

and non-profit-making associations and trade unions (Article 15), and the right to engage in wage-earning employment, if the refugees concerned do not fulfil the conditions necessary for the enjoyment of national treatment (Article 17, paragraph 1).

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

As under various other international agreements

While the Convention relating to the Status of Refugees, referred to above, is the main international instrument which lays down certain basic standards for the treatment of refugees and which can be regarded as being widely accepted by civilised States, there exist various other multilateral agreements relating to specific rights of refugees. These agreements reflect a growing tendency to accord to refugees the same treatment as is accorded to nationals of their country of residence. Very frequently, the international agencies charged with the protection of refugees (i. e., the Inter-Governmental Committee for Refugees, the International Refugee Organisation or, now, the Office of the United Nations High Commissioner for Refugees) have taken the initiative for the extension of these agreements to refugees.

Thus, the Inter-Governmental Copyright Conference held in Geneva in August/September 1952 adopted on 6 September, 1952, as a result of an initiative taken by the United Nations High Commissioner for Refugees, Protocol I to the Universal Copyright Convention which provides that "stateless persons

and refugees who have their habitual residence in a State party to this protocol shall, for the purpose of the Convention, be assimilated to the nationals of that State."¹²³

Protocols to the European Interim Agreements on Social Security Scheme relating to Old-age, Invalidity and Survivors and on Social Security other than Scheme for Old-age, Invalidity and Survivors, provide that the provisions of the principal agreements shall, subject to certain qualifications, apply to refugees under the same conditions as they apply to the nationals of the contracting parties. A protocol to the European Convention on Social and Medical Assistance provides that the provisions of Section I of the Convention shall apply to refugees under the same conditions as they apply to the nationals of the contracting parties thereto. The term "refugee" in these protocols is to be understood in the meaning of Article 1 of the 1951 Convention Relating to the Status of Refugees.

Some bilateral agreements relating to the specific rights of the nationals of the contracting parties also contain special provisions regarding refugees. Thus, for instance, the provisions of the General Convention concerning Social Security between France and Belgium of 17 January, 1948 and of its Additional Protocol concerning miners were, by an Additional Protocol of 19 July, 1949, extended to refugees and displaced persons within the meaning of Annex I to the Constitution of the International Refugee Organisation who were resident in France or Belgium. Likewise, the benefits accorded to nationals of the Contracting States under the General Convention on Social Security of 10 July, 1950 between France and the Federal Republic of Germany, and of the first additional agreement to the General Agreement have, by the additional agreement No. 3, been extended to refugees and displaced persons resident in the two countries.¹²⁴

123. Weis, "The International Status of Refugees and Stateless Persons," *Journal Du Droit International*, No. 1 : 1956, p. 56.

124. *Ibid.*, p. 58.

The provisions of some general international agreements relating to individual rights also equally apply to refugees and stateless persons. Thus, for instance, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November, 1950 guarantees to all persons within the jurisdiction of the contracting parties a number of rights and freedoms, including the right to life; the right to liberty and security of the person; freedom from torture, slavery and servitude; freedom from arbitrary arrest, detention, or exile; the right to fair and public hearing by an independent and impartial tribunal in questions of the determination of civil rights and obligations or of any criminal charge; freedom from arbitrary interference in private and family life, home, and correspondence; freedom of thought, conscience, and religion; freedom to join trade unions; the right to marry and found a family; the right to property, the right of parents to choose the education to be given to their children; and the right to free elections. These rights and freedoms were taken from the Universal Declaration of Human Rights adopted by the General Assembly on December 10, 1948 which remains only a solemn statement of intentions of considerable moral value but without legal effect. The European Convention contains precise legal obligations.

Practice of the Member States of the Committee

The Member States of the Committee, except Ghana, have not acceded to the United Nations Convention of 1951 relating to the Status of Refugees which lays down minimum standards of treatment for refugees. Further, except Iraq, which has enacted a specific law governing refugees, there is no law dealing exclusively with the status and rights of refugees in the other Member Countries. However, in the absence of any special legislation providing for the contrary, a refugee, once admitted into the country, normally enjoys, in common with other aliens, all personal freedoms and essential civil rights which are admissible to their own nationals.

Thus, under Article 21 of the Indian Constitution every person enjoys the fundamental right to life and personal liberty. Article 22 of the Constitution guarantees the right to fair trial, and Articles 25 and 26 of the Constitution ensure freedom of conscience and religion. Though refugees do not have a fundamental right to freedom of speech under the Constitution, in practice they enjoy this freedom so far as it is consistent with the laws and regulations of the country. In the matter of employment, the practice followed in India is to provide help to the refugees to the extent necessary. Special legislation has been enacted to rehabilitate certain refugees. For instance, the Refugees Rehabilitation Loans Act, 1948, provides for giving loans to refugees. As regards social security, no distinction is made between nationals and refugees. Moreover refugees enjoy the facilities of education in India and financial and technical assistance is also rendered to them as far as possible.

Similar treatment is provided in favour of refugees in Pakistan. Chapter I of Part II of the Constitution of Pakistan relating to Fundamental Rights provides that no person shall be deprived of life or liberty save in accordance with law. As regards arrest and detention, it is laid down that a person shall not be detained in custody without being informed as soon as possible, of the grounds of his arrest. He shall have the right to consult and to be represented by a legal practitioner of his choice. He has the right to be produced before the nearest magistrate within a period of 24 hours of such arrest. Normally he shall not be detained in custody beyond the period of 24 hours without the authority of a magistrate. With regard to the right to work it may be stated that labour legislation of Pakistan contains no restrictions on employment or on the choice of an occupation; likewise it makes no distinction between aliens, refugees and native-born citizens as regards conditions of work. The right to work is fully safeguarded for the refugees in Pakistan. They may register at employment exchanges and everything is done to find work for them. They are not required to have work permits. They are not debarred from

any occupation unless they have a bad record in which case they are treated in the same way as citizens in a similar position.

The Constitution of Japan also guarantees certain essential rights to every person, regardless of his nationality. The rights and freedoms enumerated in the Constitution are: the right to life and liberty (Article 31); the right of access to the courts (Article 32); freedom from arbitrary arrest and detention (Article 34); the right of public trial by an impartial tribunal and the right of legal consultation and defence (Article 37); freedom from torture, slavery and servitude (Articles 18 and 36), freedom of thought and conscience (Article 19), freedom of religion (Article 20), freedom of assembly and association as well as speech, press and all other forms of expression (Article 21), freedom to choose and change residence and to choose occupation to the extent that it does not interfere with the public welfare (Article 22), freedom of education (Article 24); and the right to property (Article 29).

The rights of refugees in Iraq are governed by Law No. 114 of 1959. Persons who seek refuge in Iraq and who are recognised as 'political refugees' in accordance with the provisions of the above law enjoy the following rights on par with the nationals: (1) the right of education and social service, (2) the right to practise professions and engage in business; (3) the right to hold agricultural lands in pursuance of the Agrarian Reform Law; and (4) the right to employment. The Council of Ministers is, however, empowered to grant additional rights to refugees as are enjoyed by the citizens of Iraq.

VI. INTERNATIONAL ASSISTANCE TO REFUGEES

Travel documents

In the modern world a travel document or passport is, as a rule, necessary for foreign travel. A refugee's need is greater

than any one else's in that he cannot even establish himself in any country other than that of his first asylum unless he can legally travel thither; to the extent that he is deprived of the protection of the Government of his country of origin and thus cannot be issued its national passport, special measures have been necessary to see that he can be issued some appropriate document that is generally recognised. Most, if not all, governments have administrative arrangements whereby stateless persons resident in their territory may be issued a travel document. In some cases the document is a simple sheet of paper, sometimes even typewritten; in other cases the document is a bound booklet having the appearance of a national passport. Sometimes such a document carries the right to return to the country of issue; sometimes it is recognised by consuls of other countries as an appropriate document on which a visa may be affixed and some times not.

The pre-eminence of the need for an internationally recognised document was in fact such that the first international agreement for the protection of refugees was concerned with arrangements for the issue of what has become known as the "Nansen Passports". This was a simple sheet of paper in an agreed form and was issued to Russian refugees pursuant to the Arrangement of July 5, 1922. This Arrangement was adopted by 53 governments in order to remove a serious obstacle particularly to the resettlement of refugees, the major refugee problem at that time being the resettlement of almost a million Russian refugees who had left Russia after the Revolution of 1917.

The "Plan for the Issue of Certificates of Identity to Armenian Refugees" of May 31, 1924, made identical provision for this other group and additional provisions for both groups were contained in an Arrangement of May 12, 1926. The benefits of this system were extended by an Arrangement of June 30, 1928, to Turkish, Assyrian, Assyro-Chaldean and

assimilated refugees and by an Arrangement of July 30, 1935, to refugees from the Saar; a similar document was made available for issue to refugees coming from Germany under the terms of Chapter III of the Convention of February 10, 1938, whose scope was extended to refugees coming from Austria.

The emergence of a new refugee problem in 1945 and 1946 constituted mainly by those displaced persons found in Europe by the advancing Allied armies, who refused to be repatriated, made new measures necessary. An Inter-Governmental Conference held in London approved, on October 15, 1946, an Agreement on the Adoption of a Travel Document for refugees. It applies to refugees who are the concern of the Inter-Governmental Committee on Refugees (subsequently, by virtue of Article 20 of the International Refugee Organisation as the successor organisation to the Inter-Governmental Committee), who do not benefit by the provisions regarding the issue of a travel document contained in previous agreements. The document issued pursuant to this Agreement is in the form of a passport and is known as the "London Travel Document".

The various agreements from 1922 onwards demonstrate a gradual development of international practice. The original "Nansen Passports" did not entitle holders to return to the country of issue, whereas the Arrangement of May 12, 1946, recommended that issuing governments should affix return visas to the documents. A document issued under the 1938 Convention, however, entitled its holders to return to the country of issue during the period of validity of the document, which was fixed at one year; and the Agreement of October 15, 1946, made similar provisions, documents having a validity of either one year or two years, subject to the possibility that the period during which a holder could return might in exceptional cases be reduced to not less than three months.

The Convention of July 28, 1951 is in the nature of a consolidating agreement for all the previous agreements and

provides in Article 28 and in the annexed schedule for the issue of travel document to refugees within the scope of the Convention. Such refugees include all those covered by previous agreements and the document is to be similar in form to the London Travel Document, though the conditions are somewhat broader. This document is to supersede, as between the Contracting States, the travel documents issued in accordance with previous agreements, including the Nansen passport.

The European Agreement on the Abolition of Visas for Refugees adopted by the Committee of Ministers of the Council of Europe on April 20, 1959, provides that refugees lawfully resident in a signatory country will be allowed to travel to another signatory country for visits of upto three months without a visa.

Financial and technical assistance

Financial and technical assistance to refugees are made available by the countries of residence, by States Members of the United Nations, by voluntary agencies and by the general public. This assistance, which is provided through international agencies charged with the protection of refugees, is required not only for providing refugees with food, clothing, shelter, medical, educational, recreational and other welfare services, etc. but also by making them economically self-sufficient and providing them facilities for voluntary repatriation, resettlement and local integration.

INTERNATIONAL AGENCIES FOR THE PROTECTION OF REFUGEES

The High Commission for Refugees :

The first international agency concerned with refugees was the High Commission for Refugees, set up by the League of Nations on the initiative and under the direction of Dr. Nansen on 27 June, 1921. Its mandate, which covered Russian refugees and, after 1923, was extended to Armenian refugees, originally

embraced both material assistance and legal and political protection. A change occurred in 1924 when the main protection having become that of procuring work for the refugees, the technical services of the High Commission were transferred to the International Labour Office. The High Commission continued to be responsible for political and legal protection. In 1926, new categories of refugees, viz., Assyrians, Assyro-Chaldeans and Turks, were brought within the scope of the High Commissioner's mandate. In 1929, the tasks of protection and assistance were once again combined in the hands of the High Commissioner and his services were tentatively placed under the authority of the Secretary-General of the League.

The Nansen International Office

After the death of Dr. Nansen in May 1930, the legal and political protection of Russian and assimilated refugees ("Nansen refugees") was assumed by the League Secretariat. The Nansen International Office for Refugees was created as an autonomous body, under the authority of the League, for the discharge of the humanitarian tasks relating to relief. In 1935, refugees from the Saar were added to the categories coming under the Office's mandate. The Office went into liquidation as from the end of 1938.

The High Commissioner for Refugees coming from Germany

Shortly after the National Socialists' rise in Germany, the Assembly of the League of Nations gave consideration to the serious problems presented by the influx of refugees from Germany to neighbouring countries and decided in October 1933 to appoint a High Commissioner for Refugees coming from Germany. At that time, Germany was a member of the League; and in order not to give offence to the German Government the Assembly resolved that the High Commissioner should be independent of the League and should report, not to the Council of the League, but to his own Governing Body.

His terms of reference were to negotiate and direct the international collaboration necessary to solve the economic, financial and social problems of the refugees. After the withdrawal of Germany from the League of Nations, the High Commissioner for Refugees was once more made directly responsible to the Assembly. His mandate was broadened to include legal and political protection and questions of employment, though it was clearly laid down that his activity was to be confined to persons having left their country of origin. His competence was extended in May 1938 to cover refugees coming from Austria. The Office of the High Commissioner for Refugees from Germany was closed at the end of December, 1938, simultaneously with the winding up of the Nansen International Office.

The Office of the High Commissioner for all Refugees under League of Nations Protection :

The Assembly of the League of Nations, by a resolution adopted on 30th September, 1938, decided to set up a single High Commissioner's Office responsible for all League work for refugees, namely, legal protection and the co-ordination of material aid for all categories of refugees hitherto under the mandate of the two predecessor bodies. One of the functions of the High Commissioner, was to administer the "Humanitarian Fund" hitherto held by the Nansen Office and built up mainly from the receipts from the stamps affixed to Nansen Passports. The High Commissioner was not empowered to give direct assistance to refugees, but was authorised to place sums at the disposal of suitable official and unofficial agencies for the purpose. He was to assist governments and private organisations in their efforts to promote emigration and permanent settlement.

The Office of the League of Nations High Commissioner closed at the end of 1946, the function of protection being assumed by the Inter-Governmental Committee for the few months intervening before the International Refugee Organisation began operations.

The Inter-Governmental Committee on Refugees :

In order to give to refugees and potential refugees from Germany and Austria assistance complementary to that accorded by the League of Nations High Commissioner for Refugees, an international conference held at Evian in July 1938, on the initiative of President Roosevelt and attended by the representatives of 32 States, set up an Inter-Governmental Committee on Refugees with its seat in London. The mandate of the Committee covered : '(1) persons who have not already left their country of origin (Germany, including Austria), but who must emigrate on account of their political opinions, religious beliefs or racial origin and, (2) persons so defined who have already left their country of origin and who have not yet established themselves permanently elsewhere.'¹²⁵ By the personal union existing in the person of Sir Herbert W. Emerson, at the same time High Commissioner of the League of Nations and Director of the Inter-Governmental Committee on Refugees, and by the administrative coordination of the offices of the two bodies, which used the same premises, close co-operation between them was established.

The Committee's principal activity, as indicated in the basic resolution of 14 July, 1938, was to undertake negotiations to improve the conditions of exodus of the refugees and replace them by conditions of orderly emigration, and to approach the Governments of the countries of refuge and settlement with a view to developing opportunities for permanent settlement.

The mandate of the Inter-Governmental Committee on refugees was subsequently extended as a result of a Conference between representatives of the United Kingdom and the United States held in Bermuda in 1943, to "all persons wherever they may be who, as a result of events in Europe, have had to leave their countries of residence because of the danger to their lives

125. Resolution of 14 July, 1938 (Proceedings of the Inter-Governmental Committee, Evian, 6 to 15 July, 1938).

or liberties on account of their race, religion, or political beliefs." This decision enabled the Committee to extend its programme to Spanish refugees and to new groups of refugees who emerged during the Second World War.

United Nations Relief and Rehabilitation Administration :

The Second World War gave rise to a shift of populations the like of which had never been seen before. One of the first problems confronting the Allied authorities at the end of the War was, therefore, that of maintaining and repatriating Allied nationals and victims of the Axis Powers who were in liberated territory. This task was assigned to U. N. R. R. A., the Organisation set up by 44 Allied nations on 9 November, 1943 to help solve the most urgent economic and social questions which would arise after the liberation of the countries invaded or occupied during the War. UNRRA Resolution No. 1 mentions among the functions which would devolve upon the Administration that of 'assistance in caring for, and maintaining records of, persons found in any areas under the control of any of the United Nations, who by reasons of War have been displaced from their homes, and, in agreement with the appropriate Governments, military authorities or other agencies, in securing their repatriation and return.' The competence of UNRRA was, therefore, limited to displaced persons; it did not cover refugees in the true sense of the term, or persons whose displacement was not due to the Second World War.

The International Refugee Organisation :

In 1945, when the governments considered, individually and within the United Nations, the problem of about a million "displaced persons" who refused to be repatriated after the War and became in fact a new category of refugees, there was a general agreement that the refugee problem should be dealt with as a whole. Thus, after about eighteen months of discussion, the Constitution of the International Refugee Organisation

was adopted in December 1946, by the General Assembly of the United Nations.¹²⁶ The Constitution itself did not formally come into force until September 1948, owing to insufficiency of ratifications and financial support; but under an "Agreement on interim measures to be taken in respect of refugees and displaced persons" incorporated in the same resolution, its provisions were carried out from July 1, 1947, by the Preparatory Commission for the International Refugee Organisation (PCIRO) which assumed financial and operational responsibility as from that date for the work being done by the Inter-Governmental Committee and that of UNRRA relating to refugees; there was thus a development of work which was such that when the IRO Constitution came into force no practical change occurred in work, the change being nominal only. The functions entrusted to the International Refugee Organisation were: repatriation, identification, registration, and classification; care and assistance; legal and political protection and the resettlement and re-establishment of refugees within the mandate of the Organisation.¹²⁷

United Nations High Commissioner for Refugees:

As the practical task of maintaining refugees and their transportation to their countries of origin or overseas resettlement in countries neared completion, governments and organs of the United Nations again discussed the form of any necessary further international work on behalf of refugees. The General Assembly of the United Nations decided at its Fourth Session, in 1949, that a new body (the Office of the United Nations High Commissioner for Refugees) should be created to provide international protection for refugees after the disappearance of the International Refugee Organisation. The Statute of the new body was approved by the General Assembly on 14 December, 1950.¹²⁸

126. Resolution 62(1), December 15, 1946.

127. Art. 2, Sec. 1 of the Constitution of the IRO.

128. G.-A. Resolution No. 428(V) of 14 December, 1950.

The Statute of the United Nations High Commissioner's Office contains detailed provisions relating to the authority, functions, competence, activities and organisation of the Organ. Chapter II, paragraph 8 of the Statute states:

"The High Commissioner shall provide for the protection of refugees falling under the competence of his office by—

- (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

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- (c) Asserting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
- (d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;
- (e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;
- (f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;
- (g) Keeping in close touch with the Governments and inter-Governmental organisations concerned;
- (h) Establishing contact in such manner as he may think best with private organisations dealing with refugee questions;
- (i) Facilitating the coordination of the efforts of private organisations concerned with the welfare of refugees.

It may, however, be noted that in distinction to previous agencies, the High Commissioner's mandate is not selective. It extends to all refugees (existing as well as potential new groups) whatever their origin and in whatever country they may be, except any one: (a) 'who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country'; (b) 'who continues to receive from other organs or agencies of the United Nations protection or assistance (i.e., the refugees in Korea, who were assisted by the United Nations Korean Reconstruction Agency, and the Palestine refugees assisted by the United Nations Relief and Works Agency for Palestine Refugees); (c) 'who is a common criminal or war criminal'. Moreover, the General Assembly of the United Nations has, in a series of resolutions, made it possible for the High Commissioner to use his "good offices" even where he has no official competence. Thus, the situation of one million Chinese refugees in Hong Kong, although they are not within the High Commissioner's competence, has been recognised as a problem of concern to the international community. The General Assembly of the United Nations, in November 1957, asked the High Commissioner to use his good offices to encourage arrangements for contributions to alleviate the distress of these refugees,¹²⁹ and again in November 1959 the High Commissioner was authorised to use his good offices in the transmission of contributions designed to provide assistance to those refugees who do not come within the competence of the United Nations.¹³⁰ Again, in December 1960, the General Assembly invited States Members of the United Nations and members of the Specialised Agencies to consult with the High Commissioner in respect of measures of assistance to groups of

129. G. A. Resolution No. 1167 (XII) of 26 Nov., 1957.

130. G. A. Resolution No. 1388 (XIV) of 20 Nov., 1959.

refugees who do not come within the competence of the United Nations.¹³¹ A general good offices resolution was adopted by the General Assembly in December 1961 also.¹³²

In the case of an estimated 200,000 Algerian refugees in Tunisia and Morocco, the High Commissioner carried out for several years relief measures in close cooperation with the League of Red Cross, Red Crescent, Red Lion and Sun Societies to feed and clothe these refugees, most of whom were women and children and people of old age and assisted in their repatriation to their home country. The High Commissioner's action in these two countries at the request of the respective governments was confirmed by the General Assembly in its resolutions adopted in December 1958, November 1959 and December 1960.¹³³

In accordance with the General Assembly Resolution of December 1961¹³⁴ concerning the refugees from Angola who are in Congo, the High Commissioner has assisted the Congolese authorities to meet their immediate needs and has also taken steps in agreement with the central and local authorities of the Congo to further agricultural activities as the refugees are predominantly of agricultural background. Agencies engaged in the relief work have continued to meet special situations, and the Portuguese Red Cross has established reception centres on the Angolese side of the border for those who wish to be repatriated.

As regards the several thousand refugees from Ghana in the Republic of Togo, the High Commissioner undertook measures to meet the immediate needs of the refugees and ensure their integration within the country's economy. Similarly,

131. G. A. Resolution No. 1499 (XV) of 5 Dec., 1960.

132. G. A. Resolution No. 1673 (XVI) of 18 Dec., 1961.

133. G. A. Resolution No. 1286 (XIII) of 5 Dec., 1958.
G. A. Resolution No. 1389 (XIV) of 20 Nov., 1959.
G. A. Resolution No. 1500 (XV) of 5 Dec., 1960.

134. G. A. Resolution No. 1671 (XVI) of 18 Dec., 1961.

the High Commissioner provided emergency assistance and undertook settlement projects in favour of more than 150,000 refugees from Rwanda and Burundi, the Congo (Leopoldville), Tanganyika and Uganda.

In the sphere of legal protection to refugees the High Commissioner's basic task consists of promoting the conclusion of international conventions for the protection of refugees and supervising their application, and also in negotiating special agreements with Governments for the measures calculated to improve the refugee situation. The post-war fundamental legal instrument concerning the international protection of refugees is the 1951 Convention relating to the Status of Refugees which is in the nature of a consolidating agreement for all the previous agreements.¹³⁵

Some countries find themselves by an accident of political geography to be neighbours of countries from which there may be an influx of refugees. Even with the most generous of humanitarian instincts some of these countries can do little more than provide a temporary haven and the High Commissioner is faced with the problem of finding a place for the refugees as immigrants. Governments are accordingly encouraged to liberalise their selection criteria and to adopt legal measures that will make it possible for refugees in the handicapped categories to be included in resettlement schemes. After the institution of World Refugee Year in 1959,¹³⁶ more Governments have shown willingness to offer resettlement opportunities to the handicapped including the aged and the sick thereby alleviating the burden which falls on certain countries of asylum.

Under the provisions of its Statute, the Office of the High Commissioner is to facilitate the co-ordination of the

135. See the Section dealing with international instruments concerning refugees.

136. General Assembly Resolution No. 1285 (XIII), December 5, 1958.

efforts of private organisations concerned with the welfare of refugees. The refugees often have particular legal problems which form an integral part of their assimilation in the new community. Some of the private organisations have arrangements for providing legal assistance but others have not. The High Commissioner has, therefore, started a programme of legal assistance to complement the legal protection exercised by his office. Funds have been made available to provide the services of lawyers to advise, assist and, if necessary, represent refugees in judicial proceedings. Among matters which arise are questions of recognition of status, pensions and welfare benefits, work and residence permits, recognition of diplomas, the grant of scholarships and naturalization.

United Nations Relief and Works Agency :

The task of assisting Arab refugees from Palestine was assigned to the United Nations Relief and Works Agency (UNRWA), especially founded for that purpose in accordance with a General Assembly Resolution adopted in 1949.¹³⁷ In many respects UNRWA faces a particularly difficult task because of the political aspect of the problem. Not only are the economies of the Arab countries affected by the presence of substantial number of new-comers who oppose integration and are anxious to return to their homeland, but there was also in the beginning an absolute lack of even the most primitive facilities for their housing, schooling and nursing. UNRWA provided tent camps, schools, clinics, vocational training centres, community houses, etc. and tried to develop schemes facilitating the refugees' return to work independently in trade and crafts with the help of appropriate grants, for the purpose of making them economically self-supporting.

137. Resolution No. 302 (IV) of 1949.

INTERNATIONAL INSTRUMENTS

Prior to the Convention Relating to the Status of Refugees of 28 July 1951

The creation of international agencies for the protection of and assistance to refugees was accompanied by action for the establishment of multilateral instruments designed to define and improve the legal status of refugees. There was, in fact, a close connection between the agencies for the protection of refugees and the efforts to establish an international legal status for refugees. In the exercise of their function of legal protection of refugees, the international agencies frequently initiated and promoted the conclusion of international agreements concerning the legal status of refugees; they sought, where necessary, amendments to these agreements and supervised their application. The difficulties in the way of the movement of refugees arising from their lack of national passports led to the first of these instruments being concerned solely with the establishment of internationally valid travel documents for refugees.¹³⁸ The instruments which belong to this category are:

The Arrangement with regard to the issue of certificates of identity to Russian refugees, signed at Geneva on 5 July, 1922.¹³⁹ This Arrangement introduced the so-called Nansen Passport. It was adopted by 53 States.

The Arrangement for the issue of certificates of identity to Armenian refugees, adopted at Geneva on 31 May, 1924,¹⁴⁰ which extended the benefits of the Nansen passport system to Armenian refugees. It was adopted by 35 States.

The Arrangement relating to the issue of identity certificates to Russian and Armenian refugees, supplementing and

138. Weis, *The International Status of Refugees and Stateless Persons*, *Journal Du Droit International*, No. 1, 1956, pp. 14 to 24.

139. *League of Nations Treaty Series*, Vol. XIII, No. 355.

140. *League of Nations Document CL*, 72 (a) 1924.

amending the previous Arrangements dated 5 July, 1922 and 31 May, 1924, signed at Geneva on 12 May, 1926.¹⁴¹ This Arrangement recommended the affixing of return visas on Nansen certificates. Twenty States adopted the Arrangement.

The Arrangement concerning the extension to other categories of refugees of certain measures taken in favour of Russian and Armenian refugees, signed at Geneva on 30 June, 1928.¹⁴² This Arrangement extended the Nansen Passport system to Assyrian, Assyro-Chaldean and assimilated refugees as well as to Turkish refugees. It was signed by 11 States.

The Plan for the issue of a certificate of identity to refugees from the Saar.¹⁴³ By this plan which was adopted by 16 States, Saar refugees became entitled to the Nansen passport.

Among the international agreements relating to refugees which deal exclusively with travel documents, belongs lastly the *Agreement relating to the issue of a travel document to refugees signed in London on 15 October, 1946*, which has already been discussed in the preceding section of this report.

The first of the international instruments relating to the legal status of refugees was the *Arrangement relating to the legal status of Russian and Armenian refugees, signed at Geneva on 30 June, 1928*,¹⁴⁴ which was only in the nature of a recommendation and not a legally binding instrument. The Arrangement was adopted by 11 States. It recommended *inter alia* that the services which normally are rendered to nationals abroad by the consular authorities of their country of nationality should, in the case of refugees, be discharged by the representatives of the League of Nations High

141. *League of Nations Treaty Series*, Vol. 89, No. 2004.

142. *League of Nations Treaty Series*, Vol. 89, No. 2006.

143. Annex to *League of Nations Document CL*, 120, 1935, XII.

144. *League of Nations Treaty Series*, Vol. 89, No. 2005.

Commissioner for Russian and Armenian Refugees. However, it soon became apparent that recommendations were not sufficient to improve the legal status of refugees. National laws are normally made with a view to the normally protected alien. The peculiar situation of refugees would only be covered on a national level by amending legislation or, on an international level, by treaties legally binding on the contracting States.¹⁴⁵

The first treaty to regulate the legal status of refugees was the *Convention relating to the International Status of Refugees*, signed at Geneva on 28 October, 1933. It applied to Russian, Armenian and assimilated refugees, i. e. to Nansen refugees, but Article 1 authorised the contracting States to modify or amplify the categories of persons falling within its scope. This was done by France which extended the application of the Convention to Spanish refugees. The Convention was ratified by eight States, some of which made reservations.¹⁴⁶

After the rise of a new refugee problem by the coming into power of Hitler in Germany, a *Provisional Arrangement concerning the Status of refugees from Germany* was concluded at Geneva on 4 July, 1936 and signed by seven States. It was replaced by a *Convention concerning the Status of refugees coming from Germany*, signed at Geneva on 10 February 1938 whose provisions are very similar to the 1933 Convention. The Convention was ratified by three States.¹⁴⁷

An additional protocol opened for signature on 14 September, 1939 and signed by three States extended the application of the Convention to refugees from Austria.¹⁴⁸

145. Weis: "The International Status of Refugees and Stateless Persons," *Journal Du Droit International*, No. 1, 1936, p. 20.

146. *Ibid.*, The provisions of the Convention have been discussed in the preceding Sections of this study.

147. *Ibid.*, p. 22.

148. *Ibid.*, p. 22.

The Convention relating to the Status of Refugees of 28 July, 1951

The Convention is designed to revise and consolidate previous international agreements relating to the status of refugees and to extend their material and personal scope. According to its Article 37 the Convention replaces, as between Parties to it, the Agreements of 5 July, 1922, 31 May, 1924, 12 May, 1926, 30 June, 1928 and 30 July, 1935, the Conventions of 28 October, 1933 and 10 February, 1938, the Protocol of 14 September, 1939 and the Agreement of 15 October, 1946. At present 42 States are parties to it.¹⁴⁹

VII. CONCLUSION

It will have been seen from the above survey that refugees as a whole need three types of assistance:

(1) *Care and maintenance*—food, clothing, shelter, medical, educational, recreational and other welfare services; and employment (often with antecedent training or retraining) in order that they may once again provide their own care and maintenance.

(2) *Re-establishment*—repatriation to countries of nationality or former habitual residence, absorption into countries of present location, or resettlement in other countries. All such measures of resettlement require negotiations (usually protracted) with the governments concerned, especially where resettlement is involved; and where either repatriation or resettlement is involved procedure for handling all of the details of movement.

(3) *Legal and political protection*—in countries of present location and in countries of resettlement until firm re-establishment is attained—as much as possible of that representation

149. The provisions of the Convention have been discussed in detail in the preceding Sections of this Study.

of rights and legitimate interests as would be afforded by the diplomatic and consular officials of the refugees' countries of nationality if they were not,—in law, or in fact—stateless. Outstanding among the rights and interests to be protected are those of employment and rations and social benefits, the issuance of identity and travel documents, and the acquisition of settled residence status and finally a new citizenship.

Viewed in this context and judged from the steps already taken in this direction by the international agencies, the refugee problem is international in scope and character and can only be solved by international co-operation.

ANNEXURE 1

DRAFT DECLARATION ON THE RIGHT OF ASYLUM

(Note prepared by the Office of the U.N.H.C.R.)

INTRODUCTION

(a) Historical Background

The right of asylum has occupied the attention of the United Nations from its very beginning. In 1947 the International Refugee Organisation (IRO) submitted the question, among others, to the Commission on Human Rights. The Commission at its second (1947) session decided "to examine at an early opportunity the question of the inclusion of the right of asylum of refugees from persecution in the International Bill of Human Rights or in a special convention for that purpose" (E/600, paragraph 48). At the same session the Commission adopted a draft article on the right of asylum for inclusion in the Universal Declaration of Human Rights. In 1948 the General Assembly incorporated the right of asylum as Article 14 of the Declaration. The final text of the first paragraph of this article "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution" was different from earlier drafts which included the words "be granted" instead of "to enjoy". This change was made because it was not accepted by States that a persecuted person should be able on the basis of this declaration to claim the right of entry to any country he might choose.

The Commission on Human Rights has had the right of asylum on its agenda since its fifth (1949) session as a result of the decision at its second (1957) session referred to above. In order to seek how best to protect the human rights and fundamental freedoms of the individuals who sought asylum from

persecution, the Commission on Human Rights considered that more was necessary than the codification of the law on the right of asylum which was envisaged by the International Law Commission as being the right of sovereign States to grant asylum and the right of an individual to seek and enjoy but not to be granted asylum, as expressed in the Universal Declaration of Human Rights. This need was well expressed by the Director-General of the IRO in a communication (E/CN.4/392, paragraph J.5) circulated by the Secretary-General to the Commission on Human Rights at its sixth (1950) session:

"If the general right of the individual to seek and enjoy asylum is recognized, it is necessary to attempt to define whose responsibility it is to give effect to this right."

Much discussion of the possibility of including the right of asylum in the draft International Covenant on Human Rights took place during the fifth (1949), sixth (1950) and eighth (1952) sessions of the Commission on Human Rights but did not lead to the inclusion of a provision on the right of asylum in the Draft Covenant. In November 1961, the USSR again proposed the inclusion of an article on the right of asylum in the draft Covenant on Civil and Political Rights which is to be discussed during the seventeenth (1962-63) session of the General Assembly by the Third Committee (*Agenda Item 43*). The text is identical with the text (E/CN.4/L. 184) proposed by the USSR but not adopted in the eighth (1952) session of the Commission on Human Rights as follows:

"The right of asylum is guaranteed to all persons persecuted for their activities in defence of the interests of democracy, for their scientific work or for their participation in the struggle for national liberation." (A/C. 3/L. 942)

At the thirteenth (1957) session of the Commission on Human Rights, France proposed a draft declaration on the

Right of Asylum. This draft Declaration, with Israeli amendments, was submitted to Governments and to the Office of the UNHCR for their comments. At the fifteenth (1959) session, comments having been received from twenty three governments and the UNHCR, a revised draft was presented by France. This draft, together with an amendment by the Government of Iraq, was communicated to Governments for further comment.

At the sixteenth (1960) session a draft Declaration on the Right of Asylum was adopted by the Commission on Human Rights and transmitted to the Economic and Social Council. The Council transmitted it further to the General Assembly for its consideration and to Governments for any further comments. It was placed on the agenda of the fifteenth (1960-61) and sixteenth (1961-62) sessions of the General Assembly and its discussion was postponed on each occasion. By its Resolution 1571 (XV) the General Assembly decided to take up the draft Declaration as soon as possible at its sixteenth (1961-62) session but this was not possible, and so by its Resolution 1682 (XVI) the General Assembly decided to consider the draft Declaration at its seventeenth (1962-63) session and to devote the necessary number of meetings to its consideration. It has now been placed on the agenda of the seventeenth (1962-63) session as item No. 46 and is to be discussed by the Third Committee immediately after discussion of Item No. 42, the Annual Report of the UNHCR.

The right of asylum has also been considered by various United Nations organs in connection with the Draft Declaration on the Rights and Duties of States, the Statute of the Office of the UNHCR, the 1951 Geneva Convention relating to the Status of Refugees, the 1954 Geneva Convention relating to the Status of Stateless Persons and further with reference to the Korean Armistice Agreement and the Repatriation of Prisoners. The General Assembly in 1959 by its Resolution 1400 (XIV) requested the International Law Commission to undertake the codification of the principles and rules of

International Law relating to the right of asylum, but the Commission has not yet decided when to begin its work on the subject.

(b) General

The right of asylum is a prerequisite to the enjoyment of all other rights and freedoms for persons fleeing from persecution. It can be equated to "the right to life, liberty and security of persons" which is embodied in Article 3 of the Universal Declaration of Human Rights. The High Commissioner is interested in this right because it is also a basic prerequisite for refugees within his mandate who form a large proportion of the persons seeking asylum from persecution.

THE PURPOSE OF THE DECLARATION

The Declaration on the Right of Asylum is, therefore, intended in the broad context of the human rights and fundamental freedoms of the individual to put into words what has not yet matured in law, i.e. to give suitable expression to the recognition by the international community of the basic need for protection of persons fleeing from persecution.

The Declaration should enshrine the principles which are generally accepted by States as being suitable to guide them in their practice of granting asylum to individuals and to encourage them to adopt a liberal practice in this matter.

CONCEPTIONS OF THE RIGHT OF ASYLUM

There are two general conceptions of the right of asylum held by Governments. The first is a consideration of the right of asylum as the right of persons seeking asylum, the second is a consideration of the right of asylum as the exclusive right of sovereign States. A considerable number of States whose governments support the first conception have already embodied in their Constitutions or national legislations an obligation to grant asylum. The governments which maintain the second conception do not admit that a person seeking asylum has any

right of his own at law to be granted asylum within their territory but consider the right of asylum as an expression of the freedom of States to grant asylum to whomsoever they wish within their territory. This asylum cannot then be challenged by any other State without infringing upon the territorial sovereignty of the State granting asylum.

The second of these conceptions appears to have the support of the majority of governments in the United Nations. In practice, however, most of the States which insist strongly on the prerogative rights of their sovereignty are as liberal in granting asylum as those who champion the right of asylum as the right of the individual seeking asylum.

THE PROBLEM

A conflict sometimes arises between the interests, in their own safety, of States in whose territory asylum is sought and of persons seeking asylum in these States. Persons seeking asylum want protection from persecution and from being forced to remain in or return to a country where they may be persecuted. States, on the other hand, wish to protect themselves from any danger which may be involved in granting asylum in their territory.

Any declaration must, therefore, find some form of expression which reconciles both these requirements.

GENERAL POINTS

(i) Declaration v. Covenant

Much argument has been produced to determine the relevant merits of embodying the right of asylum in a Covenant, which would have binding force, or in a declaration, which by its nature would have no binding force but only be persuasive. Debate on this question has sometimes prevented debate on the substantive questions of the right of asylum itself. The Office of the UNHCR, while appreciating the merits of the argument in favour of embodying the right of asylum in a Covenant, realizes that it does not appear possible at present to embody the right of asylum in a legally binding international

instrument. It considers that it is more important in the absence of such an instrument to achieve at an early date a Declaration expressing the humanitarian principles which are generally accepted as being those principles which ought properly to be adopted by States in their practice with regard to persons who are entitled to invoke Article 14 of the Universal Declaration of Human Rights.

(ii) International Law Commission

As has been noted in the introduction, the International Law Commission has been requested to undertake the codification of the principles and rules of international law relating to the right of asylum. This fact has been used as an argument to suggest that the Human Rights Commission should not properly concern itself with the right of asylum until after the International Law Commission has successfully codified the Law. The International Law Commission has only once had the opportunity to consider the relevant General Assembly Resolution and the only action taken was to defer a decision on when to start considering the matter. The Office of the UNHCR, therefore, considers that such a delay should not be accepted because for the reasons stated under (i) above a Declaration would already be of very great importance.

The second reason for not wanting to wait for the outcome of the International Law Commission's work is the fact that the Commission will be chiefly concerned with the right of asylum as a right of States and declaration refers rather to the position of the individual seeking asylum for the protection of his human rights and fundamental freedoms.

(iii) Effect on earlier international agreements and sovereignty

Concern has been expressed, notably by South American Governments, that the Declaration would allow States who adopted it the opportunity to act in violation of their obligations under other international instruments. Since the Declaration of its very nature is not a binding instrument, it could

not be invoked to justify non-compliance with obligations under an earlier agreement of a binding character. Such instruments are moreover explicitly reserved in the Preamble of the Declaration.

Comments have also been made with regard to the effect of the declaration on the sovereignty of States. It has been pointed out that no legal obligation is imposed by virtue of the Declaration. The Office of the UNHCR wishes to emphasize the non-binding effect of the law of the Declaration. It is not intended to create any legal obligation but to be an exhortation to States to grant asylum according to the principles generally considered to be proper in the circumstances. The only obligation which can be raised by such an instrument is a moral obligation which will in consequence only have persuasive force.

TITLE AND ARTICLE 1

Territorial v. Diplomatic Asylum

Suggestions have been made by Governments to exclude diplomatic asylum from the scope of the Declaration and to limit it to territorial asylum. It has been suggested that the title be amended to the Declaration on Territorial Asylum. It must be noted that Article 1 at present refers exclusively to territorial asylum but the other Articles can be taken to apply to both types of asylum. The Office of the UNHCR, however, has no reason to object to a change being made if it is considered desirable to limit the scope of the Declaration in this way.

Article 2

Concern of the international community

The Office of the UNHCR considers it important that the Declaration states that the situation of persons entitled to invoke Article 14 of the Universal Declaration of Human Rights is the concern of the international community. A person

fleeing from persecution may have no government whose protection he can claim. The grant of asylum is considered as an international humanitarian duty. Since it can only be granted by individual States, it is often a matter of chance which State in each case grants asylum. The grant of asylum may place an unequal burden on one or more States which can only be relieved by other members of the international community coming to their assistance. This article implies that the other States should do this in fulfilment of a humanitarian duty in order to ensure the protection of all persons fleeing from persecution.

International protection

The instruments providing for international protection, namely the Universal Declaration of Human Rights, the Statute of the Office of the UNHCR and the 1951 Geneva Convention relating to refugees, do not give to persons seeking asylum any right to be granted asylum. The draft Declaration, however, while not imposing any legal obligation on States to grant asylum, recognizes that persons forced to seek asylum from persecution should receive it.

Article 3

The present text

After a preliminary general discussion of this Article by the Commission at its 16th session (1959), it was generally agreed that the Article should be composed of three paragraphs each containing one sentence. The first paragraph expressed the principle of *non-refoulement* without qualification, the second paragraph contained qualifications to the principle and the third paragraph constituted the present second paragraph of the Commission's final text. There was general agreement on the first and third paragraphs but both the French and the Indian members proposed texts for the second paragraph. When their proposals were made formally, India was supported by Lebanon which jointly proposed the Indian draft. The object of the joint amendment was to make it clear that the State had

complete discretion to decide, in the light of considerations of security, whether it was necessary not to grant asylum. It was intended moreover that this should be an exception to the principle of non-return expressed in the first paragraph of the Article. The object of the French amendment was to show that when questions of security arose the principle of non-return was less imperative but did not become inapplicable.

When the Commission came to the vote, the joint amendment was voted on first and rejected. Before the French amendment was voted on as a whole, a separate vote was requested on the phrase which introduced qualifications to the principle other than national security. The result of the vote was to remove the phrase and leave security as the only qualification of the principle. The French amendment as a whole with the omission of the phrase removed by the separate vote was then voted on and adopted. This result, however, was so unsatisfactory to all members that the debate was reopened. The Iraqi member then proposed the present text incorporating the first two paragraphs into one single paragraph, expressing the qualifications based on national security and other considerations in a phrase simply as exceptions to the principle of *non-refoulement* which the sentence expresses. The Article as a whole was then adopted by fourteen members voting for it, two members voting against it and two members abstaining. This shows that the text of the Commission cannot be regarded as so clearly reflecting the unanimous view of its members that there is no room in it for improvement.

The principle of non-refoulement

The Office of the UNHCR considers that the three paragraph form of the Article should be preferred because the Office considers it essential that the so-called principle of *non-refoulement*, i.e. that no person should be forced to return to or remain in a territory where he may be persecuted should be stated without any qualification in the first paragraph. While appreciating the interest of States in their own safety, it appears neither