

126. There would seem to be a general recognition of the need to adopt appropriate measures to make the Convention applicable to those refugees for whom the High Commissioner is competent under his Statute but who are not covered by the Convention due to the dateline of 1st January, 1951. The problem arising in this connexion, however, relates to the form which such a measure should take. Thus it could either take the form of a recommendation, or of a binding legal obligation accepted by the Parties to the Convention.

(A) Recommendation

127. It has been seen that, while a recommendation is a possible legal technique, it might possess certain disadvantages²⁰⁷ as far as a solution of the present problem is concerned. Reference has also been made to the possible difficulties connected with the application of the Final Act of the 1951 Convention²⁰⁸ and with the Recommendation concerning *de facto* stateless persons in the Final Act of the Status of Stateless Persons Convention of 1954.²⁰⁹ It has, however, also been seen that in several of the ILO Conventions referred to above, Member States were given the possibility of declaring that they accepted as recommendations those Parts of the Convention which they were not yet able to accept as binding legal obligations.²¹⁰ These examples show that a recommendation may be resorted to as a complementary legal technique. If therefore the acceptance of binding legal obligations by the States Parties to the 1951 Convention were considered an appropriate solution to the present problem and the introduction of certain limitations on such obligations were provided

207. The relative advantages and disadvantages of a recommendation as compared with a Convention were also considered prior to and in connexion with the preparation of the 1951 Convention. See *ante* para. 44.

208. See *ante* para. 9.

209. See *ante* para. 123.

210. See *ante* para. 115.

for, the technique of a recommendation might be resorted to in those fields where, due to such limitations, binding legal obligations have not or have not yet been accepted by the Contracting States.

(B) Acceptance of binding legal obligations by the States Parties to the Convention

128. While this is the normal legal technique for the amendment of international treaties, certain problems arise in the present connexion with regard to the method whereby such obligations are to be assumed and their scope.

(i) Method

129. As regards method there would seem to be two possibilities; Revision of the Convention and Protocol.

(a) Revision

This is provided for in Article 45 of the Convention in the following terms:

"1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations;

"2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request".

130. Although this method is specifically provided for in the Convention, it may possess certain practical drawbacks, as far as the solution of the present problem is concerned. Before any measure can be adopted it would be necessary that a request be addressed to the General Assembly. Only after the General Assembly has considered what measures, if any, should be taken in regard to such a request and has adopted an appropriate recommendation can the matter proceed further. Moreover, a discussion in the General Assembly would include

many States which are not Parties to the Convention and are therefore not directly concerned with the problem, and would exclude those States which are Parties to the Convention but are not Members of the United Nations.

(b) Protocol

131. On the other hand, a Protocol extending the scope of the Convention could be adopted directly by the States Parties to the Convention without prior discussion in the General Assembly. If general agreement cannot be reached between all States Parties to the Convention, at least some progress could be achieved by the adoption of a Protocol by a limited number of them, *inter alia* with the possibility of others acceding at a later date.

(ii) Scope of the proposed new obligation

132. From the point of view of effectiveness, it would of course be highly desirable for the proposed new obligation to be as broadly defined as possible and to be accepted by the largest possible number of States. The optimum solution would seem to be a general agreement by all Contracting States to abolish the dateline of 1 January 1951 in Article (1) (A) (2) of the Convention. This would result in the Convention becoming applicable to all present and, automatically, to any future groups of refugees fulfilling the definition in the Convention. It has, however, been seen when examining the historical development of the definition of the term "refugee" in the Convention²¹¹ and in the Statute²¹² that various States adopted a more limited approach in view of the reluctance to accept future unforeseen obligations. The possibility cannot be excluded that certain States may still be unwilling to assume future obligations, the extent of which they cannot foresee or to broaden their obligations to cover all existing groups of

211. *Ante paras.* 36-42.

212. *Ante paras.* 59-95.

refugees without limitation. It may thus be necessary to seek compromise between universality on the one hand and effectiveness on the other. From the point of view of legal technique, it might therefore be desirable for the new obligations, if it is to secure acceptance by the largest possible number of States, either to be limited in itself or to contain the possibility of limitation. Such a limitation could be established (a) *ratione personae*, i. e. according to a particular group, or particular groups of refugees or (b) *ratione materiae*, i. e. according to particular provisions of the Convention, or the two techniques could be combined.

(a) Limitation *ratione personae*

133. A limitation according to a particular group or to particular groups could assume various forms. It would, for example, be possible to provide for a *general extension* of the Convention's present scope coupled with a *general limitation* as regards groups known to exist or whose existence can be foreseen at a particular date; that is to say the introduction of a new dateline. Apart from or in addition to such new dateline, it might be possible to introduce some more specific limitation as regards particular groups of persons by defining the events as a result of which they became refugees. This would bear some resemblance to the geographic limitation at present contained in Article 1 (B) of the 1951 Convention.

(b) Limitation *ratione materiae*

134. Alternatively the States Parties to the Convention might agree that the Convention as such should, in principle, apply to all refugees covered by the definition without limitation as to date. At the same time, however, limitations could be introduced as regards the particular provisions of the Convention to be applied. In this connexion the legal techniques adopted in the 1933 and 1938 Conventions,²¹³ in certain ILO

213. *Ante paras.* 30 and 31.

Conventions and in the European Social Charter²¹⁴ could provide useful precedent. If a solution of this type were adopted, however, it would be necessary to examine the provisions of the Convention with considerable care with a view to determining which of them, in the given circumstances, could or could not be excluded.

214. *Ante paras.* 104-107.

VI REPORT OF THE COLLOQUIUM ON LEGAL ASPECTS OF REFUGEE PROBLEMS HELD IN BELLAGIO (ITALY) 21-28 APRIL, 1965.

1. The Carnegie Endowment for International Peace in consultation with the United Nations High Commissioner for Refugees sponsored a Colloquium of legal experts to consider the possibility of developing international law relating to refugees. The meeting was held at the Villa Serbelloni in Bellagio from 21-28 April 1965.

2. In view of the time which has elapsed since the adoption of the basic legal instruments relating to the status of refugees, it was felt necessary that there should be a re-examination of refugee problems in their legal aspects. In particular, it was deemed desirable to consider adapting the Convention relating to the Status of Refugees of 1951 to meet new refugee situations which have arisen, and thereby to overcome the increasing discrepancy between the Convention and the Statute of the Office of the High Commissioner for Refugees. The Colloquium reached the following conclusions, which are submitted to the High Commissioner for Refugees for his consideration.

3. The Colloquium had regard to the fact that it was increasingly recognized that the refugee problem has now become universal in nature and of indefinite duration, and that the Convention is therefore no longer adequate; an increasing number of refugees are not covered by the Convention, particularly as it is limited to persons who have become refugees as a result of events before 1st January, 1951. The members of the Colloquium were of the opinion that it was urgent for humanitarian reasons that refugees not at present covered by the

Convention should be granted similar benefits by means of an international instrument. The Colloquium was agreed that a recommendation or a resolution would be not sufficient for this purpose and that a legally binding instrument would be necessary. While it would be possible to proceed by way of the preparation and adoption of a new Convention, whether by revision of the existing Convention or otherwise, such a procedure would, in their opinion, be too lengthy and cumbersome to meet the need for urgency. The Colloquium considered that the end in view could best be met by a Protocol to the Convention.

4. The Colloquium agreed that it would be essential that such a Protocol should remove the existing dateline (1st January, 1951) in Article 1A(2) of the Convention. The Colloquium agreed on the terms of the preamble and substantive provisions of a Draft Protocol the text of which is set out in *Annex I*.

5. In relation to this text, the Colloquium considered it desirable to make the following comments :

- (a) Adherence to the Protocol would not be limited to States parties to the Convention but would be open to other States.
- (b) It was the understanding of the Colloquium that the text *Annex II* would allow reservations, within the limits of Article 42 of the Convention, to be made at the time of signature, ratification or accession to the Protocol.
- (c) Under Article 1B of the 1951 Convention parties are required, at the time of adherence to the Convention, to declare whether they will apply the Convention only to persons who are refugees as a result of events occurring in Europe before 1st January, 1951, or whether they will apply the Convention without such geographical limitation. Under Article 1(b) of the proposed

Protocol, parties would undertake to apply the Convention without regard to the dateline of 1st January, 1951. If the Protocol did no more than remove this dateline, it would appear that States adhering to the Protocol would still have the option contemplated by Article 1B of the Convention, which they would be bound to exercise. The Colloquium considered that to give this option to States adhering to the Protocol would not be consistent with its purpose, which is to extend the scope of the Convention as widely as possible. The Colloquium was of the opinion that no such option should be exercised in relation to the Protocol. The text accordingly includes a provision to the effect that no declaration under Article 1B shall be made by any State on becoming party to the Protocol. As regards States which had already made a declaration under Article 1B limiting the application of the Convention to events occurring in Europe, it was felt that it would be desirable, as a general aim, that such declaration should be withdrawn as soon as possible. On the other hand, it was also felt that if the Protocol excluded the extension of such a declaration, it might deter some States which have made such a declaration from accepting the Protocol. The text accordingly includes a provision to the effect that existing declarations limiting the application of the Convention shall, unless withdrawn, apply also under the Protocol.

6. On two issues which were discussed in the Colloquium in connexion with the Draft Protocol, different views were expressed :

- (a) Some members of the Colloquium expressed the view that the requirement of Article 38 of the

Convention, relating to the compulsory jurisdiction of the International Court of Justice, would deter some States from acceding to the Protocol, and it was therefore suggested that the Protocol might contain a provision to the effect that States adhering to it would not be precluded from making a reservation, in relation to the Protocol, to Article 38 of the Convention. Others did not believe that this was a major obstacle to adherence. They were concerned also that to make Article 38 optional would result in two groups of States, one bound by Article 38 of the Convention and the other not. Such a result would, in their view, not only be undesirable but might prevent some States which have accepted the Convention, which includes Article 38, from adhering to the Protocol. The Colloquium felt that it was not in a position to evaluate the extent to which such a provision would in fact prove an obstacle to the adherence of States to the Protocol.

- (b) It was also suggested that in view of the extended obligations devolving upon States which acceded to the Protocol there was a possibility that in exceptional circumstances some States might find it impossible, because of the number of refugees arriving in their territory, to continue to apply the provisions of the Convention. It was thought, therefore, that it would be desirable to make a specific provision in the Protocol enabling them in such circumstances to suspend the operation of those Articles of the Convention which may, under Article 42, be subject to reservations. Certain members of the Colloquium pointed out that

without such a provision some States might be unwilling to become parties to the Protocol. On the other hand, the view was expressed that a provision in the Protocol giving discretion to States to suspend unilaterally their obligations under the Convention might be open to abuse.

7. In regard to these issues it would of course be important to ascertain the attitude of governments. The Colloquium considered that it might nevertheless be useful to prepare texts of articles embodying the proposals discussed in paragraph 6; these texts will be found in *Annex II*.

8. The Colloquium also gave some consideration to certain other legal aspects of refugee problems; its views on these are set out below.

9. Reference was made to the fact that regional organizations were contemplating the adoption of regional arrangements dealing with refugee problems in their particular area.

The members of the Colloquium agreed that it was appropriate to seek measures for the solution of local aspects of such problems on a regional basis, supplementary to measures adopted on a universal level.

The Colloquium was agreed that regional arrangements should be in harmony with the rules and principles, and should not involve any diminution of the standards, embodied in instruments adopted within the framework of the United Nations. There should also be close co-operation between regional organizations and the United Nations High Commissioner for Refugees.

10. The Colloquium reaffirmed the wish, expressed in the preamble to the 1951 Convention, that States, while recognizing the social and humanitarian nature of the problem of refugees, should do everything in their power to prevent this

problem from becoming a cause of tension between States. They should apply the Convention in good faith and in particular should accord and maintain the status of refugee under the Convention only for persons entitled to such status under Article 1.

11. The Colloquium also discussed the question of reception (*accueil*) and asylum.

The Colloquium agreed that the first and foremost need of a refugee from persecution is to be received in another country.

Under international law it is the sovereign right of any State to admit any person it wishes, without regard to any objection by other States. The Colloquium took note that under Article 14 of the Declaration of Human Rights, *bona fide* refugees have ".....the right to seek and to enjoy in other countries asylum from persecution".....; moreover, that every State may grant such asylum without regard to any objection by other States.

The Colloquium stressed the importance of Article 33 of Convention, forbidding a State to ".....expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". It also took note of the principle, expressed, *inter alia*, in the Draft Declaration of Asylum drawn up by the Commission of Human Rights, that no person shall be subjected to rejection at the frontier, to return or expulsion which would compel him to return to or remain in territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

The Colloquium also emphasized the importance of Recommendation D of the Conference of Plenipotentiaries of 1951 ".....that Governments continue to receive refugees in

their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum.....".

It was also agreed that receiving refugees or the granting of asylum in no way implies a unfriendly act in relation to the State of origin of the refugee or a passing of judgment on the political system in that State.

The view was expressed that there was an increasing tendency towards the recognition of the above principles as part of international law. Note was taken of the growing respect for these principles, and particularly of the generous way in which many States have applied them in recent years. The Colloquium gave its warm support to this development.

12. In conclusion, the Colloquium considered that the continual and recurring character of the refugee problem required the international community to re-examine all aspects of its refugee activities, including the Statute and office of the High Commissioner.

ANNEXURE I

Draft Protocol

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees of 28 July, 1951 (hereinafter referred to as "the Convention"), covers only persons who became refugees as a result of events occurring before 1 January, 1951;

Considering that new refugee situations have arisen as a result of events since that date, and that the refugees concerned may not be covered by the Convention;

Considering that it is desirable to make the provisions of the Convention applicable to the greatest possible number of refugees;

Have agreed as follows :

1. (a) The States Parties to the present Protocol shall be bound by all the provisions of the Convention, as modified by this Protocol.
- (b) They shall apply the provisions of the Convention to any person within the definition of "refugee" in Article 1, as if the words "As a result of events occurring before 1 January, 1951 and".....and the words ".....as a result of such events" in Article 1 A (2) were omitted.
- (c) No declaration as contemplated by Article 1 B of the Convention shall be made by any State when becoming party to this Protocol. The States Parties shall apply the Convention without any limitation such as is permitted by Article 2 B (1) (a), save that existing declarations under Article 1 B (1) (a) shall, unless extended under Article 1 B (2), apply also under the Protocol.
[Final clauses to be added]

ANNEXURE II

Draft Article relating to reservations

(Paragraph 6 (a) of the Report)

As among States Parties to this Protocol, reservations may be made to any of the provisions of the Convention, as herein extended, other than those contained in Articles 1,3,4, 16(1), 33, 36,37,39-46 thereof.

Draft Article relating to exceptional circumstances

(Paragraph 6 (b) of the Report)

Where exceptional circumstances result in the presence on the territory of a State Party of such numbers of refugees that that State Party finds itself unable to continue to apply the

provisions of the Convention, it may, by a notification addressed to the Secretary-General of the United Nations, suspend, as from the date of such notification, and for a period of up to six months, its obligations under the present Protocol (other than those to which Articles 1,3,4, 16(1) and 33 of the Convention relate) in regard to those refugees who are present on its territory as a result of such exceptional circumstances.

A suspension notified in accordance with the present Article shall not affect the application by the State concerned, of the present Protocol to refugees already benefiting from its provisions.

A State Party which has notified a suspension in accordance with this Article may, before the expiration of the six months period, similarly notify a suspension for a period of up to six months, and may, if necessary, subsequently notify further suspensions for a similar period and in a similar manner. The State Party shall inform the Secretary-General of the United Nations when the suspension has been terminated.

(Final clauses to be added)