

nationality or membership of a particular social group or political opinion.

Asylum is granted today by all States either in practice or on the basis of specific provisions in their municipal law. According to traditional international law, the right of asylum is the exclusive right of sovereign States to grant asylum within their discretion. States are under no obligation to refuse admission to persons wishing to enter their territory nor, in the absence of extradition treaties, to return them to their home country in which they may be prosecuted for a criminal offence. Being the exercise of a sovereign right the grant of asylum cannot be considered a wrongful act by other States, more specially the State of origin of the person to whom asylum is granted.

Beyond the traditional view of the right of asylum, the view has also been maintained either that asylum is the right of the individual or that States are under an obligation to grant asylum to individuals fleeing from persecution.

(i) *The competence of states to grant asylum in their territory :*

It is an undisputed rule of international law that every State has exclusive control over the individuals on its territory. The principles that follow from this general rule are that (1) "Every State is competent to regulate the admission of aliens at will. It also means the reverse, namely, that a State is free to admit any one it chooses to admit even at the risk of inviting the displeasure of another State," and (2) "territorial supremacy means that no State is entitled to exercise corporeal control over individuals on the territory of another State, even if these are its nationals,—although no rule of international law prevents a State from assuming jurisdiction, in its courts, for offences committed aboard. Such individuals are safe from persecution unless the State on whose territory they are, is prepared to

surrender them."²⁸ Thus, it has been recognised in several cases²⁹ that seizure of individuals on foreign territory with the connivance of official authorities involves the State responsibility of the seizing State which is bound to return the individual concerned if the State of asylum so demands. A competence to grant asylum thus derives directly from the territorial supremacy of States.

The practice of States in the matter of extradition supports this view. It is generally recognised that, in the absence of an extradition treaty with the requesting State, there is no legal duty to surrender fugitives. Thus, it was held by the Supreme Court of the United States in the case of *Factor v. Laubenheimer* :

"The principles of international law recognise no right to extradition apart from treaty. While a government may if agreeable to its own Constitution and law, voluntarily exercise the power to surrender a fugitive from justice to the country from which he has fled, and it has been said that it is under a moral duty to do so, the legal right to demand his extradition, and the correlative duty to surrender him to the demanding State exist only when created by treaty."³⁰

28. Morgenstern : "The Right of Asylum," *British Yearbook of International Law*, Vol. 26, 1949, p. 327.

29. The most important of these was a dispute in 1935 between Germany and Switzerland on the kidnapping of Her Jacob Solomon, a German refugee from Swiss territory. On this case, which ended in the surrender of the individual concerned to Switzerland before arbitration could take place, and two similar instances in the same year, see Peruss in *American Journal of International Law*, 29 (1935), pp 502 ff., and *ibid.*, 30 (1936) p. 125. In cases where a refugee is brought to the territory of the pursuing State after being arrested by a private person or by the agents of the State of asylum, it would seem that there is no duty to return the individual concerned to the place of asylum. See *Reports from the Law Officers of Crown*, 1882 pp. 75-76.

30. Morgenstern, "The Right of Asylum," *British Yearbook of International Law*, 26 (1949), p. 329.

These observations refer to the competence of States to give asylum to all fugitives. In actual fact, 'common' criminals are usually surrendered. On the other hand, the principle of non-extradition of political offenders has been explicitly laid down in treaties and municipal enactments on extradition. The effect of that principle is to grant asylum to political offenders. By enacting these provisions in treaties, States have reciprocally recognised a right to give asylum to political refugees. That right has been safeguarded by the principle that "the nation surrendering is to be the judge of what is, or is not, a political offence."³¹

It may be mentioned that the competence of States to grant asylum has been recognised in some special treaties on asylum. Thus, the treaty on Political Asylum signed at Montevideo on 4 August, 1939 by six Latin American States, provided in Article 11: "Asylum granted within the territory of the High Contracting States, in conformity with the present treaty, is an inviolable asylum for persons pursued under the conditions described in Article 2.

"The determination of the causes that induce the asylum appertains to the State which grants it."³²

Moreover, States have often recognised the existence of a general right of asylum even while objecting to the exercise of that right in an individual case.³³ During discussions on the Constitution of the International Refugee Organisation in the United Nations several Eastern European States, while attempting to limit the right of asylum, have explicitly admitted its

31. *Ibid.*

32. *American Journal of International Law*, 37 (1943), *Official Documents*, p. 102. Article 16 of the *Treaty of Montevideo of 1889* is similar in tenor.

33. Morgenthau, "The Right of Asylum," *British Yearbook of International Law*, 26 (1949), p. 330.

existence.³⁴ There can, thus, be no doubt that States are competent to grant asylum.

(ii) *The right of individuals to asylum :*

- (a) *General Principles of International Law:* According to the general International Law as at present constituted, the so-called right of asylum is a right of States not of the individuals.³⁵ This was stated by a United States District Court in the case of *Ex parte Kurth*³⁶ in the following words :

"The constitutional provisions that rights enumerated in the Constitution should not be construed so as to deny others retained by the people do not give a right of asylum in the United States, to political refugees of other countries, such a right being contrary to principles of international law and not having been previously recognised."

In the Third Committee of the General Assembly of the United Nations in November 1948 Egypt (now U. A. R.) submitted an amendment to the Article of the Declaration of Human Rights which is concerned with the right of asylum. She proposed that there should be a right of asylum 'in accordance with the rules of international law.'³⁷ This was opposed by Pakistan on the ground that "since the right to claim asylum was not admitted by the rules of International Law, to make the exercise of that right subject to such rules as proposed by

34. *Official Records of the Economic and Social Council, First Year, Second Session* p. 543, *Journal of the General Assembly, Second Part of First Session*, p. 794.

35. Weis, "Legal Aspects of the Convention of 28 July, 1951 relating to the Status of Refugees," *British Yearbook of International Law*, Vol. 30 (1953), p. 481.

36. (1940) 28 F. Suppl. 258; appeal dismissed in *Kurth v Carr*, 106 F. (2d), 1003.

37. Doc. A/C. 3/264.

Egyptian delegation would be tantamount to preventing it from coming into existence until International Law should have developed sufficiently to include that principle."³⁸

The Universal Declaration of Human Rights (which is the chief instrument concerned with the subject of asylum from the point of view of the individuals), as adopted by the General Assembly of the United Nations in December 1948, provides in Article 14 as follows :

"Every one has the right to seek and to enjoy in other countries asylum from persecution."

"This right may not be invoked in the case of persecution genuinely arising from non-political crimes or from acts contrary to the purpose of the United Nations."

The declaration as such confers no legal right and imposes no legal obligations. It has been criticised as being apt to create impressions which have no basis in the International Law."³⁹

It may be of interest to note that the earlier version of Article 34(1) of the Declaration stated that : Everyone has the right to seek and be granted in other countries asylum from persecution." When the final version was adopted, the words "be granted" were replaced by the words "to enjoy." It was thought that the Article as it stood appeared to enable any prosecuted person to claim the right of entry into any country he might choose. In actual practice, however, the right of asylum was generally understood to be the right of a sovereign State to grant asylum and to refuse extradition."⁴⁰

38. Doc. A/C. 3/SR 121, p. 15.

39. Weis : "International Protection of Refugees," *American Journal of International Law*, Vol. 48, 1954, p. 196.

40. Activities of the various Organs of the United Nations in connection with the Right of Asylum.—U.N. Doc. E/CN. 4/713, p.3.

(b) *Views of various governments on the right of asylum :* ⁴¹

In connection with the proposal to include a provision on the right of asylum in the Draft International Covenant on Human Rights, certain States claimed that the right of asylum was not a fundamental right of the individual but the right of a State to extend its protection to the individual and that States would be unwilling to surrender the right to decide in each instance which aliens they would admit to their territory.⁴²

Furthermore, in their comments to the French Draft Declaration on the Right of Asylum, originally submitted to the Thirteenth Session of the United Nations Human Rights Commission in 1957, a number of governments expressed the view that the right of asylum is the sovereign right of States. Thus, the Belgian Government pointed out that Belgian legal doctrine and jurisprudence hold that the right of asylum is not the right of the individual but simply the right that any State has under international law to refuse another State's request for the extradition of an individual.⁴³ The Czechoslovak Government stated that in granting asylum Czechoslovakia follows the generally accepted principle of international law which provides that the grant of asylum is an exclusive right of every State and is governed only by its internal laws. The adoption of the Draft Declaration would result in the violation of sovereignty of States and interference with their domestic affairs, and would, therefore, be incompatible with Article 2 (7) of the United Nations Charter.⁴⁴

41. These views were expressed in the United Nations by various Governments in connection with the Draft International Covenants on Human Rights and the French Declaration on the Right of Asylum. They have been taken from the note entitled "Legal Aspects of the Problem of Asylum" sent to the Secretariat of the Committee by the Office of the U.N. High Commissioner for Refugees.

42. Activities of the various Organs of the U.N. in connection with the Right of Asylum, U.N. Doc. E/CN.4/713, p.8.

43. U.N. Doc. E/CN. 4/781, p. 2.

44. *Ibid.* p. 3.

Peru, while approving the adoption by the United Nations of a declaration formulating the principles of the right of territorial asylum, objected to Article 4(a) of the Draft Declaration which could have the effect of imposing on Member States an obligation to grant asylum to those who seek it, where as the granting of asylum should always be voluntary.⁴⁵ The United Kingdom stated that the right of asylum is traditionally the right of a State to grant asylum to an individual and that there was no recognised right of the individual to be granted asylum.⁴⁶ India considered it to be an accepted principle of International Law that an individual had no right of asylum and that a State had no duty to grant asylum. All that could be said was that a State was competent to grant asylum if it so wished.⁴⁷

Several of the governments which supported this view, however, also added that asylum would, in practice, be granted. Thus, Belgium considered itself bound in this matter by elementary principles of humanity and by its age-old traditions of hospitality,⁴⁸ and Czechoslovakia stated that it granted asylum in practice.⁴⁹ Peru stated that it could never have any objection to the adoption by the United Nations of a declaration formulating the principle of territorial asylum. Within the framework of the inter-American legal system, Peru had signed and ratified treaties and conventions recognising

45. *Ibid.*, pp. 5-6, Article 4(a) stated that : "Irrespective of any action taken by participating States, the United Nations shall, in a spirit of international solidarity, consult with States as to the most effective means of providing help and assistance to the persons referred to in Article 2." Article 2 stated that : "Every person whose life, physical integrity or liberty is threatened, in violation of the principles of the Universal Declaration of Human Rights, shall be regarded as entitled to seek asylum."

46. *Ibid.*, pp. 10-12.

47. U.N. Doc. E/CN.4/781, Add. I., p. 2.

48. U.N. Doc. E/CN. 4/781, p. 2.

49. *Ibid.*, p. 3.

this right and believes that in them could be found safeguards and rules for the general recognition of this humanitarian principle.⁵⁰ The United Kingdom considered that if it was the consensus of opinion among Governments that a declaration on the right of asylum would serve a useful purpose, it should be confined to recommendation which, while leaving to States the ultimate decision whether or not to grant asylum, will help to secure in those States which accept the recommendations, the most generous treatment possible of persons who are genuinely fleeing from persecution.⁵¹

It would be seen that while certain States adhered to the view that the right of asylum was an exclusive right of States, a number of other States supported the view of asylum as a right of the individual or a duty of States to grant asylum to persons fleeing from persecution. Thus, at the Eighth Session of the Human Rights Commission held in 1952, Chile, Uruguay and Yugoslavia jointly presented the text of a provision for inclusion in the Draft International Covenant on Human Rights according to which the right of asylum should be granted to "all persons charged with political offences and in particular to all persons accused or persecuted because of their participation in the struggle for national independence or political freedom or because of their activities for the achievement of the purposes and principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights." The U. S. S. R. proposed that the right of asylum should be guaranteed "to all persons persecuted for their activities in defence of democratic interests, for their scientific work or for their participation in the struggle for national liberation."⁵² Other States emphasized the importance of the right of asylum pointing out also that it had been

50. *Ibid.* p. 5.

51. *Ibid.* p. 10.

52. U.N. Doc. E/CN 4/L. 184 & U.N. Doc. E/CN. 4/L. 191.

included in the Universal Declaration of Human Rights and to exclude it from the Draft Covenant on Human Rights would be a serious omission.⁵³

Similarly, as stated above, certain Governments in their comments on the French Draft Declaration on the Right of Asylum subscribed to the view that the right of asylum was an exclusive right of States.

Other Governments in their comments, e. g., Australia, Ceylon, Japan, Haiti, Morocco,⁵⁴ Pakistan, Israel,⁵⁵ Denmark and Greece⁵⁶ did not subscribe to this view,⁵⁷ while still other Governments supported the opposite view of asylum as a right of the individual.

Thus, the Spanish Government, in its comments stated that while it agreed in principle with the draft, it considered that in its final form the wording should be *strengthened* to make it clear that all States were under an obligation to grant asylum to any person in the situation described in Article 2.⁵⁸ Moreover, "any step designed to produce a clear statement of the international obligation of States to grant asylum on their territory is to be supported and defended as the manifestation

53. Activities of various organs of the United Nations in connection with the right of asylum, U.N. Doc. E/CN. 4/713, p. 8.

54. U.N. Doc. E/CN. 4/781.

55. U.N. Doc. E/CN. 4/781 Add 1.

56. U.N. Doc. E/CN. 4/781 Add 2.

57. The comments of Honduras (U.N. Doc. E/CN. 4/781) and Portugal (U.N. Doc. E/CN. 4/781. Add/(1) were concerned with diplomatic rather than territorial asylum. Poland considered the transmission of the Draft Declaration to Governments to be premature as the question of the right of asylum had not yet been sufficiently, carefully and thoroughly discussed (U.N. Doc. E/CN. 4/781) and Australia did not submit any detailed comments since it was not persuaded that a formal declaration on the subject was desirable (U.N. Doc. E/CN. 4/781/Add. 2).

58. That is, every person whose life, physical integrity or liberty is threatened in violation of the Principles of the Universal Declaration of Human Rights.

of a principle deeply rooted in our national consciousness.⁵⁹ The Swedish Government stated that the basic principle of every one's right to seek and enjoy in other countries asylum from persecution was long recognised in International Law and had been described in Article 14 of the Universal Declaration of Human Rights. International conventions had also been concluded with a view to safeguarding the interests of refugees and a United Nations organ was charged with the task of promoting their international protection. Since the proposed declaration would not, however, secure implementation of the principles already recognised, doubts might be entertained as to the practical value of adopting a new Declaration which would not be binding on States.⁶⁰ The Netherlands Government considered it desirable to take the right of the individual as the basis of the Declaration,⁶¹ and the Yugoslav Government proposed amending paragraph 2 of the Draft Declaration so as to make it more clearly evident that every person whose life, physical integrity or liberty is threatened by violation of the principles of human rights, is entitled to seek asylum and the State in which asylum is sought has the duty to investigate whether the conditions exist for granting asylum and, consequently, to inform the interested person of its decision.⁶²

In the report on its Fifth Session the Human Rights Commission summarized the opinions expressed by various Governments in connection with French Draft Declaration as follows :

"Divergent views on the nature of the right of asylum were stated. Some considered it a right of the individual and thought that some means of ensuring it should be found. It was argued that the right 'to seek and to

59. U.N. Doc. E/CN. 4/781, pp. 6-9.

60. *Ibid.* pp. 9-10.

61. U.N. Doc. E/CN. 4/781/Add. 1, p. 4.

62. *Ibid.* p. 13.

enjoy' asylum proclaimed in Article 14 of the Universal Declaration of Human Rights implied the right to 'receive asylum.' Others did not agree with such an interpretation and emphasized that the right to grant asylum was a sovereign right of the State."⁶³

(c) *The right of individuals under the municipal law of individual States*

The Constitutions of a considerable number of States have recognised a right of individual to asylum and/or have specifically provided for the non-extradition of political offenders. Thus, for example, the Constitutions of several East European communist countries, in practically identical terms offer the right of asylum to aliens "persecuted for defending the interests of the working people, or for their scientific activities, or for their struggle for national liberation." The French Constitution provides in its Preamble that "anyone persecuted because of his activities in the cause of freedom has the right of asylum within the territories of the Republic." The Constitution of Italy provides that "any alien debarred in his own country from the effective exercise of democratic liberties guaranteed by the Italian Constitution shall have the right of asylum in the territory of the Republic on conditions laid down by law." The Constitutions of several Latin American States offer the right of asylum to those persecuted for political reasons.⁶⁴

63. Commission of Human Rights, *Report of the Fifteenth Session*, U.N. Doc. E/CN. 4/789, p. 9.

64. Constitutions of Albania of July 1950, Art. 40; Bahama Islands of December 1963, Section I; Bulgaria of December 1947, Art. 84; Central American Republic of February 1959, Preamble; Chad of March 1959, Art. 5; Costa Rica of November 1959, Art. 31; Dahomey of February 1959, Preamble; Denmark, Act. No. 224 of 7 June 1952, regarding the admission of Foreigners to the country, para. 2; El Salvador of September 1950, Art. 153; France of October 1958 Preamble; Gabon of February 1959, Preamble; Germany, Basic Law of 23 May, 1949, Art. 16, para. 2; Guatemala of March, 1956, Art. 48; Guinea of November 1959, Preamble; Haiti of December 1957, Art. 36; Honduras of December 1957, Art. 86; Hungary of August 1949, Art. 58, para. 2; Italy of

(Continued on page 55)

It has, however, been observed that although "the Constitutions of a number of countries expressly grant the right of asylum to persons persecuted for political reasons, but it cannot be said that such a right has become a 'general principle of law' recognised by civilised States, and, as such, forming part of International Law."⁶⁵

It may be noted here that although an individual has no right of asylum in International Law, but the practice of States in the matter of admission, extradition and expulsion of refugees has recognised the existence of a right of asylum (on the part of refugees) with such consistency that we can begin to speak of a 'general principle of law recognised by civilised States' which the Statute of the International Court of Justice declares to be a source of International Law.⁶⁶

(d) *The treatment of refugees in the practice of States*

(i) *The right of admission :*

In most States the entry of aliens is regulated by means of legislative enactments which amounts, in effect, to a negation of a right of admission on the part of individuals. However, the application of immigration laws has often been waived in case of political refugees. The Aliens Act of 1905, the first Act to limit entry into the United Kingdom, explicitly exempted political and religious refugees from the main excluding

(Footnote 64 continued)

December 1947, Art. 10, paras. 3-4; Ivory Coast of March 1959, Preamble; Jordan of January 1952, Art. 21 (i); Kenya of December 1963, Sec. 14; Madagascar of April 1959, Preamble; Mali of January 1959, Preamble; Mauritania of March 1959, Preamble; Nicaragua of November 1950, Art. 54; Niger of March 1959, Preamble; Northern Rhodesia of December, 1963, Sec. 1; Norway, Aliens Act of 27 June 1956, Sec. 2; Poland of July 1952, Art. 75; Romania of September 1952, Art. 89; Senegal of January 1959, Preamble; Syria of September 1950, Art. 20, United Arab Republic of March 1958, Art. 9; Upper Volta of March 1959, Preamble; USSR of Dec. 1936, Art. 129; and Yugoslavia of January 1946, Art. 31.

65. Oppenheim, *International Law*, Vol. I, p. 677.

66. Morgenstern, "The Right of Asylum" *British Yearbook of International Law*, Vol. 26 (1949), p. 338.

provisions.⁶⁷ The Aliens Restriction Act of 1914 had no such exempting clauses, but the Attorney-General stated in the House of Commons that the Government had no intention of enforcing the Act against political refugees.⁶⁸ Similarly, the Act of 1917 which contains the 'qualitative' tests of the United States Immigration Laws exempted religious refugees from the literacy tests.⁶⁹ Moreover, in 1936 Under-Secretary of State, Mr. Welles, stated American policy on the subject to be as follows :

"It is the traditional policy of the Government of the United States to grant refuge in the territory to persons whose lives are believed to be in jeopardy as a result of their political activities in a foreign country. Such persons applying for admission to the United States as so-called political refugees are customarily admitted for a reasonable period under a literal interpretation of the Immigration Laws, provided they can establish to the satisfaction of the competent authorities that their personal safety is actually threatened and that the offences in which they may have been involved are not such as would render them inadmissible under the law"⁷⁰

This policy has continued since the Second World War. Speaking for the Government in the House of Lords on 23 June 1948, Lord Henderson stated : "No case has ever been brought to our attention of any political refugee being denied the right of asylum in either of our zones (of occupation in

67. 5 Edw. VII, C. 13. By Section I, para. 3, refugees were exempted from exclusion owing to poverty. An order of 9 March, 1906 provided that, if it was uncertain whether individuals were political refugees, persons coming from politically disturbed countries, should be given the benefit of the doubt. *Ibid* : p. 339.

68. *Ibid*, p. 339.

69. See *Tod v Waldman*, 266 U.S. 113. Political refugees are also exempted from bringing official documents of their States of origin if it is impossible for them to obtain these.

70. Hackworth, *Digest of International Law*; Vol. III, 1942, p. 132.

Germany and Austria). And I want to say emphatically, that we will never turn back or deport a political refugee."

Both Great Britain and the United States have admitted leading political dissidents from the Eastern European States without requiring the usual formalities.

Political refugees arriving at the frontiers of the German Federal Republic are, after examination, permitted to enter. Special arrangements were made by the French Government to distinguish at their Pyrenean frontier posts between Spaniards who were economic migrants and Spaniards who had suffered on political grounds at the hands of the Spanish Government; the latter were permitted to join the other Spanish refugees residing in France.⁷¹

Among the Member States in the Committee, the laws of Indonesia, Iraq and the United Arab Republic have specifically provided for the grant of asylum to political refugees. According to Iraq and the United Arab Republic asylum to political refugees is a well-established institution under customary International Law.

(ii) *Non-extradition of political offenders*

As already stated, most extradition treaties and constitutional enactments on the extradition explicitly exempt political offenders from extradition. The principle of non-extradition of political offenders, which at least until the end of the nineteenth century was considered to be the main aspect of asylum, has, with varying degrees of certainty, been affirmed to be either a rule of international customary law or a general principle of law recognised by civilised nations.⁷²

There is, at present, a tendency to refuse extradition, if persecution is feared by the person whose extradition is requested

71. Weis, "The International Protection of Refugees," *American Journal of International Law*, 48(1954), p. 196.

72. Weis, *Legal Aspects of the Problem of Asylum*; Office of the U. N. High Commissioner for Refugees, MHC/R/151/64, p. 8.

or if the treatment he may receive in the country to which he is to be extradited is contrary to the rule of law, natural justice, human rights and fundamental freedoms where they are not understood in the same way by the country requesting extradition and the country of which extradition is requested.⁷³ This tendency has found expression in the European Convention on Extradition signed on 13 December 1957 by Austria, Denmark, France, the Federal Republic of Germany, Greece, Italy, Luxembourg, Norway, Sweden and Turkey. Article 3(2) of the Convention provides that extradition shall not be granted if there are substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that a person's position may be prejudiced for any of these reasons. Provisions excluding extradition to a country of persecution are also to be found in Article 3 of the Belgian-German Extradition Agreement of 17 January, 1958 and the Austrian-German Extradition Agreement of 22nd September, 1958.⁷⁴

(iii) *The powers of expulsion and of 'refoulement'*

There can be no doubt that by International Law every sovereign State has the power to expel unwanted aliens. However, exceptions have been made in favour of political refugees. As a rule refugees are not expelled to countries where they would be persecuted. In England, the Court of Criminal Appeal, in the early case of *Re Zausmer* refrained from recommending expulsion on the ground that the defendant, if sent back to Russia, would be punished for desertion.⁷⁵ This is still the policy of the Home Office. The position in the United States is similar. In a number of cases, courts in the United States have

73. *Ibid.* p. 9.

74. *Ibid.* p. 10.

75. Morgenstern, "The Right of Asylum," *British Yearbook of International Law*, Vol. 26 (1949) p. 346 (11911) Crim. App. Rep. 41.

given the impression that they consider that genuine political refugees should not be deported to the persecuting country.⁷⁶ In two cases it was held that deportation of Jews to countries threatened or occupied by Nazi Germany would be inhuman punishment.⁷⁷ In France, refugees are not, as a rule, deported to their country of origin. The position in Holland appears to be similar. In some countries or with regard to certain refugees, there are legal provisions on the subject. A Swedish law of 4 June, 1937 provides that an alien who has been refused a residence permit, or is threatened with deportation can have his claim to be regarded as a refugee officially reconsidered....If the decision to deport him is upheld, the alien cannot be deported to a country whence he has fled for political reasons or to a country which may deport him to his country of origin.⁷⁸

Theoretically speaking, a political refugee could be deported from Burma to a country where he might be persecuted, but in practice, she refrains from doing so. A political refugee could be deported from Ceylon to a country where he might be exposed to persecution. Such cases in Indonesia will normally receive sympathetic consideration. According to India and Iraq, if the conduct of political refugee deserves or justifies such a course of action, he could be deported to that country. In Japan, a political refugee could be sent to a country of his choice. Deportation of a political refugee is not permissible under the laws of the United Arab Republic.

It may be noted that the right of States to expel aliens from their territories has also been restricted in several multilateral treaties relating to them. Most bilateral agreements concluded between international agencies charged with the protection of refugees and countries of admission for the resettlement of refugees contain provisions relating to expulsion and deportation; some of the agreements concluded by the

76. *Ibid.* p. 347.

77. *U. S. ex rel. Weinberg v Schlotfeld* (1938), 26 F. Supp. 283; and *U. S. ex rel. Boruca v Schlotfeld* (1940), 109 F. (2d) 108.

78. *Ibid.*

International Refugee Organisation provided for the interposition of that Organisation in expulsion proceedings.

The Convention of October 28, 1933, relating to the Status of Refugees, which applies to Russian and assimilated refugees (so-called "Nansen Refugees") (Article 3), and the Convention of February 10, 1938, regarding the Status of Refugees from Germany (Article 5) restrict the clauses for expulsion and *refoulement* (i. e. non-admittance at or reconduction to the frontier) to reasons of national security or public order. The former convention obliges States not to refuse entry to refugees at the frontier of their countries of origin; the latter prohibits return to Germany except in cases of unreasonable refusal by the refugee to proceed to another country.⁷⁹

The Convention of July 28, 1951, relating to the Status of Refugees provides in this connection in Article 32 that a refugee lawfully in the territory of a contracting State shall not be expelled 'save on grounds of national security or public order'. Such a refugee shall be expelled "only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security require otherwise, the refugee shall be allowed to submit evidence to clear himself, and to appeal and be represented for the purpose before the competent authority or a person or persons specially designated by the competent authority". Article 33 of the Convention which is considered as one of the fundamental provisions, reads:

"No contracting 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 particular social group or political opinion".

79. Weis, "The International Protection of Refugees," *American Journal of International Law* Vol. 48, p. 197, and "Legal Aspects of the Convention of 28 July, 1951 Relating to the Status of Refugees," *British Yearbook of International Law*, Vol. 30 (1953) pp. 481.

The Convention concerning Migration for Employment (revised 1949) adopted by the International Labour Conference at its 82nd Session on July 1, 1949⁸⁰ also contains a limited restriction of the right of expulsion. The Model Agreement on Temporary and Permanent Migration for Employment, including Migration for Refugees and Displaced Persons adopted by the same conference, contains a prohibition of the compulsory return of refugees to their country of origin.⁸¹ One of the most important political statements on this subject is the Resolution of the General Assembly of the United Nations of February 12, 1946.⁸² It states that:

"No refugees or displaced persons who have finally and definitely, in complete freedom and after receiving full knowledge of the facts, including adequate information from the Governments of their countries of origin expressed valid objections to return to their country of origin, and do not come within the provisions of (d) below,⁸³ shall be compelled to return to their country of origin."

2. Diplomatic asylum

Foreign ambassadors, ministers and other accredited diplomatic officers are entitled under International Law to certain well-recognised immunities from the local jurisdiction, including among others immunity of their official residences and offices from interference of local authorities. Such authorities may not enter an embassy or a legation for the purpose of serving legal process or of making an arrest. This exemption constitutes what is called the inviolability of the diplomatic residence and is often referred to as 'extritoriality'. It,

80. ILO Convention 97, Art. 8.

81. ILO Recommendation No. 86, Art. 25.

82. Resolution 8(1).

83. This refers to the surrender of war criminals, quislings and traitors.

therefore, frequently happens, particularly in times of local political disorder, that persons desiring to evade the local jurisdiction or to escape from threatened danger, seek refuge in these places.

It may be noted that in the past the practice of granting asylum by these foreign governmental agencies was quite common. This practice was based on the theory of 'extritoriality', according to which the residences of envoys were considered, in every respect, to be outside the territory of the receiving States.⁸⁴ Thus, when in 1726, the Duke of Ripperda, first minister of Philip V of Spain, who was accused of high treason and had taken refuge in the residence of the British ambassador in Madrid, was forcibly arrested there by order of the Spanish Government, the British Government complained of this act as violation of International Law.⁸⁵ Twenty-one years later, in 1747, a similar case occurred in Sweden. A merchant named Springer was accused of high treason, and took refuge in the house of British ambassador at Stockholm. On the refusal of the British envoy to surrender Springer, the Swedish Government surrounded the embassy with troops, and ordered the carriage of the envoy, when leaving the embassy, to be followed by mounted soldiers. At last Springer was handed over to the Swedish Government under protest, but Great Britain complained and recalled her ambassador, as Sweden refused to make the required reparation.⁸⁶

In Latin-American countries, asylum has often been sought at foreign legations by political refugees on the occasion of revolutionary out breaks and the custom exists upto the present day. In 1934 the Brazilian Government issued new regulations for their diplomatic service and included in them a number of instructions about the grant of asylum, notably

84. Oppenheim, *International Law*, Vol. I, p. 793; Moore, *A Digest of International Law*, Vol. II, p. 774.

85. *Ibid.*, p. 794.

86. *Ibid.*

that heads of missions may grant asylum but must immediately inform the local minister of foreign affairs and the local representatives of the country of which the person granted asylum is a national. Asylum must not be granted to deserters or persons accused of crime and must be limited to the time necessary for the refugee to find security elsewhere. In 1889 a convention regarding international criminal law was concluded between the Argentine Republic, Bolivia, Paraguay, Peru and Uruguay, by Article 17 of which it was provided that asylum in a legation should be respected in the case of persons prosecuted for political offences, with the obligations for the head of the legation immediately to acquaint the Government of the State to which he was accredited with the fact, which government could demand that the refugee should be sent out of the national territory with as little delay as possible. The head of the mission could, in his turn, demand the necessary guarantees for the fugitive being allowed to leave the territory without interference. The same principle was to be observed with respect to refugees who found asylum on board vessels of war lying within territorial waters. But this Article only applied as between the contracting parties. Nevertheless, non-signatory Powers, such as the United States, the United Kingdom and France, besides others, have on various occasions, granted diplomatic asylum to political refugees. During the Civil War in Chile in 1891 as many as eighty were received in the United States legation, as many more in that of Spain, five in the French, two in German and eight in the Brazilian legations."⁸⁷

The Sixth International American Conference adopted at Havana, in February 1928, a Convention on Asylum which laid down (Article 2) that asylum granted to political offenders in legations shall be respected subject to certain specified conditions.⁸⁸ The Convention on Political Asylum adopted

87. Satow, *A Guide to Diplomatic Practice* 4 edn., pp. 220-22.

88. Hackworth : *Digest of International Law*, Vol. II, pp. 646-48.