convention to apply as regards the treatment of refugees.

(a) Removal of the existing limitations on the Convention's personal scope

(i) *The dateline*—As stated above, the Convention, unlike earlier instruments, contains a definition of the term "refugee" which is universal in character. Thus according to Article 1 (A), the term "refugee" covers, in addition to statutory refugees,³ a refugee under the earlier instruments and under the Constitution of the International Refugee Organisation (IRO) and, in addition, any person who "as a result of events occurring before 1 January 1951⁴ 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 and is unable or, owing to such fear, 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 dateline represented by the words "as a result of events occurring before 1 January, 1951" constitutes a limitation on the Convention's personal scope. In the course of the preparation of the Convention, it was considered whether it

3. i. e. persons who had been considered as refugees under the earlier instruments referred to above and under the Constitution of the IRO.

should not include a definition covering all refugees irrespective of their origin and of the fact that the events which caused the rupture with their country of origin belong to the past or future. This solution was put aside, it being considered difficult for Governments "to sign a blank cheque" and to undertake obligations to future refugees, the origin and number of which would be unknown.⁵ The term "events" was intended to apply to happenings of major importance involving profound political changes, as well as systematic programmes of persecution in this period which are after-effects of earlier changes. The date 1 January 1951 was intended to exclude events happening after that date but not persons who might become refugees at a later date as a result before them, or as a result of after-effects which occurred at a later date. The date of 1 January 1951 was chosen because it was the date of the assumption of offices by the United Nations High Commissioner for Refugees.⁶

In spite of the dateline, the Convention, at the time when it was adopted, applied to all the then known groups of refugees in need of international protection. In the meantime, however, new refugee situations have arisen and the refugees concerned may not be covered by the Convention due to the dateline. In some cases a causal link was considered to exist between the plight of persons who left their country after 1 January 1951 and events occurring prior to that date. Thus the refugees who came from Hungary as a result of the Revolution in 1956 were generally considered to be refugees covered by the 1951 Convention, since the events leading to the Hungarian revolution were considered to have occurred before 1 January, 1951. With the passage of time, however, it may become increasingly difficult for Governments to recognise the existence of such a long-term historical causal link. This

5. *Report of the Ad Hoc Committee on Statelessness and Related Problems*, Document E/1618, p. 38.

6. *Ibid.*, p. 39.

seems especially true in new refugee situations which have arisen in Africa.

It should be added that the competence of the United Nations High Commissioner for Refugees, resulting from the definition contained in the Statute of his Office, is not limited by a dateline. At the date when the Convention and the Statute were adopted⁷ the personal scope of the two instruments was in practice identical. The emergence of new refugee situations has, however, led to a growing discrepancy between the two instruments due to the increasing number of refugees who are not covered by the Convention but for whom High Commissioner is competent under his Statute.

The problem of the dateline in the 1951 Convention was given particular attention by the Colloquium on Legal Aspects of Refugee Problems held in Bellagio (Como) Italy, from 21-28 April, 1965. The Colloquium was organised by the Carnegie Endowment for International Peace, with the support of the Swiss Government and in consultation with the United Nations High Commissioner for Refugees.

In its Report addressed to the High Commissioner,⁸ the Colloquium placed on record that the refugee problem had now become universal in nature and of indefinite duration and that the Convention was no longer adequate; an increasing number of persons were not covered by the Convention, particularly as it was limited to persons who had become refugees as a result of events before 1 January, 1958. The members of the Colloquium were of the opinion that it was urgent for humanitarian reasons that refugees at present not covered by the Convention should be granted similar rights by means of an international instrument. The Colloquium was agreed that a recommendation or a resolution would not

7. The Statute figures as an annex to General Assembly Resolution 428 (V) of 14 December 1950.

8. Executive Committee Document A/AC. 96/INF. 40.

be sufficient for this purpose and that a legally binding instrument would be necessary. The Colloquium considered that in view of the need for urgency, the end in view could best be met by a Protocol to the Convention, removing the dateline. The Colloquium agreed on the terms of the preamble and substantive provisions of a Draft Protocol which figure as an Annex to its Report.

The United Nations High Commissioner for Refugees is presently consulting with Governments regarding measures for giving effect to the Colloquium's recommendations.

(ii) *The geographic limitation*—According to Art. 1 (B) of the Convention, the words "events occurring before 1 January" should be understood to mean either (a) "events occurring in Europe before 1 January 1951" or (b) "events occurring in Europe or elsewhere before 1 January 1951" according to a declaration to be made by each Contracting State at the time of signature, ratification or accession. It is also provided that a State which has adopted alternative (a) for the purpose of its obligations under the Convention, may at any time adopt alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

This provision is the result of a compromise introduced during the Conference of Plenipotentiaries⁹ to enable certain States to become parties to the Convention. For this reason, even the possibility of introducing a geographic limitation does not give the Convention a European character. Of the 48 States which are now parties to the Convention, only 15 have their obligations under the Convention limited to persons who have become refugees as a result of events in Europe (Argentina, Australia, Brazil, Congo (Brazzaville), Dahomey, Ecuador, France, Italy, Ivory Coast, Luxembourg, Monaco, Niger, Peru, Portugal, and Turkey).

9. A/Conf. 2/SR. 20, p. 14, *Ibid*, SR, 23, p. 4.

The question of the geographic limitation was also given consideration by the recent Colloquium on Legal Aspects of Refugee Problems. The Colloquium considered that since the purpose of a Protocol removing the dateline was to extend the scope of the Convention as widely as possible, it would be inconsistent with this purpose to enable States adhering to the Protocol to introduce a geographic limitation. The draft Protocol prepared by the Colloquium, therefore, includes a specific provision according to which States may not introduce a geographic limitation when adhering to the Protocol. As regards those States which had already made a declaration under Article 1 (B) of the Convention, the Colloquium felt it would be desirable, as a general aim, that such declaration should be withdrawn as soon as possible. On the other hand, it was also felt that if the Protocol did not permit States, which had limited their obligations by a declaration under the Convention, to extend such a declaration to the Protocol, this might deter some States from adhering to the Protocol. The Draft Protocol prepared by the Colloquium, therefore, contains a provision to the effect that existing declarations limiting the application of the Convention shall, unless withdrawn, apply also under the Protocol.

(b) Supplementing the Convention in regard to matters for which it does not provide—admission and asylum

Although the Convention is an instrument which defines specific rights and freedoms for refugees in a comprehensive manner, it does not deal explicitly with the question of asylum which is of basic importance to the refugees. In the light of legal developments in this field, asylum may be said to possess two aspects: non-return of a refugee to a country of persecution and admission of a refugee fleeing from persecution to a country of asylum. Article 32 of the Convention dealing with the former aspect provides that the Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. Moreover,

Article 33 provides, subject to certain strictly defined exceptions, that no State shall expel or return ("*refouler*") 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. The Convention does not, however, deal explicitly with admission. The provision that comes nearest to it is Article 31 which provides that the Contracting States shall not impose penalties on account of their illegal entry or presence on refugees coming directly from a country in respect of which they fear persecution, provided they present themselves without delay to the authorities and show good reason for their illegal entry or presence.

Differing views have been held as to whether asylum, both in the sense of non-return to a country of persecution and of a right to admission, is under international law a sovereign right of the State or a right of the individual.¹⁰ The question of giving articulate expression to the right of admission in the international instrument was considered in connexion with Universal Declaration of Human Rights and the Human Rights Covenants. It is at present being examined in connexion with the draft Declaration on the Right of Asylum. The earlier version of Article 14 (1) of the Universal Declaration of Human Rights stated that: "Everyone has the right to seek and be granted in other countries asylum from persecution." When the first version was adopted, however, the words "be granted" were replaced by the words "to enjoy". According to the Declaration, therefore, everyone has the right to seek and to enjoy but not to be granted asylum. As regards the Draft International Covenants on Human Rights it was decided after considerable discussion by a majority vote that a provision regarding the right of asylum should not be

10. See P. Weis, "*Legal Aspects of the Problem of Asylum*", paper presented to 51st Session of the International Law Association, Tokyo, 1964.

included. Since the right of asylum was thus not to be the subject of a legally binding provision, the proposal was put forward to make it the subject of a non-legally binding declaration. The Draft Declaration on the Right of Asylum, adopted by the Human Rights Commission, was transmitted in 1960 to General Assembly whose Third Committee adopted the Preamble and first Article. The remaining Articles await further consideration by the Sixth Committee to which the matter has now been referred.

The question of asylum was also examined by the Colloquium on Legal Aspects of Refugee Problems. The Colloquium agreed that it is the first and foremost need of a refugee from persecution to be received in another country. Moreover :

“Under international law it is the sovereign right of any State to admit any person it wishes, without regard to any objection by other States. The Colloquium took note that under Article 14 of the Declaration of Human Rights, *bona fide* refugee have “. . . the right to seek and to enjoy in other countries asylum from persecution. . . .” ; moreover, that every State may grant such asylum without regard to any objection by other States.

“The Colloquium stressed the importance of Article 33 of the Convention, forbidding a State to “. . . expel or return (“*refouler*”) 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.” It also took note of the principle expressed, *inter alia*, in the Draft Declaration of Asylum drawn up by the Commission of Human Rights, that no person shall be subjected to rejection at the frontiers, to return or expulsion which would compel him to return to or remain in a territory if there

is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

“The Colloquium also emphasized the importance of Recommendation D of the Conference of Plenipotentiaries of 1951 “. . . that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum . . .”

“It was also agreed that receiving refugees or the granting of asylum in no way implies an unfriendly act in relation to the State of origin of the refugee or a passing of judgment on the political system in that State.

“The view was expressed that there was an increasing tendency towards the recognition of the above principles as part of international law. Note was taken of the growing respect for these principles, and particularly of the generous way in which many States have applied them in recent years. The Colloquium gave its warm support to this development.

Since the right of asylum, in the sense of admission, is of basic importance to the refugees, the fact that the 1951 Convention contains no explicit provision dealing with this matter represents a *lacuna*, although such a right could, as a matter of interpretation, be deduced from the wording of Article 33. Recent developments have shown that there is increasing recognition by States of the principle that a refugee fleeing from persecution should be granted at least temporary admission to a country of asylum. It would, therefore, be desirable that the 1951 Convention should be supplemented by a principle requiring States as a minimum to grant refugees fleeing from persecution temporary asylum.

(c) Improving certain rights which States are required, by the 1951 Convention, to grant to refugees

As stated above, the Convention goes further than earlier instruments in defining specific rights and freedoms for refugees in a comprehensive manner. This does not, however, mean that these rights may not be the subject of improvement. Until a refugee ceases to be a refugee either by voluntary repatriation or naturalisation, his integration in his asylum country should be facilitated by granting him a favourable legal status as nearly equivalent as possible to that of a national of that country. The *minimum* standard of treatment for refugees is laid down in Article 7, para. 1, of the Convention which provides that: "Except where the Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally." Apart from this, the Convention lays down varying standards. In several cases the standard is in fact that of "national treatment". Thus, as regards access to courts, Article 16 of the Convention provides that refugees shall have free access to the courts of law on the territory of all Contracting States. Moreover, in a Contracting State in which he has his habitual residence, a refugee shall enjoy the same treatment as a national in matters pertaining to access to the courts and exemption from security for costs.¹¹

With respect to rationing (Article 20) and elementary education (Article 22 (1)) refugees are to be accorded the same treatment as nationals. Furthermore, in the Contracting State in which they are lawfully staying, refugees are entitled to the same treatment as nationals with respect to public relief (Article 23).

There are, however, certain significant matters as regards which the standard laid down by the Convention is not, or not entirely, the same as "national treatment".

11. In a country other than that in which he has permanent residence, a refugee shall, in regard to these matters, receive the treatment granted to the nationals of his country of habitual residence.

In this connexion, mention may be made in the first place of wage-earning employment, the right to engage in self-employment and to practise liberal professions, social security and the right to hold movable and immovable property. These matters are of basic importance to the refugee from the point of view of his integration in his country of asylum and of his material well-being in general. They also find their place in the Universal Declaration of Human Rights to which reference is made in the preamble to the 1951 Convention. Thus Article 23 (1) of the Universal Declaration of Human Rights states that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." According to Article 22, "Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of economic, social and cultural rights indispensable for his dignity and the free development of his personality." Finally, according to Article 17 (1), "Everyone has the right to own property alone as well as in association with others." It is now proposed to deal with these various matters in turn:

(i) Wage-earning employment and the right to engage in self-employment and to practise liberal professions

As regards the right to engage in wage-earning employment, Article 17 of the Convention requires refugees lawfully staying in the territory of a Contracting State to be granted the most favourable treatment accorded to nationals of a foreign country in the same circumstances. When certain conditions are fulfilled, however, a refugee is entitled not exactly to national treatment and treatment approximating to the latter, i.e. he is exempt from measures taken for the protection of the national labour market. The conditions are that (i) the refugee was exempt from such measures at the date of the coming into force of the Convention for the Contracting State concerned or

(ii) has completed three years' residence in the country, (iii) has a spouse possessing the nationality of the country of residence or (iv) has one or more children possessing the nationality of that country. While several States have made reservations to Article 17,¹² these States normally apply the Article in practice and in certain cases grant refugees more favourable treatment than provided for by the Article. The question, therefore, arises as to whether it might not be possible to improve the standard laid down in Article 17 by making it applicable under normal conditions even if the conditions therein listed are not fulfilled. There may, however, be exceptional circumstances, e.g. a sudden influx of refugees which could result in a severe burden on the national labour market if the more liberal criteria were applied. This problem could perhaps be dealt with by means of reservations or of another suitable formula permitting a temporary suspension of obligations in such cases.

A problem that arises in connexion with the wage-earning employment of refugees relates to the practical application on the international level of the standards which the Convention lays down. While a refugee is to enjoy the right to work, under stated conditions, this is sometimes, made subject to certain formalities to be fulfilled by the prospective employer. The latter may, for example, be required to obtain the necessary permission to employ the refugee. While such permission cannot be refused if the Convention's criteria apply, the mere fact that he has to comply with these formalities may lead the prospective employer to prefer engaging national workers in whose case these complications do not exist. The question, therefore, arises as to whether any measure for improving the standard laid down in Article 17 should not be accompanied by a recommendation that States should reduce any formalities connected with the employment of refugees to an absolute minimum.

12. Australia, Austria, Denmark, France, Greece, Iceland, Italy, Liechtenstein, Norway, Sweden, and Switzerland.

As regards self-employment and the practice of liberal professions, the Convention requires refugees to be granted treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances (Articles 18 and 19). In view of the importance to a refugee also to be able to engage in gainful occupations other than those of a wage-earning character, the question arises whether the standard applied by the Convention could not, if possible, also be improved here with a view to ensuring that the refugee is granted the same treatment as nationals.

(ii) Social security

Under the Convention the Contracting States are required to grant a refugee lawfully staying in their territory, the same treatment as is accorded to nationals as regards social security. This provision does not give rise to any problem as regards the social security benefits payable to a refugee within his country of asylum on the basis of contributions paid by him during the period of his residence there. As regards social security, however, the refugee's position frequently differs from that of a national. He will normally have become a refugee at a period in life when, on the one hand, he has paid social insurance contributions in his country of origin. He may on the other hand, not have paid such contributions in his country of asylum for a sufficiently long period to entitle him to normal social security benefits. It may also not be possible for him to cast roots in his country of first asylum, and he may emigrate after having paid social insurance contributions for a certain period. In both cases the refugee would be placed at a disadvantage if the rights acquired by him in his country of origin and his country of first asylum would not be taken into account for social security purposes. In this connexion, however, Article 24 of the Convention provides for the possibility of introducing certain limitations on the standard of national treatment: "(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of

acquisition; (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension." These limitations were taken over from Article 6 of ILO Convention 97 concerning Migration for Employment. Having regard to these limitations, a refugee's contribution periods in his country of origin are normally disregarded when calculating his pension in his country of asylum. Moreover, in the absence of a social security agreement, there is no cumulation of the contribution periods in the refugee's country of first asylum and in his country of emigration. To the extent to which social security agreements exist the position is easier. According to para. 3 of Article 24, "The contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question." While such agreements, normally providing for the cumulation of pension periods and for the transfer of pensions, exist between a number of European countries of first asylum, they do not exist between these countries and the main countries of emigration, resulting in a disadvantage to the refugee. The question of the transfer abroad of a fully acquired pension raises a specific problem. Certain States parties to the 1951 Convention consider that this problem is covered by para. 3 of Article 24. That is to say, a refugee's fully acquired pension can only be transferred if there exists a social security agreement between the country in which his pension rights were acquired and his country of resettlement. An alternative view is that where a fully acquired pension is transferable in the case of nationals, it should also be transferable in the case of a refugee by virtue of the principle of national treatment. In

this case the question arises whether, due to his special position, a refugee's fully acquired pension should not be transferable in all cases.

It would now seem to be a generally accepted principle that everyone is entitled to participate in social security and to claim social security benefits. For the reasons mentioned above, the refugee, due to his special position and the resulting technical difficulties, may not be able to claim full social security benefits. The question, therefore, arises whether the rights granted by the 1951 Convention should not, as far as possible, be improved to the extent to which the refugee, due to his special position, finds himself at a disadvantage in regard to social security.

(iii) The right to hold movable and immovable property

Under the Convention (Article 13), "refugees are to be accorded treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property."

The fact that refugees may not be able to hold property has in certain cases given rise to difficulties as regards their integration. It would, therefore, seem appropriate to consider whether the position concerning the right to hold property could not as far as possible be assimilated to that of nationals.

IV
NOTE ON POLITICAL OR SUBVERSIVE
ACTIVITIES OF REFUGEES*

1. Neither the UNHCR Statute nor the Refugee Convention of 1951 contains an explicit reference to political or subversive activities of refugees. However, both instruments contain 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.

2. The relevant provisions are Para. 7(d) of the Statute and Article 1 F of the Convention. Although these exclusion clauses are normally interpreted to refer to acts which took place before a person became a refugee and not to such acts committed in the country of asylum, the clauses act also as cessation clauses i. e., a person once recognised as refugee would lose his status if he later on has committed acts as defined in these clauses.

3. With regard to "acts contrary to the purposes and principles of the United Nations", the drafters of the Convention were not very explicit as to the interpretation of this formulation. In discussion, however, reference was made to "the principles referred to in the United Nation Charter and the Universal Declaration of Human Rights", to "crimes against humanity" and to "war crimes, genocide and the subversion or overthrow of democratic regimes" (see Docs. E/AC.7/SR.166, P. 9 and A/CONF.2/SR.24, P.5). It is also interesting to note in this context that the Constitution of the International Refugee Organisation (IRO) referred to the principles of the United Nations in specifying that fear based on reasonable grounds of persecution because of political opinions should be considered as valid objection to a return to the country of origin provided these opinions are not in conflict with the principles of the United Nations, as laid down in

* Prepared by U.N.H.C.R.

the Preamble of the Charter of the United Nations" (IRO Constitution, Annex I, Section C, 1 (a) and (i)).

4. The 1951 Convention makes no reference to the political activities of refugees and this is a matter within the jurisdiction of the State of residence. Article 2 of the 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 the following:

"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". (Document E/1618 E/AC.32/5, P. 41).

5. Finally Article 15 of the Convention dealing with the right of association, provides: "As regards non-political and non-profit-making associations and trade unions the Contracting State shall accord to refugees lawful staying in their territory the most favourable treatment accorded to nationals of foreign country, in the same circumstances". As this provision refers to non-political associations only the sovereign right of the Contracting States to regulate the question of the formation by refugees and their membership of political associations was left to the sovereign jurisdiction of the Contracting States.

6. In the Preamble to the Convention, the wish is expressed "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". This phrase, read in its context, is generally understood as a recommendation to States to cooperate, apart from and regardless of any obligations undertaken under the convention, in efforts to find permanent solutions for refugees so as to prevent their unsettled conditions from becoming a cause of tension in relations between States.

7. The political or subversive activities of refugees have often created problems in the past and States have generally tried to regulate such activities so as not to allow their territories to be used for acts detrimental to other States. For example, Article 41 of the new Aliens Law of Yugoslavia promulgated on the 31st March 1965 (Official Gazette No. 13 of 1965) provides:

"L'étranger qui agit contre le système en Yougoslavie, fixe par la Constitution, ou manifeste les activités contraires à la collaboration internationale et à la consolidation de la paix au monde, peut être délégué de l'asile," (unofficial translation)

International conventions recognise the principle that refugees should not be permitted to engage in political or subversive activities against the State of their former nationality or residence.

Extracts from the Draft Declaration on the Right of Asylum, the Charter of the Organisation of African Unity, the European Convention for the Protection of Human Rights, the Resolution of the Institute of International Law of the 11th September, 1950 and the Convention on Territorial Asylum adopted at the 10th American Conference are set out in *Annex I* to this Note.

The text of an Agreement between the Governments of Sudan and Ethiopia is set out in *Annex II*.

The text of the Resolution on the Problem of Refugees in Africa passed by the Assembly of Heads of States and Governments of the Organisation of African Unity and the Declaration made by the Assembly on the Problem of Subversion are set out in *Annexes III and IV*.

The text of conclusions to an article appearing in the recent number of a well-known periodical on the question of the activities of refugees is set out in *Annex V*.