at Montevideo by the Seventh International American Conference in 1933 amended the former Convention inasmuch as it forbids the granting of asylum to persons accused of or condemned for common crimes, or to deserters from the army or the navy.[89]

Nowadays the official residences of envoys are, *in a sense and in some respects only*, considered as though they were outside the territory of the receiving State. But such immunity of domicile is granted only insofar as it is necessary for the independence and inviolability of envoys and the inviolability of their official documents and archives.[90] Thus it is said that an ambassador's house cannot be converted into an asylum because all the privileges of ambassadors have one and the same object in view, namely to enable them to discharge the duties of their office without impediment or restraint and that granting of asylum does not constitute part of their duties. An Executive Order of December 2, 1932, in relation to "Unsanctioned Asylum", which was incorporated in the Instructions to Diplomatic Officers of the United States expressed this viewpoint in the following way :

> "Immunity from local jurisdiction is granted to foreign embassies and legations to enable the foreign representatives and their suites to enjoy the fullest opportunity to represent the interests of their States. The fundamental principle of legation is that it should yield entire respect to the exclusive jurisdiction of the territorial Government in all matters not within the purposes of the mission. The affording of asylum is not within the purposes of a diplomatic mission.
>
> The limited practice of legation asylum, which varies in the few States permitting according to the nature of the

89. *Ibid.* The United States in an express reservation refused to recognise or to subscribe to the doctrine of asylum as part of International Law.

90. Oppenheim, *International Law*, Vol. I, p. 795-96.



> emergency, the attitude of the Government, the State of the public mind, the character of the fugitives, the nature of the offences and the legation in which asylum is sought, is in derogation of the local jurisdiction. It is not but a permissive local custom practised in a limited number of States, where unstable political and social conditions are recurrent.
>
> There is no law of asylum of general application in international law. Hence, where the asylum is practised, it is not a right of the legate State but rather a custom invoked or consented to by the territorial Government in times of political instability. . . ."[91]

It must, however, be noted that the grant of temporary asylum 'against the violent and disorderly action of irresponsible sections of the population'[92] is a legal right which, on grounds of humanity, may be exercised irrespective of treaty, and that the authorities of the territorial States are bound to grant full protection to the foreign diplomatic missions providing shelter for refugees in such circumstances.[93] Article 3(2) of the Resolution of the Institute of International Law adopted at Bath in 1950 lays down that "asylum may be granted to every individual whose life, person or liberty are threatened by violence emanating from local authorities or against which local authorities are manifestly not in the position to offer protection, which they tolerate or to which they incite.[94] The extension of refuge to persons on purely humanitarian grounds when their lives were in imminent danger from mob or other violence during the period when danger continued has frequently been accorded by American

91. Hyde, *International Law*, Vol. II, 1951, pp. 1277-78.

92. Asylum case between Colombia and Peru, *ICJ Reports*, 1950, p. 187.

93. Oppenheim, *International Law*, Vol. I, p. 797.

94. *Ibid.*

diplomatic missions without the disapproval of the Department of State.[95]

**The right of repatriation and resettlement**

The permanent solution of the problem of refugees lies in their repatriation to countries of nationality or former habitual residence or, if repatriation is refused by the refugees on reasonable grounds or not accepted by the countries of origin, their absorption into countries of residence or resettlement in other countries.

Repatriation of refugees has been specifically provided in several resolutions passed by the General Assembly of the United Nations.[96] Thus, the Resolution of 12 February, 1946 on the "Question of Refugees" provided that :

> "C. (ii) 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....., shall be compelled to return to their country of origin. The future of such refugees or displaced persons shall become the concern of whatever international body will be recognised or established....., except in cases where the Government of the country where they are established has made an arrangement with this body to assume the complete cost of their maintenance and the responsibility for their protection ;
>
> (iii) The main task concerning displaced persons is to encourage and assist in every way possible their early return to their countries of origin. Such assistance may

95. Hyde, *International Law*, Vol. II, (1951), p. 1288; Hackworth, *Digest of International Law*, Vol. II, pp. 624-32.

96. This statement is based upon the information contained in the note on 'Repatriation' sent to this Secretariat by the Office of the U. N. High Commissioner for Refugees which has been used in this Section.



> take the form of promoting the conclusion of bilateral arrangements for mutual assistance in the repatriation of such persons having regard to the principles laid down in Paragraph (c) (ii) above."

The above resolution of the General Assembly was annexed to the Constitution of the International Refugee Organization (IRO)[97] and became the basis for the repatriation activities of the IRO. The Governments accepting the IRO Constitution recognised in the Preamble :

> "that as regards displaced persons, the main task to be performed is to encourage and assist in every way possible their early return to their country of origin; that genuine refugees and displaced persons should be assisted by international action, either to return to their countries of nationality or former habitual residence, or find new homes elsewhere, under the conditions provided for in this Constitution;....."

The facilitation of voluntary repatriation is also mentioned as one of the main tasks of the Office of the United Nations High Commissioner for Refugees (UNHCR) in the relevant resolution of the U. N. General Assembly and the Economic and Social Council. Thus, the General Assembly Resolution 319 (IV) of 3 December, 1949, deciding to establish the Office of the UNHCR, after the termination of the activities of the IRO, affirmed that the problem of refugees is international in scope and nature and that its final solutions can only be provided by the voluntary repatriation of the refugees or their assimilation within new national communities. The Annex to this Resolution which lays down the frame work and general functions of the High Commissioner's Office, states that the High Commissioner should "assist Governments and private organizations in their efforts to promote voluntary

97. See Annex III to the IRO Constitution, *United Nations Yearbook* 1946-47, p. 810 f.

repatriation of refugees or their assimilation in new national communities" and should "engage in such additional activities, including repatriation and resettlement activities as the General Assembly may determine".

'Voluntary repatriation' as one of the means for permanent solution of refugee problem has been reiterated by the U. N. General Assembly in its subsequent Resolutions adopted in connection with the High Commissioner's Office and the World Refugee Year. [98]

Repatriation has also been mentioned in the various General Assembly Resolutions dealing with specific groups of refugees. Thus, the General Assembly Resolution of December 9, 1949 provided that refugees from Palestine may either be repatriated to their home country or be given compensation in case they would not like to go back to their home country. In its Resolution 1671 (XVI) of 18 December, 1961 concerning Angolan refugees in the Congo, the General Assembly requested the High Commissioner to continue to lend his good offices in seeking appropriate solutions *inter alia* by facilitating, in close collaboration with the authorities and organisations directly concerned the voluntary repatriation of these refugees.

Finally, in its Resolution 1673 ( XVI ) of 18 December, 1961, on the Report of the U. N. High Commissioner for Refugees (known as the "Good Offices Resolution") the General Assembly invited Member States to lend their support to the alleviation of refugee problem still awaiting solution *inter alia* by facilitating the voluntary repatriation, resettlement or local integration of refugees. A similar request was made by the

98. Resolution 428(V) of 14 December, 1950 concerning the Statute of the Office of the United Nations High Commissioner for Refugees; 1039(XI) of 23 January, 1957 on the Report of the U. N. High Commissioner for Refugees; 1166(XII) of 26 November, 1957 regarding International Assistance to Refugees within the mandate of U. N. High Commissioner for Refugees; 1285 (XIII) of 5 December, 1958, 1390 ((XIV) of 20 November, 1959 and 1502 (XV) of 5 December 1960 relating to World Refugee Year; 1388 (XIV) of 20 November, 1959 and 1499 (XV) of 5 December, 1960 on the Report of the U. N. High Commissioner for Refugees.



General Assembly in its Resolution 1959 (XVIII) of December 1963.

It may not be out of place to mention the operation carried out for the repatriation of Algerian refugees from Morocco and Tunisia to their home country. In December 1958 the U. N. General Assembly concerned itself for the first time with this problem (Resolution 1286 (XIII), this resolution being followed in subsequent years by Resolutions 1389 (XIV) and 1500 (XV). In its Resolution 1672 (XVI) of 18 December 1961 the General Assembly requested the High Commissioner "to use the means at his disposal to assist in the orderly return of these refugees to their homes and consider the possibility, when necessary, of facilitating their resettlement in their home-land as soon as circumstances permit". The Governmental declarations accompanying the Evian Cease Fire Agreement of 8 March 1962 stated that "persons who are refugees abroad will be able to return to Algeria" and that "Commissions established in Morocco and Tunisia will facilitate this return". The composition and functions of these Commissions were defined in Article 23 of the Decree on the Provisional Organization of the Public Authorities in Algeria ( Decree No. 62—305 of 19 March, 1962), as follows :

> "Commissions set up in Algeria and outside Algeria will be entrusted with taking all administrative and other necessary measures with a view to the repatriation to Algeria of the Algerian refugees, notably those in Tunisia and Morocco.
>
> "These Commissions will consist of three members, one appointed by the High Commissioner (of the French Republic), the second by the Provisional Executive, and the third, under the reservation that this international organization agrees by the (United Nations) High Commissioner for Refugees.
>
> "The control of these repatriations at the crossing-over points on the frontier will be ensured by the competent civilian services".

The repatriation of refugees from Morocco began on 10 May, 1962 and was concluded on 25 July, 1962, with the return of some 61,400 persons. In Tunisia, where preparations for the repatriation took longer on account of material difficulties experienced at the Algerian-Tunisian frontier, the first movement did not begin until 30 May, 1962. The operations on this side were concluded on 20 July with a total of some 120,000 persons from Tunisia having returned to their former place of origin in Algeria. [99]

It may be noted here that a refugee can claim right of repatriation to the State of origin on the ground of his nationality and on the ground of the existence of the duty of the State to re-admit its nationals and grant them the right to reside in its territory. But the legal position of a refugee is peculiar in the sense that although he may not have been deprived of his nationality by the State of origin, he does not, in fact, enjoy the protection of that State. In this situation neither the State of nationality can be pressed to take him back nor can he be forced ( on humanitarian grounds ) to leave the country of refuge. For instance, the German Jews during the latter part of the German National-Socialist regime were under the German law regarded as German nationals, but they did not enjoy protection of Germany, and were not granted an effective right of sojourn. This situation was recognised by other States, which refrained from resorting to *refoulement* of these persons and which entered into international commitments to this effect by the conclusion of multilateral treaties in which these persons were, *quad definitionem* described as not in fact enjoying German protection. [100]

99. Final Report (A/Ac. 96/79), dated 18 October, 1962 on Assistance to Refugees from Algeria in Morocco and Tunisia—Implementation of General Assembly Resolutions 1286 (XIII), 1389 (XIV), 1500 (XV) and 1672 (XVI), submitted by the High Commissioner to the United Nations General Assembly.

100. Weis, *Nationality and Statelessness in International Law*, 1956, p. 62.



On May 29, 1949, it was declared by the British Home Secretary in the House of Commons that : "The only place to which I can legally deport a person is his country of origin, but I try to help refugees as far as I can by allowing them to get out under their own power, if they are willing to do so." [101]

It was precisely for this lack of protection that the Economic and Social Council of the United Nations gave the term "stateless persons" a wider meaning by including in its study [102] not only *de jure* stateless persons but also *de facto* stateless persons, i. e., persons who without having been deprived of their nationality no longer enjoy the protection and assistance of their national authorities". [103]

Resettlement of refugees has been done in the past and could be accomplished in the future as well on humanitarian grounds. Resettlement cannot be claimed by refugees as a matter of right; the right to retain an alien on its soil whether temporarily or permanently is a sovereign right of the State.

Attempts have, therefore, been made to solve the problem of repatriation and resettlement by means of international agreements. There are a considerable number of such agreements,[104] of which the Convention relating to the International Status of Refugees of October 28, 1933, the Convention relating to the Status of Refugees coming from Germany of February 10, 1938, and the Convention relating to the Status of Refugees of July 28, 1951, are the most important. There exist a number of agreements concluded between international organisations charged with the protection of refugees and individual States, concerning repartriation and resettlement of refugees.

101. *Ibid.* p. 60.

102. *A Study of Statelessness*, United Nations Publication No. 1949, XIV, 2.

103. *Ibid.* p. 9.

104. *Ibid.* Annexes to part I.

**Right of indemnification**

As a result of the War and Post-War happenings such as mob violence and actions of destructions, robbery, theft and other criminal activities of the individuals and the acts of the governments of the countries from which refugees had escaped (e. g., general nationalization, individual expropriation without compensation and outright confiscation), refugees have suffered extensive damage and losses. Some of them are of personal character whilst others are strictly material losses. Personal losses include death of family members and loss or severe deterioration of health. Examples of material losses suffered by refugees are : loss of professional and social position ; loss of income from professional activities ; loss of social security and private insurance benefits and endowments ; loss of real estate ; loss of income from real estate caused by damage and destruction of immoveable property ; destruction, robbery and theft of moveable property ; cost of resettlement caused by the necessity to leave the home in order to save life and freedom etc.[105]

There are numerous cases of people who had suffered damage and loss twice or even more. In all parts of the world there are still living refugees who had suffered in Europe during World War I, in Russia in 1917, in various European countries after the breakdown of the Austrian, German and Ottoman empires, in Germany in 1933, in Spain in 1936, and in several countries during World War II. After World War II, a similar phenomenon was repeated in Eastern Europe and the countries of Asia and recently in Africa. These happenings qualify the problem as the one which is world-wide and which deserves to be treated in accordance with the principles of justice toward man expressed by his right to demand an effective compensation for damages from those who caused the damage.

105. See article entitled 'International Law and Refugees' *Jus Gentium*, Vol. VII, n. 1. Roma, 1962, p. 4.



The principle that a refugee is entitled to receive compensation for losses suffered by him is clearly recognised in Resolution 194 (III) passed by the General Assembly on December 11, 1949 on the question of Palestine refugees which provides in Paragraph 11 :

> "..... the refugees wishing to return to their homes and live in peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which under principles of international law or in equity, should be made good by the governments or authorities responsible."

This principle is also recognised and given effect to in the German Federal Indemnification Law supplemented by a number of other legislative provisions of lesser importance enacted by the Federal Republic of Germany, as well as by bilateral agreements concluded by the Federal Republic of Germany with various States, under which those States received global amounts for the indemnification of their nationals who were victims of national socialist persecution. So far, agreements have been concluded with Belgium, Denmark, Greece, France, Israel, Italy, Luxembourg, The Netherlands, and Norway. Austria has also enacted legislation on the indemnification of victims of national socialist persecution. The extent to which refugees are entitled to indemnification under the German Federal Law differs according to the reasons underlying the persecution. Where the reason was the persecutee's race, religion, political conviction or political opposition to national socialism, indemnification is granted in respect of injury to body and health and deprivation of liberty. Moreover, the dependants of such persecutees are entitled to indemnification in respect of the persecutee's death where such death was a result of persecution. On the other hand, if the persecution is attributable to the persecutee's nationality indemnification was to be made at a reduced scale.

However, under the agreement now concluded between the Federal Government and the U.N.H.C.R. the latter are treated almost on a par with the former category.

So far as traditional international law is concerned, the liability of a State to pay reparation for maltreatment of a person in its territory was confined to the case of maltreatment of aliens for a State was regarded as being free to treat its own subjects in any manner it liked. It is, however, no longer so. The position of the refugees, the circumstances in which they have been forced to take refuge from their home-land or the country of their habitual residence, the question of their asylum, repatriation and treatment have been regarded as matters of international concern since the beginning of the present century. There has been awareness and recognition of the fact that in the interest of the world peace the questions regarding the rights of the refugees have become of inter-national importance. Moreover, in the context of Universal Declaration of Human Rights and the principles and purposes of the U.N. Charter it can no longer be said that treatment to be meted out by a State to its own subjects is purely of a domestic concern. The situation that leads to mass movement of population from a State gives rise to problems for other States where such refugees may seek asylum, and consequently the international community has the right to see to the proper solution of the refugee problem by their repatriation, resettle-ment and their being indemnified by being duly compensated for the losses suffered by them. It may, therefore, be stated as a rule of progressive development of international law that a refugee who is forced to leave the territory of the State of his nationality or habitual residence due to persecution or voluntarily leaves due to well-founded fear of persecution on account of his race, political belief, religion, or membership of a particular social group should be entitled to compensation for the losses suffered by him from the State concerned.

If the right to receive compensation on the part of a refugee, as envisaged above, is accepted as a principle of



International Law, the next question that would arise is who has the right to espouse the cause of the refugee.

A State may under its own municipal laws provide for an individual refugee to claim and receive compensation from the appropriate Government Department as has been done under the Federal German and Austrian laws, and in such cases the procedure would be simple. But where the State denies the right to compensation or denies any particular claim to such compensation, the question would arise as to how the refugee is to press his claim.

In the case of claims on account of damage caused to aliens it is the State of nationality which takes up the cause in the exercise of its right of diplomatic protection of its citizens abroad, but in the case of a claim by a refugee, it would pro-bably be the State of his nationality against which the claim is to be preferred.

According to traditional International Law a State cannot claim a pecuniary indemnity in respect of damage suffered by a private person on the territory of a foreign State unless the injured person was its national at the moment when the damage was caused and retains its nationality until the claim is decided. In one of its last awards, the former Permanent Court of International Justice laid down :

> "...it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection, and it is as part of the function of diplomatic protection that the right to take up a claim and to ensure respect for the rules of international law must be envisaged. Where the injury was done to the national of some other State, no claim for which such injury may give rise falls within the scope of the diplomatic protection which a State is entitled to

afford nor can it give rise to a claim which that State is entitled to espouse."[106]

There is no bond of nationality between the State of residence and the refugees with the result that the State of residence will not be competent under traditional International Law to claim compensation on behalf of refugees for the damages suffered by them in their own State. The basis of this doctrine would be found in the traditional view that an individual is not recognised in International Law and that he is represented in international relations through the State whose nationality he possesses and that State alone is entitled to give him protection. In the peculiar situation a refugee finds himself, he enjoys no protection nor is he willing to come under the protection of his home State. It is from the persecution of that State he is seeking refuge, and it is the State which grants him asylum is giving him protection. Could it not be said as a part of progressive development of International Law that in such a situation, the State which gives him asylum should take the place of his State of nationality for the purpose of affording him protection against all other States including the State of of his nationality? Similarly in the case of refugees who are stateless, the State which gives the asylum would be competent to afford protection. This course of action on the part of the State granting asylum may be opposed on the ground that the matter falls within the domestic jurisdiction of the State. "But there is a substantial body of opinion and of practice in support of the view that.....when a State renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible".[107] Further, " it must be noted that, possibly, to the extent to which human rights and fundamental freedoms have become a persistent feature, partaking of

106. *Yearbook of the International Law Commission*, 1956, p. 196.
107. Oppenheim, *International Law*, Vol. I, p. 312.



the character of a legal obligation of the Charter, they may have ceased to be a matter which is essentially within the domestic jurisdiction of States".[108]

**The capacity of international organisations charged with the protection of refugees**

The organisations charged with the protection of refugees would not be competent to claim compensation on behalf of refugees from the country of their nationality, under the traditional doctrine. But the fact that such organisations are of non-political character and by reason of the fact that their work is based on humanitarian principles, they stand in a favourable position *vis-a-vis* the States. This is evident from the work which these organisations have performed in the past and are doing now also. For instance, the United Nations High Commissioner for Refugees negotiates on behalf of refugees both with the States of residence and the States of origin on matters concerning the recognition of their legal status, admission, resettlement, repatriation, etc., and no country has accused him of interference in matters which fall within its domestic jurisdiction. The authority behind the High Commission is the moral authority of the United Nations which has not been questioned by the Government of any country. The question of compensation to refugees could, therefore, best be settled through such international agencies which already enjoy the goodwill of the Governments, because as experience in connection with international claims shows, it would indeed be an unsatisfactory and long drawn process even if the State of asylum was given the right to prefer claims on behalf of the refugees.

It may be stated that compensation to a specified class of refugees is already being paid through the U. N. High Commissioner for Refugees in accordance with an agreement between him and the Government of the Federal Republic of

108. *Ibid.* p. 313.

Germany. [109] According to the terms of the agreement the Government of the Federal Republic of Germany placed at the disposal of the High Commissioner a sum of DM 45 million for measures of assistance to refugees to enable the High Commissioner to make payments to the following persons :

(a) Persons who were damaged under the National Socialist regime by reasons of their nationality in disregard, of human rights and who on 1 October, 1953 were refugees in the sense of the Geneva Convention of 28 July, 1951;

(b) Surviving dependants of persons who were damaged under the National Socialist regime by reasons of their nationality in disregard of human rights insofar as the surviving dependants on 1 October, 1953 were refugees in the sense of the Geneva Convention of 28 July, 1951.

**Settlement of claims by international tribunals**

An alien who suffers injury to his person and property in the State of residence can avail of the benefits of the treatment recognised by the generally accepted principles of International Law concerning aliens. Refugees who have suffered losses and damage in their own State cannot point to any recognised standard of treatment under International Law. They can neither sue the State of their nationality in the courts of the State of residence nor seek justice from the courts of their own States. In bringing 'international claims' also their position is precarious owing to the fact that, the parties directly concerned with the dispute are the State of nationality and its own nationals. Refugees, therefore, are unable to seek settlement of their claims by means of international arbitration or judicial settlement.

109. Agreement between the United Nations High Commissioner for Refugees and the Government of the Federal Republic of Germany concerning payment in favour of persons damaged by reasons of their nationality, signed at Bonn on 5-10-1960.



International tribunals have generally been set up to adjudge (a) claims between Governments based upon injury to one or other, (b) claims based on injury to nationals of one Government against another, (c) claims by nationals of one Government against the nationals of another and (d) claims by an international organisation against a government or against another international organisation. [110]

There are, however, instances where the nationals have been granted the right to present claims before an international tribunal against their own Governments. This was the practice of the Arbitral Tribunal of Upper Silesia, established under the Geneva Convention of May 15, 1922 which permitted nationals to appear and argue cases against their own Governments. [111] The Charter annexed to the Convention on the Settlement of Matters arising out of the War and the Occupation signed on 26 May, 1952 with the Federal German Republic sets up an Arbitral Commission, direct access to which is open to the nationals. [112] Thus, the establishment of an international tribunal to decide the claims of refugees against their own Government will not be an impracticable idea. An individual, who is completely without recourse so far as local remedies are concerned, must have remedies at his disposal for the purpose of bringing an international claim. The problem of refugees has been recognised now as international in scope and character and consequently international protection has been provided to them in many respects. It would be highly desirable not only from the point of view of refugees but from the point of view of maintaining good international relations to extend international protection to refugees to settle this outstanding problem as well. As already stated, the problem should be treated in accordance with the principles of justice toward man the denial of which will not only constitute violation of human rights, but also may even pose a danger to world peace.

110. Simpson and Fox, *International Arbitration*, London 1959, p. 94.

111. *Steiner and Gross* v *Polish State*; Kaeckenbeck, *Transactions of the Grotius Society*, Vol. 21, 1935, p. 36.

112. *Yearbook of the International Law Commission* : 1956, p. 197.

# V. RIGHTS OF REFUGEES IN THE COUNTRY OF RESIDENCE

**Standard of treatment**

Like other aliens, refugees are entitled to the same standard of treatment which customary International Law prescribes for the treatment of aliens; but in their case the safeguard which exists in the diplomatic protection by the home State of the alien is lacking. [113] This fact constitutes the basic difference between the refugee and an ordinary alien. Nationality is largely the basis for the treatment of aliens, not only according to the private International Law of many countries, but also in public International Law, where the right of diplomatic protection of the State of nationality is the principal safeguard for the minimum standards of treatment of aliens established by International Law. In the case of '*de facto*' stateless refugees, i. e., refugees who still retain the nationality of their country of origin, that nationality is not effective because the protection of the authorities of that country is denied to them. [114] The absence of nationality or of protection by the government of the State of nationality creates legal difficulties; refugees are aliens everywhere, but laws are made with the conception of the "normal", the protected aliens, in the mind of the lawgiver; refugees often lack, moreover, the documents or are unable to comply with the formalities which are required from aliens for the enjoyment of certain rights. Their very position, the frequent uncertainty of their nationality status and even of their domicile are bound to create additional legal problems. Serious disabilities, unintentional discrimination—discrimination by the normal operation of the law—are frequently the consequence. [115]

113. Weis, *American Journal of International Law*, 48 (1954), p. 199.
114. *Ibid. British Yearbook of International Law*, 30 (1953), p. 480.
115. *Ibid. American Journal of International Law*, 48 (1954), p. 193.



The practice of individual States has done much to mitigate the disabilities of refugees. In the 'common law' countries, for example, there is little distinction between nationals and aliens on questions of civil rights; refugees, therefore, enjoy on the whole the same civil rights as nationals, in common with other aliens. This is not the case in countries whose civil law is based on the Napoleonic Code, where the concept of reciprocal treatment governs the position of aliens. In some of these countries, of which France is an example, however, much has been done, largely by administrative arrangements, in order to assimilate the treatment of refugees in certain matters to that of nationals, in others to that of fully protected aliens. But many of these practices, general and humane, as they may be, are diverse to a degree that prevents them from being considered as reflection of the common consent of States, as International Law even in gestation. [116]

**Minimum standards of treatment as laid down in the U. N. Convention of 1951**

The 1951 Convention relating to the Status of Refugees lays down the minimum standards for the treatment of refugees. The Convention came into force on 22 April, 1954 and at present 42 States are parties to it. As stated in the Memorendum of the office of the United Nations High Commissioner for Refugees, "accession to the Convention by countries throughout the world reflects an awareness of the universal character of the refugee problem. It also symbolises acceptance of the principles embodied in the Convention as general principles defining the status of refugees and the basic minimum standards for their treatment." [117]

**Asylum and non-refoulement**

The operative part of the 1951 Convention does not contain any clause on admission of refugees. The Final Act of

116. *Ibid.* p. 194.
117. See Annexure.

the Conference of Plenipotentiaries which adopted the Convention of 1951 contains a recommendation in the following terms :

> 'that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international cooperation in order that these refugees may find asylum and the possibility of resettlement. [118]

However, the Convention grants protection to refugees against expulsion and lays down the principle that bona fide refugees should not be returned or expelled to a country where their life or freedom would be threatened for political, religious or racial reasons. [119]

**Non-discrimination**

The principle of non-discrimination in the treatment of refugees is laid down in Article 3 of the Convention which reads :

> 'The Contracting States shall apply the provisions of this Convention to refugees without discrimination, as to race, religion or country of origin.'

The Preamble to the Convention also refers to the United Nations Charter and the Universal Declaration of Human Rights which embody the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.

**Exemption from reciprocity**

As stated earlier, the granting of civil rights to aliens in some countries is, in principle, subject to reciprocity "whether on the basis of treaties or due to *de facto* or legislative reciprocity." This principle, which aims at safeguarding the rights of the country's own nationals abroad and at raising the standard

118. U. N. Doc. A/CONF. 2/108, p. 9.

119. See Article 32 and 33 of the 1951 Convention.



of their treatment .....serves no purpose in the case of refugees. It seems, therefore, equitable to exempt refugees from the application of this principle."[120] The Convention recognises this difficulty and provides in Article 7 that refugees shall after three years' residence in the country, be exempt from legislative reciprocity and they shall continue to enjoy the rights and benefits to which they were entitled in the absence of reciprocity at the date of the entry into force of the Convention. The Convention further contains a recommendation to grant to refugees more far-reaching exemptions from reciprocity.

**Exemption from exceptional measures**

Refugees being aliens in their country of residence are subject to any measures, consistent with International Law, which the State of residence decides to take against aliens and their property for reasons of national security, or for other reasons. In time of war refugees of enemy nationality are liable to be considered as enemy aliens, although they will as a rule be opposed to the belligerent government of their country of nationality. Refugees may also be affected in peace time by exceptional measures taken against nationals of their country of origin (retorsion and reprisals, particularly by locking or sequestration of property), although such measures will not, in their case, lead to the desired result of compelling the home State to settle the dispute.[121] The 1951 Convention, therefore, provides that exceptional measures taken against the person, property, or interests of nationals of a foreign State shall not be applied to a refugee who is formally a national of that State solely on account of his nationality.[122] The provision constitutes an extension of the principle embodied in Article 44 of the Geneva Convention of 12 August 1949 concerning the Protection of Civilian Persons in Time of War. That Article reads :

120. Weis, "International Protection of Refugees" *American Journal of International Law*, Vol. 48 (1954), p. 201.

121. *Ibid.* p. 204.

122. Article 8.

"In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an alien State, refugees who do not, in fact, enjoy the protection of any Government."

**Administrative assistance**

In order to overcome the legal difficulties arising for refugees from the lack of assistance of diplomatic or consular representatives, the Convention requires such administrative assistance to be provided to them. It is laid down in Article 25 that "when the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States shall arrange that such assistance be afforded to him by their own authorities or by an international authority. These authorities "shall deliver or cause to be delivered under their supervision to refugees such documents or certificates as would normally be delivered to aliens by or through their national authorities."

**Identity and travel documents***

The 1951 Convention requires Contracting States to issue the identity papers to refugees in their territory who do not possess valid travel documents. Refugees lawfully staying in the territory of the Contracting States are also to be provided with travel documents for the purpose of travel outside their territory.

## SPECIFIC RIGHTS OF REFUGEES

**As under the 1951 Convention**

While the Convention stipulates for refugees the same treatment as is accorded to aliens generally, this principle does not apply to refugees with regard to specific rights, in respect of which refugees are granted more favourable treatment than other aliens. The following four standards of treatment are established under the Convention :

* Discussed in detail in the Section dealing with International Assistance to Refugees.



(1) National treatment, i. e., the treatment accorded to nationals of the Contracting State concerned ;

(2) The treatment accorded to nationals of the country of habitual residence ;

(3) Most-favoured-nation treatment, i. e., 'the most favourable treatment accorded to nationals of a foreign country ;' and

(4) 'Treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally in the same circumstances.'

(1) *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 the 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 (Art. 29).

(2) *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, legal assistance and exemption from *cautio judicatum solvi* in countries other than that of their habitual residence (Article 16, paragraph 3).

(3) *Most-favoured-nation treatment* is to be granted to refugees as regards their right to create and to join non-political