

THE RIGHTS OF REFUGEES

Report of the Committee and Background Materials

I. INTRODUCTORY NOTE

The subject "The Rights 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 implementation 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 the 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. MEMORANDUM OF THE GOVERNMENT OF THE UNITED ARAB REPUBLIC

Referring the Subject for Consideration of the Committee

The impact of the increased number of refugees after the Second World War led to much international understanding of refugees problems which were not previously met with adequate attention by the international community. In addition, it encouraged States to procure more assistance and more legal protection to the refugees in various parts of the world.

Without prejudice to humanitarian considerations, the status of refugees raises several issues of mutual interest to the member countries of the Committee. The Committee's views on these issues would be a valuable contribution towards full understanding of refugees problems. These issues are the following :

1. Definition of refugees and their classifications.
2. The relation between the problems of refugees and the preservation of peace and justice in the world.
3. Principles guiding the solution of refugees problems :
 - (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 of life and liberty.
 - (b) The right of fair trial.
 - (c) The right of speech, conscience and religion.
 - (d) The right of employment.

- (e) The right of social security.
 - (f) The right of education.
5. International assistance to refugees :
 - (a) Travel documents—visas.
 - (b) Financial assistance.
 - (c) Technical assistance.
 - (d) International cooperation in the field of refugees : International agreements and International Agencies.

III. MEMORANDUM ON LEGAL PROBLEMS AFFECTING REFUGEES

Presented by UNHCR at the Sixth Session of the Committee

The Office of the United Nations High Commissioner for Refugees has been invited to state its views in connection with the item "The Rights of Refugees" to be discussed at the 1964 Cairo Session of the Asian-African Legal Consultative Committee.

Historical introduction

The refugee problem is not new. Throughout history situations have arisen where persons have been obliged to leave their country and to seek asylum elsewhere. In more recent times, however, it has come to be recognized that the problem is one calling not only for humanitarian measures but also for measures in the legal sphere. After the first World War, there was also general recognition for the fact that the refugee problem was a matter of international concern. The first international agreement for assisting refugees was concluded in 1921 on behalf of refugees who had fled from Russia after the Revolution of 1917. Thereafter, further agreements were concluded on behalf of other groups as new problems arose. These agreements dealt with various matters affecting refugees, including the issue of identity or travel documents. Unlike these agreements which dealt only with specific groups of refugees or certain of their rights, the Convention of 28 July 1951 relating to the Status of Refugees gives a general definition of the term "refugee" and deals with the various rights of refugees in a comprehensive manner and lays down minimum standards for their treatment.

International agencies entrusted with the protection of refugees

In 1921, with the conclusion of the first international agreement relating to refugees, Dr. Fridjof Nansen was appointed League of Nations High Commissioner for Russian Refugees. His mandate was later extended to other groups of refugees. After his death in 1930, the international protection of refugees continued to be carried out in varying forms by the League of Nations. After the Second World War, the United Nations Relief and Rehabilitation Administration (UNRRA) assumed responsibility for persons displaced from their home as a result of war events, and in 1947 the international protection of refugees was taken over by the International Refugee Organisation (IRO) which carried out its functions until 1951.

The Office of the United Nations High Commissioner for Refugees

The international protection of refugees is now exercised by the United Nations High Commissioner for Refugees under General Assembly Resolution 428 (V) of 14 December 1950 to which is annexed the Statute of his office which came into existence on 1 January 1951.

By this Statute the High Commissioner is required, *inter alia*, to promote conclusion and ratification of international conventions for the protection of refugees; to promote measures to improve the situation of refugees and to reduce the number requiring protection, and to promote their voluntary repatriation or their assimilation within new national communities. It is expressly stated in the Statute that the work of the High Commissioner shall be of an entirely non-political character and shall be humanitarian and social. In Resolution 428 (V) the General Assembly also called upon governments to cooperate with the United Nations High Commissioner for Refugees in the performance of his functions.

According to the definition contained in the Statute, the latter applies in general to persons who were considered as refugees under the pre-war agreements and under the Constitution of the IRO and to persons who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality (or if they have no nationality, outside the country of their former habitual residence) and are unable or owing to such fear are unwilling to avail themselves of the protection of that country. In order to avoid duplication of United Nations efforts, the Statute does not apply to persons receiving assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees, e.g. the United Nations Relief and Works Agency (UNRWA).

It will be seen that the competence conferred upon the Office of UNHCR is universal in character and is not limited to Europe so that the High Commissioner is able to deal with new refugee situations wherever they may arise. Moreover, in a series of resolutions the United Nations General Assembly has also made it possible for the High Commissioner to use his "good offices" in new refugee situations, that is to say he is enabled to depart from the strict terms of the Statute and operate in these new refugee situations on a purely humanitarian and social basis.¹

1. cf. Resolution 1167 (XII) of 27.11.1957 (Chinese refugees in Hong Kong); 1388 (XIV) of 20.11.1959 (Authorising the High Commissioner in respect of refugees who do not fall within the competence of the United Nations, to use his good offices in the transmission of contributions in connection with World Refugee Year); 1499 (XV) of 5.12.1960 (Invitation to member states to consult with the High Commissioner in respect of measures of assistance to groups of refugees outside the competence of the United Nations); 1671 (XVI) of 18.12.1961 (Angolan refugees in the Congo); 1673 (XVI) of 18.12.1961 (General good offices resolution) and 1784 (XVII) of 7.12.1962 (Chinese refugees in Hong Kong).

Legal problems confronting the refugee

The legal problems facing the refugee result from his special position. In order to understand them regard must be had to the basic difference between the refugee and the ordinary alien. The special position of the refugee is due, in the first place, to the absence of an effective nationality which may be described as *de facto* statelessness. The refugee cannot take advantage of consular or diplomatic services for protection or advice. He often lacks the necessary documents and cannot comply with the formalities imposed on aliens for the enjoyment of certain rights in their country of residence. As the laws of many asylum countries are made with the conception of the ordinary protected alien in the mind of the lawgiver, this may lead to serious disabilities for the refugee and unintentional discrimination through the normal operation of the law.

Minimum standards for the treatment of refugees

As stated above, the minimum standards for the treatment of refugees are contained in the 1951 Convention. The Convention came into force on 22 April 1954 and at present 42 States, including a number of newly independent States, are parties to it.² Accession to the Convention by countries throughout the world reflects an awareness of the universal character of the refugee problem. It also symbolizes acceptance of the principles embodied in the Convention as general principles defining the status of refugees and the basic minimum standards for their treatment. Mention should also be made in this connection of two other international instruments: the Universal Declaration of Human Rights of 10 December 1948, specifically referred to in the Preamble to the 1951 Convention

2. A further 8 States may be considered bound by the Convention which was applied to their territory by the parent State prior to independence.

and the Draft Declaration on the Right of Asylum adopted by the United Nations Human Rights Commission in 1960, which now awaits approval by the General Assembly,

Asylum and non-refoulement

The 1951 Convention does not regulate the right of admission but grants refugees protection against expulsion or return to a country in which they may fear persecution. The Universal Declaration of Human Rights expresses the principle that everyone has the right to seek and enjoy in other countries asylum from persecution. The Draft Declaration on the Right of Asylum specifies that persons entitled to invoke the Universal Declaration of Human Rights shall not be subjected to measures such as rejection at the frontier, return or expulsion which would compel them to return to or remain in a territory where they may be persecuted.

Extradition is not expressly mentioned in any of these international instruments. The principle of non-extradition to the refugee's country of origin would, however, seem to be implicit in the general principle of asylum and has also been expressly stated in some more recent multilateral and bilateral extradition agreements.

The Draft Declaration on the Right of Asylum expresses two other principles. Firstly, asylum being granted on behalf of the international community shall be respected by other States and shall not be regarded as an unfriendly act. Secondly, where a country finds difficulty in granting asylum, States shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden of the country granting asylum.

Non-discrimination

In the application of the various provisions of the Convention which lay down minimum standards for the treatment of refugees, regard should be had to the principle of non-discrimi-

mination. Thus, the Preamble to the Convention refers specifically to the United Nations Charter and the Universal Declaration of Human Rights as having affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. Furthermore, the Convention states specifically that its provisions are to be applied by the contracting States without discrimination as to race, religion, or country of origin.

Exemption from reciprocity and from exceptional measures

The refugee is in a special position in that he has severed his links with his country of origin although he may still formally possess the nationality of that country. It is, therefore, inequitable to apply the principle of reciprocity to him as a condition for the enjoyment of certain rights or to make him subject to exceptional measures applied to the nationals of a foreign State solely on account of such nationality. Both these difficulties of the refugee are given recognition in the 1951 Convention.

Administrative assistance

The refugee who has severed his link with his country of origin may often be unable to secure the assistance of the administrative authorities of his home country, e. g. for the issue of documents of which he may be in need, such as certificates relating to personal status. The 1951 Convention, therefore, requires such administrative assistance to be granted by the authorities of the State in which the refugee resides or by an international authority.

Identity and travel documents

The special position of the refugee normally also results in his not being able to obtain identity or travel documents from the authorities of his country of origin. The 1951 Convention imposes an express obligation on the contracting States to issue identity papers to refugees in their territory who do not possess

a valid travel document and also to issue travel documents to enable them to travel abroad. The majority of the states parties to the Convention now issue such international travel documents. The UNHCR has aimed at achieving uniformity of appearance for this document. This document, which is now widely recognized, is issued valid for one or two years, and gives the holder the right to return without a return visa to the country which issued it.

**Other rights and freedoms granted to refugees
by the 1951 Convention**

In addition to the minimum standards and rights mentioned above, brief reference may be made to the other matters dealt with by the Convention: labour legislation and social security; public relief; the right to engage in wage-earning and self-employment; freedom of access to the courts; freedom of association, freedom to practise religion and freedom as regards the religious education of the refugees' children.

Conclusion

The above represents the fundamental principles and basic minimum standards granted to the refugee and embodied in international instruments and agreements. In exercising its function of international protection, it is the aim of UNHCR to promote understanding for the special position of the refugee which differs basically from that of the ordinary protected alien. It is very much hoped that these fundamental principles and minimum standards will be given due consideration in the deliberations of the Asian-African Legal Consultative Committee.

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* See Appendix to the Final Report of the Committee on "The Rights of Refugees".