

## INTERNATIONAL LAW

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### LIAISON OFFICERS OF THE PARTICIPATING COUNTRIES ON THE COMMITTEE\*

BURMA	U Tin Hline, Second Secretary, Embassy of Burma, New Delhi.
CEYLON	Mr. V.L.B. Mendis, Deputy High Commissioner, Ceylon High Commission, New Delhi.
GHANA	Mr. A.E.K. Ofori-Atta, Counsellor, Ghana High Commission, New Delhi.
INDIA	Dr. K. Krishna Rao, Joint Secretary (L & T), Ministry of External Affairs, Government of India, New Delhi.
INDONESIA	Mr. Imam Abikusno, Counsellor, Embassy of Indonesia, New Delhi.
IRAQ	Mr. Nizar el Kadi, Counsellor, Embassy of Iraq, New Delhi.

\*As on 1st June 1967.

JAPAN	Mr. Kiyoshi Sumiya, Counsellor, Embassy of Japan, New Delhi.
PAKISTAN	Mr. M.B.K. Babar, Second Secretary, Pakistan High Commission, New Delhi.
THAILAND	Dr. Suchati Chuthasmit, First Secretary, Embassy of Thailand, New Delhi.
UNITED ARAB REPUBLIC	Mr. Moustafa Osman A.M. Badr, <i>(Acting)</i> Second Secretary, Embassy of the United Arab Republic, New Delhi.

### III. AGENDA

#### I. ADMINISTRATIVE AND ORGANISATIONAL MATTERS:

1. Adoption of the Agenda.
2. Election of the President and Vice-President.
3. Admission of Observers to the Session.
4. Consideration of the Secretary's Report.
5. Consideration of the Committee's programme of work for 1967.
6. Immunities and Privileges of the Committee.
7. Date and place of the Ninth Session.

#### II. MATTERS ARISING OUT OF THE WORK DONE BY THE INTERNATIONAL LAW COMMISSION UNDER ARTICLE 3 (a) OF THE STATUTES:

1. Consideration of the Report on the work done by the International Law Commission at its Seventeenth Session.
2. Law of Treaties.

#### III. MATTERS REFERRED TO THE COMMITTEE BY THE GOVERNMENTS OF THE PARTICIPATING COUNTRIES UNDER ARTICLE 3 (b) OF THE STATUTES:

1. The Rights of Refugees (Referred by the Government of the U.A.R.).
2. Codification of the Principles of Peaceful Co-existence (Referred by the Government of India).
3. Status of Aliens (Referred by the Government of Japan);

- (a) Diplomatic Protection of Aliens by their Home States; and
  - (b) Responsibility of States arising out of Mal-treatment of Aliens.
4. Law of Outer Space (Referred by the Government of India).
- IV. MATTERS OF COMMON CONCERN TAKEN UP BY THE COMMITTEE UNDER ARTICLE 3 (c) OF THE STATUTES:
- 1. Relief Against Double Taxation (Referred by the Government of India)
  - 2. Participation in General Multilateral Treaties concluded under the Auspices of the League of Nations (Taken up by the Committee at the Sixth Session).
- V. Any other matter that may be permitted to be raised by the President.

#### IV. THE RIGHTS OF REFUGEES

## (I) INTRODUCTORY NOTE

The subject "The Right of Refugees" was referred to this Committee by the Government of the United Arab Republic under Article 3(b) of the Statutes. In its memorandum on the subject, the U. A. R. Government while indicating the legal issues for consideration of the Committee had stated that apart from humanitarian considerations, the status and rights of refugees raised several issues of mutual interest to the Member Countries of the Committee and that the Committee's views would be invaluable in understanding the refugee problem.

At the Sixth Session of the Committee held in Cairo in 1964, the subject was taken up for consideration on the basis of a preliminary note prepared by the Secretariat and a memorandum furnished by the Office of the U. N. High Commissioner for Refugees. The Committee, after a general discussion on the subject, directed the Secretariat to collect further material, particularly on the issues relating to compensation, the minimum standard of treatment in the State of Asylum and the possibility of resorting to international tribunals for determination of compensation which could be claimed by a refugee.

The Secretariat with the help and guidance of the Office of the U. N. High Commissioner for Refugees collected the relevant material on the subject and prepared a comprehensive note which formed the basis of discussions at the Seventh Session of the Committee held in Baghdad in March/April, 1965. At that Session the Committee was able to draw up an Interim Report containing certain draft principles relating to the definition of "refugee" and the minimum standard of treatment that should be afforded to him. The Committee, however, decided to postpone consideration of the question whether any provision should be made for ensuring the imple-

mentation of the right of a refugee to return to his homeland and the right to compensation which were provided for in the draft articles. The Committee was not in a position to give detailed consideration to the provisions of the U. N. Refugee Convention of 1951 for lack of time.

As directed by the Committee at the Seventh Session, the Interim Report drawn up by the Committee was sent to the Member Governments and the Office of the U. N. High Commissioner for Refugees for their comments.

At the Eighth Session of the Committee held in Bangkok in August 1966, the subject was taken up as a priority item. The points which arose for consideration of the Committee at that Session were :

- (a) Consideration of the draft principles provisionally adopted by the Committee in its Interim Report at the Baghdad Session in the light of the comments received from the U. N. High Commissioner for Refugees and the Governments of the Member States.
- (b) The question whether any and what provision should be made for ensuring the implementation of the right of a refugee to return to his homeland and the right to compensation which were provided for in the draft principles embodied in the Interim Report.
- (c) How far the principles incorporated in the United Nations Refugee Convention of 1951 should be adopted by the Committee in making its recommendations on the subject to the Member Governments.

The Committee was greatly assisted in its task by the Legal Adviser of the U. N. High Commissioner for Refugees and the representative of the League of Arab States who participated in the discussions on the subject. The Committee had also before it the *Observations* of the U. N. High Commissioner for

Refugees on the 1951 Refugee Convention as submitted before a Colloquium organised by the Carnegie Endowment in May 1965 and the *Conclusions* reached by the Colloquium.

The Committee, after a careful consideration of various aspects of the subject, came to the conclusion that having regard to the functions of the Committee, which were purely of an advisory nature, the appropriate manner in which it could deal with the subject was to define the term "refugee" and then proceed to formulate principles regarding the right of asylum, the rights and obligations of refugees, and the minimum standard of treatment in the State of asylum. The Committee further concluded that it was up to the government of each participating country to decide as to how it should give effect to the recommendations of the Committee on this subject, whether by entering into multilateral or bilateral arrangements or by embodying these principles in their national laws. In view of this position the Committee formulated the general principles on the subject in a final report which it adopted unanimously and decided to submit it to the Government of the U. A. R. and other participating governments.

As regards the question whether any provision should be made concerning enforcement of the right of repatriation and compensation by international tribunals, the Committee decided to postpone consideration of the same until a more suitable time. The Committee also decided that it was not necessary to examine in detail the provisions of the 1951 U. N. Convention on Refugees as the same had been taken note of by the Committee in formulating the principles on the subject.

## (II) FINAL REPORT OF THE COMMITTEE ADOPTED AT THE EIGHTH SESSION

The Government of the United Arab Republic by a reference made under Article 3 (b) of the Statutes requested this Committee to consider the subject of "The Rights of Refugees" in general and in particular the following issues :

1. Definition of refugees and their classifications.
2. The relation between the problem of refugees and the preservation of peace and justice in the world.
3. Principles guiding the solution of refugees problem :
  - (a) The right of asylum.
  - (b) The right of repatriation and resettlement.
  - (c) The right of indemnification.
4. Rights of refugees in the country of residence :
  - (a) The right to life and liberty.
  - (b) The right to fair trial.
  - (c) The right to speech, conscience and religion.
  - (d) The right of employment.
  - (e) The right to social security.
  - (f) The right to education.
5. International assistance to refugees :
  - (a) Travel documents-visas.
  - (b) Financial assistance.
  - (c) Technical assistance.
  - (d) International co-operation in the field of refugees: International agreements and International Agencies.

2. The subject was placed on the Agenda of the Sixth Session of the Committee for consideration. At that Session the Committee generally discussed the subject on the basis of a note prepared by the Secretariat and a Memorandum submitted by the Office of the United Nations High Commissioner for Refugees. The Committee after a general discussion on the subject decided to direct the Secretariat to collect further material, particularly on the issues relating to compensation, the minimum standard of treatment of a refugee in the State of asylum and the possibility of constitution of international tribunals for determination of compensation which could be claimed by a refugee. The Secretariat, in accordance with the directions of the Committee, submitted a comprehensive 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 with the assistance of the United Nations High Commissioner for Refugees had collected considerable material on the subject, which was placed before the Committee.

3. The Committee gave detailed consideration to this subject at its Seventh Session held in Baghdad in March 1965 and adopted an Interim Report containing provisional formulation of certain principles concerning the status and treatment of refugees. The Committee had, however, decided to postpone consideration of the question relating to implementation of the right of a refugee to return to his homeland and the right to compensation, which rights were recognised and embodied in the Draft Principles provisionally adopted by the Committee at its Baghdad Session. The Committee also postponed consideration of the provisions of the United Nations Refugee Convention of 1951.

4. The Interim Report drawn up by the Committee at its Baghdad Session was transmitted to the Governments of the participating countries as also to the United Nations High Commissioner for Refugees for their comments. Detailed comments were received on the Interim Report which have been placed before the Committee for consideration.

5. The Committee, having regard to the importance of the subject to the participating States and the urgency of the problem, decided to take up this subject as the first item on the Agenda of this Session, and gave detailed consideration to it at its second, third, fourth, fifth, sixth, seventh, eighth and ninth meetings. The Committee was greatly assisted in its task by the Legal Adviser to the United Nations High Commissioner for Refugees who attended as observer at the invitation of the Committee and participated in the discussions. The Committee also had the benefit of hearing the views of the representative of the League of Arab States who attended the Session and took part in the deliberations.

6. The Committee, on a careful consideration of the various aspects of the subject, came to the conclusion that having regard to the fact that the Committee's functions under its Statute were of an advisory character, the appropriate manner in which it could deal with the subject of refugee was to define the term "refugee" and formulate the principles regarding the right of asylum, the rights and obligations of refugees, and the minimum standard of treatment in the State of asylum. The Committee considered that it would be up to the Government of each participating State to decide as to how it would give effect to the Committee's recommendations whether by entering into multilateral or bilateral arrangements or by recognising the principles formulated by the Committee in their own municipal laws. In this view of the matter the Committee has formulated the general principles on the subject which are set out in the *Annexure* to this Report.

7. The Committee considered the question as to whether any provision should be made for the implementation of the right of a refugee to return to the State or Country of his nationality as also his right to receive compensation which have been provided for in the Articles containing the principles concerning treatment of refugees as adopted by the Committee at this Session. The Delegate of Ceylon expressed the view that it was

neither possible nor necessary to make any provision for implementation of these rights. The Delegate of Japan was of the view that the circumstances were not ripe for making any recommendation on this question, and the Delegate of Pakistan was of the opinion that it was not practicable at present to make any provision in this respect. The Delegates of Ghana, India, Indonesia and Thailand were of the view that this question should be kept pending and might be examined by the Committee at a suitable time, and it was so decided.

8. The Committee also came to the conclusion that it was not necessary to examine in detail the provision of the 1961 U. N. Convention on Refugees as the same had been taken note of by the Committee in formulating the principles on the subject.

9. The Committee records its deep appreciation of the assistance rendered to the Committee by the Office of the United Nations High Commissioner for Refugees in the matter of collection of material as also of assistance given to the Committee in the deliberations on this subject at the Sixth, Seventh and Eighth Sessions.

Sd/—SANYA DHARMAKATI  
President.

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 particular social group :

- (a) leaves the State of which he is a national, or the Country of his nationality, or if he has no nationality the State or Country of which he is a habitual resident ; or,
- (b) being outside such State or Country, 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 State or Country of which he is a national.

(2) A person who prior to his admission into the Country of refuge, 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 Delegation of Ghana reserved its position on this Article.
- (ii) 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.
- (iii) The Delegations 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.
- (iv) The Delegations of Japan and Thailand expressed the view that the word "and" should be substituted for the word "or" in the last line of paragraph (a).
- (v) In *Exception (2)* the words "prior to his admission into the Country of refuge" were inserted by way of amendment to the original text of the Draft Articles on the proposal of the Delegation of Ceylon and accepted by the Delegations of India, Indonesia, Japan and Pakistan. The Delegations of Iraq and Thailand did not accept the amendment.
- (vi) The Delegation of Japan proposed insertion of the following additional paragraph in the Article in relation to proposal under *note (iv)* :

"A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State or the Country of which he is a habitual resident, at the time of the events which

caused him to have a well-founded fear of above-mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered refugee”.

The Delegations of Ceylon, India, Indonesia, Iraq and Pakistan were of the view that this additional paragraph was unnecessary. The Delegation of Thailand reserved its position on this paragraph.

## Article II

### Loss of status as refugee

1. A refugee shall lose his status as refugee if :

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

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

### Explanation

It would be for the State of asylum of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist.

### NOTES :

- (i) The Delegations of Iraq and the United Arab Republic reserved their position on paragraph I(iii).
- (ii) The Delegation of Thailand wished it to be recorded that the loss of status as a refugee under paragraph I(ii) will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality because the right of protection was that of his country and not that of the individual.

## Article III

### Asylum to a refugee

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

2. The exercise of the right to grant such asylum to a refugee shall be respected by all other States and shall not be regarded as an unfriendly act.

3. No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

4. In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

## 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 or to the country of his nationality and in this event it shall be the duty of such State or Country to receive him.

## Article V

**Right to compensation**

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

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 or Country, public officials or mob violence.

**NOTES :**

- (i) The Delegations of Pakistan and the United Arab Republic were of the view that the word "also" should be inserted before the words "such loss" in paragraph 2.
- (ii) The Delegations of India and Japan expressed the view that the words "deprivation of personal liberty in denial of human rights" should be omitted.
- (iii) The Delegations of Ceylon, Japan and Thailand suggested that the words "in the circumstances in which the State would incur State responsibility for such treatment to aliens under international law" should be added at the end of paragraph 2.

- (iv) The Delegations of Ceylon, Japan, Pakistan and Thailand expressed the view that compensation should be payable also in respect of denial of the refugee's right to return to the State of which he is a national.
- (v) The Delegation of Ceylon was opposed to the inclusion of the words "or country" in this Article.
- (vi) The Delegations of Ceylon, Ghana, India and Indonesia were of the view that in order to clarify the position the words "arising out of events which gave rise to the refugee leaving such State or Country" should be added to paragraph 2 of this Article after the words "mob violence".

## Article VI

**Minimum standard of treatment**

1. A State shall accord to refugees treatment in no way less favourable than that generally accorded to aliens in similar circumstances.

2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, appended to these principles, to the extent that they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.