ASIAN - AFRICAN LEGAL CONSULTATIVE COMMITTEE

REPORT
OF THE
EIGHTH SESSION
BANGKOK
1966

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

REPORT
OF THE
EIGHTH SESSION
HELD IN BANGKOK

From 8th to 17th August, 1966

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I. INTRODUCTORY

Establishment and Functions of the Committee

The ASIAN LEGAL CONSULTATIVE COMMITEE, as it was originally called, was constituted by the Governments of BURMA, CEYLON, INDIA, INDONESIA, IRAQ, JAPAN and SYRIA as from the 15th of November 1956 to serve as an Advisory Body of Legal Experts, to deal with problems that may be referred to it, and to help in the exchange of views and information on matters of common concern between the participating countries. In response to a suggestion made by the late Prime Minister of India, Mr. Jawahar Lal Nehru, which was accepted by all the participating countries in the Asian Legal Consultative Committee, the Statutes of the Committee were amended with effect from the 19th of April 1958, so as to include participation of countries in the African continent. Consequent upon this change in the Statutes, the name of the Committee was altered, and it was renamed as the ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE. Membership of the Committee is open to the countries in the Asian and African continents in accordance with the provisions of its Statutes.

The United Arab Republic, upon its formation by the merger of Egypt and Syria, became an original participating country in the Committee in the place of Syria. Sudan was admitted to the Committee with effect from the 1st of October 1958. Pakistan from the 1st of January 1959, Morocco from the 24th of February, 1961, Thailand from the 6th of December 1961, and Ghana from the 28th of October, 1963.

The Committee is governed in all matters by its Statutes and the Statutory Rules. Its functions as set out in Article 3 of the Statutes are :

(a) Examination of questions that are under consideration by the International Law Commission, and to arrange for the views of the Committee to be placed before the said Commission; to consider the reports of the Commission and to make recommendations thereon to the governments of the participating countries;

(b) Consideration of legal problems that may be referred to the Committee by any of the participating countries and to make such recommendations to governments as may be thought fit.

(c) Exchange of views and information on legal matters of common concern; and

(d) To communicate with the consent of the governments of the participating countries, the points of view of the Committee on international legal problems referred to it, to the United Nations, other institutions and international organisations.

The Committee normally meets once annually by rotation in the countries participating in the Committee. Its first Session was held in New Delhi (1957), the second in Cairo (1958), the third in Colombo (1960), the fourth in Tokyo (1961), the fifth in Rangoon (1962), the sixth in Cairo (1964), the seventh in Baghdad (1965) and the Eighth was held in Bangkok from the 8th to 17th August, 1966. The Committee has its permanent Secretariat in New Delhi for the conduct of day to day work. A section of the Secretariat is charged with the collection of materials and preparation of background papers for assisting the Committee in its deliberations during the Sessions. The Committee functions in all matters through its Secretary who acts in consultation with the Liaison Officers appointed by each of the participating countries.

Office-Bearers of the Committee and its Secretariat

The Committee during its First Session elected the Member for Burma, the Hon'ble Justice U. Myint Thein, and

the Member for Indonesia, the Hon'ble Chief Justice Dr. Wirjono Prodjodikoro as President and Vice-President of the Committee respectively for the year 1957-58. During the Second Session the Committee elected the Member for the United Arab Republic. H.E. Mr. Abdel Aziz Mohamed, President of the Cour de Cassation, as President, and the Member for Ceylon, the Hon'ble Chief Justice Mr. H.H. Basnayake as Vice-President of the Committee for the year 1958-59. At its Third Session, the Member for Ceylon, the Hon'ble Chief Justice Mr. H.H. Basnayake was elected as President and Chaudhuri Nazir Ahmed Khan, Attorney General of Pakistan, as Vice-President of the Committee for the year 1960-61. At the Fourth Session, the Member for Japan, Dr. Kenzo Takayanagi, President of Cabinet Commission on Constitutional Reforms, was elected as President and the Hon'ble Dr. Wirjono Prodjodikoro, Chief Justice of the Republic of Indonesia, as Vice President of the Committee for the year 1961-62. At the Fifth Session, the Member for India, the Hon'ble Mr. M.C. Setalvad, Attorney-General of India, was elected as President and the Hon'ble Mr. A.T.M. Mustafa, Minister for Law in the Government of East Pakistan, as Vice-President of the Committee for the year 1962-63. At the Sixth Session, the Committee elected the Member for U.A.R., Mr. Hafez Sabek, Ex-President of the Cour de Cassation, as President and Member for Ghana, Mr. J.K. Abensetts, Solicitor-General of Ghana, as Vice President of the Committee for the year 1964-65. At the Seventh Session the Committee elected the Member for Iraq, Hon'ble Mr. Justice Shakir Al-Ani as President and the Member for Ceylon, Hon'ble Mr. Justice T.S. Fernando, as Vice-President of the Committee for the year 1965-66. At the Eighth Session held in Bangkok the Committee elected the Member for Thailand Mr. Sanya Dharmasakti, President of the Supreme Court of Thailand, as President of the Committee and the Member for Indonesia, Mr. F. Latumeten as Vice-President for the year 1966-67.

The Committee at its First Session decided to locate its permanent Secretariat at New Delhi (INDIA). The Committee

also decided at its First, Second, Fourth, Sixth and Seventh Sessions that Mr. B. Sen, Hony. Legal Adviser to the Ministry of External Affairs, Government of India, should perform the functions of the Secretary to the Committee.

Co-operation with other Organisations

The Committee maintains close contacts with and receives published documents from the United Nations, the Specialised Agencies, the International Law Commission, the Organisation of American States, the Arab League, the International Institute for the Unification of Private Law and the Hague Conference on Private International Law.

The Committee is empowered under its Statutory Rules to admit to its sessions Observers from international and regional inter-governmental organisations. The International Law Commission was represented at the Committee's Fourth, Fifth, Sixth, Seventh and Eighth Sessions respectively by Dr. F. V. Garcia-Amador, Dr. Radhabinod Pal, Mr. Eduardo Jimenez de Arechaga, Prof. Roberto Ago and Dr. Mustafa Kamil Yasseen. The Secretary-General of the United Nations was represented at the Committee's Fifth Session by Mr. Oscar Schachter of the U. N. Secretariat, at the Sixth Session by Mr. Luis Moreno Verdin, Director of the U. N. Information Centre, Cairo and at the Seventh Session by Mr. Dik Lehmkul, Director, U. N. Information Centre, Baghdad. The Organisation of American States was represented by Dr. F. V. Garcia-Amador at the Committee's Sixth Session. At the Sixth and Seventh Sessions the office of the United Nations High Commissioner for Refugees was represented by H. H. Prince Sadruddin Aga Khan and at the Eighth Session by Dr. E. Jahn, Legal Adviser to the High Commission for Refugees. The Arab League also sent representatives to the Committee's Second, Fifth, Sixth, Seventh and Eighth Sessions. At the Eighth Session, the International Law Association of the U. S. S. R. was also represented by an observer.

The Committee sends observers to the sessions of the International Law Commission in response to a standing invitation extended to it by the Commission. The Committee also sends observers to international conferences convened by the United Nations to discuss legal problems. At the Sixth Session the Committee decided to extend standing invitations to the Legal Counsel of the United Nations, the International Law Commission, the League of Arab States, the Organisation of African Unity and the Organisation of American States to be represented by observers at future sessions of the Committee. Further, the Secretary has discretion to invite any agency of the United Nations to attend the sessions of the Committee.

The Sessions of the Committee

First Session : During the first session held in New Delhi (1957) the Committee discussed and drew up interim reports for submission to the governments of the participating countries on three subjects, namely "Diplomatic Immunities and Privileges", "Principles of Extradition" and "Immunity of States in respect of Commercial Transactions". These subjects were, however, carried forward for further consideration at the next session.

Second Session : During the Second Session held in Cairo (1958), the Committee had before it five main subjects for consideration, namely "Diplomatic Immunities and Privileges", "Principles of Extradition", "Immunity of States in respect of Commercial Transactions", Dual Nationality", and "The Status of Aliens". It also discussed briefly the questions relating to "Free Legal Aid" and "Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters". The Committee also considered generally the Reports of the Ninth and Tenth Sessions of the International Law Commission.

The Committee finalised its Reports on "Diplomatic Immunities and Privileges" and on "Immunity of States in

respect of Commercial Transactions". These were submitted to the governments of the participating countries. Final conclusions were not reached on the other subjects discussed at this session.

Third Session : The Committee at its Third Session held in Colombo (1960) considered the comments of the governments on its Reports on "Diplomatic Immunities and Privileges" and "Immunity of States in respect of Commercial Transactions" which the Committee had finalised during its Second Session. The Committee reaffirmed the view it had taken in its Report with regard to the restrictions on the Immunity of States in respect of Commercial Transactions. It, however, made certain changes in its Report on "Diplomatic Immunities and Privileges" in the light of comments received from the governments of the participating countries. This Report was later placed before the United Nations Conference of Plenipotentiaries on Diplomatic Relations convoked in 1961.

The Committee gave detailed consideration to the subjects of "The Status of Aliens" and "Principles of Extradition" and drew up provisionally the principles governing these subjects in the form of draft articles. The provisional recommendations of the Committee on these two subjects were submitted to the governments of the participating countries for comments.

The Committee also generally considered questions relating to "Dual Nationality" and the Recommendations of the International Law Commission on "Arbitral Procedure". The Committee decided to take up, at its next session, the question of "The Legality of Nuclear Tests" and the legal aspects of certain economic matters, namely "Conflict of Laws in respect of International Sales and Purchases" and "Relief against Double Taxation".

Fourth Session: At the Fourth Session held in Tokyo (1961) the Committee discussed in detail the subjects of

"Extradition" and "The Status of Aliens" on the basis of the Draft Articles as provisionally drawn up by the Committee at its Third Session. The Committee revised the Draft Articles in the light of the comments made by the Delegations present and adopted Final Reports for submission to the governments of the participating countries. The subjects relating to "Diplomatic Protection of Citizens Abroad" and "State Responsibility for Maltreatment of Aliens" were also generally considered by the Committee. The Committee gave special attention to the question of "The Legality of Nuclear Tests". After a general discussion the Committee unanimously decided to place the subject as the first item on the agenda of the Fifth Session considering it to be a matter of utmost urgency.

The Committee also considered the subjects relating to "Free Legal Aid" and "Recognition of Foreign Decrees in Matrimonial Matters". It decided to publish the Reports of the Rapporteur on both these subjects.

Fifth Session : At the Fifth Session held in Rangoon (1962) the Committee discussed in detail the subjects of "Dual Nationality" and "The Legality of Nuclear Tests". The Committee drew up a set of Draft Articles embodying the principles relating to elimination or reduction of dual or multiple nationality. It was decided that the Draft Articles should be submitted to the governments of the participating countries for comments and that the subject be placed before the Committee at its next Session for fuller consideration in the light of the comments that may be received from the governments.

The Committee discussed the subject of "The Legality of Nuclear Tests" on the basis of the materials collected by the Secretariat on the scientific and legal aspects of nuclear tests. The Committee heard the views and expressions of opinion on the various aspects of the subject from the Delegates present at the Session and took note of the written

memoranda presented by some of the governments. On the basis of these discussions the Secretary of the Committee drew up a Draft Report for consideration of the Committee. After a general discussion the Committee decided that the Secretariat should submit the Draft Report to the governments of the participating countries for their comments, and that the subject be placed before the next Session of the Committee as a priority item on the agenda.

The Committee also considered the subject of "Arbitral Procedure" and the Report of the Secretariat on the work done by the International Law Commission at its Thirteenth Session. The Committee decided that a report should be drawn up on "Arbitral Procedure" incorporating the views expressed by the various Delegations.

Sixth Session : At the Sixth Session held in Cairo (1964) the Committee finalised its recommendations on the subjects of "Dual Nationality" and "The Legality of Nuclear Tests". It also discussed the subjects of "The Rights of Refugees" and the "U.N. Charter from the Asian-African Viewpoint", which were referred to the Committee by the Government of the U.A.R. The questions relating to "The Enforcement of Foreign Judgments, Service of Process and Recording of Evidence in Civil and Criminal Cases", referred by the Government of Ceylon, were considered by a Sub-Committee at this Session.

"Dual Nationality" was discussed at this Session on the basis of the Preliminary Report adopted at the Fifth Session and the comments received thereon from the Delegates. The Committee drew up and adopted its Final Report containing Model Rules embodying "Principles relating to Elimination or Reduction of Dual or Multiple Nationality" which it decided to submit to the governments of the participating countries.

The question of "The Legality of Nuclear Tests" was finalised at this Session taking into account the Draft Report

presented by the Secretary at the Fifth Session and the comments and memoranda received from the member governments thereon. The Final Report on the subject was unanimously adopted.

The Committee also considered certain questions relating to the Vienna Convention on Diplomatic Relations, 1961; the Vienna Convention on Consular Relations, 1963; and the Vienna Convention on Nuclear Damage, 1963. The Committee also took note of the Report on the work done by the International Law Commission at its Fifteenth Session.

Seventh Session : At the Seventh Session held in Baghdad (1965) the Committee finalised its recommendations on the subject of "Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence both in Civil and Criminal Cases" and considered in detail the subjects of "The Rights of Refugees" and "The U.N. Charter from the Asian-African Viewpoint". It also took up for preliminary consideration the topics "The Law of Outer Space" and "Codification of the Principles of Peaceful Coexistence", both referred to it by the Government of India. The topics "Relief against Double Taxation" and "Diplomatic Protection and State Responsibility" were given consideration by the Sub-Committees appointed at the Session.

Eighth Session of the Committee : The Eighth Session of the Committee was held in Bangkok from the 8th to 17th August, 1966. The subject principally discussed at this Session was "The Rights of Refugees". The points which arose for special consideration on this subject were :

(a) Consideration of the draft principles provisionally adopted by the Committee in its Interim Report at the Baghdad Session in the light of the comments received from the U.N. High Commissioner for Refugees and the Governments of the Member States;

(b) The question whether any and what provision should be made for ensuring the implementation of the right of a refugee to return to his homeland and the right to compensation which were provided for in the draft principles embodied in the Interim Report; and

(c) How far the principles incorporated in the United Nations Refugee Convention of 1951 should be adopted by the Committee in making its recommendations on the subject to the Member Governments.

The Committee, after careful consideration, came to the conclusion that having regard to the functions of the Committee which were purely of an advisory nature, the appropriate manner in which it could deal with the subject was to define the term "Refugee" and then proceed to formulate principles regarding the right of asylum, the rights and obligations of refugees and the minimum standard of treatment in the State of asylum. The Committee further concluded that it was up to the government of each participating country to decide as to how it should give effect to the recommendations of the Committee on the subject, whether by entering into multilateral or bilateral arrangements or by embodying these principles in their national laws. In view of this position, the Committee formulated the general principles governing the subject in a Final Report which it adopted unanimously and decided to submit the same to the government of U.A.R. which had referred the subject and the governments of the other participating countries.

As regards the question whether any provision should be made concerning enforcement of the right of repatriation and compensation by international tribunals, the Committee decided to postpone consideration of the same until a more suitable time. The Committee also decided that it was not necessary to examine in detail the provisions of the 1951

U.N. Convention on Refugees as the same had been taken note of by the Committee in formulating the principles on the subject.

The other subjects considered by the Committee at this Session were "Relief Against Double Taxation and Fiscal Evasion" and "Codification of the Principles of Peaceful-Co-existence".

The subject of "Double Taxation" was given consideration by a Sub-Committee. The Sub-Committee prepared and presented a report on the topics which were not dealt with by the Sub-Committee appointed at the Seventh Session. The Committee took note of the Report of the Sub-Committee and directed that this Report alongwith the Report of the Sub-Committee of the Seventh Session be placed before it for consideration at the next Session.

The subject of "Peaceful Co-existence" was considered at this Session on the basis of a comprehensive study prepared by the Secretariat which also included the reports of both the Meetings of the Special Committee of the U.N. General Assembly convoked at Mexico (1964) and at New York (1966). The Committee appointed a Sub-Committee to give detailed consideration to the subject. The Sub-Committee presented an interim report dealing with some of the aspects only as it did not have sufficient time to discuss all the aspects of the matter. The Committee, therefore, directed the Secretariat to continue its study of the subject and to revise the draft articles prepared by it in the light of discussions held at the Session and to place the revised draft articles before it for consideration at the next Session.

Upon a motion tabled by the Ghanean Delegation at this Session, the Committee took up for discussion the Judgment of the International Court of Justice on South West

Africa Cases dated the 18th July 1966 and certain questions arising therefrom under Article 3(c) of the Committee's Statutes. The matter was generally discussed and the delegates made preliminary observations on the subject. The Committee decided to place this subject as a priority item on the agenda of its next Session and directed the Secretariat to study the points raised in the course of discussions at this Session and to prepare a detailed brief to facilitate deliberations of the Committee at its next Session.

The Committee took note of the Reports on the work done by the International Law Commission at its Seventeenth and Eighteenth Sessions and also of the Report of Dr. Hasan Zakariya, who had attended the Seventeenth Session of the Commission on behalf of the Committee. The Committee also gave consideration to the subject of "The Law of Treaties", which the Committee had taken up for consideration at its Seventh Session as a matter arising out of the work of the Commission. After taking note of the views of the Delegates and the suggestions made by the Chairman of the International Law Commission on the scope of work of this Committee *vis-a-vis* the subject of "The Law of Treaties", the Committee decided to consider the Draft Articles on the Law of Treaties at the next Session as a priority item with a view to formulating proposals and suggestions from the Asian-African viewpoint. The Committee appointed Dr. Sompong Sucharitkul as Special Rapporteur on the subject with the request that he prepare the report on the specific points arising out of the Commission's draft articles which require consideration by the Committee from the Asian-African perspective. The Committee also requested the governments of the participating countries to send their comments on the draft articles to the Rapporteur through the Secretariat and directed the Secretariat to transmit the Report of the Special Rapporteur to the pariticipating countries for comments and to place that Report and the comments thereon that may be received for consideration of the Committee at its next Session.

Work Done by the Committee

The subjects on which the Committee has been able to finalise its recommedations so for are "Diplomatic Immunities and Privileges" ; "Immunity of States in respect of Commercial Transactions" ; "Legal Aid" ; "Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters" ; "Extradition" ; "Status of Aliens" ; "Dual Nationality" ; "the Legality of Nuclear Tests" ; "Reciprocal Enforcement of Foreign Judgments. Service of Process and Recording of Evidence" ; and "The Rights of Refugees".

The Committee has also made considerable progress on "Diplomatic Protection of Citizens Abroad and State Responsibility for Maltreatment of Aliens", "Relief against Double Taxation", "Laws Relating to International Sales and Purchases", "The U.N. Charter from the Asian-African View-point", "The Law of Outer Space", "Codification of the Principles of Peaceful Co-existence", "The Law of Treaties", and "Accessions to General Multilateral Treaties concluded under the auspices of the League of Nations". The Committee has also before it for consideration several other subjects including "The Law of Territorial Seas", "State Succession", "the Law of International Rivers", "International Transport Law", and certain questions arising out of the World Court Judgment on the South West Africa Cases dated the 18th of July, 1966.

The Committee has completed a compilation of the Constitutions of Asian countries which is now under print. It has also made considerable progress on the compilation of the Constitutions of African countries as also on its proposed digest of important decisions of the municipal courts of Asian and African countries on international legal questions. The Committee has published two special reports entitled *"The Legality of Nuclear Tests—Report of the Committee & Background Materials"* and *"Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence—Report of the Committee & Background Materials"*. The Committee

has also brought out in mimeographed form two of its *studies* on International Economic Law, namely (1) *Laws & Regulations relating to Control of Import and Export Trade in Member Countries*" and (2) *Foreign Investment Laws and Regulations of Member Countries*"

II. DELEGATES OF PARTICIPATING COUNTRIES, OBSERVERS AND CONFERENCE ORGANISATION

BURMA

Not Represented

CEYLON

Member and Leader of the Delegation	Hon'ble Mr. Justice T.S. Fernando, Judge, Supreme Court of Ceylon.
Alternate Member	Mr. C. Gunasingham, Charge d'Affaires, Embassy of Ceylon, Bangkok.
Adviser	Mr. H.L. de Silva, Crown Counsel.
Adviser	Mr. A.T. Moorthy, Assistant Secretary, Ministry of Defence and External Affairs.

GHANA

Member and Leader of the Delegation	Mr. K. Gyeke-Dako, Principal State Attorney, Ministry of Justice.
Alternate Member	Mr. Daniel Kojo Tengey Djokoto, Acting Director, Legal and Consular Division, Ministry of External Affairs.

INDIA

Member and Leader of the Delegation	Mr. M.C. Setalvad, Member of Parliament.
Alternate Member	Mr. R.M. Mehta, Joint Secretary and Legal Adviser, Ministry of Law.

Adviser	Dr. S.P. Jagota, Deputy Director, Legal and Treaties Division, Ministry of External Affairs.
Adviser	Mr. B.M. Dutt, Second Secretary, Embassy of India, Bangkok.

INDONESIA

Member and Leader of the Delegation	Mr. F. Latumeten, Legal Affairs Directorate, Ministry of Foreign Affairs.
Alternate Member	Mr. Zahar Arifin, Legal Affairs Directorate, Ministry of Foreign Affairs.
Adviser	Mr. Christian Tumimomor, Third Secretary, Indonesian Embassy, Bangkok.

IRAQ

Member and Leader of the Delegation	Dr. Hassan Al Rawi, Director General, Legal Department, Ministry of Foreign Affairs.

JAPAN

Member and Leader of the Delegation	Dr. Kenzo Takayanagi, Former President of the Cabinet Commission on Constitution, and Member of the Deliberative Commission on Legal Institutions.
Alternate Member	Dr Kumao Nishimura, Member of the Atomic Energy Commission.
Adviser	Mr. Tadao Araki, Second Secretary, Embassy of Japan in Thailand.

Adviser	Mr. Kiyoaki Suehiro, Third Secretary, Embassy of Japan in India.

PAKISTAN

Member and Leader of the Delegation	Mr. Jamil Hussain Rizvi, Retired Judge of the High Court of West Pakistan.
Alternate Member	Mr. Yusuf Abdullah, Liaison Officer of Pakistan to ECAFE.

THAILAND

Member and Leader of the Delegation	Mr. Sanya Dharmasakti, President of the Supreme Court.
Alternate Member	Mr. Chitti Tingsabadh, Judge of the Supreme Court.
Alternate Member	Dr. Sompong Sucharitkul, Secretary to the Minister for Foreign Affairs.
Adviser	Mr. Uttit Sankosik, Department of Public Prosecution.
Adviser	Mr. Chamras Kemacharu, Ministry of Justice.
Adviser	Mr. Virot Borirakchanyavat, Ministry of Justice.
Adviser	Mr. Amorn Chandrasomboon, Office of the Juridical Council.
Adviser	Mr. Wichian Watanakun Treaty and Legal Department, Ministry of Foreign Affairs.

Adviser	Dr. Sudhee Prasasvinitchai, Treaty and Legal Department, Ministry of Foreign Affairs.
Adviser	Mr. Sathit Sathirathaya, Treaty and Legal Department, Ministry of Foreign Affairs.
Adviser	Mr. Jetn Sucharitkul, Treaty and Legal Department, Ministry of Foreign Affairs.
Adviser	Mr. Ukrit Durayaprama, Treaty and Legal Department, Ministry of Foreign Affairs.
UNITED ARAB REPUBLIC	*Not Represented.*

SECRETARY TO THE COMMITTEE

Mr. B. Sen,
Senior Advocate of the Supreme Court of India and Hony. Legal Adviser to the Ministry of External Affairs, Government of India.

OBSERVERS

CONGO (LEOPOLDVILLE)

Mr. Baudouin-Isidore N'Kongo,
Ministry of Foreign Affairs,
Congo (Leopoldville).

IRAN

Mr. Bahram Panahi,
Charge d' Affaires, Embassy of Iran,
Bangkok.

MALAYSIA

Mr. Syed Othman bin Ali,
Acting Parliamentary Draftsman,
Ministry of Justice.

Mr. Ibrahim bin Salleh,
Acting Federal Counsel, Ministry of Justice.

Mr. Lamin bin Haji Mohd Yunus,
Second Secretary, Embassy of Malaysia, Bangkok.

PHILIPPINES

Mr. Pedro Angara-Aragon,
Minister Counsellor, Embassy of the Philippines, Bangkok.

ARAB LEAGUE

Dr. Clovis Maksoud,
Chief Representative of the League of Arab States in India and South-east Asia.

INTERNATIONAL LAW COMMISSION

Dr. Mustafa Kamil. Yasseen,
Chairman, International Law Commission.

UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR REFUGEES

Dr. E. Jahn,
Legal Adviser to the High Commissioner for Refugees
Dr. G. Arnaout.

INTERNATIONAL LAW ASSOCIATION OF THE U.S.S.R. — Dr. A. Julin, Counsellor, Embassy of the U.S.S.R., Bangkok.

CONFERENCE ORGANIZATION
(His Majesty's Government of Thailand)

Head of Organization	Mr. Wichian Watanakun, Chief of the Legal Division, Treaty and Legal Department, Ministry of Foreign Affairs, Bangkok.
Chief Conference Officer	Mr. Sakdichai Bamrungpong, Chief of the International Conference Division, International Organization Department, Ministry of Foreign Affairs, Bangkok.
Public Relations Officer	Mr. Pracha Guna-Kasem, Chief of the Press Division, Information Department Ministry of Foreign Affairs, Bangkok.
Chief Documents Officer	Dr. Sudhee Prasasvinitchai, Treaty Division, Treaty and Legal Department, Ministry of Foreign Affairs, Bangkok.
Liaison Officer	Mr. Thep Devakul, Treaty and Legal Department, Ministry of Foreign Affairs, Bangkok.

Administration and Liaison

Mr. Wichian Watanakun,
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Mr. Ukrit Durayaprama
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Mr. Thep Devakul,
Third Secretary, Treaty and Legal Department, Ministry of Foreign Affairs.

Mr. Montri Jalichandra,
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Mr. Nikorn Praisaengpetch,
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Mr. Banyat Skolpadungket,
Third Secretary, International Organization Department, Ministry of Foreign Affairs.

Mr. Pramual Siripool,
Third Secretary, International Organization Department, Ministry of Foreign Affairs.

Documents Officers

Mr. Sudhee Prasasvinitchai,
Second Secretary, Treaty and Legal Department, Ministry of Foreign Affairs.

Mr. Jetn Sucharitkul,
Second Secretary, Treaty and Legal Department, Ministry of Foreign Affairs.

Mrs. Urachata Rodprasert,
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Mr. Nibondh Sathaporn,
Third Secretary, Treaty and Legal Department, Ministry of Foreign Affairs.

Miss Nitya Phenkun,
The Southeast Asia Treaty Organization.

Mrs. Julie Ruchirawongse,
The Southeast Asia Treaty Organization.

Mrs. Kwanta Devakul,

Reception and Protocol

Mr. Bhong T. Thongchua,
First Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Pacha Osathanond,
Chief of the Reception Division, Protocol Department, Ministry of Foreign Affairs.

Mr. Uthai Thongphakdi,
Second Secretary, Office of the Under-Secretary to the Ministry of Foreign Affairs.

Mr. Nopphasak Nobpraphai,
Second Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Prayut Nawong,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mrs. Pratheung Rodprom,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Suwan Konwathin,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Vichien Jatsuwan,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Ngern Anuraksa,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Surasak Khaobang,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Ravi Roekchamnong,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Pridi Osothsongkroh,
Third Secretary, Protocol Department, Ministry of Foreign Affairs.

Mr. Suphot Tiravanija,
Chancellor, Protocol Department,
Ministry of Foreign Affairs.

Mr. Subhadra Gajajiva,
Chancellor, Protocol Department,
Ministry of Foreign Affairs.

Miss Gusnee Kemasingki,
Tourist Organization of Thailand.

Miss Minavat Satrabhaya,
Tourist Organization of Thailand.

Public Relations

Mr. Pracha Guna-Kasem,
Chief of the Press Division, Information Department, Ministry of Foreign Affairs.

Mr. Pongpun Promkutkeo,
Third Secretary, Information Department,
Ministry of Foreign Affairs.

Finance and Procurement

Miss Ampha Bhadranawik,
Chief of the Finance Division, Office of the Under-Secretary to the Ministry of Foreign Affairs.

Mr. Sawat Nana,
Chief of the Supply and Maintenance Division,
Office of the Under-Secretary to the Ministry of Foreign Affairs.

Mr. Chuan Sirikit,
Third Secretary, Office of the Under-Secretary to the Ministry of Foreign Affairs.

LIAISON OFFICERS OF THE PARTICIPATING COUNTRIES ON THE COMMITTEE*

BURMA	U Tin Hline, Second Secretary, Embassy of Burma, New Delhi.
CEYLON	Mr. V.L.B. Mendis, Deputy High Commissioner, Ceylon High Commission, New Delhi.
GHANA	Mr. A.E.K. Ofori-Atta, Counsellor, Ghana High Commission, New Delhi.
INDIA	Dr. K. Krishna Rao, Joint Secretary (L & T), Ministry of External Affairs, Government of India, New Delhi.
INDONESIA	Mr. Imam Abikusno, Counsellor, Embassy of Indonesia, New Delhi.
IRAQ	Mr. Nizar el Kadi, Counsellor, Embassy of Iraq, New Delhi.

*As on 1st June 1967.

JAPAN	Mr. Kiyoshi Sumiya, Counsellor, Embassy of Japan, New Delhi.
PAKISTAN	Mr. M.B.K. Babar, Second Secretary, Pakistan High Commission, New Delhi.
THAILAND	Dr. Suchati Chuthasmit, First Secretary, Embassy of Thailand, New Delhi.
UNITED ARAB REPUBLIC	Mr. Moustafa Osman A.M. Badr, (*Acting*) Second Secretary, Embassy of the United Arab Republic, New Delhi.

III. AGENDA

I. ADMINISTRATIVE AND ORGANISATIONAL MATTERS:

1. Adoption of the Agenda.
2. Election of the President and Vice-President.
3. Admission of Observers to the Session.
4. Consideration of the Secretary's Report.
5. Consideration of the Committee's programme of work for 1967.
6. Immunities and Privileges of the Committee.
7. Date and place of the Ninth Session.

II. MATTERS ARISING OUT OF THE WORK DONE BY THE INTERNATIONAL LAW COMMISSION UNDER ARTICLE 3 (a) OF THE STATUTES:

1. Consideration of the Report on the work done by the International Law Commission at its Seventeenth Session.
2. Law of Treaties.

III. MATTERS REFERRED TO THE COMMITTEE BY THE GOVERNMENTS OF THE PARTICIPATING COUNTRIES UNDER ARTICLE 3 (b) OF THE STATUTES:

1. The Rights of Refugees (Referred by the Government of the U.A.R.).
2. Codification of the Principles of Peaceful Co-existence (Referred by the Government of India).
3. Status of Aliens (Referred by the Government of Japan);

(a) Diplomatic Protection of Aliens by their Home States; and

(b) Responsibility of States arising out of Maltreatment of Aliens.

4. Law of Outer Space (Referred by the Government of India).

IV. MATTERS OF COMMON CONCERN TAKEN UP BY THE COMMITTEE UNDER ARTICLE 3 (c) OF THE STATUTES:

1. Relief Against Double Taxation (Referred by the Government of India)

2. Participation in General Multilateral Treaties concluded under the Auspices of the League of Nations (Taken up by the Committee at the Sixth Session).

V. Any other matter that may be permitted to be raised by the President.

IV. THE RIGHTS OF REFUGEES

(I) INTRODUCTORY NOTE

The subject "The Right of Refugees" was referred to this Committee by the Government of the United Arab Republic under Article 3(b) of the Statutes. In its memorandum on the subject, the U. A. R. Government while indicating the legal issues for consideration of the Committee had stated that apart from humanitarian considerations, the status and rights of refugees raised several issues of mutual interest to the Member Countries of the Committee and that the Committee's views would be invaluable in understanding the refugee problem.

At the Sixth Session of the Committee held in Cairo in 1964, the subject was taken up for consideration on the basis of a preliminary note prepared by the Secretariat and a memorandum furnished by the Office of the U. N. High Commissioner for Rufugees. The Committee, after a general discussion on the subject, directed the Secretariat to collect further material, particularly on the issues relating to compensation, the minimum standard of treatment in the State of Asylum and the possibility of resorting to international tribunals for determination of compensation which could be claimed by a refugee.

The Secretariat with the help and guidance of the Office of the U. N. High Commissioner for Refugees collected the relevant material on the subject and prepared a comprehensive note which formed the basis of discussions at the Seventh Session of the Committee held in Baghdad in March/April, 1965. At that Session the Committee was able to draw up an Interim Report containing certain draft principles relating to the definition of "refugee" and the minimum standard of treatment that should be afforded to him. The Committee, however, decided to postpone consideration of the question whether any provision should be made for ensuring the imple-

mentation of the right of a refugee to return to his homeland and the right to compensation which were provided for in the draft articles. The Committee was not in a position to give detailed consideration to the provisions of the U. N. Rufugee Convention of 1951 for lack of time.

As directed by the Committee at the Seventh Session, the Interim Report drawn up by the Committee was sent to the Member Governments and the Office of the U. N. High Commissioner for Refugees for their comments.

At the Eighth Session of the Committee held in Bangkok in August 1966, the subject was taken up as a priority item. The points which arose for consideration of the Committee at that Session were :

(a) Consideration of the draft principles provisionally adopted by the Committee in its Interim Report at the Baghdad Session in the light of the comments received from the U. N. High Commissioner for Refugees and the Governments of the Member States.

(b) The question whether any and what provision should be made for ensuring the implementation of the right of a refugee to return to his homeland and the right to compensation which were provided for in the draft principles embodied in the Interim Report.

(c) How far the principles incorporated in the United Nations Refugee Convention of 1951 should be adopted by the Committee in making its recommendations on the subject to the Member Governments.

The Committee was greatly assisted in its task by the Legal Adviser of the U.N. High Commissioner for Refugees and the representative of the League of Arab States who participated in the discussions on the subject. The Committee had also before it the *Observations* of the U. N. High Commissioner for

Refugees on the 1951 Refugee Convention as submitted before a Colloquium organised by the Carnegie Endowment in May 1965 and the *Conclusions* reached by the Colloquium.

The Committee, after a careful consideration of various aspects of the subject, came to the conclusion that having regard to the functions of the Committee, which were purely of an advisory nature, the appropriate manner in which it could deal with the subject was to define the term "refugee" and then proceed to formulate principles regarding the right of asylum, the rights and obligations of refugees, and the minimum standard of treatment in the State of asylum. The Committee further concluded that it was up to the government of each participating country to decide as to how it should give effect to the recommendations of the Committee on this subject, whether by entering into multilateral or bilateral arrangements or by embodying these principles in their national laws. In view of this position the Committee formulated the general principles on the subject in a final report which it adopted unanimously and decided to submit it to the Government of the U. A. R. and other participating governments.

As regards the question whether any provision should be made concerning enforcement of the right of repatriation and compensation by international tribunals, the Committee decided to postpone consideration of the same until a more suitable time. The Committee also decided that it was not necessary to examine in detail the provisions of the 1951 U. N. Convention on Rufugees as the same had been taken note of by the Committee in formulating the principles on the subject.

(II) FINAL REPORT OF THE COMMITTEE ADOPTED AT THE EIGHTH SESSION

The Government of the United Arab Republic by a reference made under Article 3 (b) of the Statutes requested this Committee to consider the subject of "The Rights of Refugees" in general and in particular the following issues :

1. Definition of refugees and their classifications.
2. The relation between the problem of refugees and the preservation of peace and justice in the world.
3. Principles guiding the solution of refugees problem :
   (a) The right of asylum.
   (b) The right of repatriation and resettlement.
   (c) The right of indemnification.
4. Rights of refugees in the country of residence :
   (a) The right to life and liberty.
   (b) The right to fair trial.
   (c) The right to speech, conscience and religion.
   (d) The right of employment.
   (e) The right to social security.
   (f) The right to education.
5. International assistance to refugees :
   (a) Travel documents-visas.
   (b) Financial assistance.
   (c) Technical assistance.
   (d) International co-operation in the field of refugees: International agreements and International Agencies.

2. The subject was placed on the Agenda of the Sixth Session of the Committee for consideration. At that Session the Committee generally discussed the subject on the basis of a note prepared by the Secretariat and a Memorandum submitted by the Office of the United Nations High Commissioner for Refugees. The Committee after a general discussion on the subject decided to direct the Secretariat to collect further material, particularly on the issues relating to compensation, the minimum standard of treatment of a refugee in the State of asylum and the possibility of constitution of international tribunals for determination of compensation which could be claimed by a refugee. The Secretariat, in accordance with the directions of the Committee, submitted a comprehensive note on the subject including certain draft articles on the rights of Refugees to serve as a basis of discussion in the Committee. The Secretariat with the assistance of the United Nations High Commissioner for Refugees had collected considerable material on the subject, which was placed before the Committee.

3. The Committee gave detailed consideration to this subject at its Seventh Session held in Baghdad in March 1965 and adopted an Interim Report containing provisional formulation of certain principles concerning the status and treatment of refugees. The Committee had, however, decided to postpone consideration of the question relating to implementation of the right of a refugee to return to his homeland and the right to compensation, which rights were recognised and embodied in the Draft Principles provisionally adopted by the Committee at its Baghdad Session. The Committee also postponed consideration of the provisions of the United Nations Refugee Convention of 1951.

4. The Interim Report drawn up by the Committee at its Baghdad Session was transmitted to the Governments of the participating countries as also to the United Nations High Commissioner for Refugees for their comments. Detailed comments were received on the Interim Report which have been placed before the Committee for consideration.

5. The Committee, having regard to the importance of the subject to the participating States and the urgency of the problem, decided to take up this subject as the first item on the Agenda of this Session, and gave detailed consideration to it at its second, third, fourth, fifth, sixth, seventh, eighth and ninth meetings. The Committee was greatly assisted in its task by the Legal Adviser to the United Nations High Commissioner for Refugees who attended as observer at the invitation of the Committee and participated in the discussions. The Committee also had the benefit of hearing the views of the representative of the League of Arab States who attended the Session and took part in the deliberations.

6. The Committee, on a careful consideration of the various aspects of the subject, came to the conclusion that having regard to the fact that the Committee's functions under its Statute were of an advisory character, the appropriate manner in which it could deal with the subject of refugee was to define the term "refugee" and formulate the principles regarding the right of asylum, the rights and obligations of refugees, and the minimum standard of treatment in the State of asylum. The Committee considered that it would be up to the Government of each participating State to decide as to how it would give effect to the Committee's recommendations whether by entering into multilateral or bilateral arrangements or by recognising the principles formulated by the Committee in their own municipal laws. In this view of the matter the Committee has formulated the general principles on the subject which are set out in the *Annexure* to this Report.

7. The Committee considered the question as to whether any provision should be made for the implementation of the right of a refugee to return to the State or Country of his nationality as also his right to receive compensation which have been provided for in the Articles containing the principles concerning treatment of refugees as adopted by the Committee at this Session. The Delegate of Ceylon expressed the view that it was

neither possible nor necessary to make any provision for implementation of these rights. The Delegate of Japan was of the view that the circumstances were not ripe for making any recommendation on this question, and the Delegate of Pakistan was of the opinion that it was not practicable at present to make any provision in this respect. The Delegates of Ghana, India, Indonesia and Thailand were of the view that this question should be kept pending and might be examined by the Committee at a suitable time, and it was so decided.

8. The Committee also came to the conclusion that it was not necessary to examine in detail the provision of the 1961 U. N. Convention on Refugees as the same had been taken note of by the Committee in formulating the principles on the subject.

9. The Committee records its deep appreciation of the assistance rendered to the Committee by the Office of the United Nations High Commissioner for Refugees in the matter of collection of material as also of assistance given to the Committee in the deliberations on this subject at the Sixth, Seventh and Eighth Sessions.

Sd/—SANYA DHARMASAKTI
President.

Annexure

PRINCIPLES CONCERNING TREATMENT OF REFUGEES

Article I

Definition of the term "Refugee"

A *Refugee* is a person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, political belief or membership of particular social group :

(a) leaves the State of which he is a national, or the Country of his nationality, or if he has no nationality the State or Country of which he is a habitual resident ; or,

(b) being outside such State or Country, is unable or unwilling to return to it or to avail himself of its protection.

Exceptions :

(1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or Country of which he is a national.

(2) A person who prior to his admission into the Country of refuge, has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purposes and principles of the United Nations shall not be a refugee.

Explanation : The dependants of a refugee shall be deemed to be refugees.

Explanation : The expression "leaves" includes voluntary as well as involuntary leaving.

NOTES :

(i) The Delegation of Ghana reserved its position on this Article.

(ii) The Delegations of Iraq, Pakistan and the United Arab Republic expressed the view that, in their opinion, the definition of the term "Refugee" includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to occupying the State.

(iii) The Delegations of Ceylon and Japan expressed the view that in their opinion the expression "persecution" means something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilized nations.

(iv) The Delegations of Japan and Thailand expressed the view that the word "and" should be substituted for the word "or" in the last line of paragraph (a).

(v) In *Exception* (*2*) the words "prior to his admission into the Country of refuge" were inserted by way of amendment to the original text of the Draft Articles on the proposal of the Delegation of Ceylon and accepted by the Delegations of India, Indonesia, Japan and Pakistan. The Delegations of Iraq and Thailand did not accept the amendment.

(vi) The Delegation of Japan proposed insertion of the following additional paragraph in the Article in relation to proposal under *note* (*iv*) :

"A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State or the Country of which he is a habitual resident, at the time of the events which

caused him to have a well-founded fear of above-mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered refugee".

The Delegations of Ceylon, India, Indonesia, Iraq and Pakistan were of the view that this additional paragraph was unnecessary. The Delegation of Thailand reserved its position on this paragraph.

Article II

Loss of status as refugee

1. A refugee shall lose his status as refugee if :

(i) he voluntarily returns permanently to the State of which he was a national or the Country of his nationality, or if he has no nationality to the State or the Country of which he was a habitual resident ; or

(ii) he has voluntarily re-availed himself of the protection of the State or Country of his nationality ; or

(iii) he voluntarily acquires the nationality of another State or Country and is entitled to the protection of that State or Country.

2. A refugee shall lose his status as a refugee if he does not return to the State of which he is a national, or to the Country of his nationality, or, if he has no nationality, to the State or Country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or Country after the circumstances in which he became a refugee have ceased to exist.

Explanation

It would be for the State of asylum of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist.

NOTES :

(i) The Delegations of Iraq and the United Arab Republic reserved their position on paragraph 1(iii).

(ii) The Delegation of Thailand wished it to be recorded that the loss of status as a refugee under paragraph 1(ii) will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality because the right of protection was that of his country and not that of the individual.

Article III

Asylum to a refugee

1. A State has the sovereign right to grant or refuse asylum in its territory to a refugee.

2. The exercise of the right to grant such asylum to a refugee shall be respected by all other States and shall not be regarded as an unfriendly act.

3. No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

4. In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article IV

Right of return

A refugee shall have the right to return if he so chooses to the State of which he is a national or to the country of his nationality and in this event it shall be the duty of such State or Country to receive him.

Article V

Right to compensation

1. A refugee shall have the right to receive compensation from the State or the Country which he left or to which he was unable to return.

2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependants of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authorities of the State or Country, public officials or mob violence.

NOTES :

(i) The Delegations of Pakistan and the United Arab Republic were of the view that the word "also" should be inserted before the words "such loss" in paragraph 2.

(ii) The Delegations of India and Japan expressed the view that the words "deprivation of personal liberty in denial of human rights" should be omitted.

(iii) The Delegations of Ceylon, Japan and Thailand suggested that the words "in the circumstances in which the State would incur State responsibility for such treatment to aliens under international law" should be added at the end of paragraph 2.

(iv) The Delegations of Ceylon, Japan, Pakistan and Thailand expressed the view that compensation should be payable also in respect of denial of the refugee's right to return to the State of which he is a national.

(v) The Delegation of Ceylon was opposed to the inclusion of the words "or country" in this Article.

(vi) The Delegations of Ceylon, Ghana, India and Indonesia were of the view that in order to clarify the position the words "arising out of events which gave rise to the refugee leaving such State or Country" should be added to paragraph 2 of this Article after the words "mob violence".

Article VI

Minimum standard of treatment

1. A State shall accord to refugees treatment in no way less favourable than that generally accorded to aliens in similar circumstances.

2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, appended to these principles, to the extent that they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.

NOTES :

(i) The Delegations of Iraq and Pakistan were of the view that a refugee should generally be granted the standard of treatment applicable to the nationals of the country of asylum.

(ii) The Delegation of Indonesia reserved its position on paragraph 3 of the Article.

(iii) The Delegations of Indonesia and Thailand reserved their position on paragraph 4 of the Article.

Article VII

Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations.

NOTES :

(i) The Delegations of India, Japan and Thailand were of the view that the words "or any other country" should be added after the words "the country of refuge" in this Article. The other Delegations were of the view that such addition was not necessary.

(ii) The Delegation of Iraq was of the view that the inclusion of the words "or in activities inconsistent with or against the principles and purposes of the United Nations" was inappropriate as in this Article what was being dealt with was the right and obligation of the refugee and not that of the State.

Article VIII

Expulsion and deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary.

3. A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

NOTES :

(i) The Delegations of Ceylon, Ghana and Japan did not accept the text of paragraph 1. In the view of these Delegations the text of this paragraph should read as follows :—

"A State shall not expel or deport a refugee save on grounds of national security or public order, or a violation of any of the vital or fundamental conditions of asylum".

(ii) The Delegations of Ceylon and Ghana were of the view that in paragraph 2 the words "as generally applicable to aliens under such circumstances" should be added at the end of the paragraph after the word "necessary".

Article IX

Nothing in these articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

APPENDIX

PRINCIPLES CONCERNING ADMISSION AND TREATMENT OF ALIENS

(Adopted by the Committee at its Fourth Session)

Article 1

Definition of the term Alien

An alien is a person who is not a citizen or national of the State concerned.

NOTE :

In a Commonwealth country the status of the nationals of other Commonwealth countries shall be governed by the provisions of its laws, regulations and orders.

Article 2

(1) The admission of aliens into a State shall be at the discretion of that State.

(2) A State may—

(i) prescribe conditions for entry of aliens into its territory ;

(ii) except in special circumstances, refuse admission into its territory of aliens who do not possess travel documents to its satisfaction ;

(iii) make a distinction between aliens seeking admission for temporary sojourn and aliens seeking admission for permanent residence in its territory ; and

(iv) restrict or prohibit temporarily the entry into its territory of all or any class of aliens in its national or public interest.

NOTE :

(1) The Delegation of Japan is of the view that in sub-clause (iv) of Clause (2) of this Article the words "armed conflicts or national emergency" should be substituted in place of the words "national or public interest."

(2) The Delegation of Indonesia stated that his Delegation preferred Clause (2) of Article 2 as adopted by the Committee at its Third Session in Colombo.

Article 3

A State shall not refuse to an alien entry into its territory on the ground only of his race, religion, sex or colour.

Article 4

Admission into the territory of a State may be refused to an alien—

(i) who is in a condition of vagabondage, beggary or vagrancy ;

(ii) who is of unsound mind or is mentally defective ;

(iii) who is suffering from a loathsome, incurable or contagious disease of a kind likely to be prejudicial to public health ;

(iv) who is a stowaway, a habitual narcotic user, an unlawful dealer in opium or norcotics, a prostitute, a procurer or a person living on the earnings of prostitution ;

(v) who is an indigent person or a person who has no adequate means of supporting himself or has no sufficient guarantee to support him at the place of his destination ;

(vi) who is reasonably suspected to have committed or is being tried or has been prosecuted for serious infractions of law abroad ;

(vii) who is reasonably believed to have committed an extraditable offence abroad or is convicted of such an offence abroad ;

(viii) who has been expelled or deported from another State ; and

(ix) whose entry or presence is likely to affect prejudicially its national or public interest.

Article 5

A State may admit an alien seeking entry into its territory for the purpose of transit, tourism or study, on the condition that he is forbidden from making his residence in its territory permanent.

Article 6

A State shall have the right to offer or provide asylum in its territory to political refugees or to political offenders on such conditions as the State may stipulate as being appropriate in the circumstances.

Article 7

(1) Subject to conditions imposed for his admission into the State, and subject also to the local laws, regulations and orders, an alien shall have the right—

(i) to move freely throughout the territory of the State; and

(ii) to reside in any part of the territory of the State.

(2) The State may, however, require an alien to comply with provisions as to registration or reporting or othewise so as to regulate or restrict the right of movement and residence as it may consider appropriate in any special circumstances or in the national or public interest.

NOTE :

The Delegation of Indonesia expressed preference for the text adopted at the Colombo Session in Clause (1) of this Article.

Article 8

Subject to local laws, regulations and orders, an alien shall have the right—

(i) to freedom from arbitrary arrest ;

(ii) to freedom to profess and practise his own religion ;

(iii) to have protection of the executive and police authorities of the State ;

(iv) to have access to the courts of law ; and

(v) to have legal assistance.

NOTE :

(a) The Delegation of Ceylon was of the view that in Clause (ii) the expression "to freedom of religious belief and practice" should be substituted.

(b) The Delegations of Burma and Indonesia suggested retention of Clause (2) of the Draft adopted at the Colombo Session which provides that "Aliens shall enjoy on a basis of equality with nationals protection of the local laws."

The Delegations of Iraq and Japan had no objection to the retention of this clause.

Article 9

A State may prohibit or regulate professional or business activities or any other employment of aliens within its territory.

NOTE :

The Delegation of Iraq was of the view that the words "shall be free to" should be inserted in place of the word "may". The Delegation of Pakistan wished to keep its position open.

Article 10

An alien shall not be entitled to any political rights, including the right of suffrage, nor shall he be entitled to engage himself in political activities, except as otherwise provided by local laws, regulations and orders.

Article 11

Subject to local laws, regulations, and orders and subject also to the conditions imposed for his admission into the State, an alien shall have the right to acquire, hold and dispose of property.

NOTE :

The Delegation of Indonesia, whilst accepting the provisions of this Article, stated that according to the new laws of Indonesia aliens cannot acquire title to property though they can hold property.

Article 12

(1) The State shall, however, have the right to acquire, expropriate or nationalise the property of an alien. Compensation shall be paid for such acquisition, expropriation or nationalisation in accordance with local laws, regulations and orders.

(2) The State shall also have the right to dispose of or otherwise lawfully deal with the property of an alien under orders of expulsion or deportation.

NOTE :

(i) The Delegation of Japan did not accept the provisions of this Article. According to its view "just compensation" should be paid for all acquisition, nationalisation or expropriation and not "compensation in accordance with local laws, regulations and orders." The Delegation could not accept the provisions of Clause (2) as such a provision would be contrary to the laws of Japan.

(ii) The Delegation of Indonesia reserved its position on Clause (2) of this Article.

(iii) The Delegation of Pakistan stated that though it accepted the provisions of this Article, the view of the Delegation was that acquisition, nationalisation or expropriation should be in the national interest or for a public purpose.

Article 13

(1) An alien shall be liable to payment of taxes and duties in accordance with the laws and regulations of the State.

(2) An alien shall not be subjected to forced loans which are unjust or discriminatory.

NOTE :

(i) Clause (1) of this Article was accepted by all Delegations except that of Japan. The Delegation of Japan wished a proviso to that clause to be inserted to read as follows :

"Provided that the State shall not discriminate between aliens and nationals in levying the taxes and duties."

(ii) Clause (2) was accepted by the Delegations of Burma, India, Indonesia and Iraq.

The Delegation of Ceylon wished the words "or discriminatory" to be deleted. The Delegate of Japan wished the clause to be drafted as "An alien shall not be subject to forced loans." The Delegation of Pakistan suggested the following draft : "An alien shall not be subjected to loans in violation of the laws, regulations and orders applicable to him." The Delegation of the United Arab Republic was of the view that the draft should be as follows : "An alien shall not be subjected to forced loans."

Article 14

(1) Aliens may be required to perform police, fire-brigade or militia duty for the protection of life and property in cases of emergency or imminent need.

(2) Aliens shall not be compelled to enlist themselves in the armed forces of the State.

(3) Aliens may, however, voluntarily enlist themselves in the armed forces of the State with the express consent of their home State which may be withdrawn at any time.

(4) Aliens may voluntarily enlist themselves in the police or fire-brigade service on the same conditions as nationals.

NOTE :

The Delegation of Indonesia reserved its position on the whole Article.

The Delegation of Iraq reserved its position on Clause (3) of this Article.

The Delegation of Japan wished Clause (3) of this Article to be deleted.

Article 15

(1) A State shall have the right in accordance with its local laws, regulations and orders to impose such restrictions as it may deem necessary on an alien leaving its territory.

(2) Such restrictions on an alien leaving the State may include any exit visa or tax clearance certificate to be procured by the alien from the authorities concerned.

(3) Subject to the local laws, regulations and orders a State shall permit an alien leaving its territory to take his personal effects with him.

NOTE :

(i) The Delegate of Pakistan reserved his position on Clause (3).

(ii) The Delegates of Ceylon and United Arab Republic wished the following clause to be retained in this Article :

"An alien who has fulfilled all his local obligations in the State of residence, shall not be prevented from departing from the State of residence."

Article 16

(1) A State shall have the right to order expulsion or deportation of an undesirable alien in accordance with its local laws, regulations and orders.

(2) The State shall, unless the circumstances warrant otherwise, allow an alien under orders of explusion or deportation reasonable time to wind up his personal and other affairs.

(3) If an alien under order of expulsion or deportation fails to leave the State within the time allowed, or, after leaving the State, returns to the State without its permission, he may be expelled or deported by force, besides being subjected to arrest, detention and punishment in accordance with local laws, regulations and orders.

Article 17

A State shall not refuse to receive its nationals expelled or deported from the territory of another State.

NOTE :

The Delegation of Pakistan suggested the addition of the word "normally" before the word "refuse."

Article 18

Where the provisions of a treaty or convention between any of the signatory States conflict with the principles set forth herein, the provisions of such treaty or convention shall prevail as between those States.

V. RELIEF AGAINST DOUBLE TAXATION AND FISCAL EVASION

(I) INTRODUCTORY NOTE

The subject " Relief against Double Taxation and Fiscal Evasion" was referred to the Committee by the Government of India under Article 3 (c) of the Committee's Statutes for exchange of views and information between the participating countries.

The Committee initially considered this subject at its Fourth Session and appointed a Sub-Committee to examine in what manner the Committee should deal with the problem of avoidance of double taxation and fiscal evasion. At that Session, the Committee in accordance with the recommendations of the Sub-Committee, decided that the Governments of the participating countries be requested to forward to the Secretariat the texts, if any, of the agreements relating to avoidance of double taxation and fiscal evasion to which they are parties and the texts of the provisions of their national laws on this question. The Committee also directed the Secretariat to draw up the Topics of Discussions (Questionnaire with short comments) and transmit the same to the Governments of the participating countries.

At the Sixth Session of the Committee, the subject was further considered and a Sub-Committee was appointed to go into the question. The Sub-Committee after a preliminary exchange of views concluded that though bilateral taxation agreements provided a practical solution to the problems which arose from the economic intercourse of nations, it was desirable to have an exchange of views on the question of conclusion of a multilateral convention. Since the views of some of the participating States were not before the Sub-Committee, the Committee, accepting the recommendations of the Sub-Committee, decided to postpone consideration of the subject to the next Session and directed the Secretariat to prepare a

fuller compilation of the rules, regulations and practices of the participating States and the agreements concluded by them.

At the Seventh Session the subject was again considered by a Sub-Committee. The Sub-Committee was somewhat handicapped in its work as all the material and information which it required was not available, but having regard to the importance of the subject to the developing countries of Asia and Africa, it was deemed proper to make a beginning by formulating certain broad principles on the subject. The Sub-Committee accordingly drew up a Report containing its recommendations on these broad principles for consideration of the Committee. The Committee took note of the report and decided to give consideration to it at its next Session.

At the Eighth Session held in Bangkok, the subject was again considered by a Sub-Committee. The Sub-Committee prepared and presented a report on the topics which were not dealt with by the Sub-Committee appointed at the Seventh Session. The Committee took note of that Report and directed that the same along with the Report of the Sub-Committee of the Seventh Session be placed before it for consideration at its Ninth Session.

(II) REPORT OF THE SUB-COMMITTEE APPOINTED AT THE EIGHTH SESSION

The subject "Relief against Double Taxation and Fiscal Evasion" was taken up for consideration in the Fourth, Sixth and Seventh Sessions of the Asian-African Legal Consultative Committee. The Sub-Committees appointed in the Fourth and Sixth Sessions to examine this problem were not able to make any concrete recommendations for want of complete information regarding the laws, practices and bilateral agreements of the participating countries and, therefore, further consideration of the subject was deferred to the Seventh Session.

At the Seventh Session held in Baghdad, the subject was again referred to a Sub-Committee for further examination. That Sub-Committee had to contend with the same difficulties as its predecessors because of want of complete information, but in view of the importance of the subject to the Member Countries it decided to make a beginning by formulating certain broad principles on the subject of double taxation. The Committee took note of that report and decided to give consideration to it in the present Session in which this Sub-Committee has been constituted.

The task before this Sub-Committee is to consider and report on certain aspects of the subject which were left out of consideration by the Sub-Committee appointed in the last Session. It, therefore, becomes necessary to briefly outline the recommendations made by that Sub-Committee. Its most important recommendations were (1) that the laws of the participating countries should contain provisions empowering their Governments to enter into bilateral or multilateral agreements to grant relief against double or multiple taxation; (2) that bilateral agreements which take care of the special relations between contracting States afford the most practical method of

avoidance of double taxation; (3) that such bilateral agreements should be on the basis of allocation of sources of income in respect of categories of activities where the loss or gain would be substantially equal, having regard to the state of trade relations between the two countries; and (4) that in other cases, where the same income is taxable in the two countries, systems of tax credit or tax rebate should be introduced.

This Sub-Committee is also of the same view as its predecessor that the principle of allocation, under which the exclusive taxing power of each type of income is allocated to one of the two contracting States in conformity with certain tax criteria such as situs, source, residence or domicile, affords the most satisfactory and practical method of giving relief against double taxation. This implies that when income from a particular source is chargeable to tax both in the country of the source of the income and also in the country within which the tax payer is resident, the income will be taxed by the taxing authorities of the country to which that particular source is allocated and relief against double taxation will be given to the tax payer by the other contracting States either by exempting that income from local tax or by giving credit for the tax paid in the country of source. This principle has been recommended because as between countries which are more or less at an equal level of economic development, each country would give up substantially the same amount of revenue that it would gain through corresponding relinquishment by the other country. The categories of income and the countries to which such income should be allocated are given in the previous Sub-Committee's Report at page 130 and 131 of Volume II of the Brief of Documents and they are therefore not reproduced here. That Sub-Committee was, however, unable to make any recommendation in the matter of avoidance of or relief against double taxation of income arising from trade, business, industry and other profits, and it was this aspect of double taxation that was deferred to the present Session of the Committee. The present Sub-Committee, therefore, addressed itself to an

examination of the problem of double taxation on the following types of income, that is to say (a) income from industrial and commercial enterprises; (b) income from movable capital and (c) income from capital gains.

INCOME FROM INDUSTRIAL AND COMMERCIAL ENTERPRISES

In the most of the bilateral agreements concluded between different countries for avoidance of double taxation the concept of Permanent Establishment has been adopted. This means that the industrial and commercial profits accruing to an enterprise which is resident in one of the contracting States will be chargeable to tax in the other contracting State only if it carries on its business through a Permanent Establishment located in that other State. All fixed places of business having a productive character such as head offices, branches, factories, workshops, warehouses, mines, oil wells, installations etc. have been considered as Permanent Establishments. On the other hand, establishments like store-houses, purchase offices, information bureaus etc., which are not directly engaged in actual productive operations, are not included in the expression "Permanent Establishment" although they render general or particular services to the enterprise having no definite connection with the profit earned by it.

An agent acting in one of the contracting States for or on behalf of the commercial or industrial enterprise of the other contracting State has also been deemed to be a Permanent Establishment in the former State if he (1) habitually acts in the name of the enterprise concerned as a duly accredited agent and enters into the contracts on its behalf or (2) acts as a salaried employee of the enterprise and habitually contracts business on its account or (3) habitually holds for purchase or sale stocks of goods belonging to the enterprise. However, most of the bilateral agreements also provide that an independent broker or a commercial agent who merely acts as an interme-

diary between the enterprise of one of the contracting States and a prospective customer in the other contracting State is not deemed to be a Permanent Establishment of that other State. Similarly, the existence in one of the contracting States of a company which is a subsidiary of a company resident in the other contracting State will not make the subsidiary company a Permanent Establishment of the parent company, the reason being that for the purpose of taxation the subsidiary company is itself a distinct and separate legal entity.

As already stated, the concept of Permanent Establishment has been adopted in most of the bilateral agreements concluded between member countries *inter se* or between non-member countries or between member countries and non-member countries for the purpose of avoidance of double taxation on income arising from industrial or commercial enterprises. The Sub-Committee realises that the taxation of income from industrial and commercial activities which are carried on in more countries than one having conflicting interests and different tax structures, differing methods of computation of the taxable income or of the tax chargeable, affords a difficult and complex problem and the Sub-Committee has also not found it feasible or possible to make a detailed study of the taxing provisions of different States. However, having considered the provisions contained in the bilateral international agreements reproduced in the Vol. II of the Briefs of Documents, this Sub-Committee would recommend the acceptance by the Member countries of the concept of Permanent Establishment in the matter of taxation of income earned from industrial and commercial enterprises. A tentative definition of Permanent Establishment has been given in the *Annexure* for the consideration of the Committee.

INCOME FROM MOVABLE CAPITAL

Income from movable capital generally includes dividends paid by a company, interest on bonds, securities, notes or debentures issued by Government and other public or private

bodies or companies. According to the Secretariat of the Asian-African Legal Consultative Committee, the tax agreements do not follow any general principle in regard to taxation of movable capital. It is said that the conflict of interests between capital exporting countries and capital importing countries makes this one of the most difficult problems arising in connection with avoidance of double taxation. The interests of the capital exporting countries are served best by taxing the income from capital investments "at home of the creditor or beneficiary" while those of the capital importing countries, by taxation at home of the debtor, that is, where the investment is used or the income is paid. "The practical solution of the problem depends in most cases on the extent to which each of the contracting States is willing to limit its right of taxation in order to facilitate international investment". The Sub-Committee is of the view that in the interest of expansion of trade and business and flow of capital amongst participating countries, the income from capital investments should be taxed in the country of residence of the debtor, in other words, in the country in which the investment is used in priority to the country of residence of the recepient of such income. Thus dividends declared in a country should be treated as dividends from sources taxable within that country, interest on bonds, loans, securities and such other forms of indebtedness issued by Government or local authorities or other corporate bodies of one of the contracting States should be taxed by that State as income from source within that State.

INCOME FROM CAPITAL GAINS

The bilateral tax agreements which the Sub-Committee has examined adopt the principle that gains derived from the sales, transfer or exchange of immovable property are taxable in the country in which the property is situated. As regards the gains derived from the sale of capital assets other than immovable property, certain agreements reserve the right of tax to the State in which the person earning the capital gain is a

resident. Other agreements stipulate that such gains may be taxed only in the country in which the capital asset is situated at the time of the sale, exchange or transfer.

The Sub-Commitee would recommend that the capital gains derived from the sale or exchange of property or of any other capital asset may be taxed in the country of source, that is to say, in the country in which the capital asset is situated.

METHODS OF AVOIDING DOUBLE TAXATION

The bilateral agreements concluded between various countries adopt the principle that the country of the source of income has the right to tax that income in priority to any claim by the country of residence of the tax payer. However, in granting relief against double taxation of foreign income, the countries of residence exercising their residual power of taxation do not follow a uniform practice. In some cases the foreign income is included in the total income of the tax payer and tax is charged thereon in the same manner as on the domestic income, and credit is allowed for the tax paid in the country of source of the income against the tax payable on the total income. This is the tax credit method. In other cases the foreign income is taken into account only for the purpose of ascertaining the rate of tax applicable to the domestic income, but thereafter no tax is charged on the foreign income. This is the exemption method. Some of the bilateral agreements, particularly those concluded between India and Pakistan, and India and Ceylon, follow a simplified pattern of allocation of sources. Certain incomes from personal services, income from securities and from immovable property are exclusively taxable in one of the contracting countries on the basis of source, situs or accrual as laid down in the schedules of these agreements. Other kinds of income such as income from goods manufactured in one country and sold in the other or metal ores, mineral oils etc. extracted in one country and sold in the other are partly taxable by one country and partly by the other according to an agreed proportion. If either country

charges more than what is specified in the schedules to those agreements, that country allows an abatement equal to the lower of the amount of the tax attributable to such cases in either countries. Under the agreement concluded between India and Japan the bulk of income comes under the tax credit method.

The Sub-Committee considers that if an accord can be reached between contracting States in the matter of allocation of sources of income between the States, the exemption method makes for a complete elimination of double taxation. The tax credit method involves intricate procedure of calculating foreign tax to be credited against domestic tax on the total income including foreign income of the tax payer and even fails to give adequate relief from double taxation owing to differences of methods of computation of taxable income in the country of source and in the country of residence. In the Report of the Commission on Taxation of the International Chamber of Commerce, it is pointed out that the system of taxing foreign income and giving credit for foreign tax on it often fails to give adequate relief from double taxation owing to differences in the types of taxes levied in the country of residence and in the country of source, "in the base of assessment of income tax and owing to the existence of subordinate taxing authorities in addition to the central government." In the opinion of that Commission the only sure method of avoiding double taxation in the country of residence is to exempt foreign income from any proportional or progressive taxes. This Sub-Committee is likewise of the view that the exemption method makes for simplicity and is the simplest way of avoiding double taxation particularly in countries which are more or less at an equal level of economic development.

LOCAL TAX CONCESSION

If, however, the tax credit method is preferred as a means of giving relief against double taxation, this Sub-Committee would like to reiterate the principle formulated by the previous Sub-Committee in clause (6) of the General

principles on page 128 of Volume II of the Brief of Documents. The Sub-Committee feels that in granting relief by tax credit the scheme of relief should provide for giving credit for the tax *spared*. Certain countries give special tax concession by special incentive measures designed to promote economic development. If the countries of residence which tax foreign income at the ordinary rate of tax and then give credit only for the actual amount of the foreign tax charged in the country of source, the relief by way of tax concessions which the capital importing countries give to foreign capital invested in their enterprises merely ensures for the benefit of the capital exporting countries, it is not fully enjoyed by the persons who invested the capital but is expropriated by their government. For example, the law in India contains provisions for reduction of tax as special incentive measures designed to promote economic development in that country, such as provisions relating to exemption from tax of interest payable on money borrowed abroad, provisions relating to development rebate or relating to partial exemption from tax of any newly established industrial undertaking or hotels. The agreement between India and Japan incorporates a scheme by which the Indian tax has been reduced under the aforesaid provisions for promoting economic development is *deemed to have been paid* by the tax payer and credit for that amount is allowed against the Japanese tax. It appears to this Sub-Committee that this would be a useful pattern to follow in the future agreements between the participating countries.

SUMMARY OF CONCLUSIONS

To sum up, the Sub-Committee recommends :-

(1) that industrial and commercial profits accruing to the enterprise or one of the contracting States should be charged to tax only if that enterprise carries on trade or business in the other contracting States through a Permanent Establishment situated therein.

(2) Income from movable capital such as dividends declared and paid by companies, interests on bonds, loans securities or debentures issued by governments, local authorities or other corporate bodies should be taxed in the country where the investment is made and not on the country of residence of the recepient of such income.

(3) Capital gains derived from the sale, exchange or transfer of immovable property or other capital assets should be taxed by the country in which such assets are situated.

(4) As a means of removing double taxation the contracting States may as far as possible adopt the exemption method in preference to the tax credit method.

(5) In case where relief is preferred to be given by tax credit the scheme of relief should provide for affording credit to the tax *spared*.

In conclusion, the Sub-Committee wishes to place on record its appreciation of the work done by the Secretariat in collecting very useful material documented in the Second Volume of the Briefs of Documents which has been of great assistance to the Sub-Committee in its deliberations.

Sd/- R.M. Mehta
Sd/- Tadao Araki
Sd/- Wichian Watanakun

ANNEXURE

DEFINITION OF "PERMANENT ESTABLISHMENT"

The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(a) the term "fixed place of business" shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, quarry or other place of extraction of natural resources;

(b) an enterprise of one of the territories shall be deemed to have a fixed place of business in the other territory if it carries on in that other territory a construction, installation or assembly project or the like;

c) the use of mere storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not for any processing of such goods or merchandise in the territory of purchase, shall not constitute a permanent establishment;

(d) a person acting in one of the territories for or on behalf of an enterprise of the other territory shall be deemed to be a permanent establishment of that enterprise in the first-mentioned territory, but only if

1. he has and habitually exercises, in the first-mentioned territory, a general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for the enterprise, or

2. he habitually maintains in the first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or

3. he habitually secures orders in the first-mentioned territory wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it;

(e) a broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the territories and a prospective customer in the other territory shall not be deemed to be a permanent establishment of the enterprise in the last-mentioned territory:

(f) the fact that a company, which is a resident of one of the territories, has a subsidiary company which either is a resident of the other territory or carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not, of itself constitute that subsidiary company a permanent establishment of its parent company.

VI. CODIFICATION OF THE PRINCIPLES OF PEACEFUL CO-EXISTENCE

(I) INTRODUCTORY NOTE

The subject "Codification of the Principles of Peaceful Co-existence" was referred to the Committee by the Government of India under Article 3(b) of the Committee's Statutes.

The subject was taken up for consideration at the Seventh Session of the Committee and was generally discussed on the basis of the statements made by the Delegates of Ceylon, Ghana, India, Iraq, and Japan. The Committee directed the Secretariat to collect the relevant materials on the subject including the report of the Special Committee set up by the U. N. General Assembly to consider the Principles of International Law concerning Friendly Relations and Co-operation between States, and decided to take up the subject for further consideration at its next Session.

At the Eighth Session of the Committee held in Bangkok, the subject was further considered on the basis of a comprehensive brief prepared by the Secretriat which included the report of both the meetings of the Special Committee of the General Assembly convoked in 1964 (New York). The Committee appointed a Sub-Committee to give detailed consideration to the subject. The Sub-Committee presented an interim report dealing with some of the aspects. The Sub-Committee was, however, not in a position to discuss all aspects of the matter due to lack of time. The Committee, therefore, directed the Secretariat to continue its study of the subject and to revise the draft articles prepared by it in the light of discussions at that Session and to place the revised draft articles before it for consideration at its Ninth Session.

(II) MEMORANDUM OF THE GOVERNMENT OF INDIA

The subject of Peaceful Co-existence is one which is of the greatest importance to all States, especially the Asian-African States. Though the final communique of the first Asian-African Conference held at Bandung in 1955 did not expressly refer to "Peaceful Co-existence" as such, it nevertheless set forth a ten-point declaration on the "Promotion of World Peace and Co-operation", which is essentially identical with the basic principles of peaceful co-existence as universally understood. The second Asian-African Conference, to be held in Algiers, is to specifically consider (item 9 of its provisional agenda), the subject of Peaceful Co-existence and its basic principles. In addition, numerous bilateral and multilaterial declarations of various Asian and African States testify to the vital concern of these States with the principles of peaceful co-existence, in the context of modern international relations.

Besides, the United Nations General Assembly has, for some time, been considering the subject of "Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". These principles are essentially related to those of peaceful co-existence. The consensus among the vast majority of Asian African States at the Sixteenth Session of the U. N. General Assembly (wherein the above mentioned item was first taken up by the General Assembly) was that the principles of International Law concerning friendly relations and co-operation among States were but synonymous with the basic principles of peaceful co-existence. The U. N. General Assembly, at its Seventeenth Session, referred to seven principles of International Law in regard to the subject of friendly relations

and co-operation among States (Resolution 1815(XVII). Recently a Special Committee of the General Assembly, in which several Asian African members were represented, considered in detail four of these seven principles and has submitted a report, which is to be considered by the General Assembly at its present session. During this session, the General Assembly will also consider the remaining three principles of International Law referred to by it in Resolution 1815(XVII).

The Government of India would draw particular attention to the fact that the General Assembly is considering these principles "with a view to their progressive development and codification so as to secure their more effective application" (see Resolutions 1815(XVII) and 1966(XVIII)). In recent sessions of the General Assembly, as well as in the above mentioned Special Committee, several Asian-African States, as well as others, have emphasized the need for the adoption of a declaration amplifying these principles of International Law by the General Assembly.

The second conference of Heads of States and Governments of Non-aligned Nations (Cairo, October 1964) in its official declaration has also referred to Peaceful Co-existence. The conference, also in this declaration, recommended to the U. N. General Assembly that the latter should adopt a declaration on the principles of peaceful co-existence. It should be pointed out that a large number of Asian and African States are parties to this declaration.

It is submitted, in this light, that the Asian-African Legal Consultative Committee could play an important and useful role by formulating and amplifying the basic principles of peaceful co-existence, taking into account the view-points and interests of Asian African States.

(III) REPORT OF THE SUB-COMMITTEE

Appointed at the Eighth Session.

1. A Sub-Committee was constituted by a decision of the Asian-African Legal Consultative Committee dated August 8, 1966 to examine the question of Codification of the Principles of Peaceful Co-existence. The Sub-Committee was to report the result of its examination to the Committee before the close of its Eighth Session. The Sub-Committee consisted of the following delegates :—

1. Mr. H. L. de Silva (Ceylon)
2. Mr. D. K. T. Djokoto (Ghana)
3. Dr. S. P. Jagota (India)
4. Mr. Z. Arifin(Indonesia)
5. Mr. J. H. Rizvi (Pakistan)
6. Dr. Sompong Sucharitkul (Thailand, in the Chair)

2. The Sub-Committee held several meetings during the Eighth Session, where it proceeded with the general discussion of the subject as well as the methods of approach and procedure. The Sub-Committee had before it a collection of basic documents and materials as well as draft articles on the Principles of Peaceful Co-existence, prepared by the Secretariat, which it took occasion to examine and to discuss briefly. Their discussion was cut short owing to the limited time available.

3. Considering the shortage of available time and the fact that the same subject was being studied by a Special Committee of the United Nations, whose report would be discussed at the Twenty-first Session of the General Assembly, the Sub-Committee concluded that pending further discussion of the subject by the United Nations the Sub-Committee should

await the results of further studies and developments of State practice on the subject.

4. Nevertheless, the Sub-Committee, having examined the draft articles prepared by the Secretariat, rewrote some principles which it considered as forming constitutive elements of Peaceful Co-existence. It was able to agree on one principle, namely that of observance of obligations of States (attached as *Annex I* to this report). As time was running short, the Sub-Committee did not have an opportunity to consider the draft proposed by the Delegate of Thailand regarding the Principle of Cooperation (attached as *Annex II* to this report), or the draft proposed by the Delegate of Ceylon concerning the Principle of Non-intervention (attached as *Annex III* to this Report).

5. The Sub-Committee accordingly recommended that the subject be further studied by the Committee at its Ninth Session.

Sd. Sompong Sucharitkul
Chairman.

ANNEX I

PRINCIPLE OF OBSERVANCE OF OBLIGATIONS OF STATES

(1) Every State has the duty to observe strictly and in good faith obligations arising under International Law, unless their observance will be in conflict with any provisions of the Charter of the United Nations, or the performance of such obligations has become unduly burdensome or unjust.

(2) Where an existing treaty is found to be in conflict with any provisions of the Charter, the rights and obligations under such treaty shall be void.

(3) Where the performance of an existing treaty obligation has become unduly burdensome or unjust, such obligation shall no longer be binding.

ANNEX II

PRINCIPLE OF CO-OPERATION

(Prepared by the Delegate of Thailand)

1. A State has the right and legal duty to cooperate with other States and international organisations in the maintenance of international peace and security and in particular to assist and defend in a manner consistent with its existing obligations a State or country which has fallen victim of aggression. On the other hand, it shall strictly observe the legal duty not to cooperate in any manner with any other State or Country either by aiding, abetting or assisting, in the planning, initiation, preparation or perpetration of an act of aggression, infiltration, subversion or the so-called war of national liberation against

another independent sovereign State, or any act calculated to impair the political stability of a developing nation.

2. A State has the right and legal duty to cooperate with other States and international organisations in their individual and collective efforts to promote and maintain economic stability and to bring about progress and prosperity in the social and economic development, of all nations, large and small. In particular, it shall strictly observe the legal duty to refrain from any acts or measures calculated or tending to impede or retard in any manner whatsoever the social growth and economic progress of a developing nation or to impair in any way its social and economic stability.

ANNEX III

PRINCIPLE OF NON-INTERVENTION

(Prepared by the Delegate of Ceylon)

Article 1

(based on Art. 19 in Secretariat draft)

Subject to the provisions of Article 15 (of Secretariat draft) every State has the duty to refrain from intervening in matters within the domestic jurisdiction of another State.

Article 2

(based on Art. 20 in Secretariat draft)

(1) Intervention means such conduct on the part of a State as is calculated to deprive another State of its inherent discretionary powers in the conduct of its internal or external affairs.

(2) Without prejudice to the generality of the provisions of clause (1), it includes the use of armed force and recourse to acts of bribery, assassination, espionage, terrorism and the promotion of all forms of subversive activity against another State.

(3) The question whether the conduct of a State constitutes intervention should be determined by the Security Council or the General Assembly.

Article 3
(based on Art. 21 in Secretariat draft)

The enforcement of an international obligation by a State shall not be regarded as an act of intervention unless such obligation contravenes the United Nations General Assembly's Resolution on "Permanent Sovereignty over Natural Resources" or has become void on other grounds under these Articles.

(Articles 22, 23 and 24 of the Secretariat draft are unnecessary and out of place under this Principle.)

VII. WORLD COURT JUDGMENT ON SOUTH WEST AFRICA CASES

(I) INTRODUCTORY NOTE

The Committee on the motion of the Delegation of Ghana present at the Eighth Session decided to take up for discussion the judgment of the International Court of Justice on the South-West Africa Cases under Article 3 (c) of the Committee's Statutes and to consider certain questions arising therefrom. The matter was generally discussed at that Session and the Delegations of Ceylon, Ghana, India, Indonesia, Iraq, Japan, Pakistan and Thailand made statements. The Committee decided to give first priority to the subject at its Ninth Session and directed the Secretariat to study the questions raised in the course of discussions at that Session and to prepare a detailed brief for consideration of the Committee at its Ninth Session.

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To this end, my delegation would suggest that the Committee consider this matter and request the Secretariat to make available detailed material on the subject to facilitate a discussion at the next Session of the Committee.

It may be useful, in this exercise, for the Secretariat to give due consideration, *inter alia*, to :—

(a) Equitable geographical distribution of seats on the International Court of Justice,

(b) Termination of the Mandate creating the international status of South West Africa and assumption of direct responsibility by the United Nations.

It is the strong conviction of my Delegation that by taking these steps the Asian-African Legal Consultative Committee would be contributing immensely and in a positive manner towards the achievement of the high legal ideals on which we all so much set our hearts. Thank you.

Ceylon : Mr. President-Anything I say on the matter of the recent judgment of the International Court of Justice must be prefaced by a statement that I suffer from the disadvantage that at the time of leaving my country and up to this moment I have not had access to the full text of the judgment which is said to be voluminous. Nor must anything I can now say be taken as in any way critical of the good faith of the judges who participated in the decision which has come as a disappointment to the vast mass of the human race, if one is to judge by the comments which have found expression in the newspapers of so many widely dispersed parts of the world.

You will recall, Mr. President, that on the opening day of this Session I myself made some reference to this judgment as having shrouded the role of international law in the settlement of international disputes. At a time when the world, particularly

the developing and newly independent countries thereof, are hopefully looking forward to the dawn of an acceptable legal order, this judgment has introduced a disturbing element of uncertainty into international adjudication. If what I may call, without meaning offence to any one, the newer nations have hitherto shown a disinclination to use the Court on the ground that its composition is heavily weighted against them, this judgment certainly contributes nothing to remove that fear. That Court is essential in the interests of peace among the nations cannot be gainsaid ; but it appears to us to be vital that there should be a more determined wish among the nations not only to abide by the Rule of Law, but also to free themselves from the apronstrings of technicality and move forward with the purpose of fashioning that Rule dynamically in the direction of legitimation of a just moral order. Only then can the Rule of Law have positive basis in the will and acquiescence of man.

Mr. President, that the Government of South Africa accepted a mandate is not doubted, and I apprehend it is not doubted by South Africa itself. If Ethiopia and Liberia, who were members of the League of Nations, have not a sufficient legal right in seeing that the conditions of the mandate are observed by the mandatory, is it not doubtful whether all former members of the League have likewise no such legal right ? If that be so, then do we not reach a result that the Court in no circumstances now give a binding judgment on a mandatory's obligations ?

Changes in procedure and amplification of the powers of the Court in certain directions appear to be called for in the light of the present predicament. To some of us who have been brought up in the tradition whereby a stage is reached when certain issues, once adjudicated upon, are considered binding upon the parties to a suit, the doctrine of *res judicata* has meaning. Much of the work of courts, and the International Court of Justice is no exception, will be interminable if that doctrine is not respected and maintained. Yet the recent

decision appears to me to be in breach of this doctrine. Did not the applicant-nations have a right to believe that by the 1962 decision the question of jurisdiction had come to be settled as between them and South Africa? The "antecedent" point that found favour with the majority (and that too by the invocation of a casting vote) appears to amount to nothing less than a reversal of the 1962 judgment. Then, is not reversal an accident of the composition of the Bench, and does not that emphasise the element of uncertainty and impermanence in the decisions of the Court? Does it not help somewhat to erode the confidence of men in the validity of even the incipient international order which we are hopefully trying to foster and promote in the face of and despite the deep cleavages of our period?

Although the African nations are immediately concerned by this decision, is it seriously to be suggested that the other nations of the world are any less concerned? Certainly the nations in Asia have an abiding interest in the peoples of Africa taking their rightful places in the world community.

Can technicality be over-refined in disputes affecting the right of human beings to live in the way human beings have a right to live? Must law in the last result be governed inevitably by technicality? Will not this judgment come to be considered by posterity as the enthronment of technicality? Can international law today hope to grow unless it seeks to found its very basis in the emerging world community of nations, and in the process consciously and deliberately repudiating the past that had made possible nation states and colonies to cohere together as if they were not basic and irreconcilable contradictions?

In this age of dynamism there can only be one answer to this question. Must not world legal opinion relegate technicality to its proper place? The point I have just thought of mentioning here and many other questions which need not be mentioned in what is essentially a short statement deserve

anxious and serious consideration by this Committee. I, therefore, propose that we request the Secretariat to make a study of the full text including the opinions of the dissenting judges in this controversial judgment and report to the Committee before its next Session.

India : Mr. President, Distinguished Delegates and Observers :—

On behalf of my Delegation, I share the concern expressed by the distinguished Delegate of Ghana day before yesterday over the recent Judgment of the International Court of Justice in the case of South West Africa, as also his interest in the Committee expressing an opinion thereon after adequate study of the relevant documentation. Mr. President, may I say at the outset that although South West Africa is an African country, the concern and interest in the promotion of well-being of the people of that country and their right to full self-government and independence are fully shared by all Asian States.

Mr. President, it is not necessary to go over the entire background of the question of South West Africa. The matter has been before the General Assembly of the United Nations since 1946. The World Court has given three advisory opinions in this connection, the first on the 11th July 1950, the second on the 7th June 1955 and the third on the 1st June 1956, and made pronouncements regarding the international status of South West Africa, the obligations of the administering power, the powers of supervision of the General Assembly, and the procedures to be followed by its Committees and in the plenary in examining reports from the administering country and hearing petitions and petitioners. When the Union of South Africa did not cooperate with the United Nations notwithstanding these opinions, the General Assembly had no option but to encourage States which were Members of the League of Nations to agitate their rights and interest in the proper enforcement of

the international obligations of South Africa in the World Court. Accordingly, Ethiopia and Liberia initiated contentious proceedings against the Union of South Africa on the 4th November 1960. In the proceedings before the Court, South Africa raised four preliminary objections to the Court's jurisdiction, which were ruled out by the Court in its judgment of the 21st December 1962. The Court then proceeded to deal with the merits. It is a matter of great regret, Mr. President, that after a further lapse of about four years, the Court should have dismissed the applications on a preliminary point, namely, that the parties had no legal right or interest in the subject-matter of the dispute, a matter which, it appears to us *prima facie*, has already been disposed of by its judgment of the 21st December 1962. The judgment of the Court delivered on the 18th July 1966 was 7:7, and the President cast his second vote in favour of those holding that the parties (applicants) had no interest. The result was that the Court did not proceed to the merits, and after expending so much effort, energy and expense, the Asian and African nations are thus faced with the position that the crucial questions whether the Union of South Africa was bound by the obligations imposed upon it by the mandate agreement and the League Covenant, whether by pursuing a policy of *apartheid* and taking other arbitrary and discriminatory measures South Africa had violated its obligations, and whether it had fulfilled its obligations towards the United Nations remain unresolved.

Mr. President, my Government has expressed surprise at the outcome of this case and at this unfortunate judgment. The Indian Foreign Minister stated in Parliament on the 2nd August 1966 : "The judgment is not likely to inspire confidence in the International Court or in the establishment of the Rule of Law in international affairs".

We, therefore, fully endorse the views expressed by the distinguished Delegate of Ghana that this judgment need to be examined by our Committee both with regard to its basis in

international law and with regard to its consequences. We feel that the Secretariat of the Committee should be requested to—

(1) prepare a background note on the question of South West Africa ;

(2) assemble the background materials relating to the case of South West Africa before the World Court,

(3) examine the question whether it will be competent for the General Assembly of the United Nations to terminate the mandate over South West Africa and bring the territory within its direct supervision ; and

(4) prepare a note on the representation of the main forum of civilisation and of the principal legal systems of the world in the Court.

The matter may thereafter be discussed at the Ninth Session of the Committee. Thank you, Mr. President.

Indonesia : The judgment of the International Court of Justice, which we are discussing now, is a lengthy document of learned words. But the result of that lengthy document is not satisfactory. That judgment does not answer any of the questions, for instance, the question whether South Africa is responsible to the United Nations and also to the underlying explosive questions of *aparthied* in particular and the independence movement in general. Frankly speaking, Mr. President, the document is for me also *inter parties*, but because of the outcome, I am concerned that there is something wrong in it. To find out what is wrong in the logic of the judgment and to find a righteous solution based on the Rule of Law is the duty of this Committee. We can find comfort in the fact that the votes in the case were equally divided and that the negative decision was the result of the casting vote of the Australian President. The decision is a difficult one. We, therefore, should refrain

from rash action, and we support the proposal of the distinguished Delegate from Ghana to put the question on the agenda of the next Session.

Iraq : Mr. President, I shall be brief on this question because I can speak in concert with the views of other Delegates who have expressed their views. The Government of Iraq has issued a declaration in this matter. The declaration analyses this decision of the Court and condemns the judgment. I can't give you the exact text of this declaration because it is not with me. But I can give you some idea about it. It says in the declaration that this decision does not establish the Rule of Law and does not give confidence for a State in this organization. This decision is against freedom, justice and peace. This is the summary of the contents of this declaration, and we think that it is time to ask for amendment of the Statute of the International Court to have more members from the Asian and African countries to be able to defend our interests and our rights. Thank you.

Japan : With due respect to the highest authority of the World Court, the utmost which I can say at this moment is that the judgment in question was a disappointment and a surprise.

I must read and study carefully the full text of the judgment before formulating any further comments. Nevertheless, I think, there are two aspects to consider in this question, that is, the merit of case on the one hand, and on the other hand, the constitution and function of the Court. On this second point, I cannot but recollect a personal experience. About forty years ago I visited *Palais de Justice de Dijon* in France. The guide, pointing at a tortoise in the garden, said :

Voila le symbol de justice. Le marche lentement.

(There the symbol of justice. It goes slowly.)

If justice goes fast, the social order will always be upset.

If justice goes slowly the society will always be disappointed.

The problem before us, it seems to me, is how to make the World Court go on keeping pace with the march of the world society—not too fast and not too slowly. Thank you.

Pakistan : Mr. Chairman, Fellow Delegates, Distinguished President of the International Law Commission and Observer Friends. Let me at the outset thank my learned colleague from Ghana for having provided an opportunity to the members of this Committee to express their views on the judgment of 18th July 1966 of the International Court of Justice. I was in my country when this judgment was reported to the papers and I must say that the people of Pakistan and my Government were thoroughly disappointed at the performance of that august body. I have not read the full text of judgment, but it is clear to all of us that the Court has dismissed the application of Ethiopia and Liberia on a preliminary point that the two applicant countries had failed to establish in them a legal right or interest in the administration of South West Africa. Is it not shocking to the world conscience that the application made for such a laudable purpose as ensuring the right of self-determination for fellow human beings has been dismissed on a technical ground and what makes it worse is that this very Court in the year 1962 held by majority that the applicants had such a right. The principle of *res judicata* which is of universal application, has also been conveniently ignored.

I feel ashamed to say that those seven judges who were in a minority at that time of the earlier pronouncement in 1962 took undue advantage of the absence of three judges. One of them Mr. Justice Badawi from U.A.R. having died, while Mr. Justice Bustamente from Peru could not participate due to his illness, and Mr. Justice Chaudhuri Zafrulla Khan from Pakistan was not allowed by the Chairman to sit on this bench on the ground that he at one time was nominated as an *ad hoc* Judge by the applicant countries, although he never worked as such. When Mr. Justice Chaudhuri Zafrulla

Khan pleaded that it was no disqualification, the Chairman told him that several Judges shared his view and that it was not proper for him to sit in this case. Placed in this awkward position he had no option left. The accusation made by the press in a country that Mr. Justice Chaudhuri Zafrulla Khan deliberately avoided to sit in this case is false and if I may say so, malicious. I am surprised as to how could such eminent judges as the Chairman and seven other Judges hold such a view that Mr. Justice Chaudhuri Zafrulla Khan was disqualified to sit on this bench. The Judges appointed by their Governments have always heard cases against those Governments and how could Mr. Justice Chaudhuri Zafrulla Khan be disqualified to hear this case only on account of having been nominated an *ad hoc* Judge by Ethiopia and Liberia which position he did not even occupy. The seven judges who were in a minority in 1962 became a majority with the casting vote of the Chairman. The result has been that for the time being the policy of *apartheid*, which has been universally condemned as contrary to law and humanity by all civilised nations, shall continue towards the people of South West Africa. May I say that this state of affairs is a challenge to all Governments who are dedicated to peace and respect of human rights. I, on behalf of my Government and the people of Pakistan, assure our brethren of South West Africa that we shall continue to give our whole-hearted support to their effort to end the system of oppression based on *apartheid* and to secure for them their inalienable human right of self-determination. It is time that the Security Council or the General Assembly of the United Nations ask an advisory opinion of this Court on the issues raised by the applicant countries in their application. In that event the Court will have to pronounce their opinion on the merits, and I have no doubt that the unanimous verdict of the Court on merits must go in favour of the people of South West Africa.

Before I conclude I would like to say a few words about the paper issued by the Press Service Office of Public Information, United Nations, which was supplied to us yesterday. This is based on a Statement issued from the Registry of the International Court of Justice. This gives support to the now majority view of the Court. The proper thing for the Registry would have been to also give a brief gist of the dissenting notes of the other seven Judges. I have no status to take exception to this one sided picture depicted by the Registry, but I must say that I, as an humble student of law, am unable to reconcile the view taken in 1962 with the view taken now. It has been remarked at page 6 that there was no contradiction between a decision that the Applicants had the capacity to invoke the jurisdictional clause and a decision that the Applicants had not established the legal basis of their claim on the merits in respect of the contention that the jurisdictional clause of the Mandate conferred a substantive right to claim from the Mandatory the carrying out of the conduct of the Mandate provisions. If this was the correct view of law, why were not the petitions dismissed in 1962 and kept pending for four years involving huge expenditure and waste of the precious time of the Court. Probably the Court had no better work to do. If the Applicants had the capacity to invoke the jurisdiction of the Court, the only course open to the Court was to decide the matter in dispute on merits and to give a finding whether the Applicants were able to establish against the Respondent-South Africa the various allegations of the contraventions of the Mandate for South West Africa. I will close by saying that the judgment as it stands falls much too short of the expectation of my country.

Thailand : Mr. President, Fellow Delegates. The Delegation of Thailand has followed with interest the South West Africa case. Although at this stage it has not yet have time to consider the details of the decision, it is sufficient to make a few preliminary observations. This country, Thailand, supports the independence of all nations, particularly, Asian and African nations. Thailand opposes and does not tolerate the practice of *apartheid* wherever it may be adopted. There-

fore, despite its respect for the International Court of Justice, it has learned with regret and dismay the substance of the decision which, in effect, as my colleague from Japan has pointed out, would delay the turning of the wheel of Justice in this particular instance. It is rather heartening to hear that criticisms of this decision have been forthcoming from all quarters, not only from the African and Asian countries but also from the Soviet Union, the United States of America and from eastern European countries, even from Poland whose judge has pronounced in favour of this decision. We, in Thailand, strictly observe in good faith our obligations under the Charter of the United Nations and we would respect their decisions. But this is not the first time that we have been disappointed or dismayed by the decision of the International Court of Justice. Now we are happier that there is a growing sense of dissatisfaction with the result of which it is a hope of my Delegation that there will be marked progress and improvement both in the standard of justice as well as to the speed with which justice can be expected, particularly in the international field. Thank you.

Ghana : Mr. President, Distinguished Delegates-Having heard the speeches of other Delegates, at least there is a hope that we in Africa and Asia and in fact all peace-loving countries have a consensus of mind on this subject. The various opinions expressed are in fact a confirmation of what is to be expected. One golden thread runs through the speeches of Honourable Delegates, and that is what affects Africa now gives serious consideration to the thoughts of Asia.

In our times, Mr. President, might counts and the weak has no effective voice in international politics. We cherish the independence of the International Court of Justice, but can we seriously say that the members on the panel are independent. It has often been said that the judges do not represent their countries. This becomes a fiction when one considers the mode of election. The national groups are constituted by individual

governments. Judges are human beings and perhaps in trying to perpetuate their positions will naturally be guided by national interest in making up their minds on a particular issue. The Statute and the rules of procedure of the Court also admit election of *ad hoc* judges to represent the interest of States parties to a dispute. For these reasons, Mr. President, my Delegation feels that a time has come to press for the revision of the distribution of the seats of the Court. The United Nations Charter itself talks about equality of States, peaceful co-existence and denunciation of colonialism and man's inhumanity to man. The plight of people in South West Africa is an unhappy one. We, in Ghana, have once been under colonial domain and we are aware of the pinch of colonialism. It is not a happy lot, let alone when mingled with barbarism.

My Delegation is happy to note that a serious consideration has been given to this matter and the next Session of the Committee will probably see concrete decisions being taken to improve our present position as far as the International Court of Justice is concerned.

I thank all the Delegates, Mr. President, for supporting this idea. Thank you very much.

THE RIGHTS OF REFUGEES

Report of the Committee and Background Materials

I. INTRODUCTORY NOTE

The subject "The Rights of Refugees" was referred to this Committee by the Government of the United Arab Republic under Article 3 (b) of the Statutes. In its memorandum on the subject, the U.A.R. Government while indicating the legal issues for consideration of the Committee had stated that apart from humanitarian considerations, the status and rights of refugees raised several issues of mutual interest to the Member Countries of the Committee and that the Committee's views would be invaluable in understanding the refugee problem.

At the Sixth Session of the Committee held in Cairo in 1964, the subject was taken up for consideration on the basis of a preliminary note prepared by the Secretariat and a memorandum furnished by the Office of the U.N. High Commissioner for Refugees. The Committee, after a general discussion on the subject, directed the Secretariat to collect further material, particularly on the issues relating to compensation, the minimum standard of treatment in the State of Asylum and the possibility of resorting to international tribunals for determination of compensation which could be claimed by a refugee.

The Secretariat with the help and guidance of the Office of the U.N. High Commissioner for Refugees collected the relevant meterial on the subject and prepared a comprehensive note which formed the basis of discussions at the Seventh Session of the Committee held in Baghdad in March/April, 1965. At that Session the Committee was able to draw up an Interim Report containing certain draft principles relating to the definition of "refugee" and the minimum standard of treatment that should be afforded to him. The Committee, however, decided to postpone consideration of the question whether any provision should be made for ensuring the implementation of the right of a refugee to return to his homeland and the right

to compensation which were provided for in the draft articles. The Committee was not in a position to give detailed consideration to the provisions of the U.N. Refugee Convention of 1951 for lack of time.

As directed by the Committee at the Seventh session, the Interim Report drawn up by the Committee was sent to the Member Governments and the Office of the U.N. High Commissioner for Refugees for their comments.

At the Eighth Session of the Committee held in Bangkok in August 1966, the subject was taken up as a priority item. The points which arose for consideration of the Committee at that Session were :

(a) Consideration of the draft principles provisionally adopted by the Committee in its Interim Report at the Baghdad Session in the light of the comments received from the U.N. High Commissioner for Refugees and the Governments of the Member States.

(b) The question whether any and what provision should be made for ensuring the implementation of the right of a refugee to return to his homeland and the right to compensation which were provided for in the draft principles embodied in the Interim Report.

(c) How far the principles incorporated in the United Nations Refugee Convention of 1951 should be adopted by the Committee in making its recommendations on the subject to the Member Governments.

The Committee was greatly assisted in its task by the Legal Adviser of the U.N. High Commissioner for Refugees and the representative of the League of Arab States who participated in the discussions on the subject. The Committee had also before it the *Observations* of the U.N. High Commissioner for Refugees on the 1951 Refugee Convention as submitted before

a Colloquium organised by the Carnegie Endowment in May 1965 and the *Conclusions* reached by the Colloquium.

The Committee, after a careful consideration of the various aspects of the subject, came to the conclusion that having regard to the functions of the Committee, which were purely of an advisory nature, the appropriate manner in which it could deal with the subject was to define the term "refugee" and then proceed to formulate principles regarding the right of asylum, the rights and obligations of refugees, and the minimum standard of treatment in the State of Asylum. The Committee further concluded that it was up to the government of each participating country to decide as to how it should give effect to the recommendations of the Committee on this subject, whether by entering into multilateral or bilateral arrangements or by embodying these principles in their national laws. In view of this position, the Committee formulated the general principles on the subject in a final report which it adopted unanimously and decided to submit it to the Government of the U.A.R. and other participating governments.

As regards the question whether any provision should be made concerning enforcement of the right of repatriation and compensation by international tribunals the Committee decided to postpone consideration of the same until a more suitable time. The Committee also decided that it was not necessary to examine in detail the provisions of the 1951 U.N. Convention on Refugees as the same had been taken note of by the Committee in formulating the principles on the subject.

II. MEMORANDUM OF THE GOVERNMENT OF THE UNITED ARAB REPUBLIC

Referring the Subject for Consideration of the Committee

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

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

1. Definition of refugees and their classifications.
2. The relation between the problems of refugees and the preservation of peace and justice in the world.
3. Principles guiding the solution of refugees problems :
   (a) The right of asylum.
   (b) The right of repatriation and resettlement.
   (c) The right of indemnification.
4. Rights of refugees in the country of residence :
   (a) The right of life and liberty.
   (b) The right of fair trial.
   (c) The right of speech, conscience and religion.
   (d) The right of employment.

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

III. MEMORANDUM ON LEGAL PROBLEMS AFFECTING REFUGEES

Presented by UNHCR at the Sixth Session of the Committee

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

Historical introduction

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

International agencies entrusted with the protection of refugees

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

The Office of the United Nations High Commissioner for Refugees

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

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

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

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

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

Legal problems confronting the refugee

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

Minimum standards for the treatment of refugees

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

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

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

Asylum and non-refoulement

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

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

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

Non-discrimination

In the application of the various provisions of the Convention which lay down minimum standards for the treatment of refugees, regard should be had to the principle of non-discrimination. Thus, the Preamble to the Convention refers specifically to the United Nations Charter and the Universal Declaration of Human Rights as having affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. Furthermore, the Convention states specifically that its provisions are to be applied by the contracting States without discrimination as to race, religion, or country of origin.

Exemption from reciprocity and from exceptional measures

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

Administrative assistance

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

Identity and travel documents

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

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

Other rights and freedoms granted to refugees by the 1951 Convention

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

Conclusion

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

IV. STUDY PREPARED BY THE SECRETARIAT OF THE COMMITTEE AND PLACED BEFORE THE SEVENTH SESSION

CONTENTS

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

I. THE TERM "REFUGEE"

It is only since the beginning of this century that efforts have been made to give the term "refugee" a precise definition and to classify the groups of persons to which it applies. Previously, the term was used in a broad etymological sense as covering all persons seeking refuge from wars, political upheavals or even natural disasters.

In the memorandum presented by UNHCR to the Sixth Session of this Committee it was pointed out that in more recent times the refugee problem had come to be considered as one calling for measures in the legal sphere. Moreover, after the first World War there was general recognition of the fact that the refugee problem is a matter of international concern. The first measures for assisting refugees taken on the international level after the First World War were essentially pragmatic in character. They dealt with specific groups of refugees and with limited matters such as the issue of travel documents. [1] As the later instruments adopted in favour of refugees became more general in character [2] the need for a general definition gradually came to be felt. Refugees whose legal protection is the concern of the international community fall within the clearly defined category of international refugees, i.e. refugees not possessing the nationality of their country of residence or asylum.

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1. cf. Arrangement with regard to the issue of Certificates of Identity to Russian Refugees of 5th July, 1922 (League of Nations, *Treaty Series*, Vol. 13, No. 355). Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees of 12th May, 1926. (*Ibid.* vol. 89, No. 2004).
2. cf. Arrangement relating to the Legal Status of Russian and Armenian Refugees of 20th June, 1928. (*Ibid.*, vol. 89, No. 2005) and Convention relating to the International Status of Refugees of 28th October 1933. (*Ibid*, vol, 159, No. 3663). These instruments dealt *inter alia* with : personal status, exemption from reciprocity legal assistance, right to work, etc.

The normal individual is a national of some State enjoying the protection of the Government of that State. There are also stateless persons who are not legally entitled to claim the protection of any State. A refugee may or may not, be a stateless person. Quite often he remains a national of the State from which he has had to flee. The peculiarity of the refugee is that he does not in fact enjoy the protection of the government of his State of origin, whether he is legally entitled to such protection or not. It is this lack of protection, in fact, which is the test of a refugee as adopted in the various Arrangements and Conventions.

Definition of Legal Instruments concluded between the two World Wars

Since, as stated above, the various instruments adopted between the two World Wars were essentially pragmatic in character, they did not contain any definition of refugees in general. It is nevertheless of interest to examine these definitions in order to discover any common features that may be of relevance to a general definition of the concept of "refugee".

The first instrument was the Arrangement of 5 July, 1922 with regard to the issue of certificates of identity to Russian Refugees.[3] This Arrangement did not in fact contain any definition of the term "Russian refugees". The form of the Identity Certificate, annexed to the Arrangement, however described the holder as a "person of Russian origin not having acquired another nationality." The Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees of 12 May, 1926[4] adopted the following definition of the term "refugee". "Russian :—Any person of Russian origin who does not enjoy, or who no longer enjoys the protection of the Government of the Union of Socialist

3. League of Nations, *Treaty Series*, Vol.

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

Soviet Republics and who has not acquired another nationality." "Armenian :—Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy, or who no longer enjoys, the protection of the Government of the Turkish Republic and who has not acquired another nationality."

By the Arrangement of 30th June, 1928, the measures taken on behalf of Russian and Armenian refugees were extended to Turkish, Assyrian, Assyro-Chaldean and assimilated refugees.[5] These were defined as follows :

Assyrian, Assyro-Chaldean and assimilated refugees :

Any person of Syrian or Assyro-Chaldean origin and also by assimilation, any person of Syrian or Kurdish origin who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality ;

Turkish refugee :

Any person of Turkish origin previously a subject of the Ottoman Empire who under the terms of the Protocol of Lausanne of 24th July, 1923 does not enjoy or no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality.[6]

The Convention relating to the International Status of Refugees of 28th October, 1933,[7] designed to supplement and consolidate the work of the League of Nations on behalf of refugees, contained the following definition in Article 1 : "The present Convention is applicable to Russian, Armenian and assimilated refugees as defined by the arrangements of 12 May,

5. *Ibid.* No. 2006.

6. This definition refers to a limited number of Turkish refugees (150) who were excluded from the operation of the Amnesty granted by the Government of the Turkish Republic after the overthrow of the Imperial Dynasty by Kemal Ataturk. (*Ibid*, Vol. 36, p. 145).

7. *Ibid.* Vol. 159, No. 3663.

1926 and 30 June, 1928, subject to such modifications as each Contracting Party may introduce in this definition at the moment of signature or accession". Thus subject to the latter qualification the definition simply adopted the definition given in the previous instruments.[8] In 1945, however, it was extended in France to Spanish refugees defined as "Persons possessing or having possessed Spanish nationality, not possessing any other nationality and with regard to whom it has been established that in law or in fact they do not enjoy the protection of the Spanish Government."[9]

The Provisional Arrangement concerning the Status of Refugees coming from Germany was signed on 4 July, 1936.[10] For the purpose of the Arrangement the term "refugee coming from Germany" was deemed to apply to "any person who was settled in that country, who does not possess any nationality, other than German nationality, and in respect of whom it is established in law or in fact that he or she does not enjoy the protection of the Government of the *Reich*." This definition was widened in the Convention concerning the Status of Refugees coming from Germany of 10 February, 1938.[11] For the purpose of the Convention the term "refugees coming from Germany" was deemed to apply to : (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or

8. As regards the qualification the following reservations were made : Bulgaria limited the Arrangement to such refugees as were on Bulgarian territory at the relevant date ; Great Britain limited its application to Russian Armenian and assimilated refugees no longer enjoying the protection of their country of origin at the date of accession ; Czechoslovakia regarded as refugees within the meaning of Article 1 only such persons who formerly possessed Russian or Turkish nationality, lost it before January 1, 1923 and have not acquired another nationality ; Egypt, on signature reserved the right to extend or limit the definition in any way, apart from such modifications or amplifications as each Contracting Party might introduce.

9. Decree No. 45-766 of 15 March 1945.

10. League of Nations, *Treaty Series*, Vol. 171, No. 3952.

11. *Ibid.* Vol. 192, No. 4461.

in fact, the protection of the German Government ; (b) Stateless persons not covered by previous Conventions or agreements who have left German territory after being established therein and who are proved not to enjoy in law or in fact, the protection of the German Government. Persons leaving Germany for reasons of purely personal convenience were excluded from the definition.

By the Additional Protocol of 14 September, 1939 [12] the definitions in the Arrangement of 4 July, 1936 and in the Convention of 10 February, 1938 were extended to refugees coming from Austria.

These various definitions contain certain common features :

(a) It is irrelevant whether or not the refugee in law or in fact still possesses the nationality of the State whose protection he no longer enjoys.

The Arrangements of 5 July, 1922 and 12 May, 1926 referred to "persons of Russian origin". The Arrangement of 12 May, 1926 described Armenian refugees as "former subjects of the Ottoman Empire" without laying down any requirement concerning their present possession or otherwise of Turkish nationality. The same formula was adopted in the Arrangement of 30 June, 1928 as regards Assyrian, Assyro-Chaldean and assimilated refugees and Turkish refugees. France, in extending the Convention of 1933 to Spanish refugees described them as "persons possessing or having possessed Spanish nationality". It is true that the Provisional Arrangement concerning German Refugees of 4 July, 1936 described such refugees as "persons not possessing any nationality other than German nationality". However, in the Convention concerning German Refugees of 10 February, 1938, this formula was amended to "persons possessing or having possessed German nationality". The latter

12. *Ibid.* Vol. 193, No. 4634.

Convention, contained a further provision which again emphasises the difference between refugee status and statelessness. Thus "refugees coming from Germany" were defined as including also "stateless persons not covered by previous conventions or agreements who have left German territory after being established therein". This provision was the forerunner of Article 1 A (2) of the Refugee Convention of 1951 according to which a stateless person may be a refugee if he is outside the country of his former habitual residence.

(b) The person in question is not a refugee if he has acquired or possesses a nationality other than that of the country whose protection he no longer enjoys.

The various instruments provided either that the person in question *must not have acquired* and/or *must not possess* another nationality. Insofar as the relevant provisions specify the absence of another nationality they are the forerunners of Article 1 A (2) second paragraph of the Refugee Convention of 1951 which specifies that, if a person has more than one nationality, the term "country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be regarded as a refugee unless he lacks the protection of each of these countries. Insofar as these provisions of the pre-war instruments refer to the *acquisition* of a new nationality they may be termed "Cessation clauses", corresponding to Article 1 C (3) of the Refugee Convention of 1951 according to which a person ceases to be a refugee if he acquires a new nationality and enjoys the protection of the country of his new nationality.

(c) In order to claim the benefit of refugee status the person in question must not or must no longer enjoy the protection of his country of origin. This characteristic feature of refugee status finds its expression in all the pre-war instruments. The Convention concerning the Status of Refugees coming from Germany of 10 February, 1938 excluded persons leaving

Germany for reasons of purely personal convenience from the definition of "refugee". Apart from this purely negative aspect, however, none of the pre-war instruments give any indication of the reasons *why* he does not enjoy or no longer enjoys the protection of his home country.

Definitions developed by writers and international institutions

While the instruments adopted between the two wars, in view of their limited scope, did not develop a general definition of "refugee", the search for such a definition was undertaken by writers and by the International Law Institute at its session in 1936. As pointed out by the first United Nations High Commissioner for Refugees, the late Dr. Von Heuven Goedhart, however, "to define the term 'refugee' presents a few special difficulties; it is in fact impossible to give one single definition which could be used in all circumstances. Both the purpose of the definition and the point of view from which it is drafted affect its form. A sociological definition of the term 'refugee' differs from a legal one; the definition drafted for the purpose of a binding international agreement will look very different from the definition adopted by an association with a humanitarian objective. I should think that in the latter sense (i. e. in the sociological sense) a refugee is a person who has been forced to give up his home because he fears his life or liberty to be in danger. His flight may be motivated by a political event but it may be caused by a war or a natural catastrophe such as an earthquake or a flood. In consequence of these events the refugee moves to another place, either inside his own country or outside. Thus a distinction may be drawn between political refugees, war refugees and refugees from natural catastrophes on the one hand and between 'internal refugees' (persons who have been displaced within their own country) and 'international refugees' (persons who are outside their country of origin) on the other hand". [13]

13. "The Problem of Refugees", *Recueil does cours* 1953, Vol. 1 pp. 267-68.

Already in 1936, the Institute of International Law sought to give a legal definition of the international refugee. According to Article 2 (2) of its Resolution on the legal status of refugees and stateless persons :

> "Dans les presents Resolutions le terme 'refugie' designe tout individu qui, en raison d'evenements politiques survenus sur le territoire de l' Etat dont il etait ressortissant, a quitte volontairement ou nou ce territoire ou en deme ure eloigne, qui n'a acquis aucune 'nationalite nouvelle et ne jouit de la protection diplomatique d'auncun autre Etat. [14]

Emphasis is here placed on the refugee's lack of protection and this lack of protection must be because of political events. Moreover, it is made clear that the refugee need not necessarily have left his home country because of political events. It is sufficient if he remains outside his home country because of such events if they arise subsequent to his departure.

The significance of the refugee's lack of protection was also emphasised by Simpson :

"The essential quality of a refugee..... may be said to be that he has left his country of regular residence, of which he may or may not be a national, as a result of political events in that country which render his continued residence impossible or intolerable, and has taken refuge in another country, or, if already absent from his home, is unwilling or unable to return, without danger to life or liberty, as a direct consequence of the political conditions existing there. In general, the refugee cannot return without danger to life or liberty, though it may be in some cases, but by no means in all, that complete political submission to the authorities would enable him to return and live at peace. The term political in this description is used

14. *Annuaire* 1936, p. 294.

in a sense wide enough to include religious conditions. Other features of the existence of the refugee, such as the absence of *de jure* national status (i. e. statelessness) may be incidental but are not essential to his quality as refugee in the non-technical sense. [15] He is distinguished from the ordinary alien or migrant in that he has left his former territory because of political events there, not because of economic conditions or because of the economic attractions of another territory". [16]

Definition of refugee in the Constitution of the IRO

Like the pre-war conventions, the IRO Constitution defined refugees by categories, but at the same time laid down

15. See below page 16.

16. *"The Refugee Problem"*, 1939, pp. 2-4. See also Weis, *"The International Protection of Refugees" American Journal of International Law*, Vol. 48 pp, 193-94.

For a further definition see J. Vernant, *"The Refugee in the Post-War World,"* pp. 4 et seq. The definition of the refugee in international law contains two elements :

1. Persons or categories of persons qualifying for refugee status must have left the territory of the State of which they are nationals.
2. The events which are the root of a person's becoming a refugee must derive from the relations between the State and its nationals.

cf. also Balogh, *"World Peace and the Refugee Problem, Recueil des Cours*, 1949, Vol. II, p. 373-374 :

"The term 'political refugee' however, is capable of a general definition. Refugees are people who have left their country of origin because of political or religious events. They exist in every country on sufferance and are not legally protected as they are *de facto* or *de jure* outlawed by their former country and therefore lack the consular protection which the ordinary alien enjoys. They are thereby distinguished from the ordinary economic immigrant who has changed his domicile of his own free will in order to find a more prosperous life and better economic conditions in another country but who is not—save by economic reasons—compelled to do so.....

"Another distinction between the political refugee and the economic emigrant is that the latter can return to his country of origin whenever he likes, that as long as he does not accept another nationality he remains a citizen of his home country, and, if he does accept another nationality, this would not prevent his return, no longer as a citizen but still not as an enemy of his fatherland. The refugee cannot return when he likes, as his return depends upon conditions dibeyond his control..."

certain broad criteria on the lines of the more general definitions mentioned above. The main categories of refugees were briefly : (a) victims of Nazi or Fascist regimes or of regimes which took part on their side in the Second World War ; (b) Spanish Republicans and other victims of the Falangist regime in Spain ; (c) persons who were considered "refugees" before the outbreak of the Second World War for reasons of race, religion, nationality or political opinion ; (d) persons who as a result of events subsequent to the outbreak of the Second World War are unable or unwilling to avail themselves of the protection of the government of their country of nationality or former nationality. Persons falling within these various groups, with certain exceptions, became the concern of the Organisation if they could be repatriated and the help of the Organisation was required for their repatriation, or if they expressed "valid objections" to returning to their countries of nationality or former habitual residence. Such "valid objections" included "persecution, or fear of persecution based on reasonable grounds because of race, religion, nationality or political opinions, provided the opinions were not in conflict with the principles of the United Nations laid down in the Preamble to the United Nations Charter."

Definition in the Refugee Convention of 1951

The 1951 Convention moves further away from a definition by categories and indeed only resorts to such a definition in order to bring persons who were refugees under previous instruments within its ambit. Thus according to Article 1 A (1), the term "refugee" shall apply to any person who has been considered a refugee under the Arrangements of 12 May, 1926 and 30 June, 1928 or under the Conventions of 28 October, 1933 and 10 February, 1938, the Protocol of 14 September, 1939 or the Constitution of the IRO. Beyond this the Convention, in Article 1 A (2), lays down a general definition of "refugee" as a person who "as a result of events occurring before 1 January, 1951 and owing to well-founded fear of being persecuted for

reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ; or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear is unwilling to return to it."

In the case of a person who has more than one nationality the term "the country of his nationality" shall mean each of the countries of which he is a national and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

A refugee must, therefore, be outside the country of his nationality or if he is stateless outside the country of his former habitual residence and must not enjoy its protection because he is either unable or unwilling to avail himself of it. The reasons for this lack of protection are comprehensively stated, i. e. fear of persecution for political reasons and the other reasons mentioned. It is sufficient if he finds himself outside his home country for these reasons, i. e. he need not have left his country because of them and they may have arisen subsequent to his departure. As in the pre-War instruments, it is irrelevant whether or not he possesses the nationality of the country in relation to which he is a refugee.

The words "events occurring before 1 January, 1951" may mean "events occuring in Europe" or "events occurring in Europe or elsewhere", according to the meaning chosen by the party on signature, ratification or accession.

Article 1 of the Convention also specifies when a person ceases to be a refugee (so-called cessation clauses) and specifies the circumstances when the Convention does not apply to him (so-called exclusion clauses).

The cessation clauses are contained in Article 1 C. The principal ones are : voluntary re-availment by a refugee of the protection of the country of his nationality ; acquisition of a new nationality ; voluntary re-establishment in the country which he left, or outside which he remained owing to fear of persecution.

The exclusion clauses are contained in Article 1 D, E and F.

According to Article 1 D, the Convention does not apply to persons who are receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissiner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolution adopted by the General Assembly of the United Nations these persons shall *ipso facto* be entitled to the benefits of the Convention. This exclusion clause serves the purpose of preventing the overlapping of the competencies of various United Nations Agencies. It applies to Arab refugees from Palestine who fall within the competence of the United Nations Relief and Works Agency (UNRWA) and in the past applied to Korean refugees who were the concern of the United Nations Korean Relief Agency (UNKRA).

According to Article 1 E, the Convention does not apply to a person who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations attached to the possession of the nationality of that country.

Finally, Article 1 F excludes from the application of the Convention persons who have *inter alia* committed war crimes or serious non-political crimes outside their country of refuge prior to their admission to that country as refugees. [17]

17. See below page 15.

Definition of refugees in the Statute of the Office of UNHCR

The above definition in the Refugee Convention of 1951 is in form largely indentical with that contained in the Statute of the High Commissioner's Office. There are certain differences of formulation in some of the cessation and exclusion clauses, but the main difference is that the competence of the High Commissioner is not limited to persons who are outside the country of their nationality or former habitual residence because of events occurring before 1 January, 1951.

It should also be added that in a series of resolutions the United Nations General Assembly has also made it possible for the High Commisioner, at the request of Governments which are faced with refugee problems, to provide his "good offices" on a purely humanitarian and social basis, and without reference to the causes of the particular refugee problem. The word "refugee" in this connection is used in the widest sense of the term and is of a sociological rather than a legal nature. [18]

Definitions adopted within the frame work of regional organisations and agencies

Apart from the Refugee Convention of 1951 and the UNHCR Statute which are universal in character, efforts to define the concept of "refugee" have also been made on a regional level. Mention should be made in this connection of the Convention on Territorial Asylum, adopted by the Tenth Inter-American Conference in 1954. According to Article 1 : "Every

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

State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable without, through the exercise of this right, giving rise to complaint by any other State". Article II, paragraph 1, lays down the principle that : "The respect which, according to international law, is due to the jurisdictional right of each State over inhabitants in its territory, is equally due, without any restrictions whatsoever, to that which it has over persons who enter it proceeding from a a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offences". [19]

In Africa the problem of the definition of refugees is at present being dealt with by the Organisation for African Unity (OAU). It is understood that the Refugee Commission (Commission of 10) in its recommendation to the Council of Ministers of the Organisation has suggested that the term "refugee" in respect of persons coming from independent African States, should be reserved for nationals of countries whose political, racial or religious regimes have made it necessary for them to expatriate themselves for fear of oppression, imprisonment or any other hardships.

Finally, reference may be made to the definition of "refugee" adopted by the United Nations Relief and Works Agency (UNRWA), i. e. "a person whose normal residence was Palestine for a minimum period of two years immediately preceding the outbreak of the conflict in 1948 and who, as a result of this conflict, has lost both his home and his means of livelihood. Children of above born less than 2 years before 15

19. Article IV deals with extradition : "The right of extradition is not applicable to persons who, in accordance with the qualifications of the solicited State, are sought for Political offences or for common offences committed for political ends, or whose extradition is sought for predominently political motives." Pan American Union : *Law and Treaty Series*, Washington, D. C. 1954.

May, 1948". [20] This definition is not, however, general in character and relates to a specific group of persons.

20. To be eligible for UNRWA assistance the refugee must have taken refuge in 1948 in one of the four "host" countries in which UNRWA operates (Jordan, Lebanon, the Syrian Arab Republic and the Gaza Strip). He must also be in need of aid. "*UNRWA and the Palestine Refugees—Facts and Figures, 1964*". (Based on information contained in the Report of the Commissioner-General of UNRWA to the United Nations General Assembly.)

II. DISTINCTION BETWEEN REFUGEES AND OTHER ALIENS

A refugee is an alien but an alien of a special kind, since he fears persecution in his home country. For purposes of clarity it is therefore desirable to point out the distinction between refugees and certain other categories of aliens :

(a) Ordinary aliens—ordinary migrants

Since a refugee fears persecution in his home country and is therefore unwilling to return there or to seek the protection of the authorities of his home country, he differs from the ordinary alien who finds himself in another country as a traveller, or visitor. He also differs from an ordinary migrant who is an ordinary alien who has moved to another country to take up residence there, e. g. for economic reasons.

(b) Fugitives from justice

Since a refugee is, by definition, a person who is outside his home country because of fear of persecution, a person who has left his country because he fears prosecution for a common crime is not a refugee. There may, however, also be borderline cases in which a person, while fearing persecution may at the same time have committed an ordinary crime in his home country. In this connection reference may be made to Article I F (b) of the Refugee Convention of 1951 according to which the provisions of the Convention shall not apply to any persons with respect to whom there are serious reasons for believing that he has committed a *serious* non-political crime outside the country of refuge prior to his admission to that country as a refugee.[21] The fact that the provision refers to a

21. A similar provision was contained in the Constitution of the IRO (Part II (3) according to which "ordinary criminals who are extraditable by treaty" were not the concern of the Organisation. This was interpreted as excluding serious criminals who would not be regarded as *bona fide* refugees.

non-political crime indicates that, where the offence is a political one, the person in question may be a refugee, and in this respect there may be some degree of overlapping between the concept of refugee and that of political offender. [22]

(c) Stateless persons

It has been seen that the pre-war instruments, the IRO Constitution and the Refugee Convention of 1951 place the main emphasis on the fact that the refugee is without protection, and attach no importance to the fact that he may or may not still formally possess the nationality of his home country. Thus a refugee may or may not be stateless; Article I (1) of the Convention on the Status of Stateless Persons of 1954 defines a "stateless persons" as "a person who is not considered a national by any State under the operation of its law". A similar definition is to be found in Article 2 (1) of the Resolution on the Legal Status of Stateless Persons and Refugees adopted by the International Law Institute in 1936 : *"Dans les presents Resolutions le terme 'apatride' designe toute individu qui n'est considere par aucun Etat comme possedant sa nationalite"*.

At the same time Article 2 (3) of the Resolution states that *"les qualites d'apatride et de refugie ne s'excluent pas"*. Thus, while many stateless persons are refugees, all refugees are not necessarily stateless persons, since they may still possess the nationality of their former home country. Refugees have occasionally been described as *de facto* stateless persons as distinct from *de jure* stateless persons. This terminology is probably inexact since statelessness is a purely legal concept, connoting lack of nationality. It would seem more appropriate to speak of *unprotected persons* who may in turn be subdivided into *de jure* unprotected persons, i. e. stateless persons and *de facto*

22. A refugee is a person who fears persecution *inter alia* because of his political convictions which are known to the authorities of his home country. He may, but need not necessarily, have taken any *active* steps to put these convictions into effect, e. g. by the committing of a political offence.

stateless persons, i. e. refugees, it being understood that there are also refugees who are *de jure* unprotected, i. e. stateless. [23]

Conclusion

From the above it will be seen what type of problems arise when it is sought to give a general definition of the term "refugee", e. g. the problem of defining persecution; the type of measures which can be said to give rise to a well-founded fear of persecution and the moment at which such a fear must arise, i. e. whether it is necessary for the refugee to have left his home country because he fears such measures or whether it is sufficient if this fear supervenes after his departure and he is unwilling to return for this reason.

23. Weis, "Legal Aspects of the Convention of 28 July, 1951 relating to the Status of Refugees", *British Yearbook of International Law*, 1953, p. 480.

III. THE RELATION BETWEEN THE PROBLEMS OF REFUGEES AND THE PRESERVATION OF PEACE AND JUSTICE IN THE WORLD

There is a close relationship between the problems of refugees and the preservation of peace and justice in the world. Refugees, as already stated, are the victims of economic, religious, political and social persecution. They are the persons who, as a result of such persecution, have suffered extensive damage and loss (e. g., death of family members, severe deterioration of health, loss of income and employment, loss of property, loss of social status etc.) and stand in dire need of extraordinary humanitarian measures.

The problem of refugees, therefore, deserves to 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 threat to world peace. Apart from its humanitarian aspect, the problem of Palestine refugees, for instance, is regarded not only by the Arab States but also by the United Nations itself, as the principal obstacle to peace in the Middle East. [24] The appointment of Mr. Joseph Johnson, President of the Carnegie Endowment for International Peace, as Special Representative of the U. N. Conciliation Commission for Palestine, to devise ways of giving the refugees a "free choice" about their future homes, was based on the premise that the refugee problem is central in the Palestine Conflict. [25] These refugees have repeatedly demanded repatriation to Palestine and have refused all proposals and plans which do not lead to their repatriation. This right has also been upheld by

24. See article entitled. "The Arab Refugees—A Changing Problem", *Foreign Affairs*, Vol. 41, 1962-63, p. 558.

25. *Ibid.*

the various resolutions on the refugee's problems adopted by the United Nations. [26] The denial of this right, which is a just right of refugees, is bound to lead to friction and disturb peace in West Asia.

Moreover, "if States were to expel their nationals to the territory of other States without the consent of those States or were to refuse readmission, thus forcing States to retain on their soil aliens whom they have the right to expel under international law, such action would constitute a violation of the territorial supremacy of these States. It would cast a burden on them which, according to international law, they are not bound to undertake, and which, if persistently exercised, would necessarily lead to a disruption of orderly, peaceful relations between States within the community of nations. [27]

26. General Assembly Resolutions of February 12. 1946, December 13, 1946, November 17, 1947 and December 9, 1949.

27. Weis. *Nationality and Statelessness in International Law*, 1956, p. 51.

IV. PRINCIPLES GUIDING THE SOLUTION OF THE PROBLEM OF REFUGEES

The Right of Asylum

As stated in a note submitted to the General Assembly of the United Nations by the Office of the United Nations High Commissioner for Refugees, "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 person" which is embodied in Article 3 of the Universal Declaration of Human Rights. The legal aspects of the problem of asylum will be discussed in this section under two distinct heads, namely, (1) Territorial Asylum, i. e. asylum granted by a State within its own territory, and (2) Diplomatic Asylum, i. e. the grant of asylum in a legation or embassy.

(1) Territorial Asylum :

Throughout history situations have arisen in which persons have been obliged to leave their country and to seek asylum elsewhere. The problem of asylum is therefore not new. In more recent times, however, there has been increasing acceptance of the view that the grant of asylum to refugees fleeing from persecution is a matter of concern to the international community. At the same time efforts are being made by courts, writers and international bodies to clarify the nature of the right of asylum and its legal basis.

From the point of view of the person seeking asylum, this means the right to enter another State and to find sanctury there; that is to say protection against rejection at the frontier and protection against extradition, exclusion or return to a country in which he fears persecution for reasons of race, religion,

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

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

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

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

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

surrender them."[28] Thus, it has been recognised in several cases[29] that seizure of individuals on foreign territory with the connivance of official authorities involves the State responsibility of the seizing State which is bound to return the individual concerned if the State of asylum so demands. A competence to grant asylum thus derives directly from the territorial supremacy of States.

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

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

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

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

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

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

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

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

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

31. *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

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

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

> "Every one has the right to seek and to enjoy in other countries asylum from persecution."
>
> "This right may not be invoked in the case of persecution genuinely arising from non-political crimes or from acts contrary to the purpose of the United Nations."

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

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

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

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

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

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

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

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

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

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

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

44. *Ibid.* p. 3.

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

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

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

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

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

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

49. *Ibid.* p. 3.

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

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

50. *Ibid.* p. 5.

51. *Ibid.* p. 10.

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

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

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

Other Governments in their comments, e. g., Australia, Ceylon, Japan, Haiti, Morocco,[54] Pakistan, Israel,[55] Denmark and Greece[56] did not subscribe to this view,[57] while still other Governments supported the opposite view of asylum as a right of the individual.

Thus, the Spanish Government, in its comments stated that while it agreed in principle with the draft, it considered that in its final form the wording should be *strengthened* to make it clear that all States were under an obligation to grant asylum to any person in the situation described in Article 2. [58] Moreover, "any step designed to produce a clear statement of the international obligation of States to grant asylum on their territory is to be supported and defended as the manifestation

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

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

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

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

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

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

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

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

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

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

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

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

62. *Ibid.* p. 13.

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

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

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

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

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

(*Continued on page* 55)

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

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

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

(i) *The right of admission* :

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

(*Footnote 64 continued*)

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

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

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

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

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

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

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

68. *Ibid.* p. 339,

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

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

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

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

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

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

(ii) *Non-extradition of political offenders*

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

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

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

72. Weis, Legal Aspects of the Problem of Asylum: Office of the U. N. High Commissioner for Refugees, MHCR/151/64, p. 8.

or if the treatment he may receive in the country to which he is to be extradited is contrary to the rule of law, natural justice, human rights and fundamental freedoms where they are not understood in the same way by the country requesting extradition and the country of which extradition is requested.[73] This tendency has found expression in the European Convention on Extradition signed on 13 December 1957 by Austria, Denmark, France, the Federal Republic of Germany, Greece, Italy, Luxembourg, Norway, Sweden and Turkey. Article 3(2) of the Convention provides that extradition shall not be granted if there are substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that a person's position may be prejudiced for any of these reasons. Provisions excluding extradition to a country of persecution are also to be found in Article 3 of the Belgian-German Extradition Agreement of 17 January, 1958 and the Austrian-German Extradition Agreement of 22nd September, 1958.[74]

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

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

73. *Ibid*, p. 9.

74. *Ibid*. p. 10.

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

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

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

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

76. *Ibid*, p. 347.

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

78. *Ibid.*

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

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

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

> "No contracting State shall expel or return ('refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of particular social group or political opinion".

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

The Convention concerning Migration for Employment (revised 1949) adopted by the International Labour Conference at its 82nd Session on July 1, 1949 [80] also contains a limited restriction of the right of expulsion. The Model Agreement on Temporary and Permanent Migration for Employment, including Migration for Refugees and Displaced Persons adopted by the same conference, contains a prohibition of the compulsory return of refugees to their country of origin. [81] One of the most important political statements on this subject is the Resolution of the General Assembly of the United Nations of February 12, 1946. [82] It states that :

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

2. Diplomatic asylum

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

80. ILO Convention 97, Art. 8.

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

82. Resolution 8(1).

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

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

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

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

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

85. *Ibid*, p. 794.

86. *Ibid.*

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

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

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

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

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

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 1 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 Schemes relating to Old-age, Invalidity and Survivors and on Social Security other than Schemes 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. Wen, "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 gurantees 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 enjoys 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 voluntry 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 consideratin 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 complementry 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 Herbet 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;

XX XX XX

(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 there 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 officers 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 esimated 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 1961 [134] 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 predominently 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., 1968.

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, 1956, 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.*

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 15*) 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 Convenant 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 indentical 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 differ 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 accoeding 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 otherArticles 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 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

necessary nor suitable that every possible exception to the principle should be enumerated in a Declaration not of a legally binding character. The Office of the UNHCR would, therefore, welcome the omission of any phrase or sentence qualifying the main principle.

If, however, it is considered essential to make some reference to the exceptions already foreseen they should be expressed explicitly in a separate paragraph and drafted so as to derogate as little as possible from the basic principle as follows, omitting the words in parentheses if possible :

> "This provision may not be invoked in the case of any individual who constitutes a danger to national security (nor in the case of a mass influx which endangers the safety of the nation)."

Articles 4 & 5

The conduct of persons granted asylum and the right of repatriation

While the Office of the UNHCR is in full agreement with the matters expressed in Articles 4 and 5 of the draft Declaration now before the General Assembly, various States have questioned their necessity in the Declaration and have recommended their omission. The Office of the UNHCR does not oppose their inclusion.

ANNEXURE II

DRAFT DECLARATION ON THE RIGHT OF ASYLUM

(Note prepared by the Office of the U.N.H.C.R on action taken on this item during the Seventeenth Session of the U. N. General Assembly)

INTRODUCTION

1. The draft Declaration on the Right of Asylum, prepared by the Commission on Human Rights, which consisted of a preamble and five Articles (see Annex 1) was transmitted to the General Assembly by Economic and Social Council resolution 772 E (XXX) of 25 July, 1960. The item was placed on the agenda of the fifteenth and sixteenth sessions of the General assembly and allocated each time to the Third Committee. The Third Committee each time was able to hold only a procedural discussion concerning the action to be taken on the draft Declaration and to recommend to the General Assembly that the item be taken up at the following session. The General Assembly, accepting these recommendations, adopted resolutions 1571 (XV) of 18 December, 1960 and 1682 (XVI) of 18 December, 1961; by the latter it decided to take up the item as soon as possible at its seventeenth session and at that session to devote the necessary number of meetings to the consider ation of the item.

2. The Committee considered the draft Declaration at its 1192nd to 1202nd meetings, held between 26 November and 5 December, 1962. At its 1192nd meeting it heard a statement by the United Nations High Commissioner for Refugees who said that adoption of a Declaration on the Right of Asylum would be a reaffirmation by the peoples of the United Nations of their faith in fundamental human rights. The High

Commissioner urged that the Declaration should express positive principle which would protect and promote the right to seek asylum enshrined in the Universal Declaration of Human Rights and not be encumbered by qualifications or exceptions which might divest the Declaration of its force.

3. During 1962 UNHCR approached a number of Governments, seeking their support for the Declaration and suggesting various amendments to the draft transmitted to the General Assembly. The most important amendment was that Article 3 should spell out the principle of *non-refoulement* without qualification and that if such qualifications were insisted upon they should be in a separate paragraph. Amendments on the lines of the suggestions of UNHCR were submitted by Norway and Togo (A/C. 3/L. 1035) who were later joined by Costa Rica (A/C. 3/L. 1035/add. 1). The text will be found in Annex II.

4. After a general debate on the draft Declaration, the Committee concentrated primarily on the preamble and Article 1 of the draft Declaration. It adopted the texts of the preamble and Article 1 (see Annex III), as well as a procedural resolution relating to the further consideration of the draft Declaration. The views expressed by the members of the Committee are set out in the summary records of the corresponding meetings (A/C. 3/SR. 1192 to A/C. 3/SR. 1202), which may be obtained on request from New York.

PREAMBLE

5. *The Union of Soviet Socialist Republics* submitted an amendment (A/C. 3/L. 1043) to insert the following as the first paragraph of the preamble :

> "*Noting* that the chief purposes proclaimed in the Charter of the United Nations are to maintain international peace and security and to develop friendly relations among all States,".

This was subsequently revised as follows (A/C. 3/L. 1043/Rev. 1) :

> "Replace the first paragraph of the preamble by the following text :
>
> '*Noting* that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all States, and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

Peru submitted an amendment which in its revised form (A/C. 3/L. 1042/Rev. 1 and Rev. 1/Corr. 1) was to insert between the third and fourth paragraphs of the preamble a new paragraph reading :

> "*Recognizing* that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State".

7. *Belgium* submitted an amendment (A/C. 3/L. 1039 and Rev. 1) which was to delete from the fourth paragraph of the preamble the words "without prejudice to existing instruments dealing with asylum"; and to insert in article 1 (see below para.) a saving clause concerning existing instruments dealing with asylum, in particular, the 1951 and 1954 Conventions relating to the status of refugees and of stateless persons. This amendment was subsequently revised (A/C/.3/L.1039/Rev 2) to add instead, in the fourth paragraph of the preamble as drafted by the Commission on Human Rights, after the words "dealing with", the words "the status of refugees and stateless

persons and with"; and after "with asylum", the words "in particular, with diplomatic asylum". At the 1198th meeting, the representative of Belgium orally withdrew the reference to diplomaticasylum and inverted the order of enumeration so as to list "asylum" before "status of refugees and stateless persons"; thus making his revised amendment read :

> "*Recommends* that without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles :".

Voting on the preamble

8. (a) *New fourth paragraph :*

Upon a motion of the representative of Saudi Arabia, seconded by the Union of Soviet Socialist Republics, the Committee decided to vote first on the amendment of *Peru* (A/C. 3/L. 1042/Rev. 1 and Rev. 1/Corr. 1) to insert a new paragraph between the third and fourth paragraphs of the preamble. The Peruvi anamendment was adopted by 82 votes to none with 2 abstentions.

(b) *First paragraph :*

The amendment of the USSR to the first paragraph (A/C. 3/L. 1043/Rev. 1) was adopted by 45 votes to 21, with 19 abstentions.

(c) *Fifth (formerly fourth) paragraph :*

The *Belgian* amendment to this paragraph (A/C. 3/L. 1039/Rev. 2, as orally revised) was adopted by 40 votes to 16, with 27 abstentions. The representative of the Ukranian Soviet Socialist Republic requested a separate vote on the following words of the paragraph as amended : "States Members of the United Nations and members of the specialized agencies". The words were retained by 59 votes to 8, with 15 abstentions. The paragraph, amended, was adopted by 66 votes to none, with 18 abstentions.

(d) *Preamble as a whole, as amended :*

The preamble as a whole, as amended, was adopted by 82 votes to none, with 2 abstentions (see Annex III).

Article 1

9. *Poland* submitted an amendment (A/C. 3/L. 1038, point 2) to insert the word "territorial" before "asylum".

10. *Algeria*, *Cameroon*, *Guinea*, *Iraq*, *Mali*, *Morocco*, *Tunisia* and the *United Arab Republic* submitted an amendment (A/C. 3/L. 1044 and Add. 1) to insert after "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" the words "and persons struggling against colonialism". At the 1200th meeting the sponsors accepted a sub-amendment of the *United States of America* (A/B. 3/L. 1049) to replace the word "and" by "including", thus making the amendment read: "including persons struggling against colonialism" (A/C. 3/L. 1044/Rev. 1).

11. *Bulgaria* submitted an amendment (A/C. 3/L. 1041) to replace "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" by the following:

> "persons persecuted for striving for national independence, for striving to maintain peace and to develop peaceful and friendly relations between peoples and States, for fostering and developing respect for human rights and fundamental freedoms, or for any other activity, except in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations".

The words "or for any other activity" in this amendment were subsequently changed to read "or for any other reason" (A/C. 3/L. 1041/Rev. 1).

12. *Belgium* submitted an amendment (A/C. 3/L. 1039/Rev. 1) to add to article 1 a second paragraph reading:

"This Declaration shall be without prejudice to existing instruments dealing with asylum, in particular, to the Convention of 1951 relating to refugees and the Convention of 1954 relating to stateless persons,"

Upon revising his amendment to the original fourth paragraph of the preamble (see above, para. 10), the representative of Belgium also revised his amendment (A/C. 3/L. 1039/Rev. 2) for a second paragraph to article 1. In its final form (A/C. 3/L. 1039/Rev. 3 point 1) this amendment reads:

"The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes."

13. *Poland* submitted an amendment (A/C. 3/L. 1050) to the Belgian revised amendment (A/C. 3/L. 1039/Rev. 3) to replace the word "The right to seek and to enjoy asylum may not be invoked by any person . . ." by the words "It shall not be permitted to give territorial asylum to a person . . .".

14. *Poland* also submitted an amendment to article 1 (A/C. 3/L. 1040) (1) to add after "article 14" the words "paragraph 1" and (2) to add the following paragraphs to article 1:

"It shall rest with the State granting territorial asylum to evaluate the grounds for the grant of asylum.

"It shall not be permissible to grant territorial asylum to ordinary-law criminals, war criminals or persons guilty of crimes against peace or against humanity.

Subsequently, Poland submitted a revised amendment (A/C. 3/L. 1040/Rev. 1) reading:

"Add the following paragraph to article 1:

"It shall rest with the State granting territorial asylum to evaluate the grounds for the grant of asylum".

The representative of Poland subsequently withdrew this amendment (A/C. 3/L. 1040/Rev. 1). It was re-introduced, omitting the word "territorial", by the representative of *Chile*, on behalf of *Argentina, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama* and *Venezuela*.

Voting on article 1

15. At the 1201st meeting, the Committee voted on the text of article 1 as submitted by the Commission on Human Rights and amendments thereto.

(a) **Text proposed by the Commission on Human Rights**

The amendment of *Poland* (A/C.3/L.1038) was adopted by 33 votes to 11, with 32 abstentions. The representative of Bulgaria withdrew his amendment (A/C.3/L.1041/Rev. 1) in favour of the eight-power amendment (A/C.3/L.1044/Rev. 1). At the request of the representative of Algeria, a roll-call vote was taken on the amendment of *Algeria, Cameroon, Guinea, Iraq, Mali, Morocco, Tunisia* and the *United Arab Republic* (A/C.3/L.1044/Rev. 1). The amendment was adopted by 70 votes to none, with 14 abstentions. The representatives of Tanganyika and the United Arab Republic stated that they wished to have it recorded that had they been present at the time of voting they would have voted in favour of the eight-Power amendment. The text of article 1 proposed by the Commission on Human Rights, as amended, was adopted by 85 votes to none, with 1 abstention.

(b) **New paragraph 2 :**

The sub-amendment of *Poland* (A/C.3/L.1050) to the amendment of *Belgium* (A/C.3/L.1039 Rev. 3) was rejected by 28 votes to 15, with 44 abstentions. The representative of

Niger requested a separate vote on the following words in the Belgian amendment (A/C.3/L.1039/Rev. 3) : "with respect to whom there are serious reasons for considering that". Twenty votes having been cast in favour and 20 votes against, with 45 abstentions, the Chairman declared that, in accordance with rule 134 of the rules of procedure, the words in question were retained. The *Belgium amendment as a whole* was adopted by 38 votes to 7, with 40 abstentions.

(c) **New paragraph 3 :**

At the request of the representative of Chile, a roll-call vote was taken on the former amendment of *Poland* (A/C.3/L. 1040/Rev. 1) as re-introduced by *Argentina*, *Chile*, *Colombia*, *Costa Rica*, *the Dominican Republic*, *Ecuador*, *Mexico*, *Panama* and *Venezuela* (see above, para. 14.) The nine-Power amendment was adopted by 59 votes to 4, with 24 abstentions. The representative of the United Arab Republic stated that if he had been present during the voting he would have voted for the nine-Power amendment.

(d) **Article 1, as amended, as a whole :**

Article 1, as amended, as a whole, was adopted by 85 votes to none, with 4 abstentions (see Annex III).

PROCEDURAL PRESOLUTION

16. On 19 December, 1962 the General Assembly unanimoously adopted resolution 1839 (XVII) as follows ;

DRAFT DECLARATION ON THE RIGHT OF ASYLUM

"The General Assembly,

"*Noting* that the Third Committee has adopted the preamble and article 1 of the draft Declaration on the Right of Asylum'

"*Not having* been able to complete consideration of the draft Declaration'

"*Decides* to take up the item entitled "Draft Declaration on the Right of Asylum" as soon as possible at its eighteenth session to devote the necessary number of meetings to the completion of that item".

ANNEX

TEXT OF THE DRAFT DECLARATION DRAWN UP BY THE COMMISSION ON HUMAN RIGHTS

The General Assembly

Recalling that among the purposes of the United Nations is the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion;

Mindful of the Universal Declaration of Human Rights which declares in Article 14 that (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations";

Recalling also paragraph 2 of Article 13 of the Universal Declaration of Human Rights which states that "Everyone has the right to leave any country, including his own, and to return to his country";

Recommends that, without prejudice to existing instruments dealing with asylum, States Members of the United Nations and of the specialized agencies should base themselves in their practices on the following principles :

Article 1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, shall be respected by all other States.

Article 2. The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

Where a country finds difficulty in continuing to grant asylum, States individually or jointly or through the United Nations should consider, in a spirit of international solidarity, appropriate measures to lighten the burden on the country granting asylum.

Article 3. No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should, except for overriding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

In cases where a State decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the persons thus endangered to seek asylum in another country.

Article 4. Persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

Article 5. Nothing in this Declaration shall be interpreted to prejudice the rights of everyone to return to his country as stated in article 13, paragraph 2, of the Universal Declaration of Human Rights.

ANNEX II

TEXT OF AMENDMENTS TO THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM PROPOSED BY NORWAY AND TOGO AND LATER BY COSTA RICA (A/C.3/L.1035 and Add. 1)

1. **Article** 2

(a) *Paragraph* 1: Replace " The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution " by "The situation of persons entitled to invoke Article 14 of the Universal Declaration of Human Rights".

(b) *Paragraph* 2

(i) Insert the words "granting or" between the words "in" and "continuing" so that the phrase reads : "Where a country finds difficutly in granting or continuing to grant asylum".

(ii) Change "should consider in a spirit of international solidarity" to read "shall consider in a spirit of international solidarity".

2. **Article** 3

(a) *Paragraph* 1

(i) Replace "no one seeking or enjoying asylum in accordance with" by "no one entitled to invoke Article 14 of. . .".

(ii) In the English text, replace the word "should" by "shall".

(iii) Delete the words "except for overriding reasons of national security or safe-guarding of the population".

(b) Insert a new *Paragraph* 2 to read as follows :

"This provision may not be invoked in the case of any individual who constitutes a danger to national security nor in the case of a mass influx which endangers the safety of the nation".

(c) Paragraph 2 to become *Paragraph* 3, reading as follows :

"In cases where a State decides to base its action on the preceding paragraph of this Article, it shall consider, under such conditions as it may deem appropriate, allowing the persons concerned a reasonable period and all the necessary facilities to enable them to seek asylum in another country".

3. **Article 4**

Replace the word "should" by "shall".

ANNEX III

TEXT OF PREAMBLE AND ARTICLE I OF THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM AS ADOPTED BY THE THIRD COMMITTEE AT THE SEVENTEENTH SESSION OF THE GENERAL ASSEMBLY.

(Words omitted are enclosed in (square brackets,) new words are *underlined*).

The General Assembly

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all States, and to achieve (recalling that among the purposes of the United Nations is the achievement of) international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging

respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

Mindful of the Universal Declaration of Human Rights which declares in article 14 that "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations".

Recalling also paragraph 2 of article 13 of the Universal Declaration of Human Rights which states that "Everyone has the right to leave any country, including his own, and to return to his country".

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State.

Recommends that, without prejudice to existing instruments dealing with asylum *and the status of refugees and stateless persons*, States Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles :

Article 1

1. Territorial asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, *including persons struggling against colonialism*, shall be respected by all other States.

2. *The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime agaist*

peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. *It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.*

ANNEXURE—III

THE RIGHT OF DOMICILE IN INTERNATIONAL LAW

(Text of Conclusions reached, at the Conference of International Lawyers held in BONN on the 28th and 29th October, 1961 in connection with the All-German Committee of the League of Expelled Persons)

I.

In recent times, and in various parts of the world, peoples and national groups have been expelled from their original domiciles. These acts of violence are clearly contrary to the leading principles of modern international and national law.

II.

The expulsion of peoples of ethnic, racial or religious communities represents a flagrant violation of the right of self-determination. The right of self-determination has been recognized in the Charter of the United Nations as a leading regulating principle; thereby, and also by virtue of national practice during the last, decade, it has become a generally binding principle of international law. It is the right of peoples and ethnic communities to determine freely their political, economic, social and cultural status. According to this, peoples are not conceived as fluctuating masses which can be moved from one territory to another on political, economic, police or similar grounds, but as domiciled communities which are firmly attached to their area of settlement. The right of self-determination, therefore, includes the prohibition of expulsion. Even a conquerred nation cannot be denied the right of self-determination.

III.

The International Law of War contains a prohibition of deportation of the population of an occupied territory by the occupying power. Unanimous agreement was reached on this point as early as 1907 at the Hague Peace Conference. Article 49 of the Geneva Convention of the 12th August, 1949, relative to the Protection of Civilian Persons in Time of War did not, therefore, create new law, but codified existing law.

Attention may also be drawn to Article 49, paragraph 6 of that Convention, pursuant to which an occupying power must not transfer or deport parts of its own civilian population to a territory it occupies.

IV.

According to modern international law, no state may expel its own nationals from its territory or refuse them the right of entry to it.

This prohibition also applies in case of change of the territorial sovereignty. In this case the inhabitants of the territory concerned who, before the change of sovereignty, enjoyed citizens' rights, may not be refused the nationality of the State assuming sovereignty. In this way they are protected from expulsion across the newly-demarcated frontier to a foreign country.

V.

The question of whether expelling States and receiving States may carry out transfers of population in a manner permitted under international law by virtue of agreements, cannot be answered by reference to the Potsdam Agreement. For the Potsdam Agreement of the 2nd August, 1945, which in Article XIII ordered that the expulsion of Germans from Poland, Czechoslovakia and Hungary, which had begun in

full force several months earlier under the sovereign responsibility of the expelling States, should be carried out in a humane manner, was concluded by the occupying powers: Great Britain, the Soviet Union and the United States. The enjoinment also contained in it, viz., that the expelled Germans should be received, does not, therefore, imply recognition under international law of the expulsions by Germany, which was not a party to this Agreement.

VI.

International law demands of all States that they should respect a minimum standard of general human rights. Deportations within the territory of a State also infringe the principles of modern government which is characterized by a progressive recognition of general human rights.

Mass deportations of the State's own nationals within the State territory were, for example, declared unconstitutional in the U.S.S.R., in 1956-57, as being contrary to the principles of Marxist-Leninist policy on nationalities, and were revoked for part of the persons affected.

VII.

The term "Right of Domicile" has become customary for the legal status which results from the principles of national and international law described above in regard to peoples, ethnic communities and the persons belonging to them. This right, therefore, is founded upon definite provisions of present day national and international law and upon Universal Declaration of Human Rights. Its violation is an offence against international law.

Every prohibition—including the prohibition of compulsory resettlement and mass deportations—protects a state of affairs which human consciousness of justice considers valuable and worthy of being preserved. Those who benefit from the maintenance of such a state of affairs are, as a matter of

principle, entitled to claim action in restraint of illegal encroachment upon this state of affairs, or—should encroachment have taken place—to a claim to restitution. Such a claim to restitution consists in the matter under review in a claim to be permitted and enabled to return restoration to previous position, and in the second place in a claim to compensation. This corresponds to the practice of the Permanent International Court of Justice, as unmistakably expressed, in particular, in the *Chorzow case.*

ANNEXURE - IV

THE RIGHT OF DOMICILE AS AN INSTITUTION IN INTERNATIONAL LAW

(A Paper by A. W. R. Association for the study of World Refugee Problem).

Preliminary note

Among the great problems facing humanity in our days should be ranked those of the expulsion of individuals as well as of whole ethnic groups, their flight because of reasonable fear of persecution on racial, religious, political, social, or ethnic grounds, and the problems of enforced migration and resettlement. Millions of people were chased on to the roads of flight and expulsion, and it is to be feared that many more will have to follow. The questions involved have been the subject of a number of conventions, international agreements and declarations by legal subjects of international law. However, there has not yet, on the international level, been a scientific investi gation into the question of whether, and to what extent, the protection from expulsion, enforced migration and resettlement constitute a relevant institution in international law and what may be regarded as internationally guaranteed.

For that reason, the International Expert Committee on "Legal Questions" within the *Association Europeenne pour l 'Etude de Probleme des Refugies* (AER) and the Association for the study of the World Refugee Problem (AWR) have, for some time, made it their duty to deal with the task and to submit a comprehensive report at its meeting in Athens, between October 14 and 21, 1961, on the occasion of the Eleventh Congress of the AER/AWR. This report was dealt with at great length, and led to the establishment of those facts in international law which are common legal possession today. Besides, the Committee agreed on an additional declaration

which, though of a political character, nevertheless indicates the trend of development in international legal practice and doctrine.

This document may well create a new basis in the field of human rights and, from the standpoint of international law, help to remove the causes of flight and expulsion. Indeed, its fundamental importance lies in the fact that the concept and the content of the "right of domicile" have here been defined for the first time in the light of the present situation in international law. To be true, it has not been possible to avoid the juridical terminology which is known to be jejune at times, but it is hoped that the explanations given will be generally intelligible.

The work of the Legal Committee was shared, among others, by the following members : Professor Dr. Dimitri S. Constantopoulos, University of Salonica (now President of the Legal Committee); Professor Dr. Heinrich Rogge, Munich (discussant); Dr. et Dr. Kurt Rabl, Munich (discussant); Dr. Theodor Veiter, Feldkirch and Vienna (discussant and chairman); Dr. Henri-Bruno Coursier, head of the Law Department of the CICR, Geneva (co-discussant). The final resolution in the Committee was carried unanimously, and so was the ratification of the text by the General Assembly of the AER/AWR in Athens, on October 21, 1961.

A.

I.

The right to retain the lawfully acquired domicile without molestation, and as long as this is freely so desired, is recognized in principle as inviolable.

II.

Domicile is deemed to be lawfully acquired :

1. by a national, if acquisition is

(a) by choice, in the free exercise of a right to freedom of movement within the framework of laws or conventions for the protection of locally established linguistic, religious, or ethnic communities (domicile of choice), or

(b) by derivation, in the free exercise of a right to continued residence at the domicile of the parents or legal guardian (domicile of origin), provided the aforesaid parents or guardian have lawfully acquired such domicile either by choice or derivation ; and

2. by an alien (foreigner or stateless person), if acquisition by choice or derivation is in connection with an explicit or implicit residence-permit and the absence of an internationlly admissible cause for expulsion.

III.

Lawfully acquired domicile is deemed unmolested if the free exercise of the rights set forth in the United Nations Declaration of Human Rights of December 10, 1948, and in comparable international instruments is secured in law and in fact.

It is not unmolested if there is well-founded fear that these rights or the otherwise defined status of the individual groups of persons are inadmissibly curtailed by the national authorities or with their connivance (discrimination).

IV.

A person may be removed from his lawfully acquired domicile only,

1. in the case of a national : by virtue of a statute

(a) confined to cases of detention ordered under the rule of law, and to cases of public emergency caused by floods, tempests or similar occurrences, or of imme-

diately threatening dangers to the public health, and provided that

(b) such statute is subject to narrow interpretation and permits the person concerned to have recourse to a review of his case in accordance with due process of law in the same manner as in the case of violations of human rights and fundamental liberties;

2. in the case of an alien (foreigner or stateless person):

(a) to a different domestic location, if the removal is under the same conditions as applicable to nationals or

(b) to a foreign location (expulsion from the State's territory), if a temporary residence-permit is not renewed or if the removal is justifiable by internationally admissible causes for expulsion.

V.

In case of change of the supreme territorial authority, either by transfer of sovereignty, or legitimate military occupation, or by any other title, such inhabitants of the territory concerned as have, before the said change of authority, enjoyed nationals' rights must retain the same ; specifically, their right to unmolested presence in the lawfully acquired domicile must continue to be secured without restriction.

The only exception to this principle is a contractual obligation of the inhabitant to leave his domicile after having freely exercised his right to opt in connection with a legitimate transfer of sovereignty.

VI.

The abandonment by an inhabitant of, and especially his escape from, the lawfully acquired domicile because of well-founded fear of discrimination (*supra*, ch. III para. 2),

such as fear of persecution for reasons of race, religion, membership of an ethnic or social group and for actual or presumed convictions, is deemed to constitute an illegal withdrawal of the right to unmolested presence at the lawfully acquired domicile.

VII

A person who has been illegally removed from, or has abandoned, his lawfully acquired domicile for the reason set forth in article VI *(supra)*, may claim and has a right to restitution. Such restitution includes, but is not limited to the voluntary repatriation of the claimant to his former domicile, as well as the payment of his material damages, in which connection the principle is to be applied that the *mala fide* acquisition from a confiscator does not protect against such claims.

"Repatriation" is not limited to the mere presence in the place of former domicile ; instead, unmolested presence at this place is required *(supra*, ch. III*)*.

VIII.

The social and economic integration at the place of refuge of an illegally removed person or escape does not invalidate his claim to restitution as set forth in ch. VII *(supra)*. However, a claimant must consent to a reduction of his claim by the value of any indemnification received from a third party in consequence of his removal or escape.

The aforesaid third party has a right of redress against the authorities who are responsible for, have contributed to, or have tolerated the removal or escape of the claimant.

Additional Declaration

The Committee are of the opinion that international measures inconsistent with the above rules are contradictory to the evolution of International Law, especially as it has

emerged since the Universal Declaration of Human Rights of December 10, 1948, which has to be considered to be of particular significance in International Law, as it may be said to contain an authentic interpretation of the concept of "human rights" in the sense of the UNO-Charter (articles 1 and 55) as well as since the conclusion of the four Geneva Conventions of August 12, 1949,

Accordingly, individuals as well as communities have to be protected against enforced migration or expulsion from the lawfully acquired domicile.

B.

I.

At present, a draft for the Second Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Liberties is under consideration before the Council of Europe. This draft contains, i.e., the following provisions :

Article 2 . Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Article 3 . No one shall be exiled from the State of which he is a national.

II.

Pursuant to the principles set forth above, the following amendments appear desirable :

1. ad article. 2 :

(a) insert after the words "liberty of movement" the following : "Within the framework of laws and conventions protecting linguistic and ethnic communities" ;

(b) insert after the word "residence" the following : "as well as to stay there unmolested in his rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Liberties and its Additional Protocols" ;

2. ad article 3 ; insert a new second sentence : "A person from whom the State's nationality has been withheld or who has been denationalized must not be exiled."

ANNEXURE - V

EXTRACTS FROM GENERAL CONDITIONS AND RECOMMENDATIONS OF THE EUROPEAN SEMINAR ON THE SOCIAL AND ECONOMIC ASPECTS OF REFUGEE INTEGRATION

(Sweden, 27 April—7 May, 1960)

I. Legal Protection

(a) Naturalisation

It is a generally accepted fact that the granting of citizenship to refugees is the optimum and the most desirable contribution which governments can make towards the solution of the overall refugee problem, as well as towards the solution of the problems of the individual refugee, since it permits him to regain the status of 'full citizen of a national community. It is, therefore, desirable that governments facilitate the acquisition of citizenship by the refugees they admit to their territory, and that during the interval before naturalisation they make available all facilities, including social benefits, to help them bridge the transitory period.

Governments should further contemplate other practical measures to remove all existing obstacles to the naturalisation of refugees. Such measures may include: (a) waiving of naturalisation fees; (b) the reduction of the waiting period; (c) the granting of a form of "prospective citizenship" to reduce the refugee's sense of insecurity.

Wherever the liberalisation of legislation on naturalisation would entail considerable delay, the immediate application to refugees qualifying for naturalisation of existing preferential provisions benefiting nationals of the most-favoured-nation (s) is recommended.

While the naturalisation of the refugee is a primary factor in achieving integration, it is recognized that the individual refugee's free decision should prevail in this respect. A refugee should, however, not only be entitled to rights but should have a moral obligation also to accept duties. Application for citizenship is the most adequte means whereby a refugee can accept such responsibilities. Counsellors should be encouraged to assist the refugee to reach a realistic decision ; they should stress the advantages for himself and his family in becoming an active participant in the life of his new country.

As a corollary, all governments of countries of asylum should be asked to improve the existing legislation and to prepare new legislative measures with a view to granting refugees all the material benefits which are available to the nationals of those countries with regard to : legal assistance, work facilities including permission to work, recognition of foreign diplomas and degrees, free education, spiritual freedom, freedom of movement, suitable accommodation and housing, social security benefits and collateral social and health protection as available to the nationals, and counselling services.

(b) Other aspects relating to legal protection

In cases where governments contemplate exercising their right to deport refugees to a country of first asylum, this procedure should only be followed in exceptional cases and after all efforts had been exhausted to solve the problems from which the need for deportation arose.

It was also felt that there should be a review of the 1951 Geneva Convention on Refugees.

It was suggested that UNHCR should collect and disseminate information to all interested agencies concerning the social benefits and civil rights available to refugees in various countries of asylum.

ANNEXURE - VI

SWEDISH LEGISLATION CONCERNING FOREIGNERS

(An article by Mr. B. Strange, National Office for Aliens)

In the introductory clause of the Swedish Aliens Act of 1954 - the statute now in force - it is provided that an alien has the right to enter the country and to stay and to work here, subject to conditions laid down by law. Furthermore, an alien cannot be forced to leave the country by other measures than hose indicated in the Aliens Act. Last but not least, an alien must not be subjected to restrictions of his freedom that are more rigorous than is necessary. In addition to the Aliens Act, there are complementary orders giving the Act a certain flexibility.

After a period of emigration Sweden has - since about 1930 - become an immigration country.

Without making comments on the statistics I should like to say a few words concerning the naturalization of aliens in Sweden. In 1946 about 5,000 aliens became Swedish citizens. In 1959 the number was double than this. In the period from 1948 to 1959 about 43,000 Scandinavians, 18,000 Balts and 15,000 Germans were naturalized, many of whom were refugees. The main requirements for the granting of naturalization by the Ministry of Justice are :

(1) the alien must have resided in Sweden for at least seven years ;

(2) he must have reached the age of eighteen years;

(3) he must be able to support himself and his family ; and

(4) he must have led an honourable life.

An alien born in Sweden and having an unbroken residence here may become a Swedish citizen at the age of 21 years after making application to the competent authority.

The purpose of the Swedish aliens legislation is, first, to manage the control of aliens in order to administer our immigration policy. This control is maintained by regulations regarding the obligation of aliens to have passports, residence and labour permits and to register themselves with the authorities. Secondly, the law has to regulate the special cases and the procedure by which an alien can be forced to leave the country or by which other measures might be taken against him.

Furthermore, the law provides for political refugees.

First of all it should be noted that a visa is still required by nationals of the Eastern European countries and of some countries in Africa and Asia and by stateless persons. All other nationals are free to enter and stay in Sweden for a period of three months, provided that they are not rejected at the passport control. Scandinavians are not even obliged to have passports. Labour permits are obligatory for all aliens, except for refugees and for Scandinavians. A labour permit is not required for domestic work.

At the expiration of three months the alien—if he wants to stay—has to apply for an extension of his residence permit. These applications will be examined by the National Aliens Office. There can be no appeal against decisions made by the Office on these questions.

After the first extension, the National Office for Aliens may delegate its right to renew the permits in question for aliens including refugees to the local police authorities. This will as a rule be done in most of the routine cases. At present about 30% of all applications are granted by the local police authorities.

In this connection it should be mentioned that provisions are being made to allow refugees residing in the Scandinavian countries to travel in Scandinavia without having visas.

The less agreeable part of the activity of the National Office for Aliens is the management of deportation cases.

As mentioned before, an alien can be sent back at the frontier or immediately after his arrival in Sweden. If the alien claims to be a political refugee, his case will be submitted to the National Office for Aliens. A refusal of admission can be appealed against.

The Swedish aliens law recognizes three types of deportation. The first one is to be applied against an alien who lacks a passport or residence permit or is on various grounds regarded as undesirable. The decision is made by the National Office for Aliens and can be appealed against on certain conditions.

A special form of deportation can be exercised by a court as a part of a sentence. In 1959 this form, which has been in use for a few years only, led to about 250 aliens leaving Sweden including a few refugees.

The last form is expulsion, mainly used on grounds of anti-social behaviour or because of crimes committed in the alien's home country. The decision is made by the country administration or police authorities and can be appealed against to the National Office for Aliens and in the highest instance to the Government.

Deportations of all types mentioned above may be accompanied by a prohibition of the alien to return to the country without permission. This prohibition may either be permanent or for a limited period.

Obviously the Swedish aliens law gives the authorities very strong powers to deal with aliens who on various grounds are deemed undesirable.

The law, however, has also provided for the protection of aliens in a very efficient way. A residence permit guarantees the holder the right to stay here during the validity of his permit. The sojourn permit cannot—unlike the labour permit—be challenged. It will cease, however, in case of deportation. Before deciding on a case of deportation or of the execution of an expulsion of an alien, the National Office for Aliens must consult a special council or jury - the Aliens Council It is laid down that if the Council, or any member of it, holds an opinion contrary to that of the National Office for Aliens, this will establish the alien's right to appeal to the Government. Even if there should be no such right, there is a clause in the Aliens Act permitting the alien to appeal to the Government on grounds of new circumstances.

One of the most important provisions of the Aliens Act is that of the declaration of asylum. A political refugee shall not, without special reasons, be refused asylum when he is in need of it. There is also a definition of the terms "political refugee" and "political persecution".

Obviously it is a very delicate problem to assess refugee status. In most cases we have no means of checking the statement made by the refugee. We have, however, treated this problem with the utmost care and generosity and venture to say that our policy has been a very liberal one.

The Aliens Act also regulates the protection of political refugees. The main rule is that a political refugee must not be returned to the territory of any State where he is in danger of being persecuted for political reasons or to the territory of a State where he is not safe from being expelled to such a State.

It should also be mentioned that the Aliens Act has a regulation concerning the forfeiting of refugee status. There are two criteria governing the expulsion of a political refugee. The first arises when an alien by reason of serious criminality can be regarded as a considerable danger to the security and public order of the country where he is and the persecution that will threaten him in a country such as referred to above cannot be regarded as a danger to his life or otherwise of a particularly serious nature ; provided that he cannot be sent to another country. Secondly, an alien who has, here or elsewhere, been working against the security of this country and concerning whom there are reasonable grounds for considering that he would continue such activity in this country may be removed to a country such as mentioned above, provided there is no other country to which he can be sent. These provisions mainly correspond to those of the Geneva Convention. They even go further weighing the crime against the persecution that will threaten the alien. It should be mentioned that the National Office for Aliens has to submit these cases to the Government for decision. Under these provisions only a few criminals have been returned to their home countries.

Ever since the war we have admitted to permanent residence and in many cases to citizenship something like 200,000 people ; refugees from the Scandinavian countries, from the Baltic countries, from Germany, Poland and Hungry and elsewhere. We grant asylum to anyone whose life is in danger and whose existence would be likely to be made intolerable for political reasons. We have been fortunate enough - owing to the prevailing conditions - to be able to provide work for most of the aliens in our country.

On the other hand, we shall always remember that the aliens - and among them not least the refugees - really have been a considerable asset to Sweden, especially during the war.

ANNEXURE VII

TEXT OF LAW NO. 114 OF 1959 OF THE REPUBLIC OF IRAQ FOR REFUGEES

In the name of the People,

The Sovereignty Council,

After perusal of the Interim Constitution and according to the proposal of the Minister of Interior and to the approval of the Council of Ministers, do hereby enact the following Law;

Article 1

The word "refugee" shall mean , in this Law, the political refugee, civilian or military person, together with the members of his family for whom he is legally responsible.

Article 2

Refugee shall be taken in the following ways;

(1) By an application put in by a foreigner living abroad to approve of his resorting and entering Iraq.

(2) By an application put in by the foreigners residing in Iraq to be regarded as refugees.

(3) By immigration of a person/persons from the boundaries region to the Iraqi territory, applying for being regarded as refugees.

Article 3

The refugee shall never be submitted to his State, but in case of rejection of a person's resorting to Iraq, it will be likely to send him away to another State according to the concerned offices' proposal and to the Minister of Interior's approval.

Article 4

Unless being certain of the following, nobody's resorting shall be approved:

(1) That he is a refugee;

(2) That, by his resorting, his faithfulness to the Republic of Iraq has been verified;

(3) That his application shall admit of no doubt or risk; and

(4) That his sole purpose shall not be only to find a means of earning living.

Article 5

A Central Committee shall be formed in the Capital, and others in the other *liwas*, adjacent to the boundaries to examine the refugees' affairs, according to instructions the Minister of Interior shall issue.

Article 6

(a) The Central Committee shall be the competent authority to examine the refugees' affairs in relation to the whole parts of Iraq, regarding Paras 1 and 2 of Article 2 of this Law. As to the competence of the *Liwas* Committee they shall be confined to the case defined in Para 3 of the said Article, each within the limits of its *Liwa*.

(b) As to the matters concerning the persons residing abroad, it shall be permissible to entrust the Iraq Diplomatic Corps with examination of them.

Article 7

The Committee, in accordance with the jurisdiction of each, shall pass a decision in favour of, or against the foreigners' application for resorting, and state the justificative reasons

for that. The Central Committee shall put in its decisions through the Director General of Police to the Ministry of Interior. As to the Committees in the *Liwas*, they shall put in them through the *Mutasarrifiyats*.

Article 8

The *Mutasarrif* and the Director General of Police shall respectively, have the right to return the decision to the Committee for re-examination or to put it in to the Minister of Interior, together with their recommendation of settlement.

Article 9

(a) The Minister of Interior shall have the right to sanction or reject resorting. His decision shall be objectionable to the Council of Ministers within fifteen days as from the date of notification.

(b) The competent offices of security shall have the right of objection, pursuant to Para (a).

(c) The Council of Ministers' decision for this shall be conclusive.

Article 10

In relation to the case mentioned in Para 3 of Article 2 of the Law, the *Mutasarrif* of the *Liwa* shall have the right to order the Police not to make legal proceedings in pursuance of the Residence Law, to arraign the persons who applied for resorting to Iraq until coming to a decision concerning them. The Police shall pass this order. In case resorting is approved, they shall be exempted from the text of the Residence Law.

Article 11

In case one's resorting has been rejected for lack of fulfilment of the conditions stated in Para I of Article 4 of this Law, and in case Para 3 of Article 2 of this Law, pertains to him, the *Mutasarrif* of the *Liwa* shall have the right, after taking legal proceedings against him, in pursuance of the Residence Law, to send him out of Iraq. But in case he fulfils the condition stated in Para I of Article 4 of this Law, but is lacking the fulfilment of the other conditions stated in the said Article, the text of Article 3 of this Law shall be applied to him by the *Mutasarrif* of the *Liwa* and the Department of Residence in conformity to relevant rules.

Article 12

In case of rejection of one's resorting to whom the texts of paras 1 and 2 of Article 2 of this Law pertain, the Minister of Interior shall have the right to approve his residence, in pursuance of the Residence Law, or to reject it. His decision shall be conclusive.

Article 13

In case a person's resorting is approved, he shall be provided with a document by the Director General of Police, by whom this will entitle, or by the *Mutasarrif* of the *Liwa*, pursuant to the jurisdiction of each. The said document shall be considered as a census book and as an official identity. It shall be registered at the Census Office, the Administrative Office, the Police Office, and the Security Office. The Ministry of Interior shall issue the requisite instructions concerning this.

Article 14

(a) The refugee shall enjoy the following Iraqi citizen's rights after issuance of an approbative decision on his resorting :

(1) The right of taking advantage of all of the sanitary, educational and social services.

(2) The right of practising professions and business.

(3) The right of being provided with agricultural lands, in pursuance of the text of the Agrarian Reform Law, provided that unless he has obtained the Iraqi nationality, the deed of the land should not be registered by his name.

(4) The right of being appointed or employed according to the competent Minister's proposal and to the Council of Minister's approval.

(b) The Council of Ministers shall have the right, according to the Minister of Interior's proposal, to entitle some of the refugees or all of them further rights as the Iraqi citizens enjoy.

Article 15

The refugees shall be responsible for the whole tasks for for which the Iraqi citizens are responsible, excluding the state of being on service or else the Council of Ministers shall approve, providing that relevant Laws shall be observed.

Article 16

In case the refugee disturbs peace of State or its political interests the Council of Ministers, according to the Minister of Interior's proposal, shall have the right to abolish the decision regarding his resorting, and order expulsion of him, as well as to arraign him in case his action is punishable, provided that the text of this Law shall be observed in events of expulsion.

Article 17

The Ministry of Interior in relation to the *Liwas*, and the Ministry of Social Affairs in relation to the Capital, shall have

the right to house the refugees, free of charge, provided that the refugee shall maintain the house at his own expense.

Article 18

(1) The refugee shall take an oath of allegiance to the Republic of Iraq for the whole duration of his stay in Iraq, in the presence of the appropriate Committee mentioned in this Law after approbation of his resorting, prior to be provided with the refugees indentity.

(2) The form of oath shall be composed in conformity to instructions issued by the Ministry of Interior.

Article 19

The Authorities and Committees mentioned in the foregoing Articles shall verify the refugee's financial sitution respecting his capability of earning living. In case the refugee proves unable to make living, the Committee shall have to give the necessary information about him, in conformity with the instructions issued by the Ministry of Interior and shall state the period it suggests to have him paid a certain sum of monthly expenses.

Article 20

(a) The Minister of Interior according to the Committee's report, pursuant to the foregoing Article and to the confirmation of the *Mutasarrif* of the *Liwa* or the Director General of Police, shall have the right to fix the monthly expenses allocated to the refugee.

(b) The Ministry of Interior shall defray the said expenses.

Article 21

The Ministry of Interior shall be confided with surveillance, administration, expenditure, and social guidance of the refugees.

Article 22

The Minister of Interior's jurisdiction of giving orders to defray the monthly expenses or to provide for the refugee's living costs, shall be limited to a period not exceeding one year. The allocated expenses shall be intercepted prior to the termination of this period in case the refugee proves to be able to make living. It shall be impermissible to defray the refugee's expenses after expiry of the said period, except in urgent cases determined by the Council of Ministers.

Article 23

The refugee's place of residence shall be determined by the proposal of the *Mutasarrif* or the Director General of Police according to their jurisdiction respectively. The proposal shall be put to the Minister of Interior who shall have the right to decide on the determined place of residence or to change it.

Article 24

(a) As soon as he traverses the Iraqi boundaries. the refugee shall give up his arms to the Iraqi Authorities which shall hold it in trust for him, or else he shall be compensated for its price.

(b) Unless the Council of Ministers shall approve, the refugee shall not be permitted to bear arms.

(c) The refugee shall register his possessions at the *Mutasarrifiyats*.

Article 25

The Minister of Interior, regarding the Capital, and the *Mutasarrif* regarding the *Liwas*, shall have the right to give order to arrest the refugee in case he disturbs peace of State or Order, for a period not exceeding two months until expulsion of him is decided upon, in accordance with the method stated in this Law.

The *Mutasarrif's* decision in connection with this matter shall be subject to the approval of the Minister of Interior.

Article 26

The *Mutasarrifs* of the *Liwas*, regarding the *Liwas*, and the Director General of Police, regarding the Capital, shall have the right accoreding to the requirements of keeping order and public security to have the refugee bailed by a guarantor or by a personal guarantee in security for both. In case he breaks the guarantee or the bail, he or his guarantor shall be bound to competent courts for the sum defined in the bail, which shall be obtained from him in pursuance of relevant Laws.

Article 27

Anyone who infringes the text of this Law, instructions, notifications, or orders shall be punished with imprisonment for a period neither less than a month nor exceeding six months, or with a fine neither less than ID.2 nor exceeding ID. 50, or with both.

Article 28

In case the refugee deserts, his properties and possessions existing in Iraq shall be confiscated according to the Minister of Interior's decision and to the Council of Ministers' approval. The legal proceedings shall also be taken against his guarantor in the light of Article 26 of this Law.

Article 29

The Minister of Interior shall issue the instructions that the text of this Law requires within a month as from the date of putting it into force. He shall have the right to amend or change them when it is necessary.

Article 30

This Law shall be put into force from the date of its publication in the Official Gazette.

Article 31

The Ministers shall execute this Law.

Made at Baghdad on June 30, 1959.

ANNEXURE VIII

EXTRACTS FROM THE CONSTITUTION OF JAPAN

Chapter III : Rights and Duties of the People

Article 16

Every person shall have the right of peaceful petition for the redress of damage for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters ; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17

Every person may sue for redress as provided by laws from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18

No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19

Freedom of thought and conscience shall not be violated.

Article 20

Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.

Article 21

Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22

Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23

Academic freedom is guaranteed.

Article 24

Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 29

The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefore.

Article 31

No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32

No person shall be denied the right of access to the courts.

Article 33

No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34

No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35

The right of all persons to be secure in their houses, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36

The infliction of torture by any public officer and cruel punishment are absolutely forbidden.

Article 37

In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity. to examine all witnesses and he shall have the right of compulsory process for obtaining witness on his behalf at puplic expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38

No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against is his own confession.

Article 39

No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article 40

Any person, in case he is acquitted after he has been arrested or detained may sue the State for redress as provided by law.

Note: Chapter III consists of Articles 10 to 40. Those Articles, which are not reproduced here, are applicable only to the Japanese nationals.

ANNEXURE IX

TEXT OF AGREEMENT BETWEEN THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY CONCERNING PAYMENTS IN FAVOUR OF PERSONS DAMAGED BY REASON OF THEIR NATIONALITY

The United Nations High Commissioner for Refugees and the Government of the Federal Republic of Germany have agreed as follows:

Article 1

The Government of the Federal Republic of Germany shall treat those persons who have claims on account of permanent injury to body or health according to Paragraphs 167 and 168 of the Federal Law for the Indemnification of Victims of National-Socialist Persecution (Federal Indemnification Law - BEG -) in the same way as persons defined in Paragraph 160, Sub-Paragraph 1 BEG are treated according to Paragraph 161, BEG with regard to the scale of compensation for injury to body and health. For this purpose assistance granted by a State or an inter-governmental organization shall not be taken into account.

Article 2

1. The Government of the Federal Republic of Germany, in addition, places at the disposal of the United Nations High Commissioner for Refugees the 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 reason 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 reason of their nationality in disregard of human rights in so for as the surviving dependants on 1 October 1953 were refugees in the sense of the Geneva Convention of 28 July 1951.

2. The Federal Government shall place the aforementioned sum at the disposal of the United Nations High Commissioner for Refugees within the framework of World Refugee Year in two equal instalments. The first instalment is payable one month after the Agreement comes into force, the second instalment three months later.

Article 3

The United Nations High Commissioner for Refugees shall apply the sum mentioned in Article 2 for the purpose stated. He shall co-operate in this matter with welfare organizations which have assumed the care of the group of person in question as well as with representatives of the refugees.

Article 4

The United Nations High Commissioner for Refugees declares that - without prejudice to German legal provisions in favour of persons who have been damaged by reason of their nationaltiy in disregard of human rights-the payments foreseen according to Articles 1 and 2 are considered by him as a final settlement of the questions which relate to an indemnification of the group of persons named in articles 1 and 2.

Article 5

This Agreement applies also to the Land Berlin is so far as the Government of the Federal Republic of Germany does not make a contrary declaration to the United Nations High Commissioner for Refugees within three months after the coming into force of the Agreement.

Article 6

This Agreement comes into force on the day of its signature.

Done at Bonn on the fifth of October one thousand nine hundred and sixty in two originals in the German language.

The United Nations High Commissioner for Refugees	For the Government of the Federal Republic of Germany
(signed) A. R. LINDT	(signed) Carstens.

ANNEXURE X

TEXT OF AGREEMENT RELATING TO REFUGEE SEAMEN OF 23 NOVEMBER 1957 ADOPTED AT THE HAGUE

Preamble

The Government of the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands, the Kingdom of Norway and the Kingdom of Sweden,

Being Governments of States Parties to the Convention of the 28th of July 1951 relating to the Status of Refugees,

Desirous of making further progress towards a solution of the problem of refugee seamen in the spirit of Article 11 and of maintaining co-operation with the United Nations High Commissioner for Refugees in the fulfilment of his functions, especially having regard to Article 35 of the above-mentioned Convention,

Have agreed as follows :

CHAPTER I

Article 1

For the purposes of this Agreement :

(a) the term "Convention" shall apply to the Convention relating to the Status of Refugees of 28 July 1951;

(b) the term "refugee seaman" shall apply to any person who, being a refugee according to the definition in Article 1 of the Convention and the declara-

tion or notification made by the Contracting State concerned in accordance with Section B of that Article, is serving as a seafarer in any capacity on a mercantile ship, or habitually earns his living as a seafarer on such a ship.

CHAPTER II

Article 2

A refugee seaman who is not lawfully staying in the territory of any State and who is not entitled to admission for the purpose of so staying to the territory of any State other than a State where he has well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, shall become entitled to be regarded, for the purpose of Article 28 of the Convention, as law-fully staying in the territory:

(a) of the Contracting Party under whose flag he, while a refugee, has served as a seafarer for a total of 600 days within the three years preceding the application of this Agreement to his case on ships calling at least twice a year at ports in that territory, provided that for the purposes of this paragraph no account shall be taken of any service performed while or before he had a residence established in the territory of another State; or if there is no such Contracting Party,

(b) of the Contracting Party where he, while a refugee, has had his last lawful residence in the three years preceding the application of this Agreement to his case, provided that he has not, in the meantime, a residence established in the territory of another State.

Article 3

A refugee seaman who on the date when this Agreement enters into force:

(i) is not lawfully staying in the territory of any State and is not entitled to admission for the purpose of so staying to the territory of any State, other than a State where he has well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and

(ii) is not in accordance with Article 2 of this Agreement regarded as lawfully staying in the territory of a Contracting Party

shall become entitled to be regarded, for the purpose of Article 28 of the Convention, as lawfully staying in the territory:

(a) of the Contracting Party which after 31 December 1945 and before the entry into force of this Agreement last issued to, or extended or renewed for him while a refugee, a travel document valid for return to that territory whether or not that document is still in force; or, if there is no such Contracting Party,

(b) of Contracting Party where he, while a refugee, after 31 December 1945 and before the entry into force of this Agreement was last lawfully staying ; or, if there is no such Contracting Party,

(c) of the Contracting Party under whose flag he, while a refugee, after 31 December 1945 and before the entry into force of this Agreement last has served as a seafarer for a total of 600 days within any period of three years on ships calling at least twice a year at ports in that territory.

Article 4

Unless otherwise decided by the Contracting Party concerned, a refugee seaman will cease to be regarded as lawfully staying in the territory of a Contracting Party when he, after the date upon which he, in accordance with Article 2 or 3 of this Agreement, last became entitled to be so regarded:

(a) has estabilised his residence in the territory of another State, or

(b) within any period of six years following that date, has been serving a total of 1350 days on ships flying the flag of one other state, or

(c) within any period of three years following that date, neither has served at least a total 30 days as a seafarer on ships flying the flag of that Contracting Party and calling at least twice a year at ports in its territory nor has stayed for at least a total of 10 days in the territory of that Party.

Article 5

For the purpose of improving that position of the greatest possible number of refugee seamen, a Contracting Party shall give sympathetic consideration to extending the benefits of this Agreement to refugee seamen who, according to its provisions, do not qualify for those benefits.

CHAPTER III

Article 6

A Contracting Party shall grant to a refugee seaman in possession of a travel document issued by another Contracting Party and valid for return to the territory of that Contracting Party the same treatment as regards admission to its territory in pursuance of a previous arrangement to serve on a ship, or for shore leave, as is granted to seafarers who are nationals of the last mentioned party, or at least treatment not less favourable than is granted to alien seafarers generally.

Article 7

A Contracting Party shall give sympathetic consideration to a request for temporary admission to its territory by a refugee seaman who holds a travel document valid for return to the territory of another Contracting Party with a view to facilitating his establishment in another State or for other good reason.

Article 8

A Contracting Party shall endeavour to ensure that any refugee seaman who serves under its flag and cannot obtain a valid travel document is provided with identity papers.

Article 9

No refugee seaman shall be forced, as far as it is in the power of the Contracting Parties, to stay on board a ship if his physical or mental health would thereby be seriously endangered.

Article 10

No refugee seaman shall be forced as far as it is in the power of the Contracting Parties, to stay on board a ship which is bound for a port, or is due to sail through waters, where he has well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Article 11

The Contracting Party in the territory of which a refugee seaman is lawfully staying or, in accordance with this Agreement, is for the purpose of Article 28 of the Convention regarded as lawfully staying, shall admit him to its territory if so requested by the Contracting Party in whose territory that seaman finds himself.

Article 12

Nothing in this Agreement shall be deemed to impair any rights or benefits granted by a Contracting Party to refugee seaman apart from this Agreement.

Article 13

1. A Contracting party may, for compelling reasons of national security or public order, consider itself released from the obligations incumbent on it under this Agreement with regard to a refugee seaman in question shall be allowed such period as may be reasonable in the circumstances to submit to the competent authority evidence to clear himself, except where there are reasonable grounds for regarding the refugee seaman in question as a danger to the security of the country where he is.

2. A decision made in accordance with paragraph 1 of this Article does not, however, release the Contracting Party in question from its obligations under Article 11 of this Agreement with respect to a refugee seaman to whom it has issued a travel document, unless the request for admission to its territory is presented to that Party by another Contracting Party more than 120 days after the expiration of that travel document.

CHAPTER IV

Article 14

Any dispute between the Contracting Parties relating to to the interpretation or application of this Agreement, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the Parties to the dispute.

Article 15

This Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Government of the Kingdom of the Netherlands.

Article 16

This Agreement shall come into force on the 90th day following the day of deposit of the eighth instrument of ratification.

Article 17

1. Any Government which undertakes obligations with respect to refugee seamen under Article 28 of the Convention or obligations corresponding thereto may accede to this Agreement.

2. Instruments of accession shall be deposited with the Government of the Kingdom of the Netherlands.

3. This Agreement shall come into force with respect to each acceding Government on the 90th day following the day upon which its instrument of accession was deposited but not before the date of entry into force as defined in Article 16.

Article 18

1. Any Government may, at the time of ratification or accession or at any time thereafter, declare that this Agreement shall extend to any territory or territories for the international relations of which it is responsible, provided that it has undertaken in relation thereto such obligations as are mentioned in paragraph (1) of Article 17.

2. Such extension shall be made by a notification addressed to the Government of the Kingdom of the Netherlands.

3. The extension shall take effect on the 90th day following the day upon which the notification was received by the Government of the Kingdom of the Netherlands, but not before the date of entry into force as defined in Article 15.

Article 19

1. A Contracting Party may denounce this Agreement at any time by a notification addressed to the Government of the Kingdom of the Netherlands.

2. The denunciation shall take effect one year from the date upon which the notification was received by the Government of the Kingdom of the Netherlands, provided that where the Agreement has been denounced by a Contracting Party, any other Contracting Party after consulting the remaining parties, may denounce the Agreement with effect from the same date, so however that not less than six months notice is given.

Article 20

1. A Contracting Party which has made a notification under Article 18 may, at any time thereafter, by a notification addressed to the Government of the Kingdom of the Netherlands, declare that the Agreement shall cease to apply to the territory or territories specified in the notification.

2. The Agreement shall cease to apply to the territory concerned one year from the date upon which the notification was received by the Government of the Kingdom of the Netherlands.

Article 21

The Government of the Kingdom of the Netherlands shall inform the Governments mentioned in the Preamble and all acceding Governments of deposits and notifications made in accordance with Articles 15, 17, 18, 19 and 20.

IN WITNESS WHEREOF, the undersigned, duly authorised to that effect, have signed this Agreement.

Done at The Hague, this twenty-third day of November 1957, in the English and French languages, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Government of the Kingdom of the Netherlands, which shall transmit certified true copies thereof to the Governments mentioned in the Preamble and all acceding Governments.

V. DRAFT GENERAL PRINCIPLES CONCERNING THE STATUS AND TREATMENT OF REFUGEES.

V. DRAFT GENERAL PRINCIPLES CONCERNING THE STATUS AND TREATMENT OF REFUGEES

(Basis for Discussion)

Prepared by the Secretiat of the Committee

Article 1

Definition of a Refugee

1. A refugee is a person who owing to fear of being persecuted for reasons of race, religion, membership of a particular social group or of political belief is outside the country of his nationality or in the case of a stateless person, the country of his habitual residence, and is unable or owing to such fear is unwilling to return to that country or to avail himself of the protection of that State.

Explanation

1. A person who is reasonably suspected to have committed a common crime of a grave nature other than a political crime, or a crime against peace, a war crime or a crime against humanity in the country of his nationality or habitual residence on account of which he has taken refuge therefrom shall not be regarded as a refugee.

2. A person ceases to be a refugee if he voluntarily returns to his country of nationality and in the case of stateless person the country of his habitual residence or if he acquires the nationality of another State and is entitled to the protection of that State.

Article 2

Right of Asylum

1. A State has the undisputed right to grant asylum to a refugee in its territory for the exercise of which it is not answerable to any other State.

2. Although under the existing principle of international law a refugee has no corresponding right to such asylum, taking note of the practice of several States and the principles and purposes of the Declaration of Human Rights, States should endeavour subject to their laws, regulations and executive orders to grant asylum to such individuals or classes of refugees who are genuinely fleeing from persecution.

3. A State has the right to enquire as to whether conditions exist for treating a person as a refugee before granting him asylum, and the burden of proving that it is so is on the refugee.

4. Temporary asylum in the premises of diplomatic mission may be given only in exceptional circumstances and to persons in imminent danger of their lives.

Article 3

Right of Repatriation

1. A refugee shall have the right to be repatriated, if he so chooses, to the country whose nationality he possesses.

2. If such repatriation is denied, the State of his nationality shall compensate the refugee for loss suffered by him by reason of denial of repatriation.

3. No refugee shall, however, be forced either by the State of his nationality or the State of his residence to seek repatriation to his country of origin or the country of his permanent residence.

Article 4

Right of Indemnification

1. A refugee shall have the right to receive compensation from the State the territory of which he was forced to leave by reason of the circumstances mentioned in Article 1.

2. The compensation shall be payable for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of family members, and destruction of or material damage to property and assets caused by the authorities of the State, by public officials or through mob violence in the circumstances which would incur State responsibility for such treatment to aliens under international law.

3. The State which gives asylum to the refugee will be competent to espouse his cause and prefer claims on behalf of the refugee on the delinquent State even though it may be the State of nationality of the refugee.

Article 5

Personal and Property Rights

1. Refugees, who have been granted asylum in the territory of a State, shall enjoy therein such personal and property rights as are contained in Articles 7, 8 and 11 of the *Principles Concerning Admission and Treatment of Aliens* adopted by this Committee.

2. The State shall endeavour to accord to the refugee treatment in conformity with the principles contained in the U. N. Convention on Refugees 1951.

Article 6

Expulsion and Deportation

1. The State shall not normally order the expulsion of a refugee save in the case where the refugee violates the conditions of his asylum or acts contrary to the national interest of the State of residence.

2. A refugee shall not be deported to the country where his life or freedom would be threatened for his political, religious or moral belief.

VI. INTERIM REPORT OF THE COMMITTEE ADOPTED AT ITS SEVENTH SESSION

VI. INTERIM REPORT OF THE COMMITTEE ADOPTED AT ITS SEVENTH SESSION

The Government of the United Arab Republic by a reference made under Article 3 (b) of the Statutes requested this Committee to consider the subject of "The Rights of Refugees" in general and in particular the following issues :

1. Definition of refugees and their classifications.
2. The relation between the problem of refugees and the preservation of peace and justice in the world.
3. Principles guiding the solution of refugee problem :
   (a) The right of asylum.
   (b) The rights of repatriation and resettlement.
   (c) The right of indemnification.
4. Rights of refugees in the country of residence :
   (a) The right to life and liberty.
   (b) The right to fair trial.
   (c) The right to speech, conscience and religion.
   (d) The right of employment.
   (e) The right to social security.
   (f) The right to education.
5. International assistance to refugees :
   (a) Travel documents—Visas.
   (b) Financial assistance.
   (c) Technical assistance.
   (d) International co-operation in the field of refugees : International agreements and International Agencies.

The subject was placed on the Agenda of the Sixth Session of the Committee for consideration. At that Session the Committee generally discussed the subject on the basis of a note prepared by the Secretariat and a Memorandum submitted by the Office of the United Nations High Commissioner for Refugees. The Committee had the benefit of the views expressed by the Deputy High Commissioner for Refugees who attended the Session. The Committee after a general discussion decided to direct the Secretariat to collect further material on the subject, particularly on the issues relating to compensation, the minimum standard of treatment of a refugee in the State of asylum and the constitution of international tribunals for determination of compensation that can be claimed by a refugee. The Secretariat, in accordance with the directions of the Committee, had prepared a revised note on the subject including certain Draft Articles on the Rights of Refugees to serve as a basis of discussion in the Committee. The Secretariat had also placed before the Committee considerable material on the subject, including the text of the Agreement of 28th July, 1951 relating to the Status of Refugees.

The Committee gave detailed consideration to this subject at its meetings held on 23rd, 24th, 25th, 27th and 28th March, 1965. The Committee had the benefit at this Session also of the Deputy High Commissioner for Refugees in consideration of the subject. The Committee decided at this Session to formulate certain general principles on the rights a refugee should have, and the principles adopted on this subject are set out in the form of articles in *Annexure I* to this Report.

The Committee decided to postpone consideration of the question as to whether any provision should be made for ensuring the implementation of the right to return and the right to compensation which have been provided for in the Articles on the Rights of Refugees.

The Committee could not, for lack of time, give detailed consideration to the provisions of the United Nations Refugee

Convention of 1951, and accordingly it decided to postpone its recommendation on the question as to whether a State should endeavour to afford to the refugee treatment in conformity with the principles contained in that Convention.

The Committee was also not in a position to consider a proposal made by the Delegation of India to incorporate a provision in the Articles relating to the Rights of Refugees. The text of the Draft Article suggested by the Delagation of India was in the following terms :

> "A refugee shall lose his status as a refugee if he does not return to the State of which he is a national, or, if he has no nationality, to the State of which he was a habitual resident, or to avail himself of the protection of such State even after the circumstances in which he became a refugee ceased to exist".

The Committee, having regard to the urgency of the problem, decided to draw up this Interim Report and to submit the same to the governments with a view that their comments and observations may be available before the next Session of the Committee when it proposes to give further consideration to this subject.

The Committee records its deep appreciation of the assistance rendered to the Committee by the Deputy High Commissioner for Refugees in the study of this subject.

Sd/—
(SHAKIR AL—ANI)
President
1.4.1965.

ANNEXURE I

PRINCIPLES CONCERNING TREATMENT OF REFUGEES

Article I

Definition of the term 'Refugee'

A Refugee is a person who, owing to persecution or well-founded fear of prosecution for reasons of race, colour, religion, political belief or membership of a particular social group :

(a) leaves the State of which he is a national or, if he has no nationality, the State of which he is a habitual resident; or,

(b) being outside such State, is unable or unwilling to return to it or to avail himself of its protection.

Exceptions

(1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any of the States of which he is a national. (2) A person who has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purposes and principles of the United Nations shall not be a refugee.

Explanation

The dependants of a refugee shall be deemed to be refugees.

Explanation

The expression "leaves" includes voluntary as well as involuntary leaving.

Notes (i) The Delegations of Iraq, Pakistan and United Arab Republic expressed the view that, in their opinion, the definition of the term 'Refugee' includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to occupying the State.

(ii) The delegation of Ceylon and Japan expressed the view that in their opinion the expression "persecution" means something more than discrimination or unfair treatment but includes such conduct as shocks the consience of civilized nations.

(iii) The Delegation of Japan expressed the view that the word 'and' should be substituted for the word 'or' in the last line of paragraph (a).

Article II

Loss of status as refugee

A refugee shall lose his status as refugee if :—

(i) he voluntarily returns to the State of which he is a national or, if he has no nationality, to the State of which he is a habitual resident; or

(ii) he voluntarily acquires the nationality of another State and is entitled to the protection of that State.

Note : The Delegation of Iraq and United Arab Republic reserved their position on paragraph (ii).

Article III

Asylum to a refugee

A State has the sovereign right to grant or refuse asylum to a refugee in its territory.

Article IV

Right of return

A refugee shall have the right to return, if he so chooses, to the State of which he is a national and in this event it shall be the duty of such State to receive him.

Article V

Right to compensation

1. A refugee shall have the right to receive compensation from the State which he left or to which he was unable to return.

2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependants of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authorities of the State, public officials or mob violence.

Notes

(i) The Delegations of Pakistan and the United Arab Republic were of the view that the word "also" should be inserted before the words "such loss" in paragraph 2.

(ii) The Delegations of India and Japan expressed the view that the words "deprivation of personal liberty in denial of human rights", should be omitted.

(iii) The Delegations of Ceylon and Japan suggested that the words "in the circumstances in which the State would incur State responsibility for such treatment to aliens under international law" should be added at the end of paragraph 2.

(iv) The Delegations of Ceylon, Japan and Pakistan expressed the view that compensation should be payable also in respect of the denial of the refugee's right to return to the State of which he is a national.

Article VI

Right of movement and residence

1. Subject to the conditions imposed for the grant of asylum in the State and subject also to the local laws, regulations and orders, a refugee shall have the right :—
   (i) to move freely throughout the territory of the State; and
   (ii) to reside in any part of the territory of the State.
2. The State may, however, require a refugee to comply with provisions as to registration or reporting or otherwise so as to regulate or restrict the right of movement and residence as it may consider appropriate in any special circumstances or in the national or public interest.

Article VII

Personal rights

Subject to local laws, regulations and orders, a refugee shall have the right :—

(i) to freedom from arbitrary arrest;
(ii) to freedom to profess and practise his own religion;
(iii) to have protection of the executive and police authorities of the State;
(iv) to have access to the courts of law; and
(v) to have legal assistance.

Article VIII

Right to property

Subject to local laws, regulations, and orders and subject also to the conditions imposed for the grant of asylum in the State, a refugee shall have the right to acquire, hold and dispose of property.

Article IX

Expulsion and deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not ordinarily expel a refugee.
2. Before expelling a refugee' the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary.
3. A refugee shall not be deported to a State where his life or liberty would be threatend for reasons of race, colour, religion, political belief or membership of a particular social group.

Article X

Conflict with treaties or conventions

Where the provisions of a treaty or convention between two or more States conflict with the principles set forth herein' the provisions of such treaty or convention shall prevail as between those States.

Article XI

Nothing in these articles shall be deemed to impair any higher rights and benefits granted by a State to refugees.

VII. COMMENTS OF U.N.H.C.R ON THE DRAFT PRINCIPLES CONCERNING TREATMENT OF REFUGEES ADOPTED BY THE COMMITTEE IN ITS INTERIM REPORT AT THE SEVENTH SESSION

Article 1

Definition, inclusion and exclusion clauses

The definition in the draft of Principles on the rights a refugee should have, follows in general the definition in the 1951 UN Refugee Convention in basing refugee status on the three elements of :—

(i) the refugee's persecution or fear of persecution for specified reasons;

(ii) the refugee leaving, or being outside his State of origin,

(iii) the refugee's resulting inability or unwillingness to maintain his relations with this State.

The definition differs in the following respects and with the consequences outlined below :

(i) The *mention of persecution as well as fear of persecution* makes explicit that not only those who, fear persecution but also those who have suffered it come within the definition. The drafters of the 1951 Convention assumed that the fear of all persons who had been persecuted was well-founded and that this could be therefore omitted.

The specified reasons which make the well-founded fear relevant are identical with those of the 1951 Convention except

for the *replacement of the concept of "Nationality" by that of "Colour"*. The inclusion of the concept of "Nationality" in the 1951 Convention was to emphasise its relevance to the situation of refugees who belonged to national minorities which were absorbed against their will by larger national entities.

(ii) The mention of the *fact of leaving a country as well as the fact of being outside it* for specified reasons as being relevant to refugee status also makes explicit the understanding of the drafters of the 1951 Convention who discussed the point at length. Their intention was to ensure that persons who were outside their country of origin at the time of the events which caused them thereafter to have well-founded fear should have the same protection as persons who only left their country subsequent to such events. Otherwise the man on the spot, the refugee "*sur place*" as he is usually termed, would be unprotected. Further, they argued that since no person would be a refugee until he had left his country, whether he left before or after the events which gave rise to his fear, mention of "leaving" as well as of "being outside" could be omitted.

There is a further technical difference in that *stateless refugees are defined with regard to their "habitual residence"* rather than their "former" habitual residence. If a stateless person did not have his habitual residence even at some previous time in the country of which he has fear, the satuation there would not be relevant to his status. A distinction was therefore made between his *present* habitual residence and his *former* habitual residence. Otherwise it could be argued that stateless persons already outside their country of habitual residence at the time of the events which resulted in their becoming refugees would have no protection from being sent back to their country of origin.

The change of the word "*or*" which links (a) and (b) of the draft principles to "*and*" as was suggested in the discussions would result in the exclusion of all refugees "*sur place*" from the protection of which they are just as much in need as refugees who come subsequently.

Exception (1) : No comments.

Exception (2) : The second exception is generally less exclusive than that of the 1951 Convention since it is not sufficient for there to be serious reasons for believing that this provision applies. Only person who have indeed acted or committed one of the acts specified are excluded. Unless this can be demonstrated exclusion does not occur.

On the other hand, the corresponding exclusion clause in the 1951 Convention (Article 1(F) (e)) refers to a person 'who has committed a serious non-political crime *outside the country of refuge prior to his admission to that country as a refugee.* It was considered, when the 1951 Convention was drafted, that this exclusion clause should be limited to fugitives from justice and to persons who, because of their previous serious criminal record, could not be regarded as *bona fide* refugees. It was not, however, intended to cause loss of refugee status by any refugee who committed a serious crime even if this occurred a long time after he became a refugee and in such a completely different context that it was quite unconnected with his refugee status. The application of normal sanction would not, of course, be excluded.

Article II

Definition, cessation clauses

This article corresponds to Article 1 C of the 1951 Convention, but differs from it by enumerating only two situations in which refugee status should be lost, i. e. the refugee's voluntary return to his country of origin and the voluntary acquisition of a new nationality.

With regard to the *voluntary return* the 1951 Convention speaks not of "return" but of "re-establishment" which means that a short visit to the country of origin should not necessarily result in the refugee's losing his status. This principle has found wide-spread recognition in the practice of States in recognition in which refugees sometimes find themselves and which makes understandable the refugee's desire, if the circumstances allow this, for a short-term visit to that country, i. e. for regulation of urgent family matters. Furthermore, short visit to the home country have often helped the refugee to obtain a picture of the present situation in his home country which eventually led to repatriation. It might, therefore, be desirable to adjust the text of Article II(e) to Article 1.C(4) of the 1951 Convention. In addition, in the case of stateless persons, reference should not be made to the State of which he is a habitual resident, but to the State of which he *was* a habitual resident, which would make clear that the country was meant which he has left or outside of which he remained for fear of persecution.

With regard to the second cessation clause an assimilation of the text of Article 1.C(3) of the 1951 Convention might more adequately cover the special situation in which a refugee finds himself. *Acquisition of a new nationality* should lead to loss of refugee status only if this new nationality is really effective. The present text could result in a refugee's losing his protective status on the acquisition of a new nationality in spite of a subsequent refusal of national protection even though the person concerned is entitled to it under the law of the country of which he has become a national.

According to a proposal made by the delegate of India during the discussion of the article on expulsion, refugee status would also be lost if a refugee does not return to the country of origin or does not avail himself of the protection of that State even *after the circumstances in which he became a refugee ceased to exist*. (This clause should, if adopted, be included in Article

II of the draft principles rather than in Article IX). A clause to this effect which corresponds to Article 1.C(5) and (6) of the 1951 Convention might lead to further clarification in the sense that refugee status should only be invoked as long as a person can reasonably have fear of being persecuted in the country concerned. On the other hand, such a clause is likely to raise difficult questions of interpretation. It should not lead to frequent re-examination of refugee status as long as the conditions in the country concerned have not so fundamentally changed that the basis for fear cannot be said to exist any longer at all. Otherwise this clause might allow refugee status to be subject to unduly frequent review, to the detriment of the refugee's sense of security which international protection is intended to create and the element of continuity which is inherent in refugee status.

Furthermore, attention is drawn to the proviso contained in Article 1.C(5) and (6) according to which this cessation clause shall not apply to a refugee who is able to invoke *compelling reasons arising out of previous persecution* for refusing to return to the country of his former habitual residence. This provison was intended to make it possible for a person to maintain his refugee status, for instance if the particularly serious persecution from which he or his family have suffered makes it understandable that he does not wish to return to that country or to avail himself of the protection of its authorities. In such circumstances the wish of the refugee should be respected as far as possible.

In the 1951 Convention two grounds for cessation are mentioned which are not included in the draft principles:

The first stipulates that a person loses his refugee status if he has *voluntarily reavailed himself of the protection of the country of his nationality*. This clause deals with the situation where a refugee while still being outside the country of his nationality reavails himself of its protection, the most frequent example being that he accepts a national passport or a similar

document. It is evident that such a person is no longer in need of a special status and of international protection. A reference to this situation may, however, be desirable since the cessation clauses are meant to be exhaustive. Failing such a provision doubts may arise with regard to the status of such a person.

Finally, the 1951 Convention provides that a person loses refugee status if, *having lost his nationality he has voluntarily reacquired it*. This situation may be considered as being covered by Article II (ii), although the formulation "of another State" may give rise to doubts. It may therefore be desirable to introduce after the words "of another State" the words "or of the State whose nationality he has lost."

Article III—Asylum

This article just confirms the traditional doctrine according to which a State in its sovereignty decides whom it shall admit to its territory.

According to this traditional doctrine the right of asylum is the sovereign right of the State to grant asylum which in so doing does not commit an unfriendly act towards other States. More recently, there has also been a general recognition that asylum is granted by States on humanitarian grounds and in the exercise of a humanitarian duty. There is, furthermore, a new trend in the doctrine on asylum which places the emphasis on the position of the individual and views the grant of asylum from the standpoint of the protection of his human rights.

This trend is reflected in the Draft Declaration on the Right of Asylum at present before the Third Committee of the U.N. General Assembly which stipulates the principle of *non-refoulement* from which States should deviate only in exceptional cases. Although it is maintained that it is for the receiving State to decide whether there is in fact any basis for the assertion that there are "overriding reasons of national security or safeguarding of the population" for deviating from

the principle of *non-refoulement*, it is provided that in the event of such deviation the State concerned "should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate to enable the person thus endangered to seek asylum in another country."

There is a world-wide recognition of the fact that persons who are in fear of persecution should at least be given temporary asylum, and it seems to be desirable that this principle somehow is reflected in the Draft Principles. This may be done in terms similar to Article 3 of the Draft U.N. Declaration.

Article IV—Right of return

With regard to Article IV, it is for consideration whether in addition to the right of return, emphasis should not be given to the principle that no refugee shall be repatriated against his will, which has found its expression in so many rosolutions of the General Assembly.

Article V—Right to compensation

No Comments.

Article VI—Right of movement and residence

No Comments.

Article VII—Personal rights

To the extent to which certain of the rights mentioned in this Article are not expressly spelled out in the Convention, the Article may be said to be more favourable, e.g. freedom from arbitrary arrest and the right to have the protection of the executive and police authorities of the State. On the other hand, as regards those rights which are provided for in the Convention, i.e. freedom of religion, *access to courts and legal assistance*, these rights are made "subject to local laws, regulations and orders". This may open the possibility of

the application of a lower standard than that laid down by the Convention as regards these various rights.

As regards religion, the Article only refers to the refugee's "freedom to profess and practise his own religion". The Convention, on the other hand (Article 4), also mentions the refugee's *freedom as regards the religious education of their children*".

The Article mentions access to courts in general terms and legal assistance. Article 16, paragraph 2, of the Convention requires the grant to refugees of the treatment enjoyed by the nationals of the country of their habitual residence in matters pertaining to access to courts *including legal assistance and exemption from cautio judicatum solvi*. The latter is not referred to in the draft article.

Article VIII

Right to property

This Article requires the grant to refugees of the right to acquire, hold and dispose of property "subject to local laws, regulations and orders and subject also to the conditions imposed for the grant of asylum in the State". This condition could lead to a discrepancy with the Convention which, as regards the acquisition of movable and immovable property, lays down (Article 13) as a minimum standard "treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances".

Article IX

Expulsion and deportation

This draft Article differes in important points from the related 1951 Convention provisions. First, the draft affords less protection to refugees against expulsion by replacing the absolute "The Contracting States shall not expel a refugee..."

by the word "The State shall not ordinarily expel a refugee". The *introduction of the word "ordinarily"* opens the way for any otherwise disallowed expulsion to be permitted on the basis of any circumstances which can be considered out of the ordinary.

The second factor which results in the draft affording less protection to the refugee is the *replacement of the reasons justifying expulsion* in the 1951 Convention, namely "grounds of national security or public order" by "*national or public interest or on the ground of violation of the conditions of asylum*". National and public interests are not terms normally found in legal texts and therefore have the disadvantage of having no generally accepted definition which would prevent their interpretation at the complete discretion of any authority co ncerned. They are, therefore, likely to be interpreted primarily with the interest of the authority concerned in mind and without taking into account the refugee's precarious situation and constant need of protection.

The introduction of the element of *violation of the "conditions of asylum"* also may result in a grave danger to a refugee, who may infringe a very minor condition of the residence regulations to which he may be subject. He could, therefore, be expelled although the infringement might only be technical or quite out of proportion to the danger to the refugee if deported.

The draft omits, furthermore, any *provision for legal remedies*, such as the right of appeal against the decision, to be represented by counsel or to have the decision made in accordance with the due process of law, which are provided for in Article 32 of the 1951 Convention. It would, therefore, seem desirable to adapt paragraph 1 of draft Article IX more along the lines of Article 32, paragraph 1, of the 1951 Convention and to include after paragraph 1 a new paragraph corresponding to Article 32, paragraph 2, of the Convention.

Finally, with regard to paragraph 4 of Article IX the question arises whether the formulation "*a refugee shall not be deported*" is clear enough to include similar measure to which a refugee may be subjected such as *refoulement* at the border, summary expulsion and other methods of surrender. It might be desirable, therefore, to include after the word "deported" a formulation similar to the words "or returned in any manner whatsoever", which are used in Article 33 of the 1951 Convention. It is for consideration whether there should not be a paragraph in this article—or even a separate article—on extradition which might read as follows :

Article 3

Extradition

1. Extradition shall not be granted in the following circumstances :

(a) If the offence in respect of which it is requested is regarded by the requested Member State as a political offence or as an offence connected with a political offence.

(b) If the requested Member State has substantial grounds for believing that the granting of a request for extradition for an ordinary criminal offence would result in the prosecution or punishment of a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

2. A refugee shall not be extradited to a country to which his expulsion is not permitted under Article 2 (2).

3. On the same basis a refugee shall also not be expelled to a country to which his extradition is not permitted under paragraph 1 above.

Article X

Conflict with treaties or conventions

To the extent to which these Articles are adopted by States which are not parties to the 1951 Convention or to an instrument applying the Convention to post-dateline refugees, the present Article could result in a diminution of the rights of refugees to the extent to which these may be inconsistent with any other treaty or Convention. A possible alternative formulation might be to provide (a) that where the present Articles provide for the grant to refugees of more favourable rights than provided for in other international instruments, the present Articles shall prevail and (b) that the present Articles should not impair any similar or more favourable rights to be granted to refugees by other treaties or conventions. This would also seem to be in the spirit of Article XI which safeguards more favourable rights and benefits granted by a State to refugees.

We feel it should definitely be made clear that this Article should not give States the possibility of departing from the principles adopted by the Committee simply by agreeing between themselves on other principles of a lower standard.

Article XI

This Article is in accordance with Article 5 of the 1951 Convention which provides that : "Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention". These rights and benefits need not, however, necessarily be "higher" than those already provided for but may relate to other matters not explicitly mentioned. It would, therefore, seem appropriate for the word "higher" to be omitted from Article XI.

We would also like to make a remark of a more general nature which applies to the present Articles VI, VII and VIII

which, as you know, have been more or less verbally taken over from the principles on the treatment of aliens. In all these articles the rights stipulated are made "subject to the local laws, regulations and orders" and some of them "subject also to the conditions imposed for the grant of asylum". We wonder whether it is logically correct to make a principle subject to an exception which is so broadly defined that its application may nullify the principle itself. There are certain principles which, it would seem, are of a higher order and should not be made subject to specific laws. This applies in particular to the principle prohibiting arbitrary arrest which is universally admitted to be an absolute principle. The observance of such principles is important for refugees who, as distinct from other aliens, cannot return to their home country if they do not like the conditions in their country of residence and who generally also have no choice between various countries of asylum. In this connection we should like to refer to the 1951 Convention which for instance in Article 26 makes the freedom of movement subject to any regulations *applicable to aliens generally in the same circumstances*. An adoption of a similar wording might improve these provisions.

IX. FINAL REPORT OF THE COMMITTEE ADOPTED AT THE EIGHTH SESSION

IX. FINAL REPORT OF THE COMMITTEE ADOPTED AT THE EIGHTH SESSION

The Government of the United Arab Republic by a reference made under Article 3(b) of the Statutes requested this Committee to consider the subject of "The Rights of Refugees" in general and in particular the following issues :

1. Definition of refugees and their classifications.
2. The relation between the problem of refugees and the preservation of peace and justice in the world.
3. Principles guiding the solution of refugee problem :
   (a) The right of asylum.
   (b) The right of repatriation and resettlement.
   (c) The right of indemnification.
4. Rights of refugees in the country of residence :
   (a) The right to life and liberty.
   (b) The right to fair trial.
   (c) The right to speech, conscience and religion.
   (d) The right of employment.
   (e) The right to social security.
   (f) The right to education.
5. International assistance to refugees :
   (a) Travel documents-visas.
   (b) Financial assistance.
   (c) Technical assistance.
   (d) International co-operation in the field of refugees : International agreements and International Agencies.

2. The subject was placed on the Agenda of the Sixth Session of the Committee for consideration. At that Session the Committee generally discussed the subject on the basis of a note prepared by the Secretariat and a memorandum submitted by the Office of the United Nations High Commissioner for Refugees. The Committee after a general discussion on the subject decided to direct the Secretariat to collect further material, particularly on the issues relating to compensation, the minimum standard of treatment of a refugee in the State of asylum and the possibility of constitution of international tribunals for determination of compensation which could be claimed by a refugee. The Secretariat, in accordance with the directions of the Committee, submitted a comprehensive note on the subject including certain Draft Articles on the Rights of Refugees to serve as a basis of discussion in the Committee. The Secretariat with the assistance of the United Nations High Commissioner for Refugees had collected considerable material on the subject, which was placed before the Committee.

3. The Committee gave detailed consideration to this subject at its Seventh Session held in Baghdad in March 1965 and adopted an Interim Report containing provisional formulation of certain principles concerning the status and treatment of refugees. The Committee had, however, decided to postpone consideration of the question relating to implementation of the right of a refugee to return to his homeland and the right to compensation, which rights were recognised and embodied in the Draft Principles provisionally adopted by the Committee at its Baghdad Session. The Committee also postponed consideration of the provisions of the United Nations Refugee Convention of 1951.

4. The Interim Report drawn up by the Committee at its Baghdad Session was transmitted to the Governments of the participating countries as also to the United Nations High Commissioner for Refugees for their comments. Detailed comments were received on the Interim Report which have been placed before the Committee for consideration.

5. The Committee, having regard to the importance of the subject to the participating States and the urgency of the problem, decided to take up this subject as the first item on the agenda of this Session, and gave detailed consideration to it at its second, third, fourth, fifth, sixth, seventh, eighth and ninth meetings. The Committee was greatly assisted in its task by the Legal adviser to the United Nations High Commissioner for Refugees who attended as observer at the invitation of the Committee and participated in the discussions. The Committee also had the benefit of hearing the views of the representative of the League of Arab States who attended the Session and took part in the deliberations.

6. The Committee, on a careful consideration of the various aspects of the subject, came to the conclusion that having regard to the fact that the Committee's functions under its Statute were of an advisory character, the appropriate manner in which it could deal with the subject of refugees was to define the term "refugee" and formulate the principles regarding the right of asylum, the rights and obligations of refugees, and the minimum standard of treatment in the state of asylum. The Committee considered that it would be up to the Government of each participating State to decide as to how it would give effect to the Committee's recommendations whether by entering into multilateral or bilateral arrangements or by recognising the principles formulated by the Committee in their own municipal laws. In this view of the matter the Committee has formulated the general principles on the subject which are set out in the *Annexure* to this Report.

7. The Committee considered the question as to whether any provision should be made for the implementation of the right of a refugee to return to the State or Country of his nationality as also his right to receive compensation which have been provided for in the Articles containing the principles concerning treatment of refugees as adopted by the Committee at this Session. The Delegate of Ceylon expressed the view that it was neither possible nor necessary to make any provision for

implementation of these rights. The Delegate of Japan was of the view that the circumstances were not ripe for making any recommendation on this question, and the Delegate of Pakistan was of the opinion that it was not practicable at present to make any provision in this respect. The Delegates of Ghana, India, Indonesia and Thailand were of the view that this question should be kept pending and might be examined by the Committee at a suitable time, and it was so decided.

8. The Committee also came to the conclusion that it was not necessary to examine in detail the provisions of the 1951 U.N. Convention on Refugees as the same had been taken note of by the Committee in formulating the principles on the subject.

9. The Committee records its deep appreciation of the assistance rendered to the Committee by the Office of the United Nations High Commissioner for Refugees in the matter of collection of material as also of assistance given to the Committee in the deliberations on this subject at the Sixth, Seventh and Eighth Sessions.

Sd/- SANYA DHARMASAKTI
PRESIDENT

ANNEXURE

PRINCIPLES CONCERNING TREATMENT OF REFUGEES

Article I

Definition of the term "Refugee"

A Refugee is a person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, political belief or membership of a particular social group:

(a) leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or,

(b) being outside such State or Country, is unable or unwilling to return to it or to avail himself of its protection.

Exceptions :

(1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or Country of which he is a national.

(2) A person who prior to his admission into the Country of refuge, has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purposes and principles of the United Nations shall not be a refugee.

Explanation : The dependents of a refugee shall be deemed to be refugees.

Explanation : The expression "leaves" includes voluntary as well as involuntary leaving.

NOTES

(i) The Delegation of Ghana reserved its position on this Article.

(ii) The Delegations of Iraq, Pakistan and the United Arab Republic expressed the view that, in their opinion, the definition of the term "Refugee" includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to occupying the State.

(iii) The Delegations of Ceylon and Japan expressed the view that in their opinion the expression "persecution" means something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilised nations.

(iv) The Delegations of Japan and Thailand expressed the view that the word "and" should be substituted for the word "or" in the last line of paragraph (a).

(v) In Exception (2) the words "prior to his admission into the Country of refuge" were inserted by way of amendment to the original text of the Draft Articles on the proposal of the Delegation of Ceylon and accepted by the Delegations of India, Indonesia, Japan and Pakistan. The Delegations of Iraq and Thailand did not accept the amendment.

(vi) The Delegation of Japan proposed insertion of the following additional paragraph in the Article in relation to proposal under note (iv) :

"A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State or the Country of which he is a habitual resident, at the time of the events which caused him to have a well-founded fear of above-mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered refugee".

The Delegations of Ceylon, India, Indonesia, Iraq and Pakistan were of the view that this additional paragraph was unnecessary. The Delegation of Thailand reserved its position on this paragraph.

Article II

Loss of status as refugee

1. A refugee shall lose his status as refugee if—

(i) he voluntarily returns permanently to the State of which he was a national or the Country of his nationality or if he has no nationality to the State or the Country of which he was a habitual resident ; or

(ii) he has voluntarily re-availed himself of the protection of the State or Country of his nationality ; or

(iii) he voluntarily acquires the nationality of another State or Country and is entitled to the protection of that State or Country.

2. A refugee shall lose his status as a refugee if he does not return to the State of which he is a national, or to the country of his nationality, or, if he has no nationality, to the

State or Country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or Country after the circumstances in which he became a refugee have ceased to exist.

Explanation :

It would be for the State of asylum of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist.

NOTES

(i) The Delegations of Iraq and the United Arab Republic reserved their position on paragraph 1 (iii).

(ii) The Delegation of Thailand wished it to be recorded that the loss of status as a refugee under paragraph 1 (ii) will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality because the right of protection was that of his country and not that of the individual.

Article III

Asylum to a refugee

1. A State has the sovereign right to grant or refuse asylum in its territory to a refugee.

2. The exercise of the right to grant such asylum to a refugee shall be respected by all other States and shall not be regarded as an unfriendly act.

3. No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to

measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

4. In cases where a State decides to apply any of the abovementioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article IV

Right of return

A refugee shall have the right to return if he so chooses to the State of which he is a national or to the country of his nationality and in this event it shall be the duty of such State or Country to receive him.

Article V

Right to compensation

1. A refugee shall have the right to receive compensation from the State or the Country which he left or to which he was unable to return.

2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependants of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authorities of the State or Country, public officials or mob violence.

NOTES

(i) The Delegations of Pakistan and the United Arab Republic were of the view that the word "also"

should be inserted before the words "such loss" in paragraph 2.

(ii) The Delegations of India and Japan expressed the view that the words "deprivation of personal liberty in denial of human rights" should be omitted.

(iii) The Delegations of Ceylon, Japan and Thailand suggested that the words "in the circumstances in which the State would incur state responsibility for such treatment to aliens under international law" should be added at the end of paragraph 2.

(iv) The Delegations of Ceylon, Japan, Pakistan and Thailand expressed the view that compensation should be payable also in respect of the denial of the refugee's right to return to the State of which he is a national.

(v) The Delegation of Ceylon was opposed to the inclusion of the words "or country" in this Article.

(vi) The Delegations of Ceylon, Ghana, India and Indonesia were of the view that in order to clarify the position the words "arising out of events which gave rise to the refugee leaving such State or Country" should be added to paragraph 2 of this Article after the words "mob violence".

Article VI

Minimum standard of treatment

1. A State shall accord to refugees treatment in no way less favourable than that generally accorded to aliens in similar circumstances.

2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, appended to these principles, to the extent that they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.

NOTES

(i) The Delegations of Iraq and Pakistan were of the view that a refugee should generally be granted the standard of treatment applicable to the nationals of the country of asylum.

(ii) The Delegation of Indonesia reserved its position on paragraph 3 of the Article.

(iii) The Delegations of Indonesia and Thailand reserved their position on paragraph 4 of the Article.

Article VII

Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations.

NOTES

(i) The Delegations of India, Japan and Thailand were of the view that the words "or any other country" should be added after the words "the country of refuge" in this Article. The other Delegations were of the view that such addition was not necessary.

(ii) The Delegation of Iraq was of the view that the inclusion of the words "or in activities inconsistent with or against the principles and purposes of the United Nations" was inappropriate as in this Article what was being dealt with was the right and obligation of the refugee and not that of the State.

Article VIII

Expulsion and deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary.

3. A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

NOTES

(i) The Delegations of Ceylon, Ghana and Japan did not accept the text of paragraph 1. In the view of these Delegations the text of this paragraph should read as follows :

A State shall not expel or deport a refugee save on grounds of national security or public order, or a violation of any of the vital or fundamental conditions of asylum".

(ii) The Delegations of Ceylon and Ghana were of the view that in paragraph 2 the words "as generally applicable to aliens under such circumstances" should be added at the end of the paragraph after the word "necessary".

Article IX

Nothing in these articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

APPENDIX

PRINCIPLES CONCERNING ADMISSION AND TREATMENT OF ALIENS

(Adopted by the Committee at its Fourth Session)

Article 1

Definition of the term Alien

An alien is a person who is not a citizen or national of the State concerned.

Note : In a Commonwealth country the status of the nationals of other Commonwealth countries shall be governed by the provisions of its laws, regulations and orders.

Article 2

(1) The admission of aliens into a State shall be at the discretion of that State.

(2) A State may—

(i) Prescribe conditions for entry of aliens into its territory;

(ii) except in special circumstances, refuse admission into its territory of aliens who do not possess travel documents to its satisfaction;

(iii) make a distinction between aliens seeking admission for temporary sojourn and aliens seeking admission for permanent residence in its territory; and

(iv) restrict or prohibit temporarily the entry into its territory of all or any class of aliens in its national or public interest.

Note : (1) The Delegation of Japan is of the view that in sub-clause (iv) of Clause (2) of this Article the words "armed conflicts or national emergency" should be substituted in place of the words "national or public interest".

(2) The Delegation of Indonesia stated that his Delegation preferred Clause (2) of Article 2 as adopted by tho Committee at its Third Session in Colombo.

Article 3

A State shall not refuse to an alien entry into its territory on the ground only of his race, religion, sex or colour.

Article 4

Admission into the territory of a State may be refused to an alien—

(i) who is in a condition of vagabondage, beggary or vagrancy;

(ii) who is of unsound mind or is mentally defective;

(iii) who is suffering from a loathsome, incurable or contagious disease of a kind likely to be prejudicial to public health;

(iv) who is a stowaway, a habitual narcotic user, an unlawful dealer in opium or narcotics, a prostitute, a procerer or person living on the earnings of prostitution;

(v) who is an indigent person or person who has no adequate means of supporting himself or has no sufficient guarantee to support him at the place of his destination;

(vi) who is reasonably suspected to have committed or is being tried or has been prosecuted for serious infractions of law abroad;

(vii) who is reasonably believed to have committed an extraditable offence abroad or is convicted or is convicted of such an offence abroad;

(viii) who has been expelled or deported from another State; and

(ix) whose entry or presence is likely to affect prejudicially its national or public interest.

Article 5

A State may admit an alien seeking entry into its territory for the purpose of transit, tourism or study, on the condition that he is forbidden from making his residence in its territory permanent.

Article 6

A State shall have the right to offer or provide asylum in its territory to political refugees or to political offenders on such conditions as the State may stipulate as being appropriate in the circumstances.

Article 7

(1) Subject to conditions imposed for his admission into the State, and subject also to the local laws, regulations and orders, an alien shall have the right :—

(i) to move freely throughout the territory of the State; and

(ii) to reside in any part of the territory of the State.

(2) The State may, however, require an alien to comply with provisions as to registration or reporting or otherwise so as to regulate or restrict the right of movement and residence as it may consider appropriate in any special circumstances or in the national or public interest.

Note : The Delegation of Indonesia expressed preference for the text adopted at the Colombo Session in Clause (1) of this Article.

Article 8

Subject to local laws, regulations and orders, an alien shall have the right :—

(i) to freedom from arbitrary arrest;

(ii) to freedom to profess and practise his own religion;

(iii) to have protection of the executive and police authorities ot the State;

(iv) to have access to the courts of law; and

(v) to have legal assistance.

Note : (a) The Delegation of Ceylon was of the view that in Clause (ii) the expression "to freedom of religious belief and practice" should be substituted.

(b) The Delegations of Burma and Indonesia suggested retention of Clause (2) of the Draft adopted at the Colombo Session which provides that "Aliens shall enjoy on a basis of equality with nationals protection of the local laws."

The Delegation of Iraq and Japan had no objection to the retention of this clause.

Article 9

A State may prohibit or regulate professional or business activities or any other employment of aliens within its territory.

Note : The Delegation of Iraq was of the view that the words "shall be free to" should be inserted in place of the word "may". The Delegation of Pakistan wished to keep its position open.

Article 10

An alien shall not be entitled to any political rights, including the right of suffrage, nor shall he be entitled to engage himself in political activities, except as otherwise provided by local laws, regulations and orders.

Article 11

Subject to local laws, regulations, and orders and subject also to the conditions imposed for his admission into the State, an alien shall have the right to acquire, hold and dispose of property.

Note : The Delegation of Indonesia, whilst accepting the provisions of this Article, stated that according to the new laws of Indonesia aliens cannot acquire title to property though they can hold property.

Article 12

(1) The State shall, however, have the right to acquire, expropriate or nationalise the property of an alien. Compensation shall be paid for such acquisition, expropriation or nationalisation in accordance with local laws, regulations and orders.

(2) The State shall also have the right to dispose of or otherwise lawfully deal with the property of an alien under orders of expulsion or deportation.

Note : (i) The Delegation of Japan did not accept the provisions of this Article. According to its view "just compensation" should be paid for all acquisition, nationalization or expropriation and not "compensation in accordance with local laws, regulations and orders." The Delegation could not accept the provisions of Clause (2) as such a provision would be contrary to the laws of Japan.

(ii) The Delegation of Indonesia reserved its position on Clause (2) of this Article.

(iii) The Delegation of Pakistan stated that though it accepted the provisions of this Article, the view of the Delegation was that acquisition, nationalisation or expropriation shold be in the national interest or for a public purpose.

Article 13

(1) An alien should be liable to payment of taxes and duties in accordance with the laws and regulations of the State.

(2) An alien shall not be subjected to forced loans which are unjust or discriminatory.

Note : (i) Clause (1) of this Article was accepted by all Delegations except that of Japan. The Delegation of Japan wished a proviso to that clause to be inserted to read as follows :

"Provided that the State shall not discriminate between aliens and nationals in levying the taxes and duties."

(ii) Clause (2) was accepted by the Delegations of Burma, India, Indonesia and Iraq.

The Delegation of Ceylon wished the words "or discriminatory" to be deleted. The Delegate of Japan wished the clause to be drafted as "An alien shall not be subject to forced loans." The Delegation of Pakistan suggested the following draft : An alien shall not be subjected to loans in violation of the laws, regulations and orders applicable to him." The Delegation of the United Arab Republic was of the view that the draft should be as follows : "An alien shall not be subjected to forced loans."

Article 14

(1) Aliens may be required to perform police, fire-brigade or militia duty for the protection of life and property in cases of emergency or imminent need.

(2) Aliens shall not be compelled to enlist themselves in the armed forces of the State.

(3) Aliens may, however, voluntarily enlist themselves in the armed forces of the State with the express consent of their home State which may be withdrawn at any time.

(4) Aliens may voluntarily enlist themselves in the police or fire-brigade service on the same conditions as nationals.

Note : The Delegation of Indonesia reserved its position on the whole Article.

The Delegation of Iraq reserved its position on Clause (3) of this Article.

The Delegation of Japan wished Clause (3) of this Article to be deleted.

Article 15

(1) A State shall have the right in accordance with its local laws, regulations and orders to impose such restrictions as it may deem necessary on an alien leaving its territory.

(2) Such restrictions on an alien leaving the State may include any exit visa or tax clearance certificate to be procured by the alien from the authorities concerned.

(3) Subject to the local laws, regulations and orders a State shall permit an alien leaving its territory to take his personal effects with him.

Note : (i) The Delegate of Pakistan reserved his position on Clause (3).

(ii) The Delegates of Ceylon and United Arab Republic wished the following clause to be retained in this Article :

"An Alien who has fulfilled all his local obligations in the State of residence, shall not be prevented from departing from the State of residence."

Article 16

(1) A State shall have the right to order expulsion or deportation of an undesirable alien in accordance with its local laws, regulations and orders.

(2) The State shall, unless the circumstances warrant otherwise, allow an alien under orders of expulsion or deportation reasonable time to wind up his personal and other affairs.

(3) If an alien under orders of expulsion or deportation fails to leave the State within the time allowed, or, after leaving the State, returns to the state without its permission, he may be expelled or deported by force, besides being subjected to arrest, detention and punishment in accordance with local laws, regulations and orders.

Article 17

A State shall not refuse to receive its nationals expelled or deported from the territory of another State.

Note : The Delegation of Pakistan suggested the addition of the word "normally" before the word "refuse."

Article 18

Where the provisions of a treaty or convention between any of the signatory States conflict with the principles set forth herein, the provisions of such treaty or convention shall prevail as between those States.

APPENDICES

I

CONVENTION RELATING TO THE STATUS OF REFUGEES

(Geneva, July 28, 1951)

Preamble

The High Contracting Parties

CONSIDERING that the Charter of the United Nations and the Universal Declaration of Human Rights approved on December 10, 1948, by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

CONSIDERING that the United Nations has on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible excercise of these fundamental rights and freedoms,

CONSIDERING that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

CONSIDERING that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot therefor be achieved without international co-operation,

EXPRESSING the wish that all States, recognising the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

NOTING that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and

recognising that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

HAVE AGREED as follows :—

Chapter I

GENERAL PROVISIONS

Article 1

Definition of the Term "Refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who :

(1) Has been considered a refugee under the Arrangements of May 12, 1926, and June 30, 1928, or under the Convention of October 28, 1933, and February 10, 1938, the Protocol of September 14, 1939, or the Constitution of the International Refugee Organisation :

Decisions of non-eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent the status of refugee being acorded to persons who fulfil the conditions of paragraph 2 of this action ;

(2) As a result of events occurring before January 1, 1951, and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membeship of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more then one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality, if without any valid reason based on well-

founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

(B). 1 For the purpose of this Convention, the words "events occurring before January 1, 1951, in article 1 section A, shall be understood to mean either

(a) "events occurring in Europe before January 1, 1951 ; or

(b) "events occuring in Europe or elsewhere before January 1, 1951" ;

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if ;

(1) He has voluntarily re-availed himself of the protection of the country of his nationality ; or

(2) Having lost his nationality, he has voluntarily reacquired it ; or

(3) He has acquired a new nationality ; and enjoys the protection of the country of his new nationality ; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution ; or

(5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have

ceased to exist, continues to refuse to avail himself of the protection of the country of his nationality ;

Provided that this paragraph shall not apply to a refugee falling under Section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.

(6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence ;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugee protection or assistance.

When such protection or assistance has ceased for any reasons, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person 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 the country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that :

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes ;

(b) he has committed a serious non-political crime outside the country of refugee prior to his admission to that country as a refugee ;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2

General Obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3

Non-discrimination

The contracting States shall accord to refugees within the territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5

Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6

The term "in the same circumstances"

For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including

requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him. with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7

Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8

Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a

foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality.

Article 9

Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10

Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11

Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of Contracting State, that State shall give sympathetic consideration to their establishment on

its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II
JURIDICAL STATUS

Article 12

Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognised by the law of that State had he not become a refugee.

Article 13

Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and and other contracts relating to movable and immovable property.

Article 14

Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee

shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15

Rights of association

As regards non-political and non-profit-making assocations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16

Access to courts

1. A refugee shall have free access to the courts of law in the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CAPTER III
GAINFUL EMPLOYMENT

Article 17

Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment

accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions :

(a) He has completed three years' residence in the country.

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruiment or under immigration schemes.

Article 18

Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19

Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognised by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV

WELFARE

Article 20

Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21

Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22

Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23

Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24

Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters :

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities : remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining ;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations,

covered by a social security scheme), subject to the following limitations :

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition ;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the State signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V
ADMINISTRATIVE MEASURES

Article 25

Administrative assistance

1. 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 in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be deliverd under their supervision to refugees such documents or certificates as would normally be delivered to aliens by or through their national authorities.

3. Documents or certificates so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26

Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27

Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognised and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29

Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30

Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they

have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31

Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national

security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during the period such internal measures as they may deem necessary.

Article 33

Prohibition of expulsion or return ("Refoulement")

1. No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34

Naturalisation

The Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI
EXECUTORY AND TRANSITORY PROVISIONS

Article 35

Cooperation of the national authorities with the United Nations

1. The Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning :

(a) the condition of refugees,

(b) the implementation of this Convention, and

(c) laws, regulations and decrees which are, or may hereafter be in force relating to refugees.

Article 36

Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37

Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to

it, the arrangements of July 5, 1922, May 31, 1924, May 12, 1926, June 30, 1928, and July 30, 1935, the Conventions of October 28, 1933, and February 10, 1938, the Protocol of September 14, 1939, and the Agreement of October 115, 1946.

CHAPTER VII
FINAL CLAUSES

Article 38

Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39

Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on July 28, 1951, and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from July 28 to August 31, 1951, and shall be re-opened for signature at the Headquarters of the United Nations from September 17, 1951 to December 31, 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from July 28, 1951, for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an

instrument of accession with the Secretary-General of the United Nations.

Article 40

Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41

Federal clause

In the case of a federal or non-unitary State, the following provisions shall apply :

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States ;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment.

(c) A Federal State party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42

Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43

Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or

accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44

Denunciation

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

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45

Revision

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.

Article 46

Notification by the Secretary-General of the United Nations

Th Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39 :

(a) Of declarations and notifications in accordance with section B of article 1 ;

(b) Of signatures, ratifications and accessions in accordance with article 39 ;

(c) Of declarations and notifications in accordance with article 40 ;

(d) Of reservations and withdrawals in accordance with article 42 ;

(e) Of the date on which this Convention will come into force in accordance with article 43 ;

(f) Of denunciations and notifications in accordance with article 44 ;

(g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorised, have signed this Convention on behalf of their respective Governments,

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

SCHEDULE

Paragraph 1

1. The travel document referred to in article 28 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a perent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one two years, at the discretion of the issuing authority.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorised for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognise the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on the ground which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the doument.

Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorised for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragragh 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX

SPECIMEN TRAVEL DOCUMENT

The document will be in booklet form (approximately 15×10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Convention of 25 July 1951" be printed in continuous repetition on each page, in the language of the issuing country.

(Cover of booklet)

TRAVEL DOCUMENT

(Convention of 25 July, 1951)

No..... (1)

TRAVEL DOCUMENT

(Convention of 25 July, 1951)

This document expires on.....unless its validity is extended or renewed.

Name.....

Forename (s) .....

Accompanied by.....child (children)

1. This document is issued solely with a view to providing travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorised to return to.....,..... (state here the country whose authorities are issuing the document) on or before.....unless

some later date is hereafter specified. (The period during which the holder is allowed to return must not be less than three months.)

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. (The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued.)[1]

(This document contains pages, exclusive of cover.)

---

(2)

Place and date of birth.....

Occupation.....

Present residence.....

* Maiden name and forename(s) of wife.....

.....

* Name and forename(s) of husband.....

.....

Description

Height.....

Hair.....

Colour of eyes.....

Nose.....

Shape of face.....

Complexion.....

Special peculiarities.....

Children accompanying holder

Name	Forename (s)	Place and date of birth	Sex
.....	.....	.....	.....
.....	.....	.....	.....

[1]The sentence in brackets to be inserted by Governments which so desire.

Name	Forename (s)	Place and date of brith	Sex
.....	.....	.....	.....
.....	.....	.....	.....

* Strike out whichever does no apply.

(This document contains pages, exclusive of cover)

.....

(3)

Photograph of holder and stamp of issuing authority, finger-prints of holder (if required)

Signature of holder.....

(This document contains pages, exclusive of cover.)

.....

(4)

1. This document is valid for the following countries :

.....

.....

.....

.....

2. Document or documents on the basis of which the present document is issued :

.....

.....

.....

Issued at.....

Date.....

Signature & stamps of authority issuing the document :

Fee paid :

(This doument contains pages, exclusive of cover.)

(5)

Extension or renewal of validity

Fee paid : From.....

To.....

Done at..... Date.....

Signature & stamps of authority extending the validity of the document :

Extension or renewal of validity

Fee paid : From.....

To.....

Done at..... Date.....

Signature and stamp of authority extending or renewing the validity of the document

(This document contains pages, exclusive of cover.)

(6)

Extension or renewal of validity

Fee paid : From.....

To.....

Done at..... date.....

Signature and stamp of authority extending or renewing the validity of the document :

Extension or renewal of validity

Fee paid : From.....

To.....

Done at Date.....

Signature and stamps of authority extending or renewing the validity of the document :

(This document contains pages, exclusive of cover.)

(7—32)

Visas

The name of the holder of the document must be repeated in each visa.

(This document contains pages, exclusive of cover.)

II

UNHCR AIDE MEMOIRE ON THE CONVENTION TO THE STATUS OF REFUGEES 1951.

Purpose and Background

1. After the Second World War, the United Nations recognized the necessity of drawing up a Convention which would consolidate and extend various pre-War instruments for the protection of refugees. The text of the 1951 Convention was adopted by a Conference of Plenipotentiaries, which met in Geneva at the invitation of the United Nations. It is a humanitarian instrument, the purpose of which is to provide a minimum legal status and standards of treatment for persons who are outside their country because of well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

Accession to the Convention

2. States which have not yet signed the Convention may accede at any time by the deposit of a letter of accession through their representative accredited to the United Nations in New York, with the Secretary-General, after complying with the national procedure required in their particular country, *i.e.* after Government decision or ratification by Parliament.

3. Reservation may be made, at the time of ratification or accession, to any of the articles of Convention, with the exception of Articles 1 (definition of refugees), 3 (non-discrimination), 4 (freedom to practise religion), 16 paragraph 1 (free access to courts), 33 (prohibition of expulsion or return to countries of persecution), and 36 to 46 inclusive (the final clauses).

Scope of the Convention

4. The scope of the Convention is limited to those persons whose fear of persecution is a result of events occuring before 1 January 1951. Thus States which adhere to the Convention are not required to "sign a blank cheque" and accept certain responsibilities for all persons who may become refugees in the future, but only for those whose fear of persecution is related to events which occurred before 1951. This does not mean that the refugees must have left their country before any particular date ; for example, a refugee leaving a country in 1959 may qualify as a refugee if he has well-founded fear of persecution because such fear of persecution by the existing regime may be traceable to events occurring before 1951.

5. Further, each State becoming a party to the Convention must decide whether she accepts the Convention on the understanding that "events occurring before 1 January 1951" mean "events occuring before that date *in Europe*" or "events occurring before that date *in Europe or elsewhere*". Naturally acceptance of the broader scope covered by the second alternative would be welcomed by UNHCR, but certain States may be obliged to limit their acceptance of the Convention to groups covered by the former alternative only.

6. If the more restrictive alternative is adopted, States parties to the Convention can nevertheless extend the treatment for which it provides to additional groups. A recommendation that they should do so is contained in paragraph E of the final act of the Conference.

7. The determination whether an individual is a refugee in the sense of Article 1 of the Convention, and whether therefore the Convention is to be applied to him is within the competence of the Contracting State. Article 35 of the Convention refers to co-operation of Contracting States with the UNHCR and this Office is prepared to give any advice

which Governments may require on problems which may occur in the implementation of the Convention, including determination of eligibility.

Right of Asylum

8. The Convention does not impose obligation on a Contracting State with regard to the granting of Asylum and no article on admission is included in the operative part of the Convention. However, Article 32 contains safeguards concerning the expulsion of refugees who have been admitted and are lawfully in the territory of a Contracting Party, while Article 33 prohibits the expulsion or return of any refugee to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion ; the benefit of Article 33 cannot, however, be claimed by a refugee who is a danger to the security of the country in which he is, or a danger to the community of that country.

Specific rights of the refugee in country of residence

9. The Convention provides that, where it does not contain more favourable provisions, a Contracting State shall grant refugees the same treatment which is accorded to aliens generally but in regard to specific rights, refugees are granted more favourable treatment than other aliens. Four standards of treatment are established :

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

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

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

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

10. *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 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 (Article 29).

11. *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 in countries other than that of their habitual residence (Article 16, paragraph 3).

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

13. *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 property, property rights and interests (Article 14); the right to engage on their own account in agriculture, industry, handicrafts and commerce to establish commercial and industrial companies (Article 18); to practise the liberal professions (Article 19) ; to obtain housing (Article 21) ; and to benefit from higher education (Article 22, paragraph 2) .

Articles which relate to the special situation of the refugees

14. To cover the particular situation of the refugee as an unprotected alien, certain special articles were included in the Convention, viz. Article 7, which provides that a refugee shall be granted certain concessions with out regard to reciprocity as in his case conditions of reciprocity have no meaning ; Article 8, which provides that refugees shall be exempted in appropriate cases from exceptional measures taken against nationals of the State to which they formerly belonged, even though the refugees may in law still have the nationality of that State; Article 12, which provides that the personal status of a refugee shall be governed by the law of his country of domicile or residence; Article 25, which provides that where a refugee requires administrative assistance such as the provision of documents, which would, in the case of a normal alien, be provided by the authorities of his country of nationality, such assistance shall be afforded to him by the country of residence or by an international authority; and Article 28, which provides for the issue of a travel document to refugees lawfully staying in the country. A schedule is annexed to the Convention giving the text of this travel document as well as details concerning its issue.

III

NOTE CONTAINING SOME SUGGESTIONS REGARDING MODIFICATION OF THE 1951 U. N. CONVENTION

1. The 1951 Convention marks an important stage in the development of international law relating to refugees. As from the end of the first World War, a series of international instruments were adopted in regard to successive waves of refugees, e.g. Russian, Armenian, Assyrian, Assyro-Chaldean Turkish, and refugees from Germany and Austria. Some of these earlier instruments dealt only with the issue of travel documents ("Nansen passyorts"),[1] while others contained more comprehensive provisions dealing, for example, with deportation, the right to work and the law governing a refugee's personal status.[2] As compared with these earlier instruments, however, the 1951 Convention defines specific rights for refugees in a comprehensive manner and lays down minimum standards for their treatment. These rights, freedoms and standards are also in many respects more favourable than those defined in earlier instruments. The earlier instruments moreover dealt with specific categories of refugees. The 1951 Convention, however, contains a definition of the term "refugee" which, despite certain limitations referred to below, is universal in character.

1. Arrangement of 6 July 1922, League of Nations, *Treaty Series* Vol. 13, p. 355. Arrangement of 31 May 1924 League of Nations, Document CL. 72(a). Arrangement of 12 May 1926, League of Nations, *Treaty Series*, Vol. 89, No. 2004, Arrangement of 30 June 1928, *Ibid.* Vol, 89, No. 2006.

2. Arrangement of 30 June 1928, League of Nations, *Treaty Series* Vol. 89, No. 2004. Convention relating to the International Status of Refugees of 28 October 1933, *ibid.* Vol. 159, No. 3663 Provisional Arrangement of 4 July 1936, *ibid.* Vol. 171, No. 3952. Convention of 10 February 1938, *ibid.* Vol. 198, No. 4634.

2. Although the Convention thus represents a considerable degree of progress as compared with earlier instruments, this does not mean that it is all-inclusive and leaves no room for further improvement. It would seem that any efforts to improve the Convention should be concerned with the following aspects : (a) Removal of existing limitations on the Convention's personal scope, (b) Supplementing the Convention in regard to matters for which it does not provide, and (c) Raising the standards which states are required by the Convention to apply as regards the treatment of refugees.

(a) Removal of the existing limitations on the Convention's personal scope

(i) *The dateline*—As stated above, the Convention, unlike earlier instruments, contains a definition of the term "refugee" which is universal in character. Thus according to Article 1 (A), the term "refugee" covers, in addition to statutory refugees,[3] a refugee under the earlier instuments and under the Constitution of the International Refugee Organisation (IRO) and, in addition, any person who *"as a result of events occurring before 1 January 1951*[4] and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

The dateline represented by the words "as a result of events occurring before 1 January, 1951" constitutes a limitatiou on the Convention's personal scope. In the course of the preparation of the Convention, it was considered whether it

3. i. e. persons who had been considered as refugees under the earlier instruments referred to above and under the Constitution of the IRO.

should not include a definition covering all refugees irrespective of their origin and of the fact that the events which caused the rupture with their country of origin belong to the past or future. This solution was put aside, it being considered difficult for Governments "to sign a blank cheque" and to undertake obligations to future refugees, the origin and number of which would be unknown. [5] The term "events" was intended to apply to happenings of major importance involving profound political changes, as well as systematic programmes of persecution in this period which are after-effects of earlier changes. The date 1 January 1951 was intended to exclude events happening after that date but not persons who might become refugees at a later date as a result before them, or as a result of after-effects which occurred at a later date. The date of 1 January 1951 was chosen because it was the date of the assumption of offices by the United Nations High Commissioner for Refugees. [6]

In spite of the dateline, the Convention, at the time when it was adopted, applied to all the then known groups of refugees in need of international protection. In the meantime, however, new refugee situations have arisen and the refugees concerned may not be covered by the Convention due to the dateline. In some cases a causal link was considered to exist between the plight of persons who left their country after 1 January 1951 and events occurring prior to that date. Thus the refugees who came from Hungary as a result of the Revolution in 1956 were generally considered to be refugees covered by the 1951 Convention, since the events leading to the Hungarian revolution were considered to have occurred before 1 January, 1951. With the passage of time, however, it may become increasingly difficult for Governments to recognise the existence of such a long-term historical causal link. This

5. *Report of the Ad Hoc Committee on Statelessness and Related Problems*, Document E/1618, p. 38.

6. *Ibid*, p. 39.

seems especially true in new refugee situations which have arisen in Africa.

It should be added that the competence of the United Nations High Commissioner for Refugees, resulting from the definition contained in the Statute of his Office, is not limited by a dateline. At the date when the Convention and the Statute were adopted[7] the personal scope of the two instruments was in practice indentical. The emergence of new refugee situations has, however, led to a growing discrepancy between the two instruments due to the increasing number of refugees who are not covered by the Convention but for whom High Commissioner is competent under his Statute.

The problem of the dateline in the 1951 Convention was given particular attention by the Colloquium on Legal Aspects of Refugee Problems held in Bellagio (Como) Italy, from 21-28 April, 1965. The Colloquium was organised by the Carnegie Endowment for International Peace, with the support of the Swiss Government and in consultation with the United Nations High Commissioner for Refugees.

In its Report addressed to the High Commissioner,[8] the Colloquium placed on record that the refugee problem had now become universal in nature and of indefinite duration and that the Convention was no longer adequate ; an increasing number of persons were not covered by the Convention, particularly as it was limited to persons who had become refugees as a result of events before 1 January, 1958. The members of the Colloquium were of the opinion that it was urgent for humanitarian reasons that refugees at present not covered by the Convention should be granted similar rights by means of an international instrument. The Colloquium was agreed that a recommendation or a resolution would not

7. The Statute figures as an annex to General Assembly Resolution 428 (V) of 14 December 1950.

8. Executive Committee Document A/AC. 96/INF. 40.

be sufficient for this purpose and that a legally binding instrument would be necessary. The Colloquium considered that in view of the need for urgency, the end in view could best be met by a Protocol to the Convention, removing the dateline. The Colloquium agreed on the terms of the preamble and substantive provisions of a Draft Protocol which figure as an Annex to its Report.

The United Nations High Commissioner for Refugees is presently consulting with Governments regarding measures for giving effect to the Colloquium's recommendations.

(ii) *The geographic limitation*—According to Art. 1 (B) of the Convention, the words "events occurring before 1 January" should be understood to mean either (a) "events occurring *in Europe* before 1 January 1951" or (b) "events occurring *in Europe or elsewhere* before 1 January 1951" according to a declaration to be made by each Contracting State at the time of signature, ratification or accession. It is also provided that a State which has adopted alternative (a) for the purpose of its obligations under the Convention, may at any time adopt alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

This provision is the result of a compromise introduced during the Conference of Plenipotentiaries[9] to enable certain States to become parties to the Convention. For this reason, even the possibility of introducing a geographic limitation does not give the Convention a European character. Of the 48 States which are now parties to the Convention, only 15 have their obligations under the Convention limited to persons who have become refugees as a result of events in Europe Argentina, Australia, Brazil, Congo (Brazzaville), Dahomey, Ecuador, France, Italy, Ivory Coast, Luxembourg, Monaco, Niger, Peru, Portugal, and Turkey).

9. A/Conf. 2/SR. 20, p. 14, *Ibid*, SR. 23, p. 4.

The question of the geographic limitation was also given consideration by the recent Colloquium on Legal Aspects of Refugee Problems. The Colloquium considered that since the purpose of a Protocol removing the dateline was to extend the scope of the Convention as widely as possible, it would be inconsistent with this purpose to enable States adhering to the Protocol to introduce a geographic limitation. The draft Protocol prepared by the Colloquium, therefore, includes a specific provision according to which States may not introduce a georgraphic limitation when adhering to the Protocol. As regards those States which had already made a declaration under Article 1 (B) of the Convention, the Colloquium felt 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 did not permit States, which had limited their obligations by a declaration under the Convention, to extend such a declaration to the Protocol, this might deter some States from adhering to the Protocol. The Draft Protocol prepared by the Colloquium, therefore, contains a provision to the effect that existing declarations limiting the application of the Convention shall, unless withdrawn, apply also under the Protocol.

(b) Supplementing the Convention in regard to matters for which it does not provide—admission and asylum

Although the Convention is an instrument which defines specific rights and freedoms for refugees in a comprehensive manner, it does not deal explicitly with the question of asylum which is of basic importance to the refugees. In the light of legal developments in this field, asylum may be said to possess two aspects : non-return of a refugee to a country of persecution and admission of a refugee fleeing from persecution to a country of asylum. Article 32 of the Convention dealing with the former aspect provides that the Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. Moreover,

Article 33 provides, subject to certain strictly defined exceptions, that no State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a partlcular social group or politlcal opinion. The Convention does not, however, deal explicitly wlth admission. The provision that comes nearest to it is Article 31 which provides that the Contracting States shall not impose penalties on account of their illegal entry or presence on refugees coming directly from a country in respect of which they fear persecution, provided they present themselves without delay to the authorities and show good reason for their illegal entry or presence.

Differing views have been held as to whether asylum, both in the sense of non-return to a country of persecution and of a right to admission, is under international law a sovereign right of the State or a right of the individual.[10] The question of giving articulate expression to the right of admission in the international instrument was considered in connexion with Universal Declaration of Human Rights and the Human Rights Covenants. It is at present being examined in connexion with the draft Declaration on the Right of Asylum. The earlier version of Article 14 (1) of the Universal Declaration of Human Rights stated that : "Everyone has the right to seek and be granted in other countries asylum from persecution." When the first version was adopted, however, the words "be granted" were replaced by the words "to enjoy". According to the Declaration, therefore, everyone has the right *to seek* and *to enjoy* but *not to be granted* asylum. As regards the Draft International Covenants on Human Rights it was decided after considerable discussion by a majority vote that a provision regarding the right of asylum should not be

10. See P. Weis, "*Legal Aspects of the Problem of Asylum*", paper presented to 51st Session of the International Law Association, Tokyo, 1964.

included. Since the right of asylum was thus not to be the subject of a legally binding provision, the proposal was put forward to make it the subject of a non-legally binding declaration. The Draft Declaration on the Right of Asylum, adopted by the Human Rights Commission, was transmitted in 1960 to General Assembly whose Third Committee adopted the Preamble and first Article. The remaining Articles await further consideration by the Sixth Committee to which the matter has now been referred.

The question of asylum was also examined by the Colloquium on Legal Aspects of Refugee Problems. The Colloquium agreed that it is the first and foremost need of a refugee from persecution to be received in another country. Moreover :

> "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* refugee 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 the Convention, forbidding a State to ". . . . expel or return ("*refouler*") a refugee in any manner whatsoever to to 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 frontiers, to return or expulsion which would compel him to return to or remain in a 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 an 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.

Since the right of asylum, in the sense of admission, is of basic importance to the refugees, the fact that the 1951 Convention contains no explicit provision dealing with this matter represents a *lacuna*, although such a right could, as a matter of interpretation, be deduced from the wording of Article 33. Recent developments have shown that there is increasing recognition by States of the principle that a refugee fleeing from persecution should be granted at least temporary admission to a country of asylum. It would, therefore, be desirable that the 1951 Convention should be supplemented by a principle requiring States as a minimum to grant refugees fleeing from persecution temporary asylum.

(c) Improving certain rights which States are required, by the 1951 Convention, to grant to refugees

As stated above, the Convention goes further than earlier instruments in defining specific rights and freedoms for refugees in a comprehensive manner. This does not, however, mean that these rights may not be the subject of improvement. Until a refugee ceases to be a refugee either by voluntary repatriation or naturalisation, his integration in his asylum country should be facilitated by granting him a favourable legal status as nearly equivalent as possible to that of a national of that country. The *minimum* standard of treatment for refugees is laid down in Article 7, para. 1, of the Convention which provides that : "Except where the Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally." Apart from this, the Convention lays down varying standards. In several cases the standard is in fact that of "national treatment". Thus, as regards access to courts, Article 16 of the Convention provides that refugees shall have free access to the courts of law on the territory of all Contracting States. Moreover, in a Contracting State in which he has his habitual residence, a refugee shall enjoy the same treatment as a national in matters pertaining to access to the courts and exemption from security for costs. [11]

With respect to rationing (Article 20) and elementary education (Article 22 (1)) refugees are to be accorded the same treatment as nationals. Furthermore, in the Contracting State in which they are lawfully staying, refugees are entitled to the same treatment as nationals with respect to public relief (Article 23).

There are, however, certain significant matters as regards which the standard laid down by the Convention is not, or not entirely, the same as "national treatment".

11. In a country other than that in which he has permanent residence, a refugee shall, in regard to these matters, receive the treatment granted to the nationals of his country of habitual residence.

In this connexion, mention may be made in the first place of wage-earning employment, the right to engage in self-employment and to practise liberal professions, social security and the right to hold movable and immovable property. These matters are of basic importance to the refugee from the point of view of his integration in his country of asylum and of his material well-being in general. They also find their place in the Universal Declaration of Human Rights to which reference is made in the preamble to the 1951 Convention. Thus Article 23 (1) of the Universal Declaration of Human Rights states that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." According to Article 22, "Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of economic, social and cultural rights indispensable for his dignity and the free development of his personality." Finally, according to Article 17 (1), "Everyone has the right to own property alone as well as in association with others." It is now proposed to deal with these various matters in turn :

(i) Wage-earning employment and the right to engage in self-employment and to practise liberal professions

As regards the right to engage in wage-earning employment, Article 17 of the Convention requires refugees lawfully staying in the territory of a Contracting State to be granted the most favourable treatment accorded to nationals of a foreign country in the same circumstances. When certain conditions are fulfilled, however, a refugee is entitled not exactly to national treatment and treatment approximating to the latter, i.e. he is exempt from measures taken for the protection of the national labour market. The conditions are that (i) the refugee was exempt from such measures at the date of the coming into force of the Convention for the Contracting State concerned or

(ii) has completed three years' residence in the country, (iii) has a spouse possessing the nationality of the country of residence or (iv) has one or more children possessing the nationality of that country. While several States have made reservations to Article 17, [12] these States normally apply the Article in practice and in certain cases grant refugees more favourable treatment than provided for by the Article. The question, therefore, arises as to whether it might not be possible to improve the standard laid down in Article 17 by making it applicable under normal conditions even if the conditions therein listed are not fulfilled. There may, however, be exceptional circumstances, e.g. a sudden influx of refugees which could result in a severe burden on the national labour market if the more liberal criteria were applied. This problem could perhaps be dealt with by means of reservations or of another suitable formula permitting a temporary suspension of obligations in such cases.

A problem that arises in connextion with the wage-earning employment of refugees relates to the practical application on the international level of the standards which the Convention lays down. While a refugee is to enjoy the right to work, under stated conditions, this is sometimes, made subject to certain formalities to be fulfilled by the prospective employer. The latter may, for example, be required to obtain the necessary permission to employ the refugee. While such permission cannot be refused if the Convention's criteria apply, the mere fact that he has to comply with these formalities may lead the prospective employer to prefer engaging national workers in whose case these complications do not exist. The question, therefore, arises as to whether any measure for improving the standard laid down in Article 17 should not be accompanied by a recommendation that States should reduce any for malities connected with the employment of refugees to an absolute minimum.

12. Australia, Austria, Denmark, France, Greece, Iceland, Italy Liechtenstein, Norway, Sweden, and Switzerland.

As regards self-employment and the practice of liberal professions, the Convention requires refugees to be granted treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances (Articles 18 and 19). In view of the importance to a refugee also to be able to engage in gainful occupations other than those of a wage-earning character, the question arises whether the standard applied by the Convention could not, if possible, also be improved here with a view to ensuring that the refugee is granted the same treatment as nationals.

(ii) **Social security**

Under the Convention the Contracting States are required to grant a refugee lawfully staying in their territory, the same treatment as is accorded to nationals as regards social security. This provision does not give rise to any problem as regards the social security benefits payable to a refugee within his country of asylum on the basis of contributions paid by him during the period of his residence there. As regards social security, however, the refugee's position frequently differs from that of a national. He will normally have become a refugee at a period in life when, on the one hand, he has paid social insurance contributions in his country of origin. He may on the other hand, not have paid such contributions in his country of asylum for a sufficiently long period to entitle him to normal social security benefits. It may also not be possible for him to cast roots in his country of first asylum, and he may emigrate after having paid social insurance contributions for a certain period. In both cases the refugee would be placed at a disadvantage if the rights acquired by him in his country of origin and his country of first asylum would not be taken into account for social security purposes. In this connexion, however, Article 24 of the Convention provides for the possibility of introducing certain limitations on the standard of national treatment : "(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of

acquisition; (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension." These limitations were taken over from Article 6 of ILO Convention 97 concerning Migration for Employment. Having regard to these limitations, a refugee's contribution periods in his country of origin are normally disregarded when calculating his pension in his country of asylum. Moreover, in the absence of a social security agreement, there is no cumulation of the contribution periods in the refugee's country of first asylum and in his country of emigration. To the extent to which social security agreements exist the position is easier. According to para. 3 of Article 24, "The contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security. subject only to the conditions which apply to nationals of the States signatory to the agreements in question." While such agreements, normally providing for the cumulation of pension periods and for the transfer of pensions, exist between a number of European countries of first asylum, they do not exist between these countries and the main countries of emigration, resulting in a disadvantage to to the refugee. The question of the transfer abroad of a fully acquired pension raises a specific problem. Certain States parties to the 1951 Canvention consider that this problem is covered by para. 3 of Article 24. That is to say, a refugee's fully acquired pension can only be transferred if there exists a social security agreement between the country in which his pension rights were acquired and his country of resettlement. An alternative view is that where a fully acquired pension is transferable in the case of nationals, it should also be transferable in the case of a refugee by virtue of the principle of national treatment. In

this case the question arises whether, due to his special position, a refugee's fully acquired pension should not be transferable in all cases.

It would now seem to be a generally accepted principle that everyone is entitled to participate in social security and to claim social security benefits. For the reasons mentioned above, the refugee, due to his special position and the resulting technical difficulties, may not be able to claim full social security benefits. The question, therefore, arises whether the rights granted by the 1951 Convention should not, as far as possible, be improved to the extent to which the refugee, due to his special position, finds himself at a disadvantage in regard to social security.

(iii) **The right to hold movable and immovable property**

Under the Convention (Article 13), "refugees are to be accorded treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property."

The fact that refugees may not be able to hold property has in certain cases given rise to difficulties as regards their integration. It would, therefore, seem appropriate to consider whether the position concerning the right to hold property could not as far as possible be assimilated to that of nationals.

IV
NOTE ON POLITICAL OR SUBVERSIVE ACTIVITIES OF REFUGEES*

1. Neither the UNHCR Statute nor the Refugee Convention of 1951 contains an explicit reference to political or subversive activities of refugees. However, both instruments contain exclusion clauses specifying various circumstances in which a person is not to be considered a refugee for the purpose of the Statute or the Convention.

2. The relevant provisions are Para. 7(d) of the Statute and Article 1 F of the Convention. Although these exclusion clauses are normally interpreted to refer to acts which took place before a person became a refugee and not to such acts committed in the country of asylum, the clauses act also as cessation clauses i. e., a person once recognised as refugee would lose his status if he later on has committed acts as defined in these clauses.

3. With regard to "acts contrary to the purposes and principles of the United Nations", the drafters of the Convention were not very explicit as to the interpretation of this formulation. In discussion, however, reference was made to "the principles referred to in the United Nation Charter and the Universal Declaration of Human Rights", to "crimes against humanity" and to "war crimes, genocide and the subversion or overthrow of democratic regimes" (see Docs. E/AC.7/SR.166, P. 9 and A/CONF.2/SR.24, P.5). It is also interesting to note in this context that the Constitution of the International Refugee Organisation (IRO) referred to the principles of the United Nations in specifying that fear based on reasonable grounds of persecution because of political opinions should be considered as valid objection to a return to the country of origin provided these opinions are not in conflict with the principles of the United Nations, as laid down in

* Prepared by U.N.H.C.R.

the Preamble of the Charter of the United Nations" (IRO Constitution, Annex I, Section C, 1 (a) and (i)).

4. The 1951 Convention makes no reference to the political activities of refugees and this is a matter within the jurisdiction of the State of residence. Article 2 of the Convention provides : "Every refugee has duties to the country in which he finds himself which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance af public order". In its comments on the draft of this Article, the Ad Hoc Committee stated the following :

> "Article 2 states the obligation upon a refugee to comply with laws and regulations of the country in which he is.
>
> The Committee fully appreciated that the provision made in this Article was axiomatic and need not be explicitly stated. However, it was considered useful to include such a provision in order to produce a more balanced document as well as for its psychological effect on refugees and on countries considering admitting refugees.
>
> The representative of France proposed a second paragraph to this Article, explicitly permitting Contracting States to restrict the political activity of refugees. The Committee felt that such a provision was too broad, and might be misconstrued as constituting approval of limitations on areas of activity for refugees which are in themselves unobjectionable. The Committee also felt that a provision of this kind was unnecessary and that in the absence of any provision to the contrary every sovereign government retained the right it has to regulate any activities on the part of an alien whichit considers objectionable. The failure to include such a provision is not to be interpreted as derogating from the power of

governments in this respect. In an effort to meet at least in part the view of the representative of France, the phrase "including measures for the maintenance of public order "was included". (Document E/1618 E/AC. 32/5, P. 41).

5. Finally Article 15 of the Convention dealing with the right of association, provides : "As regards non-political and non-profit-making associations and trade unions the Contracting State shall accord to refugees lawful staying in their territory the most favourable treatment accorded to nationals of foreign country, in the same circumstances". As this provision refers to non-political associations only the sovereign right of the Contracting States to regulate the question of the formation by refugees and their membership of political associations was left to the sovereign jurisdiction of the Contracting States.

6. In the Preamble to the Convention, the wish is expressed "that all States, recognising the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem becoming a cause of tension between States". This phrase, read in its context, is generally understood as a recommendation to States to cooperate, apart from and regardless of any obligations undertaken under the convention, in efforts to find permanent solutions for refugees so as to prevent their unsettled conditions from becoming a cause of tension in relations between States.

7. The political or subversive activities of refugees have often created problems in the past and States have generally tried to regulate such activities so as not to allow their territories to be used for acts detrimental to other States. For example, Article 41 of the new Aliens Law of Yugoslavia promulgated on the 31st March 1965 (Official Gazette No. 13 of 1965) provides :

"L'etranger qui agit contre le syseme en Yougoslavie, fixe par la Constitution, ou manifeste lesactivites contrairs a la collaboration internationale et a la consolidation de la paix au monde, peut etre de l'asile," (unofficial translation)

International conventions recognise the principle that refugees should not be permitted to engage in political or subversive activities against the State of their former nationality or residence.

Extracts from the Draft Declaration on the Right of Asylum, the Charter of the Organisation of African Unity, the European Convention for the Protection of Human Rights, the Resolution of the Institute of International Law of the 11th September, 1950 and the Convention on Territorial Asylum adopted at the 10th American Conference are set out in *Annex I* to this Note.

The text of an Agreement between the Governments of Sudan and Ethiopia is set out in *Annex II.*

The text of the Resolution on the Problem of Refugees in Africa passed by the Assembly of Heads of States and Governments of the Organisation of African Unity and the Declaration made by the Assembly on the Problem of Subversion are set out in *Annexes III and IV.*

The text of conclusions to an article appearing in the recent number of a well-known periodical on the question of the activities of refugees is set out in *Annex V.*

Annex I

Draft Declaration on the Right of Asylum

(Doc. A/5145), Article 4 :

Persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

Charter of the Organisation of African Unity of 25 May 1963. Article III No. 5 :

Unreserved condemnation in all its forms of political assassination as well as subversive activities on the part of neighbouring States or any other State.

European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November, 1950

Article 16 :

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens. (Articles 10 and 11 deal with freedom of expression and freedom of peaceful assembly, and Article 14 stipulates the principle of non-discrimination in the enjoyment of the rights and freedoms on any grounds as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.)

Resolution of the Institute of International Law of 11 September 1950, concerning "L'asile en droit international public".

Annuaire de l' Institut de Droit International, vol. 43, *tome* II. 1950, Page 243 :

Article 2

1. Tout Etat qui, dans l' accomplissement de ses devoirs d'humanite, accorde asile sur son territoire n'encourt de ce fait aucune responsibilite internationale.

2. La responsibilite internationale de l'Etat n'est engagee a cause des agissements de l'asile que dans les memes conditions ou elle le serait a cause des agissments de out autre individu vivant sur son territoire. Cette regle s'applique soit que, le cas echeant, l'Etat soit en mesure d'expulser l'asile, soit que l'expulsion soit rendue impossible du fait que les autres Etats refusent de le recevoir.

Convention on Territorial Asylum of 28 March 1954

adopted at the 10th American Conference (OAS—OEA)

Article VII

La liberte d'expression de la pensee que le droit interne reconnait a tous les habitants d'un Etat ne peut faire l'object d'une reclamation de la part d'une autre Etat, sous le pretexte, fonde sur des opinions qu'expriment, publiquement, centre ce dernier ou sou gouvernement, des asiles ou refugies, sauf le cas ou ces opinions constituent une propagande systematique qui incite a l'emploi de la force ou de la violence contre le gouvernement de l'Etat reclamant.

Article VIII

Anenn Etat a a le droit de demander a un autre Etat de priver les asiles ou les refugies politiques de la liberte de reunion ou d'associat' ou que le droit interne accorde a tous les etrangers sur son territoire, a moins que ces requnions ou ces associations n'aient pour object d'encouragert'emploi de la force ou de la violence contre le gouvernement de l'Etat requerant.

Article IX

Sur la demande de l'Etat interesse, celui qui a accorde le refuge ou l'asile assurera la surveillance ou procedera a l'internement, a une distance raisonnable de ses frontiers, des refugies ou des asiles politiques connus pour avoir ete les meneurs notoires d'un mouvement subversif, ainsi que de ceux contre lesquels existeraient des preuves qu'ils etaient disposes a en faire partie.

Annex II

Excerpts from "Ethiopian Herald" Addis Ababa, dated July 30, 1965

MEMORANDUM

Following is the memorandum of agreement between the Governments of the Sudan and Ethiopia :

Conscious of the long standing friendly relations between the two countries and the eternal brotherhood among their peoples;

Having in mind the most amicable relations that have enabled them to overcome any and all differences in the past;

Convinced that it is essential for their good neighbourly relations to eliminate all the causes of misunderstanding which may impair their friendly relations;

Desirous to renew and consolidate the historic cordial relations between the governments and peoples of the two countries;

Reaffirming their strong adherence to the Charter of African Unity and the United Nations;

And, further desirous to reinforce the links between the two States by removing all sources of conflict and misunderstanding

Have agreed as follows :

Neither party shall engage itself or allow its own nationals or nationals of the other party or any foreign State or any

other person or institutions within its jurisdiction to engage in any type of activities that are harmful or designed to harm the national interests of the other party.

In particular the parties agree as follows :

1. Subject to the principles of international law and custom, neither party shall allow any hostile propaganda of whatever origin to be disseminated by press, radio or any other media, within its jurisdiction against the national interests of the other party.

2. Neither party shall permit, allow or provide facilities for the transfer of arms and ammunitions or traffic of arms or ammunitions of any type within its territorial jurisdiction, when the arms and ammunitions are designed for use by outlaws, rebels or secessionists within the territorial jurisdiction of the other party.

3. Neither party shall allow the nationals of the other party to engage in or conduct in any type of activities that are directly or indirectly designed to encourage secessionist movements in the territory of the other party.

4. Both parties shall take immediate and effective measures to eliminate all offices that are established by dissident elements or other persons and institutions in the territory of the other party for conducting activities inimical to the national interests of the other party and shall take care that no such offices are established in the future.

5. Neither party shall allow its territory to be used as a training centre for any person or persons who wish to conduct or encourage secessionist movements in the territory of either party and to exert positive efforts to discover the existence of any such training centres and immediately disband the same.

6. Neither party shall allow any person to whom asylum has been granted to engage in any activities hostile or subversive to the national interests of the other party. If

any person or persons to whom asylum has been granted is found engaged in activities inconsistent with the recognised status of a political refugee, such person or persons shall, in accordance with the rules and custom of international law, forfeit the status of political refugee and shall not be allowed to stay in the country.

7. Both parties agree to put into effect the Extradition Agreement signed on March 29, 1964, immediately after ratification by both parties.

8. Without prejudice to the right of political asylum as established by international law, neither party shall, as far as possible, allow nationals of the other party who are not holding a valid passport to establish residence within its territorial jurisdiction, unless the two parties agree otherwise.

9. Both parties, respecting the boundaries are defined in the existing treaties, agreements or protocols, undertake to prevent and bring to an end any incursion objected to by either party.

10. Both parties agree to establish a joint consultative Committee composed on the part of Ethiopia of the Foreign Minister, Finance Minister, Defence Minister, Interior Minister and Information Minister, and on the part of Sudan of the Minister of Foreign Affairs, Minister of the Interior, Minister of Defence, Minister of Finance aud any other Minister as the Government of the Sudan may appoint, which shall consult concerning the fulfilment of this agreement and which will consider all problems and difficulties that exist in the relations between the Republic of Sudan and Ethiopian Government.

For the Government of the Republic :

H.E. Sayed Mohamed Ahmed Mahgoub, Prime Minister.

For the Imperial Government of Ethiopia :

H.E. Tsahafe Taezaz Aklilu Habtewold, Prime Minister 28th July 1966. Addis Ababa.

Annex III

ORGANISATION OF AFRICAN UNITY
Secretariat
P.O. Box 3243
Addis Ababa

Assembly of the Heads of State and Government
Second Session
Accra, October 1965

RESOLUTION ON THE PROBLEM OF REFUGEES IN AFRICA

passed at 18.57 o'clock

The Assembly of Heads of State and Government, meeting in its Second Ordinary Session in Accra, Ghana, from 21 to October 1965 ;

Considering that the gravity of the refugee situation in Africa causes many complex problems for their countries of origin as well as for their host countries ;

Recalling the recommendation already adopted by them and the principles laid down in this respect by the Organisation of African Unity ;

1. *Reaffirm* their desire to give all possible assistance to refugees from any Member State on both humanitarian and fraternal bases ;

2. *Recall* that Member States have pledged themselves to prevent refugees living on their territories from carrying out by any means whatsoever any acts harmful to the interests of Member States of the Organisation of African Unity ;

3. *Request* all Member States never to allow the refugee question to become a source of disagreement amongst them ;

4. *Appreciate* the assistance provided by the United Nations High Commissioner to African governments in their programme for refugees ;

5. *Request* the African States that are members of the Economic and Social Council to do their utmost in order to secure and increase in African representation on the Executive Committee of the United Nations High Commission's Programme on Refugees ;

6. *Asks* members of the Refugee Commission established by Resolution OM/REs. 19(II) to provide legal experts at the highest level possible to re-examine the draft Convention on the refugee problem having regard to the views expressed by us at the present session of the Assembly and report back to the Assembly ;

7. *Request* Member States of the Organisation of African Unity, if they have not already done so, to ratify the United Nations Convention for Refugees and to apply meanwhile the provisions of the said Convention to refugees in Africa.

Annex IV

ORGANISATION OF AFRICAN UNITS
Secretariat
P. O. Box 3243
Addis Ababa

Assembly of Heads of State and Government
Second Session
Accra, October 1965

Declaration on the problem of subversion

We, the Heads of State and Government of the Organisation of African Unity, meeting in our Second Ordinary Session in Accra, Ghana, from 21 to 25 October, 1965 ;

Desirous of consolidating the fraternal links which unite us ;

Solemnly pledge :

1. Not to tolerate, in conformity with Article 3, paragraph 5, of the Charter, any subversion originating in our countries against another Member State of the Organisation of African Unity ;

2. Not to tolerate the use of our territories for any subversive activity directed from outside Africa against any Member State of the Organisation of African Unity ;

3. We pledge ourselves to oppose collectively and firmly by every means at the disposal of Africa every form of subversion conceived, organised or financed by foreign powers against Africa, OAU or against its members individually ;

4. (a) To resort to bilateral or multilateral consultation for the purpose of settling all differences between two or more Member States of the Organisation of African Unity ;

   (b) To refrain from reacting against any African State by press or radio campaign, but to resort instead to the procedure laid down in the Charter and the Protocol of Mediation, Conciliation and Arbitration of the Organisation of African Unity ;

5. (a) Not to give any cause for dissension within or among Member States by fomenting or aggravating racial, religious, linguistic, ethnic or other differences, and

   (b) To combat all forms of activity of this kind ;

6. To observe strictly the principles of international law with regard to all political refugees who

are nationals of any Member State of the Organisation of African Unity ;

7. To endeavour to promote, through bilateral and multilateral consultations, the return of refugees with the consent of both the refugees concerned and of their countries of origin ;

8. To continue to guarantee the safety of political refugees from non-independent African territories, and to support them in their struggle to liberate their countries.

Annex V

Dr. Otto Kimminich : "*Volkerrechtsfragen der exil-politischen Betatigung*", *Archiv fur Volkerrecht* : Volume 10 (1962/63), p. 133 ff.

English translation of conclusions :

The questions which thus appear to be relevant, in the present connection, from the point of view of international law may be answered as follows :

1. Emigrants have no legal right *vis-a-vis* their country of asylum to engage in political activities in exile.

2. Every State has the right to grant asylum to political refugees and in so doing is not responsible to the refugee's country of origin or to a third State. In times of peace, international law does not require a country of asylum to observe "ideological neutrality." The country of asylum is not, however, permitted to support emigrant propaganda which is contrary to international law, nor must it organise or encourage military expeditions by emigrant. Moreover, in time of peace, consent to the establishment by emigrants of an exile government of their country of origin is contrary to international law.

3. A country of asylum is not obliged to prohibit all political activities by exile groups. A State is not responsible for any revolutionary or disparaging propaganda by emigrants which it has not supported but only tolerated. The State must, however, suppress such propaganda if it is part of the preparation for military expeditions or for attempted assassination or outrage, or if it is directed against the honour of diplomats accredited to that State. Emigrant war propaganda must under all circumstances be suppressed by the State of asylum. The State must also prevent any military acts of violence by emigrants.

These conclusions are derived from the basic rule concerning political activities in exile that — except as regards attempted assassination or outrage, acts of violence and war propaganda — according to general international law no State is prevented from suppressing the political activities of emigrants residing in its territory but is not on the other hand obliged to do so.

V

BACKGROUND PAPER SUBMITTED BY THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES ON THE DEVELOPMENT IN THE LAW OF REFUGEES WITH PARTICULAR REFERENCE TO THE 1951 CONVENTION AND ITS STATUTE TO THE COLLOQUIUM ORGANISED BY THE CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

Bellagio (ITALY) - 21 to 28 April, 1965

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I. GENERAL REMARKS

(A) The refugee problem as the subject-matter of international legal instruments

1. Already in antiquity the world was beset by the problem of persons fleeing from their homes in fear of persecution. In more recent times, it has come to be accepted that the refugee problem is one calling not only for humanitarian measures, but also for measures in the legal sphere and particularly in the international legal sphere. As from the end of the first World War international legal instruments were adopted in order to regulate various matters connected with new refugee problems as and when they arose. At the same time, international agencies were established for the legal protection of refugees. The basic international instruments relating to refugees at the present time are the Convention relating to the Status of Refugees of 28 July 1951 and the Statute of the Office of the United Nations High Commissioner for Refugees annexed to General Assembly Resolution 428 (V) of 14 December 1950. The international legal instruments relating to refugees adopted between the two World Wars will be described in greater detail below.[1] To the extent to which they form part of a general development in the field of refugee law, however, they call for the following comments : *Ratione materiae* these instruments were originally limited to specific matters, such as the issue to refugees of certificates of identity in lieu of passports (later known as "Nansen passports") to enable them to travel abroad. In the course of time the material scope of these instruments gradually become wider. The most comprehensive instrument relating to the legal status of refugees is now the 1951 Convention which lays down minimum standards for the treatment of refugees as regards a variety of matters. *Ratione personae* the pre-War instruments

1. Post paras. 26-31.

were confined to a specific category or categories of refugees. The first instrument related to Russian refugees and later instruments were concluded for the benefit of Armenian, Turkish, Assyro-Chaldean and assimilated refugees and refugees from Germany and Austria. The 1951 Convention also marks a development as compared with the pre-War instruments in that it contains the elements of a general definition of the term "refugee". Thus in addition to persons who have been considered as refugees under the pre-War instruments, the term "refugee" for the purposes of the Convention, applies to any person who is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence, because of well-founded fear of persecution.[2] The definition in the Convention, however, contains a limiting factor in that it only applies to persons who fear persecution as a result of "events occurring before 1 January, 1951". Moreover, the Contracting Parties are given the option, at the time of signature, ratification or accession, of limiting the words "events occurring before 1 January 1951" to "events occurring *in Europe*" prior to that date.

2. Parallel to the widening of the material and personal scope of international instruments relating to refugees there went a corresponding widening of the competence *ratione personae* of the international agencies established for their protection. The first League of Nations High Commissioner for Refugees was competent only for Russian refugees. This competence.—and that of the international agencies which succeeded him,—was gradually expended to include the other categories of refugees for whom provision had been made by the respective international instruments.[3] At present the competence of the United Nations High Commissioner for

2. The definition of the term "refugee" in the 1951 Convention and in the statute of the Office of UNHCR will be analysed in detail below, paras. 21-25.

3. For details regarding the international agencies established for the legal protection of refugees prior to the establishment of the Office of UNHCR, see "Study of Statelessness", pp. 35-41.

Refugees extends to all persons falling within the scope of the 1951 Convention. His competence is, however, wider in that it is not limited to persons who have become refugees as a result of events occurring before 1 January 1951. The assistance afforded by the High Commissioner in the exercise of his "good offices" function will be referred to later.[4]

3. Subject to the existence of the dateline in the 1951 Convention, there may thus be said to have been a development in international legal instruments relating to refugees from the specific and limited to the more comprehensive general and universal. This development in the legal sphere may be regarded as a reflection of a wider development in the attitude of States towards refugee problems characterized by a growing humanitarian understanding and an increased desire to adopt a generous asylum practice in accordance with an international humanitarian duty. Thus the right of asylum, the most vital need for the refugee, has gradually been embodied in the municipal law of various States, and has been given expression in some form in certain international instruments, e.g. the "Universal Declaration of Human Rights" (Art. 14), the 1928, 1933 and 1954 Conventions on Asylum adopted within the framework of the Organisation of American States and various extradition treaties. In connection with this development, mention should be made of the discussion of the question of the right of asylum in the United Nations Commission on Human Rights and the General Assembly. These bodies have elaborated a draft "Declaration on the Right of Asylum" aimed at the establishment of universal standards of conduct *vis-a-vis* asylum seeking refugees short of a legal obligation to grant asylum. The consideration of the draft Declaration by the General Assembly has not yet been completed.

(B) Problems arising in connexion with the personal scope of the 1951 Convention

4. At the time when the Convention was adopted, the fact that the definition of the term "refugee" was limited by

4. See post paras. 14, 96-103.

the date-line of 1 January 1951 did not give rise to any special problem, since the definition applied to all known groups of refugees. These were in the main (a) refugees covered by the pre-War international legal instruments and (b) persons who became refugees as a result of events occurring during or immediately after the second World War.

5. With the passage of time, however, new refugee situations arose which in certain cases could be covered by the Convention, thanks to the willingness of governments to recognize the existence of a casual link between the plight of persons who left their home countries after 1 January 1951 and events occurring prior to that date. Thus the refugees who came from Hungary as a result of the Revolution in 1956 were generally considered to be refugees covered by the 1951 Convention, and a similar view has recently been adopted by the Swiss Government with regard to refugees from Tibet.[5]

6. However, as new refugee problems arise subsequent to 1951, it may become increasingly difficult for governments to recognize the existence of such a long-term historical causal link. This seems to be especially true in new refugee situations, like those which have now arisen in Africa. Thus the High Commissioner has in the last few years had to interest himself, *inter alios*, in the following new groups of refugees : Algerian refugees, Rwandese refugees, Sudanese refugees, refugees from Angola and from Portuguese Guinea. In addition, he has had to interest himself in Tibetan refugees, Chinese refugees and refugees from Cuba. It is clear that some of these new refugee situations may have no, or very little, connexion with events occurring before 1 January 1951.

5. It will be seen that already at the date when the Convention was adopted, the definnition was intended to exclude events occurring after 1 January 1951 but not persons who might become refugees at a later date as a result of events occurring prior thereto or as a result of after-effects of such events occurring at a later date. See post para. 25.

7. There may thus be an increasing number of refugees who, not being covered by the Convention, are unable to take advantage of the minimum standards of treatment for which the Convention provides.

8. The Conference of Plenipotentiaries which adopted the 1951 Convention was already aware that this problem might arise in the future and therefore adopted as part of the Final Act, Recommendation E, worded as follows :

> "The Conference,
>
> "Expresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides."

9. As will be seen later, whenever, it is doubtful whether this Recommendation can provide a generally satisfactory solution for the problem of post-dateline refugees. It may thus be difficult for the Governments of certain States to apply, on the basis of a mere recommendation, the provisions of a Convention which if applied in the normal way, might involve a modification of the *jus cogens* relating to matters such as personal status, social security or public assistance. On the international level, measures adopted on the basis of a mere recommendation, whereby the treatment accorded to post-dateline refugees is assimilated to that accorded to Convention refugees may not necessarily have extra-territorial effect. [6]

10. Thus, as frequently in the past, new refugee groups have come into existence for whom no appropriate legal instrument exists in the field of international treaty law. The present problem, however, presents certain aspects which dist-

6. See post paras. 51-54/118-124/127.

inguish it from similar problems which heve arisen in the past; namely the broader definition of the term "refugee" in the Statute of UNHCR as compared with the definition in the Convention; the relationship between these two definitions; and the widening by various General Assembly Resolutions of the tasks and competence entrusted to the High Commissioner under his original mandate. It is necessary to examine these specific aspects in order to obtain a complete picture of the present problem.

(C) Competence of the United Nations High Commissioner for Refugees under the Statute of his Office in relation to the personal scope of the 1951 Convention

11. The Statute of UNHCR annexed to General Assembly Resolution 428 (V) of 14 December 1950, contains a definition of the term "refugee" which subtantially coincides with the definition in the 1951 Convention with the important difference that it is not limited by the dateline of 1 January 1951. Under his Statute, the High Commissioner is therefore, competent for post-dateline refugees even though they are not covered by the Convention. The fact that the Convention, unlike the Statute, contained a dateline and might optionally be limited to Europe. was not, however, of any great significance when the two instruments were adop:ed. At that time their personal scope was *in practice* identical and a certain equilibrium was maintained by the fact that the mandate of UNHCR was originally limited to three years. (It has in the meantime been periodically extended, at present until the end of 1968).

The groups covered by both instruments were in the main refugees from Eastern Europe, refugees of ethnic German origin in Austria (not in Germany due to the special status granted to them there), Spanish refugees and refugees covered by pre-War instruments, such as white Russian and American refugees and refugees from Germany and Austria.

12. With the passage of time and the emergence of new refugee problems, however, there is a growing discrepancy between those refugees covered by the Convention and those for whom the High Commissioner is competent under his Statute. This problem of the increasing discrepancy between those refugees covered by the Convention and those for whom the High Commissioner is competent under his Statute is emphasized by the adoption of certain resolutions by the United Nations General Assembly extending the scope of the High Commissioner's tasks and functions. The Statute and these later General Assembly Resolutions form an integral legal basis for the activities of UNHCR, the original mandate being thus adapted to changing needs.

(D) Functions of UNHCR—Legal protection and "good offices" functions

13. The basic function of UNHCR according to the Statute is the international legal protection of refugees which is essentially aimed at safeguarding their legitimate rights and interests, mainly *vis-a-vis* their countries of asylum. When the Office of UNHCR was established in 1950, the main emphasis was placed on this basic function of international legal protection. However, the original mandate already envisaged certain activities in the social field. Thus in addition to providing international protection the High Commissioner was required to seek permanent solutions for the refugee problem by assisting governments and, with the approval of the governments concerned, private organisations to facilitate the voluntary repatriation of refugees or their assimilation within new national communities.

14. It will be seen later that the material scope of the High Commissioner's activities in the social field was subsequently extended by various General Assembly Resolutions. These Resolutions gave the High Commissioner a general authorization to appeal for funds, firstly for the grant of emergency relief and later for undertaking material assistance

programmes in order to bring about permanent solutions for refugees under his mandate. [7]

15. There have also been certain developments, resulting from various General Assembly Resolutions, regarding the scope of the competence of UNHCR *ratione personae* to deal with refugee problems in the social field as distinguished from the field of international legal protection. By virtue of these Resolutions which will be referred to in more detail later the High Commissioner is enabled to assist new groups of refugees by extending his "good offices". This has made it possible to extend and to strengthen substantially the part which the High Commissioner, under the guidance of his Executive Committee, has been able to play in the social field as an intermediary of international goodwill and solidarity in arranging for the grant of material assistance and in promoting permanent solutions. Even if, in its essence, the High Commissioner's interest has not gone beyond the scope of his functions as hitherto defined, the fact that, when he lends his "good offices", no formal eligibility determination is necessary, has been of considerable significance. It has facilitated a wider understanding of the purely humanitarian nature of the High Commissioner's work, as has been most apparent in the attitude recently adopted even by countries of origin of refugees, especially in Africa.

(E) The problem summarized

16. From the above it will be seen that a problem has arisen due to the existence of an increasing number of refugees who are not covered by the 1951 Convention and to the growing discrepancy between the categories of refugees covered by the Convention and those for whom the High Commissioner is competent under his Statute. This discrepancy which, as stated above, is emphasized by more recent developments as regards the High Commissioner's functions in the social field

7. See post paras. 96-103.

or "good offices" functions, is particularly significant as far as his function of international protection is concerned. The High Commissioner has encountered no difficulty *vis-a-vis* governments (whether parties to the 1951 Convention or not) as regards the *formal* recognition of his international protection. This function can, however, only have *material* content to the extent to which it has its counterpart in corresponding obligations of governments. In the field of international law, such obligations can be found in the 1951 Convention, in various other international legal instruments relating to or containing provisions regarding refugees and in general international law. In the case of refugees not covered by the 1951 Convention, however, such material content is reduced which, as far as these refugees are concerned, limits the effectiveness of the international protection function exercised by the High Commissiner on their behalf.

17. There would thus seem to be a general recognition of the need to extend the personal scope of the 1951 Convention, a need the existence of which has also been recognized on the international level. Thus the question of the personal scope of the 1951 Convention has been raised by several delegations represented on the Executive Committee of the High Commissioner's Programme at its Second Special Session in 1964 and at its 12th Session in 1965. At its 12th Session, the Committee "noted that the High Commissioner was studying ways and means by which the personal scope of the Refugee Convention of 1951 might be liberalized". [8] An examination of the historical development of the definition of the term "refugee" in the 1951 Convention will, however, show [9] that the dateline of 1 January 1951 and the possibility of optionally limiting the Convention to Europe were introduced because of the desire of certain Contracting States to protect themselves against possible future unforeseen

8. Report of the Twelfth Session of the Executive Committee of the High Commissioner's Programme, Document A/AC. 96/260, p. 7.
9. Post paras. 36-42.

obligations. When considering the present problem it should be born in mind that Governments may still not be prepared to assume future obligations whose extent they cannot foresee, or to broaden their obligations to existing new groups of refugees without any limitation. A means should, therefore, be found to enable Governments, by the adoption of suitable legal techniques, to assume the requisite international legal obligations without sacrificing their freedom of action in the case of new refugee situations, beyond the limits of what they would consider acceptable.

18. It is appreciated that in proposing an appropriate legal solution, account may have to be taken of historical developments, *e.g.* the difference between the present new refugee groups and those originally covered by the Statute and the Convention and the difference between the factual conditions in the light of which these instruments were adopted and those pertaining at the present time.[10]

19. The problem under consideration bears some resemblance to problems which have arisen in the past when the existence of new refugee situations called for appropriate measures on the international level. It is, therefore, proposed to examine these earlier precedents. In so doing, special consideration will be given to the legal techniques considered or adopted. It is also proposed to examine certain legal techniques adopted in other fields which may be of relevance to the matter under discussion.

20. It is hoped that the background information contained in the present paper will be of assistance to the Colloquium in proposing an appropriate solution for the present problem.

10. For an account of the factual conditions pertaining to the refugee problem in the post-war period see Elfan Rees: *"Century of the Homeless Man"*, *International Conciliation*, No. 515 November, 1957, and James Read : *"The United Nations and Refugees-Changing Concepts,"* No. 537 March 1962, both published by the Carnegie Endowment for International Peace.

II. BACKGROUND INFORMATION

(A) Analysis of the definition of the term "refugee" in the Convention relating to the Status of Refugees of 28 July 1951 and in the Statute of UNHCR (Annex to General Assembly Resolution 428(v) of 14 December, 1950.)

21. For the purposes of the Refugee Convention of 1951, the term "refugee" is defined by Article 1 A as "any person who :

> "(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organisation.[11]
>
> "(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[12]

11. Decisions of non-eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section."

12. In the case of person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national."

22. According to Article 1 B (1) the words "events occurring before 1 January 1951" shall be understood to mean either (a) "events occurring in Europe before 1 January 1951" or (b) "events occurring in Europe or elsewhere before 1 January 1951". Each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligation under the Convention. Moreover, according to Article 1 B (2) a Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.[13]

23. As regards the UNHCR Statute, paragraph 6 A (i) contains an identical provision to Article 1 A (1) of the Convention defining *pre-War refugees*. As regards later categories, the provision is substantially similar although there is a slight difference in wording : Thus in addition to pre-War refugees the competence of the High Commissioner shall, according to paragraph 6 A (ii) extend to :

> "Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country ; or who, not

13. Of the 47 States which are at present parties to the Convention 16 have adopted alternative (a) : Argentina, Australia, Brazil, Congo (Brazzaville), Dahomey, Ecuador, France, Italy, Ivory Coast, Luxemburg, Monaco Niger, Peru, Portugal, Senegal, Turkey.

Article 1 of the Refugee Convention of the corresponding provisions in the UNHCR Statute, also indicate the circumstances under which a person ceases to be a refugee (so-called "cessation clauses") or is excluded from the benefits of the Convention (so-called "exclusion clauses") Convention, Article 1, paragraphs (A) to (E) and Statute, paragraph 6 A; (a) to (f) and paragraph (7). These provisions will not be examined and they are not material for present purposes.

> having a nationality and being outside the country of his former habitual residence, is unable or owing to such fear or for reasons other than personal convenience, is unwilling to return to it."

24. The definition in the Statute does not contain a qualification similar to that in Article 1 B of the Convention regarding "events occurring in Europe" and "events occurring in Europe and elsewhere". Moreover, paragraph 6 B of the Statute contains an additional provision according to which the competence of the High Commissioner shall extend to :

> "Any other person (*i.e.* irrespective of whether or not as a result of events occcurring before 1 January 1951) who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence."

25. The scope of the Statute is, therefore, wider than that of the convention in that there is no possibility of imposing a geographical limitation and the definition is not bound to the dateline to be found in the Convention referring "events occurring before 1 January 1951." The latter expression in its earlier formulation "as a result of events in Europe after 3 September 1939 and before 1 January 1951" was the subject of comment during the preparation of the Convention. The expression was "intended to apply to happenings of major importance involving territorial or profound political changes as well as systematic programmes of persecution in this period which are the after-effects of earlier changes. The second date, 1 January 1951, excludes events which happen after that date but does not excl pudeersons who might become refugees at a later date as a

result of events before then, or as a result of after-effects which occurred at a later date. The date 1 January 1951 was chosen because it is the date of the assumption of Office by the United Nations High Commissioner for Refugees".[14]

(B) International agreements and arrangements concerning refugees adopted between the two World Wars

26. The legal instruments adopted between the two World Wars were essentially pragmatic in character. They contained no general definition of the term "refugee". They dealt with specifically defined categories of refugees and in part only with specific problems, as and when the need arose. The first instrument was the Arrangement of 5 July 1922 which was specifically concerned with the issue of certificates of identity to Russian refugees.[15] The Arrangement of 31 May 1924 for the issue of Certificates of Identity to Armenian Refugees [16] was similar in type. These two Arrangements were supplemented and amended by the Arrangement relating to the issue of Identity Certificates to Russian and Armenian Refugees of 12 May 1926 [17] and the

14. Report of the Ad Hoc Committee on Statelessness and related Problems, (First Session), 17 February, 1950, E/1618, p. 39. As to the application of the Convention to new refugees, see ante paras. 5, 6 and 7.

15. League of Nations Treaty Series, Vol. 13, No. 355. Arrangement did not contain a definition of the term "Russian refugee" but the farm of Identity certificate annexed to the Arrangement described the holder as "a person of Russian origin not having acquired another nationality".

16. League of Natians document, CL. 72(a) 1924.

17. League of Nations, Treaty Series, Vol. 89, No. 2004. For the purposes of this Arrangement, Russian and Armenian refugees were defined as follows : *Russian* : Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Republics and who has not acquired another nationality; *Armenian* : Any person of Armenian origin formerly a citizen of the Ottoman Empire who does not enjoy, or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality".

latter was extended to Turkish, Assyrian, Assyro-Chaldean and assimilated refugees by the Arrangement of 30 June 1928. [18]

27. On 30 June 1928, the first international instrument dealing with the legal status of refugees was also adopted, namely the Arrangement relating to the Legal Status of Russian and Armenian Refugees. [19] This was a comprehensive instrument and contained recommendations dealing, *inter alia*, with expulsion, personal status, exemption from reciprocity and the right to work It also recommended that the services normally rendered to nationals abroad by consular authorities should be discharged by the representatives of the League of Nations High Commissioner for Russian and Armenian refugees. The next instrument adopted, was also of a comprehensive character, and was legally binding : the Convention relating to the International Status of Refugees of 28 October 1933. [20] The new refugee problem that arose with the coming to power of Hitler led to the signing of the provisional Arrangement concerning

18. *Ibid*, No. 2006. For the purpose of the Arrangement the categories were defined as follows : *"Assyrian, Assyro-Chaldean and assimilated refngees* : Any person of Assyrian or Assyro-Chaldean origin and also by assimilation any person of Syrian or Kurdish origin who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality; *Turkish refugees* : Any person of Turkish origin previously a subject of the Ottoman Empire who under the terms of the Protocol of Lausanne of 24th July 1923 does not enjoy, or who no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality". (This definition refers to a limited number of Turkish refugees (150) who were excluded from the Amnesty granted by the Government of the Turkish Republic after the Imperial Dynasty was overthrown by Kemal Ataturk (*Ibid*, Vol. 36, p. 145).

19. *Ibid*, No. 2005.

20. *Ibid*, Vol. 159, No. 3663. According the Article 1, the Convention was to apply to Russian, Armenian and assimilated refugees, as defined by the Arrangements of 12 May 1926 and 30 June 1928, subject to such modifications or amplifications as each party may introduce in this definition at the moment of signature or accession.

the Status of Refugees coming from Germany on 4 July 1936 [21] and the Convention concerning the Status of Refugees coming from Germany on 10 February 1938, [22] both of which contained comprehensive provisions concerning the basic rights of refugees. By the additional Protocol of 14 September 1939 the Arrangement of 4 July 1936 and the Convention of 10 February 1938 were extended to refugees from Austria. [23]

28. The Arrangement of 5 July 1922 was adopted by 53 States; the Arrangement of 31 May 1924 by 35 States; the Arrangement of 30 May 1926 by 20 States; the arrangement of 30 June 1928 by 11 States; the Convention of 28 October 1933 by 8 States; the Provisional Arrangement of 4 July 1936 by 7 States, and the Convention of 10 February 1938 and the Additional Protocol of 14 September 1939 by 3 States.

(C) Legal techniques employed in the pre-War instruments

29. The Arrangements of 1922, 1924, 1926 and 1928 concerning the issue of Identity Certificates (so-called "Nansen Passports") to various groups of refugees were recommendations. So also was the Arrangement of 30 June 1928 relating to the Legal Status of Russian and Armenian Refugees which,

21. *Ibid*, Vol. 171, No. 3952. For the purposes of the Arrangement, the term "refugees coming from Germany" was defined by Article 1 as "any person who was settled in that country who does not possess any nationality other than German nationality, or in respect of whom it is established that in law or in fact he or she does not enjoy the protection of the Government of the Reich".

22. *Ibid*, Vol. 192, No. 4461. For the purposes of the Convention the term "refugees coming from Germany" was defined by Article 1 as applying to : "(a) persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government ; (b) stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government." Persons who left Germany for reasons of purely personal convenience were excluded from the definition.

23. *Ibid*, Vol. 198, No. 4634. The definition adopted in the Additional Protocol was *mutatis mutandis* the same as that contained in Article 3e of the Convention of 10 February 1938.

as stated above, was the first international instrument of its kind.

As the last mentioned Arrangement was only a recommendation, a separate Agreement was signed between France and Belgium on the same day [24] concerning the "quasi-consular" service rendered by the Representatives of the League of Nations High Commissioner for Refugees. In the Agreement the Contracting States expressly consented to the rendering of these services in their territory, thereby giving the documents and certificates issued by the High Commissioner's Representatives the official value of consular documents. [25] Moreover, it became generally apparent that recommendations were not sufficient to improve the legal status of refugees. The relevant national legislation was made with the normally protected alien in view and the special position of refugees could only be provided for on a national level by amending legislation or on an international level by treaties legally binding on the Contracting States. The subsquent instruments, i.e. the Convention of 1933, the arrangement of 1936, the Convention of 1938 and the Additional Protocol of 1939 were of this type and imposed binding legal obligations.

From the point of view of the legal techniques adopted, certain provisions of the 1933 and the 1938 Conventions call for special mention : Article 1 of the 1933 Convention provided that :

> "The present Convention is applicable to Russian, Armenian and assimilated refugees as defined by the Arrangement of 12 May 1926 and 30 June 1928, *subject to*

24. Agreement concerning the functions of the League of Nations High Commissioner for Refugees of 30 June 1928, League of Nations, *Treaty Series*, Vol. 93, Pg. 2126.

25. In the Preamble the contracting States expressed the desire "to secure the most effective possible action on the Resolution contained in the Arrangement concerning the legal status of Russian and American Refugees . . ."

such modifications or amplifications as each contracting party may introduce in this definition at the moment of signature or accession. [26]

30. As regards the qualification, *Bulgaria* introduced a limitation concerning the date when the refugees in question were on Bulgarian territory. *Great Britain* limited the application of the Convention to Russian, Armenian and assimilated refugees no longer enjoying the protection of their country of origin at the date of accession. *Czechoslovakia* regarded as refugees within the meaning of Article 1 only such persons who formerly possessed Russian or Turkish nationality; lost it before 1 January 1923 and had not acquired another nationality. *Egypt* reserved the right to extend or limit the definition in any way apart from such modifications or as amplifications each Contracting Party might introduce. In 1945, however, *France* extended the application of the Convention to Spanish refugees.

Article 23 of the 1933 Convention provided that :

"The Contracting Parties may at the moment of signature or accession declare that their signature or accession shall not apply to certain chapters, articles or paragraphs, exclusive of Chapter XI ("General Provisions"), or may submit reservations.

The Contracting Parties shall have the right at any moment to withdraw all or part of their exceptions or reservations by means of a declaration addressed to the Secretary-General of the League of Nations. The Secretary-General shall communicate the said declaration to....."

Similarly Article 25 of the 1938 Convention provided that :

"1. The High Contracting Parties shall, at the time of signature, ratification or accession or declaration

26. Underlining added.

27. Ordinance No. 45-766 of 15 March. Spanish refugees were defined as "persons possessing or having possessed Spanish nationality not possessing any other nationality and with regard to whom it has been established that in law or in fact they do not enjoy the protection of the Spanish Government.

under paragraph 2 of Article 24, 28 indicate whether their signature, ratification, accession or declaration applies to the whole of the provisions of Chapter I, II, III, IV, V and XIII or applies to the Convention in its entirety.

"2. Failing such indication, the signature, ratification, accession or declaration shall be deemed to apply to the Convention as a whole.

"3. In addition the High Contracting Parties may make reservations to the articles contained in Chapters to which their obligation extends.

"4. The High Contracting Parties shall have the right at any time to extend their obligation to cover further Chapters of the Convention, or to withdraw all or part of their exception or reservation, by means of a declaration addressed to the Secretary-General of the League of Nations. The Secretary-General shall communicate such declaration to....."

31. Thus Article 1 of the 1933 Convention expressly permitted the introduction by the Contracting States of modifications or amplifications with regard to its scope. On the other hand, Article 23 of the 1933 Convention and Article 25 of the 1938 Convention made it possible for States to become parties to the Convention without limiting its scope as far as they were concerned, but at the same time enabled them to introduce limitations as regards the substantive provisions of the Convention to be applied. This technique, permitting the adoption of the international legal instruments, in their entirety or in part, which is similar to but possesses certain advantages over the technique of introducing reservations,[29] has also

28. Application of Convention to Colonies, Protectorates, Overseas territories, etc.

29. Article 14 of the Provisional Arrangement of 1936 merely provided that :" The Government may make reservations at the moment of signature. The Contracting parties shall have the right at any moment to withdraw all or some of their reservations by means of a declaration addressed to the Secretary-General of the League of Nations . . ."

been employed in other fields not specifically concerned with refugees, *e.g.* in certain Conventions adopted within the framework of the International Labour Organisation and in the European Social Charter.[30]

(D) The Constitution of the International Refugee Organisation (IRO)

32. The Constitution of the IRO was an international treaty adopted by the General Assembly in Resolution 62 (I) of 15 December 1946. In accordance with Article 18 of the Constitution the latter came into force on 20 August 1948, when 15 States, whose required contributions to Part I of the operative budget amounted to not less than 75% of the total, had become parties to the Costitution by signature of acceptance. Article 1 of the Constitution provided that the mandate of the organisation was to extend to refugees and displaced persons in accordance with the principles, definitions and conditions set forth in Annex. I, which formed an integral part of the Constitution. Like the pre-War instruments, the IRO Constitution defined refugees by specific categories. At the same time, however, it laid down certain broad criteria on the lines of a more general definition. The definitions in the IRO Constitution are of interest from the point of view of the historical development of the definition in the 1951 Convention. Thus, in addition to specifically defined groups, the mandate of the organisation extended to persons who were considered "refugees", before the outbreak of the Second World War for reasons of race, religion, nationality or political opinions and to persons who as a result of events subsequent to the outbreak of the Second World War were unable or unwilling to avail themselves of the protection of the Government of their country of nationality or former nationality. Persons falling within these various categories, with certain exceptions, became the concern of the Organisation if they could be repatriated and the help of the Organisation was required for their repatriation, or if they expressed "valid objections" to returning to their countries of former habitual residence. It is in the definition of "valid objections" that we find the elements of a more general definition of the term "refugee". Valid objections included "persecution, or fear based on reasonable grounds, of persecution because of race, religion, nationality or political opinions, provided these opinions were not in conflict with the principles of the United Nations laid down in the Preamble to the United Nations Charter". The IRO finally terminated its activities in 1952.

30. See post paras. 105-117

(E) The Convention of 1951

33. *Introduction*

In 1947 the Human Rights Commission of the United Nations adopted a Resolution expressing the wish "that early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation."[31]

34. In pursuance of this Resolution, the Economic and Social Council at its Sixth Session adopted Resolution 116 (VI) dated 1 and 2 March 1948. In this Resolution the Council requested the Secretary-General to undertake a study of the existing situation in regard to the protection of stateless persons and of national legislation and agreements and conventions relevant to statelessness and to submit recommendations to the Council on the desirability of concluding a further convention on this subject. In the "Study of Statelessness" prepared by the Secretary-General for submission to the Economic and Social Council attention was drawn to the fact that Resolution 116 (VI) only mentioned the protection of "stateless persons" but did not refer to "refugees" and the following points were made in this connexion : As regards stateless persons these fell into two categories, *de jure* and *de facto*. *De jure* stateless persons were persons not possessing a nationality either

31. UN Document E/600, paragraph 46.

because they had never acquired one, or because they had lost their nationality and did not acquire a new one. *De facto* stateless persons, on the other hand, were persons who, having left the country of which they are nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals. Although there was, in law, a considerable difference between *de jure* and *de facto* stateless persons, their position was in practice similar. The fact that refugees were not mentioned in the Resolution did not mean that they had to be excluded from the scope of Study. In fact, a considerable number of refugees were stateless persons either *de jure* or *de facto*.[32] At the conclusion of the "Study of Statelessness", the Secretary-General recommended to the Economic and Social Council *inter alia*, to take the following decisions : To address an invitation to all Member States not yet parties to the Convention of 28 October 1933, the Convention of 10 February 1938 and the Additional Protocol thereto of 14 September 1939, to take the necessary steps as soon as possible to become parties thereto ; to urge Member or States to refrain from taking any discriminatory measures affecting *de jure* or *de facto* stateless persons ; and to improve the conditions of such persons by providing them, through appropriate legislative or administrative action, with a legal status inspired by the principles underlying these agreements to recognize the necessity of a Convention, based on the agreements in force, determining the legal status of stateless persons ; to instruct the Secretary-General, in consultation with the Director-General of the IRO and the administrative

32. UN Document E/1112 and E/1115/Add. 1, pp. 9-10. Since statelessness is a purely legal concept, connoting lack of nationality, it might be more appropriate to speak of *unprotected persons* who may in time be divided into *de jure* unprotected persons, i. e. stateless persons and *de facto* stateless persons, i. e. refugees, it being uuderstood that there are refugees who are also *de jure* unprotected, i. e. stateless. Dr. Weis : *"Legal Aspects of the Convention of 28 July 1951 relating to the status of Refugees,"* *British Yearbook of International Law*, 1953, p. 480.

heads of the other specialized agencies concerned, or an ad hoc Committee appointed by the Council, to prepare a draft Convention. The proposed draft Convention was thus to apply to stateless persons in general and was to be based on the principles of the agreements already in force.[33] In the later development, this emphasis on the link with earlier agreements is no longer apparent and the problem of refugees and stateless persons came to be treated separately.

35. In Resolution 248 (IX) B of 8 August 1949, the Economic and Social Council took note of the "Study of Statelessness" and appointed an ad hoc Committee consisting of representatives of thirteen governments[34] possessing special competence in this field, to consider, *inter alia*, the desirability of preparing a revised and consolidated Convention relating to the International Status of Refugees and Stateless Persons and, if they considered such a course desirable, to draft the text of such a Convention. The Secretary-General was invited to submit the report of the Committee to governments for comments and subsequently to the Council at an early session accompanied by such comments. The first session of the Ad Hoc Committee was held in New York from 16 January to 16 February 1950. The Committee decided to recommend to the Economic and Social Council that the most effective solution of the problems referred to it was by means of a convention. In view of the urgency of the refugee problem and the responsibility of the United Nations in this field, the Committee decided to devote itself first to the problem of refugees, whether stateless or not, and to leave to later stages of its declarations the problem of stateless persons who are not refugees. The Committee prepared a draft Convention relating to the Status of Refugees and a Separate draft Protocol relat-

33. Study of Statelessness, pp. 72-74.

34. The representatives of 11 governments took part in the work of the Committee: Belgium. Brazil, Canada, China, Denmark, France, Israel, Turkey, United Kidgdom, United States, and Venezuela.

ing to the Status of Stateless Persons. The Report of the Committee[35] and the comments of governments were transmitted to the Economic and Social Council and considered by the latter at its 11th Session in August 1950.[36] It Resolution 319 (XI) B of 16 August 1950, the Council submitted the Report of the Ad Hoc Committee to the General Assembly. It requested the Secretary-General to reconvene the Ad Hoc Committee in order that it might prepare revised drafts in the light of comments of governments and of specialised agencies and the discussions and decisions of the Council at its 11th Session. The revised drafts were to include the definition of "refugee" and the Preamble approved by the Council, and incorporated in the Resolution. The Secretary-General was also requested to submit the drafts as revised by the Ad Hoc Committee to the General Assembly at its 5th Session. The second session of the Ad Hoc Committee was held in Geneva from 14 to 25 August 1950, immediately after the 11th Session of the Economic and Social Council. The draft Preamble and Article 1 (Definition) as approved by the Economic and Social Council and the revised drafts of the remaining Articles were duly submitted to the General Assembly at its Fifth Session, and the question was considered by the Third Committee at its 324th, 325th, 326th and 327th meetings. In Resolution 429 (V) adopted on 14 December 1950, the General Assembly (1) decided to convene in Geneva a Conference of Plenipotentiaries to complete the drafting of and to sign the Convention relating to the Status of Refugees and the Protocol relating to the Status of Stateless Persons ; (2) recommended to governments participating in the Conference to take into consideration the draft Convention prepared by the Economic and Social Council, and in particular the the text of the definition of the term "refugee" annexed to the General Assembly Resolution ; (3) instructed the Secretary-General to invite the governments of all States, both members and non-members of the United Nations, to attend the Conference. The Conference of Plenipotentiaries at which 26 States were

35. Report of the Ad Hoc Committee on Statelessness and related Problems, Document E/1618, 17 February 1950.

36. Document E/AC. 7/SR. 156-169 (Social Committee)

represented by delegates,[37] and two by observers,[38] met in Geneva from 2 to 25 July 1951. The Conference adopted the Convention relating to the Status of Refugees and a Resolution concerning stateless persons.[39] The Final Act of the Conference was signed on 28 July 1951.

36. (ii) Historical development of the definition of the term "refugee" in the 1951 Convention

At the opening of the first Session of the Ad Hoc Committee, the Secretary-General submitted a Memorandum[40] to which was attached a preliminary Draft Convention. Article 1 of the latter listed three possible solutions for the problem of definition. For the purposes of the Convention the term "refugee" could mean (a) any person placed under the protection of the United Nations in accordance with the decisions of the General Assembly, or (b) refugees covered by the definitions contained in the IRO Constitution, or (c) refugees according to a definition to be drafted by the Ad Hoc Committee. As regards alternative (a) the difficulty appeared to be whether governments would be willing as it were "to sign a blank

37. Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, France, Federal Republic of Germany, Greece, Holy See, Iraq, Israel, Italy, Luxembourg, Monaco, Netherlands, Norway, Sweden, Switzerland (the Swiss delegation also represented Liechtenstein), Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

38. Cuba, Iran.

39. "THE CONFERENCE,

"HAVING CONSIDERED the draft Protocol relating to the of Stateless Persons,

"CONSIDERING that the subject still requires more detailed study,

"DECIDES not to take a decision on the subject at the present Conference and referers the draft Protocol back to the appropriate organs of the United Nations for further study."

40. Document E/AC. 32/2, dated 5 January 1950.

cheque". [41] In connexion with alternative (c), it was possible to take over the IRO definitions, where necessary subject to appropriate revision, or to approach the problem completely afresh. Any plan for the revision of the IRO definition, however, would have to take account of two considerations : (1) should all refugees of whatever origin be included in the definition subject, where necessary, to certain exceptions ? Or, on the contrary should the various categories whom it was intended to cover be enumerated ? (2) Should the definition include future refugees, i. e. refugees belonging to existing categories who may in the future seek refuge in another country and persons belonging to new categories of refugees ? [42]

37. At the beginning of the First Session of the Ad Hoc Committee draft proposals for Article 1 of the Convention were submitted by the *United Kingdom*, *France* and the *United States*. While the United Kingdom, and French draft proposals contained general definitions, [43] *the United States* draft proposal

41. It was considered that this difficulty could be overcome by relating the Convention to the situation obtaining at the time when it was concluded. This solution, however, had the drawback of being static. An alternative was to provide for the modification of the Convention, *ipso facto*, in the event of modification by the General Assembly of the scope of the United Nations protection, subject to the right of States to declare their non-acceptance of the modification within a certain period of time. See *Ibid*, pp. 15-17

42 *loc cit.*

43. The United Kingdom draft proposal was originally wide enough to include stateless persons as well as refugees but in its revised form was limited to the latter. According to the revised draft proposal, unless otherwise provided for, the term "refugee" meant "a person who, having left his country of ordinary residence on account of persecution or fear of persecution, either does not wish to return to that country for good and sufficient reason or is not allowed by the authorities of that country to return there and who is not a national of another country". (E/AC. 32/L. 2/Rev. 1)

The Preamble of the French draft proposal stated the principle that subject to the limitations laid down in the Convention refugee status should be granted to all persons who, having left their country of origin, refuse to return to it because of fear of persecution, or cannot return there because they have not obtained the authorisation to do so and for one or other of these reasons are unable or unwilling to avail themselves of the protection of that country, provided they have not acquired the nationality

(Footnote contd.)

contained a definition by categories. —According to the latter draft definition the term "refugee" was to apply in the first place to persons defined as such according to the pre-war arrangements and conventions. Beyond this, the term was to apply to "any person who is and remains outside his country of nationality or former habitual residence because of persecution or fear of persecution on account of race, nationality, religion or political belief, and who belongs to one of the following categories : (a) German, Austrian, Czechoslovak refugees, victims of the Nazi or Fascist regimes, or regimes which took part on their side during the Second World War; (b) Spanish refugees (c) neo refugees, i. e. persons outside their country as a result of events subsequent to the outbreak of the Second World War (subject to certain exceptions); (d) Displaced persons, and (e) unaccompanied children. [44] The representative of the United States explained that the point of departure of the draft proposal was, subject to certain modifications, the definition in the IRO Constitution. [45] The term "neo refugees" was not intended to imply the automatic inclusion of any new future group of refugees but to permit their inclusion, if

(Footnote 43 contd)

of another country". (E/AC. 32/L. 3). The draft Article 1 in its revised form provided that : "(1) Subject to any supplementary decisions which may be taken by the General Assembly and to any special agreements which may be concluded between the signatories to the present Convention and the High Commissioner for Refugees .....the signatures to the present Convention recognise the status of refugee, entitling him to the supreme protection of the United Nations to any person who : (a) seeking asylum or having been granted asylum under the conditions specified in Article 14 of the Universal Declaration of Human Rights ; or (b) having left his country of origin and refusing to return thereto owing to a justifiable fear of persecution, or having been unable to obtain from that country permission to return ; (c) for either of these reasons indicated in sub-paragraph (d) above, is unwilling or unable to claim the protection of the said country. (E/AC. 32/L. 3/Corr. 1).

44. E/AC. 42/L. 4 and Add. 1. In addition, the term "refugee" was to include "persons in any other categories which might be agreed to by the High Contracting Parties on the recommendation of the General Assembly."

45. E/AC. 32/SR. 5, p. 3

desired, by means of protocols, addenda or later agreements. The essential idea was that Member States should know in advance to what they were committing themselves and it was advisable on a given date to close the enumeration of categories of refugees to whom the Convention would automatically apply. [46] Although views were expressed in support of a general definition, it was the consensus in the Committee that the term "refugee" should be defined by listing various categories to which the Convention was to apply and the drafting of the definition was entrusted to a drafting group which used the United States draft proposal as a working document. [47] In its report, the Committee stated that the solution of a general definition had been rejected because "it would be difficult for a government to sign a "blank cheque" and undertake obligations towards future refugees, the origin and number of which would be unknown. It was also felt that since this was a document prepared under the auspices of the United Nations and since the individuals protected by this Convention would probably become the charge of that organ of the United Nations concerned with the protection of refugees, the categories of individuals to be covered should be specified as was done in previous United Nations decisions in this regard". [48] The text of the definition finally adopted by the Ad Hoc Committee at its first session was, for present purposes, the same as that elaborated by the drafting group referred to above. It was as follows :

Article 1

Definition of the of the term "refugee"

A. For the purposes of this Convention the term "refugee" shall apply to :

46. E/AC. 32/SR. 3, p. 13
47. E/AC. 32/SR. 6, pp. 6-7
48. Document E/1618, p.38

1. Any person who :

   (a) As a result of events in Europe after 3 September, 1939 and before 1 January 1951, has well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion, *and*

   (b) Has left, or owing to such fear is outside the country of his nationality, or if he has no nationality, outside the country of his former habitual residence; *and*

   (c) Is unable or, owing to such fear, is unwilling to avail himself of the protection of the country of his nationality.

2. Any person who :

   (a) (i) Was a victim of the Nazi regime in Germany.....

   (ii) Was, or has a well-founded fear of being, a victim of the Falangist regime in Spain;

   (b) Has left or is outside the country of his nationality, the country of his former habitual residence; and

   (c) Is unable or, for reasons other than those o purely personal convenience, is unwilling to avail himself of the protection of the Government of the country of his nationality.

3. Any person who in the period between 3 August, 1914 and 3 September, 1939 was considered to be a refugee". [49]

49. *Ibid*, p. 12

38. In their comments on the report of the First Session of the Ad Hoc Committee, certain governments again expressed themselves in favour of a general definition. [50] When the Economic and Social Council (Social Committee) at its 11th Session, considered the Report of the Ad Hoc Committee, it had before it draft proposals submitted by *Belgium* and the *United Kingdom* for a general definition. [51] It also had before it a draft proposal by France for a definition by categories.[52]

39. The question of general definition or a definition by categories was again discussed, A decision of principle was reached that the definition should be based on categories. [53]

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50. Cf *Austria* (E/1703/ Add. 4, p. 4) and *Italy* (E/1703/Add. 6, page 3), drew attention to the possible exclusion of a future influx of refugees. *France* (E/1703/Add. 5, page 2), while reiterating its previous support for a broad and general definition, pointed out in particular that such a broad definition "could itself in no way involve governments in commitments beyond those they might formally undertake either by means of a clarifying reservation made at the time of signature of the Convention, or by means of a special agreement with the High Commissioner for Refugees."

51. *Belgium.* "The term 'refugee' shall apply to any person outside the country of his nationality or its former habitual residence, who cannot avail himself of the protection of the government of his present or former nationality, or who is reluctant to do so because he has good grounds to fear that he may become the victim of persecution by reason of his race, religion, nationality or political opinions". (E/AC. 7/L. 59)

United Kingdom. For the purposes of this Convention the term 'refugee' shall apply to any person who: (a) is outside the country of his nationality, or if he has no nationality the country of his former habitual residence owing to well-founded fear of being the victim of persecution for reasons of race, religion, nationalily or political opinion and (b) (i) if he has a nationality is unable or, owing to such fear is unwilling to avail himself of the protection of the Government of the country of his nationality or (ii) if he has no nationality, is unable, or, owing to such fear is unwilling to return to the country of his former habitual residence (E/AC. 7/L. 63).

52. Document E/L.82

53. Document E/AC. 7/SR. 158, pp. 6-9. Various arguments were put forward in favour of this solution: Previous instruments had always defined refugees by categories; a definition by categories had the advantage of making it quite clear whether a person fell within the scope of the definition or not and also ensured that States did not assume unforeseen obligations. For the latter reason a definition by categories would be more likely to secure the adherence of a larger number of States. (Ibid. pp. 12-20 and SR. 159, pp. 4-7)

The discussion then proceeded on the basis of the draft Article 1 adopted by the Ad Hoc Committee and the French draft amendment. The French draft definition differed from the draft adopted by the Ad Hoc Committee in that, although defining refugees by categories, it made no reference to specific groups, e.g. victims of the Nazi regime in Germany or the Falangist regime in Spain. The draft definition adopted by the Economic and Social Council in Resolution 319 (XI)B of 16 August 1950, was substantially the same as the French draft definition and was worded as follows :

"For the purpose of this Convention the term 'refugee' shall apply to any person :

(1) Who in the period between 1 August, 1914 and 15 December, 1946 was considered a refugee under the arrangements of 12 May, 1926 and 30 June, 1928 or under the Convention of 28 October, 1933 and 10 February, 1938, and the Protocol of 14 September 1939;

(2) Who has been accepted by the International Refugee Organisation as falling under its mandate;

(3) Who has had, or has, well-founded fear of being a victim of persecution for reasons of race, religion, nationality, or political opinion as a result of events in Europe before 1 January 1951, or circumstances directly resulting from such events, and, owing to such fear, has had to leave, shall leave, or remains outside the country of his nationality, before or after 1 January 1951, and is unable, or owing to such fear or for reasons other than personal convenience, unwilling, to avail himself of the protection of the Gevernment of the country of his nationality or, if he has no nationality, has left or shall leave, or remains outside the country of his former habitual residence."

40. This draft definition, having been adopted, by the Economic and Social Council, was not further discussed by the Ad Hoc Committee at its Second Session. In accordance with Economic and Social Council Resolution 319 (XI) B, the Ad Hoc Committee duly submitted this draft definition together with the remaining draft provisions as revised by it to the General Assembly at its Fifth Session where they were considered by the Third Committee. The latter had before it draft proposals submitted by *Belgium* [54], the *United Kingdom*[55] and a joint draft proposals submitted by *Belgium*, *Canada*, *Turkey* and the *United Kingdom* [56] containing general definitions. It also had before it a draft proposal submitted by *Venezuela* containing a definition by categories. [57] An informal working party [58] established at the 329th meeting prepared a revised text [59] which in an amended form was adopted by the Third Committee [60] and by the General Assembly in Plenary Session in Resolution 429 (V) of 14 December, 1950. [61] In that Resolution the General Assembly recommended that Governments participating in the Conference of Plenipotentiaries should take into consideration the text of the definition, annexed to the Resolution, worded as follows :

54. Document A/C.3/L. 114. The draft definition was, with certain verbal differences, identical with the draft definition submitted by Belgium to the Economic and Social Council. See ante para 38, note 51.

55. Document A/C.3/L. 115. The draft definition was indentical with that submitted by the United Kingdom to the Economic and Social Council. See ante para. 38. note 51.

56. Document A/C.3/L.130. During the discussions in the Third Committee, the principle of a general definition was also supported by the *Netherlands* (A/C.3/SR.325, pp. 337-338). *Yugoslavia* (*Ibid*' pp. 339-340) and *Chile* (*Ibid*, SR. 328. p. 355), *China* (*Ibid*, SR.329, p.362).

57. During the discussions in the Third Committee the principle of a definition by categories was also supported by *France* (*Ibid*, SR. 328, p. 356 and SR. 329, pp. 364-365) and the *U. S. A.* (*Ibid*, SR. 329, pp. 363-364).

58. Belgium, Canada, France, Israel, Turkey, United Kingdom, United States and Venezuela.

59. Document A/C.3/L. 131/Rev. 1.

60. A/C.3/SR. 332. pp. 375-381.

61. A/PV. 325, p. 672.

"A. For the purposes of the present Convention the term 'refugee' shall apply to any person who :

(1) Since 1 August 1914, has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1932, the Protocol of 14 September 1939 or the Constitution of International Refugee Organisation.

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion is outside the country of his nationality, or owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationaitly and being outside the country of his former habitual residence, is unable or owing to such fear or for reasons other than personal convenience, is unwilling to return to it".

.....

41. It will be seen that a substantive difference between this draft definition and that adopted by the Economic and Social Council in Resolution 319 (XI) is that term 'refugee' is no longer limited to persons fearing persecution as a result of events in Europe, although the dateline of 1 January 1951 remains. At the Conference of Plenipotentiaries, the *French* Delegation submitted a draft amendment to paragraph 2 of Article 1 to add the words : "in Europe" after the words ; "As a result of events occurring". [62] This draft amendment gave rise to considerable discussion. The limitation of the Convention to "events in Europe" was supported by the re-

62. Document A/CONF. 2/75

presentatives of certain other States [63] while others considered that the Convention should not be purely European in character. [64] The representative of *Switzerland*, while in favour of the more general solution, proposed as a compromise that the general formula be adopted subject to the right of each State to introduce reservations. [65] While this solution received considerable support, [66] there appeared to be certain misgivings as to the legal technique of adopting a broader definition and subsequently entering reservations. [67] The President of the Conference suggested the solution of embodying the two alternatives in the definition itself, leaving it to opt for whichever of them they preferred [68] and a specific proposal along these lines was introduced by the representative of the *Holy See* [69] and adopted. [70] At a later stage a group prepared a text [71] which was adopted as Article 1 B of the 1951 Convention worded as follows :

63. i. e. *Italy* (A/CONF. 2/SR. 21, p. 4) and *U. S. A.* (*Ibid*, p. 15). The main argument advanced by the representatives of these countries and also by the representative of *France* (*Ibid*, SR. 20, pp. 9-10) was that States could not assume obligations the scope of which they could not foresee.

64. i. e. *Belgium* (*Ibid*, SR. 20, pp. 7-8), *Egypt* (*Ibid*, p.9), *Iraq* (*Ibid*, p. 11) and *Yugoslavia* (*Ibid*, SR. 21, p. 5).

65. *Ibid*, SR 20, P. 14. Since this proposal permitted a compromise it was supported by the representatives of various States, although a number of them expressed themselves in principle in favour of the more general solution, i. e. *Canada* (*Ibid*, p. 16), *Sweden*, (*Ibid*, SR. 21, p. 17), *Germany* and *Denmark* (*Ibid*, p. 17) *Netherlands* (*Ibid* SR. 22, pp. 11-12), *Norway* (*Ibid*, p. 14), cf. also *United Kingdom* (*Ibid*, SR. 33, p. 15).

66. See previous note.

67. Document A/CONF. 2/SR. 20, pp. 10-11. *France* (*Ibid*, p. 16), Egypt (*Ibid*, SR. 21 pp. 18-19) Assistant Secretary-General in Charge of Legal Affairs and *Ibid*. pp. 10-20 *passim*)

68. *Ibid*, p. 20

69. *Ibid*, SR 23, p. 4. The following words to be added to subparagraph A 2 of Article 1:" in Europe, or in Europe and other Continents as specified in a statement to be made by each High Contracting Party at the time of signature, ratification or accession."

70. Document A/CONF. 2/SR. 23, p. 7.

71. Document A/CONF. B/105.

"B. (1) For the purposes of this Convention, the words 'events occurring before 1 January 1951, in Article 1, Section A, shall be understood to mean either;

(a) 'events occurring in Europe before 1 January, 1951, or

(b) 'events occurring in Europe or elsewhere before 1 January 1951'; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United States.[72]

42. The discussion of the problem of the geographic limitation and the solution adopted presents a certain interest from the point of view of legal technique. Apart from the provision concerning the geographic limitation and the matters mentioned in the following section, the draft definition prepared by the General Assembly and annexed to Resolution 429(V) was adopted by the Conference of Plenipotentiaries subject to

72. The latter provision had its origin in the Sixth Committee which included it in consequence of the deletion of paragraph F of the draft definition annexed to General Assembly Resolution 429 (V), according to which "the Contracting States may agree to add to the definition of the term "refugee" contained in the present Article persons in other categories, including such as may be recommended by the General Assembly (A/CONF. 2/SR. 33, pp. 16-17). The legal technique represented by the last mentioned provision will be considered more fully later. (See post paras 49-50.)

certain modifications which would not seem to call for comment in the present connexion.

43. (iii) **Legal techniques considered or adopted in connexion with the preparation of the 1951 Convention**

From the above description of the historical development of the term "refugee" in the 1951 Convention it will be seen that various legal techniques were considered or adopted and these legal techniques will now be examined.

(1) **Convention or Recommendation**

44. It has been seen above that in the *Study of Statelessness* prepared for the Economic an Social Council by the Secretary-General, the latter recommended the adoption of a Convention [73] and that in the report on its First Session, the Ad Hoc Committee decided to recommend to the Economic and Social Council that the most effective solution of the problem referred to in it was by means of Conventions. [74] In the "*Study of Statelessness*" the question was put and answered as follows :

"Convention or Recommendation ?

"The question is whether the end in view could not be attained simply by legislative measures taken by each of the reception countries individually.

"In the light of experience, this method does not seem likely to produce any results.

"Nothing can of course be done in this respect with out the collaboration, or *a fortiori* against the wishes, of the countries of reception. But if the good intentions of those countries are to be translated into action, it is essential to resort to the method of a Convention, for the following reasons :

73. See ante para. 34. This view was repeated in the Memorandum submitted by the Secretary-General to the First Session of the Ad Hoc Committee (E/AC. 32/2).

74. See ante para. 35 and E/AC. 32/SR. 2, p. 6

"Certain measures, such as the provision of a document to take the place of a passport, necessitate a formal international agreement.

"Other measures, which could in theory be adopted through legislation cannot actually be taken for technical and psychological reasons.

"In point of fact :

"(a) No Government will be willing to take the first step in this direction for fear of being the only one to improve the status of stateless persons, [75] one thus causing an influx of them into its territory;

"(b) Action on these lines, if taken by a single Government alone, might appear to be inspired by certain political views. Simultaneous action is the only means of avoiding such suspicions;

"(c) A law designed to improve the status of stateless persons would have to contain a whole body of provisions impinging on the most varied branches of internal legislation. It would be difficult to get parliaments, habitually overburdened with work as they are, to adopt such a law, of an unwanted nature and content, which would require prior study by a number of commissions;

"(d) Ratification of a convention in which all these provisions find their natural place gives rise to less difficulty;

"(e) Experience in this field shows that nothing was done in the field of internal legislation to give

75. For the meaning in which this term was used, see ante para. 34.

effect to the recommendations contained in the Arrangement of 30 June 1926, although these recommendations, which were adopted after exhaustive discussion, answered to the intentions of numerous Governments. However, when they had been inserted in the 1933 and 1938 Conventions, these same provisions were incorporated in the law of the contracting countries;

"(f) A general convention is a lasting international structure; being open to the accession of States which have not signed it, it encourages Governments to associate themselves with the work of their forerunners; even if those Governments are not in a position to accede to it, such a convention sometimes exerts a direct influence on the administrative and legal practice of their countries.

"As a provisional measure and pending the conclusion of a convention, however, the possibility might be considered of inviting States Members, in the form of a recommendation, to refrain from taking discriminatory measures against stateless persons, either *de jure* or *de facto*, and to deal with them in conformity with a status inspired by the principles underlying the Conventions of 28 October 1933 and 10 February. 1938". [76]

(2) General definition or definition by categories

(3) Universal definition or definition subject to geographical limitation

45. The above matters have already been considered above in connexion with the historical development of the definition of the term "refugee" in the 1951 Convention.

76. *A Study of Statelessness*, pp. 63-64 reproduced (with the exception of the final paragraph) in the Memorandum submitted by the Secretary-General to the First Session of the Ad Hoc Committee (E/AC. 3212) pp. 5-6

(4) Addition of further categories of refugees on the basis of recommendations by the General Assembly

46. It will be recalled that in the Memorandum submitted by the Secretary-General to the First Session of the Ad Hoc Committee, one of the three possible solutions for the problem of definition was to consider as a refugee any person placed under the protection of the United Nations in accordance with the decisions of the General Assembly. It was, however, pointed out that Governments might be reluctant to accept this solution, which might, as it were, involve signing a "blank cheque". One method of overcoming this difficulty was to provide that in the event of any modification by the General Assembly of the scope of the United Nations protection, the scope of the Convention would also be modified *ipso facto*, subject to the right of States to declare within a certain time limit that they did not accept the modification or accepted it only in part. [77] The definition in the draft proposal submitted by the United States at the First Session of the Ad Hoc Committee, which, as has been seen was a definition by categories contained a provision according to which the term "refugee" was also to extend to

"Persons in any other categories which might be agreed to by the High Contracting Parties on the recommendation of the General Assembly." [78]

The draft article adopted by the Ad Hoc Committee at its First Session included a provision according to which :

77. E/AC. 32/2, p. 16, ante para. 36.

78. Document E/AC. 32/L.4/Add. 1. The draft definition submitted by France, which was a general definition, opened with the words : "Subject to any supplementary decisions which may be taken by the General Assembly and to any special agreements which might be concluded between the signatories to the present Convention and the High Commissioner for Refugees". (E/AC. 32/L. 3, ante para. 37.

"The Contracting States may agree to add to the definition of 'refugee' contained in this article, persons in other categories recommended by the General Assembly." [79]

During the discussion on this provision, the representatives of *Israel* explained the intentions of the working group which had prepared the draft article. The group had thought that the General Assembly might adopt a recommendation to include a new category of refugees. The acceptance of the new category thus recommended by the signatories to the Convention should be collective and not unilateral since otherwise there would be as many separate Conventions as acceptances. Acceptances would be made according to one of the procedures used in the United Nations. The Secretary-General would send the recommendations to the States signatories to the Convention. If general agreement among the signatories were reached, it would suffice to notify all States members thereof and such notification would automatically lead to the extension of the Convention to the proposed new categories. If, on the contrary, opinion was divided, the best course would be to call a diplomatic conference to resolve the difficulties. [80] The representative of the United States considered that the paragraph "would not prevent certain signatory States from recognizing new categories of refugees by means of bilateral or multilateral agreements independently of their inclusion in the Convention." [81] In its report the Committee stated that it had "anticipated the possibility of extending the Convention to categories of refugees other than those defined in the Article. Such extension would require agreement of the contracting States to become binding upon them. The General Assembly may propose the inclusion of new categories". [82]

79. Document E/1618, p. 12
80. Document E/AC. 32/SR. 18, p. 8
81. *Ibid*, pp. 8-9
82. Document E/1618, p. 40

A draft provision similar to the one adopted by the Ad Hoc Committee was contained in the draft definition by categories submitted by *France* at the Eleventh Session of the Economic and Social Council :

> "B. The Contracting States may agree to extend the definition of refugees contained in this Article to persons in other categories recognized by the General Assembly.
>
> This provision shall not affect the exercise by States of the right to conclude private agreements under which, without committing the United Nations, they undertake unilaterally to extend the benefits of this Convention to refugees not covered by the present Article". [83]

47. This draft provision was used as a basis of discussion in the Social Committee of the Council. The representative of *Chile* considered that as States were always free to modify the Convention by drawing up a protocol, there was no need to interpose the General Assembly. The Representative of the *United States* supported its retention for the sake of consistency since it had decided (i.e. at that state) that the Convention itself should first receive the approval of the General Assembly. The Representative of *France* explained that the second paragraph was intended to supplement the original clause by making it clear that private arrangements might be made by States even in the absence of a General Assembly recommendation. While France was not prepared to accept the first paragraph without the second, it would agree to the deletion of the entire provision. The Representative of the *United Kingdom* also stressed the freedom of action of States in extending the definition. Furthermore, the States in question might have to wait some time for the approval of the General Assembly whose attitude

83. Document E/L. 82

might even differ from their own. The Committee, therefore, decided to delete the draft provision which did not therefore figure in the definition adopted by the ECOSOC in resolution 319 (XII) of 16 August 1950. [81] It was, however, re-submitted by the representative of *Venezuela* in the Third Committee of the General Assembly in the following terms :

> "B. The Contracting States may agree to add to the definition of 'refugee' in this Article persons in other categories recommended by the General Assembly.

48. Explaining his proposal the representative of Venezuela recognized the validity of the reason which had led to the rejection of the provision by the Economic and Social Council, namely that any of the Contracting States could at any time agree to accept any category of refugees they deemed fit. Such a provision should, however, be included because the existing draft might give the impression that it was inflexibly restrictive and that the General Assembly could not subsequently augment the number of categories. It was improbable that States themselves would be greatly interested in increasing the catagories, whereas ths General Assembly would be continuously concerned with the question. If it proposed new categories, the States would be free to accept or reject them. Lastly it would be wise to keep, by means of such a paragraph, a link however slight, between the General Assembly and the Contracting States. [85]

49. The proposal was accepted and the provision, in slightly amended form, was embodied in the draft definition annexed to General Assembly Resolution 429 (V) of 14 December, 1950 :

84. Document E/AC. 7/SR. 160, pp. 13-15. See also *Ibid*, SR. 159, p. 12.

85. Document A/C. 3/SR. 324, p. 339.

> "F. The Contracting States may agree to add to the definition of the term 'refugee' in the present Article persons in other categories *including* such as may be recognized by the General Assembly". [86]

50. The provision was, however, rejected by the Conference of the Plenipotentiaries. In connexion with the provision concerning the geographic limitation,[87] the Chairman of the Style Committee explained that for those States which accepted the second alternative ("events occurring in Europe or elsewhere before 1 January 1951") the draft provision had no meaning because for them no other categories remained to be included.[88] The representative of the Netherlands pointed out that if the draft provision were deleted, a new clause would have to be included to cover categories of refugees arising as a result of events occurring after 1 January 1951.[89] The representative of the *United Kingdom* recalled that the text of the draft definition before the Conference represented a compromise. His delegation had initially favoured a definition unlimited both in time and in space and later agreed, in a spirit of compromise, to accept a restriction of the definition of the term "refugee" to those persons who became refugees as a result of events occurring before 1 January 1951. This compromise having been reached, serious technical difficulties would arise if Contracting States were allowed unilaterally to adapt the Convention so as to extend its scope to persons who became refugees as a result of events occurring after 1 January 1951. After this discussion the Conference decided to delete the draft provision.

86. underlining added.

87. See ante para. 37.

88. Document A/CONF. 2/SR. 33, p. 17.

89. *Ibid*, SR. 34, p. 10.

(5) Recommendation that the Convention shall serve as an example exceeding its contractual scope

51. It will be recalled that at the Eleventh Session of the Economic and Social Council, *France* submitted a draft proposal for a definition by categories. At the same time France submitted a proposal for a draft Preamble,[90] the final paragraph of which was, subject to certain modifications, the same as that adopted by the Economic and Social Council.[91] The draft Preamble annexed to Resolution 319 (XI) B of 16 August 1950 of the Economic and Social Council contained a final paragraph worded as follows :

> "*Expressing the hope*, finally, that this Convention will be regarded as having value as an example exceeding its contractual scope, and that without prejudice to any recommendations the General Assembly may be led to make in order to invite the High Contracting Parties to extend to other categories of persons the benefits of this Convention, all nations will be guided by it in granting to persons who might come to be present in their territory in the capacity of refugees and who would not be covered by the following provisions, treatment affording the same rights, and advantages."

52. During the discussion of this draft paragraph, the representative of the *United States*, *inter alia*, expressed the

90. Document E/L. 81

91. Speaking of the Preamble generally, the representative of France stated that : "The chief aim of the Preamble was to state the refugee problem in human and equitable terms. It enabled that problem to be expanded to its true dimensions, and indicated the ideal towards wich the United Nations must strive if it was to rest content with an imperfect and impartial solution. That was all the more essential since any Convention must of necessity represent a compromise between the ideal and the practicable. It was therefore necessary to find a place in the Preamble for the sacrificed ideal which it had provided impossible to embody in the Convention .. .." Document E/AC. 7/SR. 158, p. 11

view that all persons in need of protection at the present time were fully covered by the definition in Article 1 of the draft Convention. For this reason, the paragraph wrongly implied that the Convention was not wide enough in scope.[92] The representative of *Belgium* considered that the paragraph should be deleted. The Convention would indeed serve as an example but the wording of the paragraph was too complicated to serve as a prefatory recommendation.[93] The representative of *India* considered that it would be more appropriate to draw up a resolution for the Economic and Social Council to submit to the General Assembly, pointing out the desirability of all contracting governments according similar treatment to refugees excluded from the categories laid down in the Convention and of all non-contracting governments according such treatment to refugees within those categories.[94] The representative of *Canada* considered the paragraph inappropriate, with its suggestion that the application of the Convention should be regarded as being wider than it in fact was. The Social Committee having rejected the proposal for a broad definition, it seemed most inappropriate to express the hope in the Preamble that the Convention would in fact be applied to all refugees in all countries and not only to the categories included in the definition article.[95] The representative of *Pakistan* while recognizing that the paragraph displayed a generous emotion in trying to take stock of the real situation and broaden the definition of "refugee", expressed certain doubts regarding its legal effect. In his view a preamble could not be used to give the operative provisions of an

92. *Ibid*, SR. 166, p. 14.

93. *Ibid*, pp. 17.

94. *Ibid*, pp. 17-19.

95. *Ibid*, pp. 19-20.

instrument a meaning they were not capable of bearing.[96] In spite of these objections, however, the paragraph was accepted.[97] At the Fifth Session of the General Assembly the draft Preamble was not discussed[98] and the draft Preamble considered by the Conference of Plenipotentiaries was that annexed to Economic and Social Council Resolution 319 (XI) B of 11 and 16 August 1950.

53. At the Conference of Plenipotentiaries, the *United Kingdom* delegation proposed an amendment to the draft Preamble[99] from which *inter alia* the final paragraph was omitted. The representative of the *United Kingdom*, introducing the amendment, considered that while it was right that the Conference should express a sentiment such as that contained in the paragraph, it would be more proper to include it by way of a recommendation at the end of the Convention, since it went beyond the limits of a general statement on the text of the Convention.[100] The omission of the paragraph received the approval of the representative of *France*.[101] The matter was not discussed further and the drafting of the

96. *Ibid*, p. 21. This view was supported by the Representative of the *United States* who considered that the French text was not so much a Preamble as a draft for a resolution with which the General Assembly could introduce it. If it could be presented in that form, the Council might avoid many difficulties and also serve the additional advantage that it would be addressed not merely to governments adhering to the Convention, but to all nations equally.
Ibid, pp. 21-22.

97. *Ibid*, SR/167, p. 9.

98. General Assembly Resolution 429 (V) of 14 December 1950, recommended to the Conference of Plenipotentiaries to take into consideration the draft Convention submitted by the Economic and Social Council and, in particular, the text of the definition of the term "refugee" annexed to the Resolution. The annex to the Resolution did not contain a draft preamble.

99. Document A/CONF. 2/99.

100. Document A/CONF. 2/SR. 31, p. 24.

101. *Ibid*, p, 26.

Preamble with the omission of the paragraph was referred to the Style Committee.[10] The paragraph, subject to certain modifications, was finally included in the Final Act of the Conference as Recommendation E :

> "The Conference
>
> "Expresses the hope that the Convention relating to the Status of the Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides."

54. The difficulties which have arisen in regard to the application of this Recommendation to new refugee situations have already been mentioned[103] and will be referred to again later.[104]

(F) The Statute of the Office of the United Nations High Commissioner of Refugees

(i) Introduction :

55. In the *Study of Statelessness* prepared in pursuance of Economic and Social Council Resolution 116 (VI) D of 1 and 2 March 1948[105] the Secretary-General recommended that the Council should recognise the necessity for providing at an appropriate time permanent international machinery for ensuring the protection of stateless persons.[106] The *Study of Statelessness* was considered by the Economic and Social

102. *Ibid*, p. 29.

103. *Ante* paras. 8 and 9

104. *Post* paras. 118-124/127.

105. *Ante* para. 34.

106. For the meaning of "stateless persons" see *ante* para. 34.

Council at its Ninth Session in August 1949 when it also had before it a communication from the International Refugee Organisation[107] calling attention to the fact that the latter contemplated terminating its activities on 30 June 1950[108] and recommending that the Council should examine the problem of future international action on behalf of refugees. On 6 August 1949, the Council adopted Resolution 248 (IX) A[109] in which, *inter alia*, it took cogn'zance of the communication from the General Council of the IRO. Considering that the question of the protection of refugees who were the concern of the IRO was an urgent one owing to the fact that the IRO expected to terminate its activities about 30 June 1950 and that at that time there would still be considerable refugee problem, the Council requested the Secretary-General *inter alia*, to prepare, for the consideration of the General Assembly at its Fourth Session, a plan for such organisation within the framework of the United Nations as may be required for the international protection of refugees, taking into account the following alternative :

(a) The establisment of High Commissioner's Office under the control of the United Nations ;

(b) The establishment of a service within the United Nations Secretariat.

In this report, dated 26th October 1949,[110] the Secretary-General expressed the view that the establishment of a High Commissioner's Office was the more appropriate solution.

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107. Document E/1392 and E/1392/Corr. 1.

108. This date was later postponed to 1 April 1951.

109. Resolution 248 (IX) B of 8 August 1949 related to the drawing up of a Convention on the Status of Refugees. See *ante* para. 36.

110. Document A/C. 3/527.

56. During the Fourth Session of the General Assembly, the Third Committee devoted nine meetings to the question of refugees.[111] It had before it, *inter alia*, the above-mentioned report of the Secretary General, the communication from the General Council of the International Refugee Organisation referred to above[112], a further communication from the IRO[113] and a draft resolution submitted by *France* concerning the functioning of the High Commissioner's Office.[114] The latter French draft resolution and draft resolution on the same subject submitted by the *United States*[115] were withdrawn in favour of a joint draft resolution s bmitted by *France* and the *United States*.[116] This joint draft resolution, as amended, was adopted by the Third Committee, aud appropriate recommendations made to thc General Assembly. In Resolution 319 (IV) of 3 December 1949, the General Assembly, inter alia decided to establish as of 1 January 1951, a High Commissioner's Office for Refugees in accordance with the provisions of the *Annex*[117] to the Resolution and requested the Secretary-General to prepare detailed draft provisions for the implementation of the Resolution and the *Annex* and to submit them, together with comments of governments to the Economic and Social Council at its Eleventh Session. The General Assembly also requested the Economic and Social Council, at its Eleventh Session, to prepare a draft resolution embodying provisions for the functioning of the High Commissioners's Office and to submit the draft resolution to the General Assembly at its Fifth Session.

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111. Summary Records A/C2/SR.256/264.

112. Document E!1392 and E!1392!Corr. 1.

113. Document A/C.3/528.

114. Document A/C.3/529.

115. Document A/C.3/L.28.

116. Document A/C.3/L.29.

117. These provisions contained a number of general principles but were not as detailed as those finally adopted in the Statute.

57. The detailed provisions prepared by the Secretary-General for the implementation of General Assembly Resolution 319 (IV) and the Annex thereto[118] were considered by the Social Committee of the Economic and Social Council in the course of six meetings at its Eleventh Session.[119] In its report to the Economic and Social Council,[120] the Social Committee recommended a draft resolution, with a draft Statute attached for ultimate adoption by the General Assembly. The report of the Social Committee was considered by the Economic and Social Council at its 414th meeting[121] where the draft resolution and annexed draft Statute of the High Commissioner's Office were approved without the change and, with the addition of an appropriate preamble, were adopted as Economic and Social Council Resolution 319 (XI) A of 11 August 1950.

58. The draft resolution and *Annex* contained in the latter Resolution were transmitted to the General Assembly at its Fifth Session in a Memorandum from the Secretary-General in which the action taken by the United Nations was summarised to date.[122] The question of refugees was discussed during seventeen meetings of the Third Committee.[123] In its report the Third Committee[124] gave an account of the action taken by it, and submitted draft resolutions, to one of which was annexed the draft Statute of the High Commissioner's Office. The report of the Third Committee was considered by the General Assembiy at its 325th Plenary Meeting in the course of which the Resolution and the annexed Statute were adopted without change (Resolution 428 (V) of 14 December 1950).

118. Document E/1669.

119. Summary Records E/AC.7/SR.156, 169, 170, 171, 172 and 173.

120. Document E/1831.

121. Summary Records E/SR.414.

122. Document A/1385.

123. Document A/C.3/SR.324-328, 341 and 344.

124. Document A/1682.

(ii) Historical development of the term "refugee" in the Statute of the Office of the United Nations High Commissioner for Refugeees

59. Economic and Social Council Resolution 248 (IX) A of 6 August 1949, requesting the Secretary-General to prepare a plan for such organisation within the framework of the United Nations as may be required for the international protection of refugees contained no definition indicating which categories of refugees were to be the concern of the new organisation. However, in his report the Secretary-General took the view that the term "refugees" was used in the Resolution in the sense in which the term had been used in the Constitution of the IRO. He did not, therefore, consider that he was called upon to propose a new definition.[125]

60. As mentioned above, at the Fourth Session of the General Assembly, the Third Committee had before it a draft Resolution submitted by *France* and one submitted by the *United States* which were withdrawn and replaced by a joint resolution.[126] According to the draft Resolution submitted by *France*[127] the General Assembly would decide to establish a High Commissioner's Office for Refugees in accordance with

125. Document A/C.3/527, pp. 32-33. This view was based on a reading of the Resolution as a whole. Thus in the second paragraph the Council took cognizance of the communication from the General Council of the International Refugee Organisation and in the third paragraph stated that: "The question of the protection of refugees who are the concern of the IRO is an urgent one owing to the fact that the IRO expects to terminate its services about 30 June 1950". In the fifth paragraph the Council noted the conclusions submitted by the General Council of the IRO and in the sixth paragraph it requested: "Governments which are Members of the United Nations and all other States, to provide after the termination of the IRO, the necessary legal protection for refugees who have been the concern of the IRO under its mandate'.

126. *Ante* para. 56.

127. Document A/C./529.

the principles and procedures annexed to the draft Resolution. Chapter III of the *Annex* relating to the "Powers of the High Commissioner" contained *inter alia*, the following :

"(a) The powers of the High Commissioner shall extend to all refugees ;

"(b) The definition provisionally adopted shall be that contained in the Constitution of IRO ;

" The High Commissioner shall be responsible to the General Assembly for his interpretation of that definition,

" He shall consider the inclusion in his mandate of categories of refugees which IRO was unable for purely financial reasans to bring under its protection.

" In addition, he shall at the earliest possible date examine, with particular reference to the work of the Committee appointed to prepare a convention for the protection of refugees, the conditions under which the aforesaid definition should be modified so as to include all categories of persons who, for political, religious or racial reasons, are or may in future be deprived of the protection of their country of origin."

61. This draft Resolution was subsequently replaced by a different one also submitted by *France*,[128] the annex to which, containing the draft "Terms of Reference of the High Commissioner" included the following :

"(a) The High Commissioner shall be competent to deal as a provisional measure, with refugees as defined in the Constitution of the IRO. He shall also be

128. Document A/C.3/L.26.

competent to deal with the categories of refugees covered by the international convention referred to in Resolution 248 (IX) of the Economic and Social Council dated 8 August 1949.[129] He will further deal with such categories of refugees as may be defined by the General Assembly or the Economic and Social Council....."

62. At the same time a draft resolution was submitted by the *United States*[130] according to which it would be decided to establish an office of the High Commissioner for Refugees and that :

"the persons falling under the competence of the Office of the High Commissioner for Refugees shall be those defined in *Annex* I of the Constitution of the International Refugee Oranisation."[131]

In addition the Economic and Social Council was requested :

(a).....

(b) to transmit to the General Assembly at its Fifth Regular Session such recommendations as the Council may deem appropriate as to additional categories not defined in the Constitution of the International Refugee Organisation which should become the concern of the Office of the High Commissioner for Refugees."

63. Thus according to the *United States* draft proposal, persons falling within the competence of the High Commissioner would in principle be limited to those covered by the definitions in the IRO Constitution and such additional categories as the

129. *Ante* para. 35.

130. Document A/C.3/L.28.

131. *Ante* para. 56.

Economic and Social Council might recommend to the General Assembly at its Fifth Session. The *French* draft proposals, however, already contained in themselves the possibility of future extension on the basis of Resolutions of the Economic and Social Council or of the General Assembly.

64. The French and United States draft resolutions were subsequently withdrawn in favour of a joint text, which contained alternative provisions on points on which agreement could not be reached. Paragraph 3 of the *Annex* to the joint draft Resolution was worded as follows :

> "(France) 3. Pending the adopting by the General Assembly of new definitions for the term "refugee" the definitions contained in *Annex 1* of the Constitution of the IRO should provisionally be applied by the High Commissioner".
>
> "(United States) 3. Persons falling under the competence of the Office of the High Commissioner for Refugees should be refugees and displaced persons defined in *Annex 1* of the IRO and such others as the General Assembly may from time to time determine."[132])

65. As regards the High Commissioner's competence, the representative of the *United States* expressed the view that "the General Assembly should decide specifically for what particular groups of refugees it was willing to accept responsibility. Such groups should be carefully identified after full consideration of the circumstances which had brought them into existence. The League of Nations had found it necessary to indentify specific groups of refugees falling within its competence. The IRO Constitution also covered specific and identified categories of refugees. In that connection, the High Commissioner would not be limited in the application of the IRO definitions by any

132. Document A/C.3/L. 29.

restrictions which the IRO had had to adopt for administrative or financial reasons. Regarding additional categories of refugees not covered by the IRO Constitution, the Economic and Social Council would have ample opportunity to make recommendations to the General Assembly which could consider them before the service of protection was initiated by the High Commissioner on 1 January 1951. The *French* delegation had argued that the High Commissoner should be free to intervene in any emergency which might arise before action had been taken by the General Assembly. The acceptance of responsibility for refugees by the United Nations was, however, a serious matter on which only the General Assembly should decide. A High Commissioner with such broad authority might easily involve the United Nations, in responsibilities which the United Nations might not desire to assume.[133]

66. The representative of France pointed out that the United States text spoke of "categories of refugees" a term that had never been used in the IRO Constitution-and its adoption would in effect mean that the High Commissoner's field of action would be restricted indefinitely to the refugees who fulfilled the requirements of the IRO definitions. The French text, on the other hand, made it clear that the application of those definitions would only be provisional, pending the adoption by the General Assembly of new definitions for the term "refugee". His text made no mention of "categories", because he did not think that refugees should be divided strictly into categories. All those who came under the new definitions should automatically be eligible for any protection and assistance provided by the High Commissioner." He also pointed out that the IRO had sometimes made unjust decisions for administrative or financial reasons. [134]

133. Document A/C.3/SR.262, pp. 2-3, Similarly *Ibid*, SR. 261, p. 10 and SR.264, pp. 8-9.

134. *Ibid*, SR. 262, pp. 4-5.

67. Several delegations in addition to the French delegation expressed themselves in favour of a wide definition covering persons other than those included in the categories listed in the IRO Constitution. [135]

68. At the end of discussion the *French* variant for paragraph 3 of the *Annex* was adopted. [136] When the matter came up for consideration at the plenary meeting of the General Assembly the latter adopted an amendment submitted by the *United States* delegation, [137] for an alternative wording for the paragraph 3 of the *Annex* to Resolution 319(IV) A of 3 December 1949, worded as follows :

> 3. "Persons falling under the competence of the High Commissioner's Office for Refugees should be, for the time being, refugees and displaced persons defined in *Annex I* of the Constitution of the International Refugee Organisation and, thereafter, such persons as the General Assembly may from time to time determine, including such persons brought under the jurisdiction of the High Commissioner's Office under the

135. Cf. *Netherlands*: While there was no objection to adopting the same defintion as in the IRO Constitution, the time was ripe to give some thought as recommended in the French draft (i. e. the First draft) to the fate of those categories of refugees which the IRO had for financial reasons not taken under its protection (A/C. 3/SR.257, p.2).

United Kingdom: There was no need to adopt a definition of the term "refugee" similar to that used in the IRO Constitution. The High Commissioner should act as an adviser for questions concerning all those who might become stateless either *de jure* or *de facto* (*Ibid*, p.8). *Mexico* supported the French draft Resolution (second) because it was more general in character (A/C.3/SR.261,p.5) and *Belgium* considered that the problem of refugees could no longer be confined within the strict definitions laid down in the IRO Constitution (*Ibid*),p.7. *Greece*, *Ibid*, SR.263, pp.13-14).

136. Document A/C.3/SR.264, p.13.

137. Document A/1162

> terms of international conventions or agreements approved by the General Assembly." [138]

69. By Resolution 319(IV) A of 3 December 1949, the General Assembly requested the Secretary-General, *inter alia*, to prepare detailed draft provisions for the implementation of the Resolution and the *Annex*, to circulate the draft provisions to governments for comments and to submit them together with any such comments to the Economic and Social Council at its 11th Session. The General Assembly also requested the Economic and Social Council to prepare, at its 11th Session, a draft Resolution embodying the provisions for the functioning of the High Commissioner's Office for Refugees and to submit the draft Resolution to the General Assembly at its Fifth Session; and to transmit to the General Assembly at its Fifth Session such recommendations as the Council may consider appropriate regarding the definition of the term "refugee" to be applied by the High Commissioner.

70. These detailed provisions prepared by the Secretary-General, in accordance with Resolution 319(IV), were dated 25 April 1950. It will be recalled that the First Session of the Ad Hoc Committee dealing with the draft Convention had been held from 16 January to 16 February 1950. Its report, [139] which contained a draft Convention, was transmitted to the Economic and Social Council and also considered by the

138. The representative of the United States explained that the new text left the door open for the inclusion, within the competence of the High Commissioner, of other persons to be defined in future international instruments which might be initiated by the Ad Hoc Committee established by the Economic and Social Council to study the problem of stateless persons and their protection. The United States considered the text to be more precise. Under it, the General Assembly, which had already approved *Annex* I of the Constitution of the IRO, *would know to exactly what categories of refugees it was extending its protection.* (A/SR.264, pp. 17-18)

139. Report of the Ad Hoc Committee on Statelessness and related problems, document E/1618, 17 February 1950.

latter at its 11th Session.[140] Thus at its 11th Session, held in August 1950 the Economic and Social Council considered the report of the First Session of the Ad Hoc Committee and also, in accordance with General Assembly Resolution 319(IV) of 3 December 1949, prepared a draft Resolution embodying provisions for the functioning of the High Commissioner's Office for consideration by the General Assembly at its Fifth Session.

71. The introductory remarks to the detailed provisions prepared by the Secretary-General [141] for submission to the Economic and Social Council at its 11th Session contain the following comments regarding paragraph 3 of the *Annex* to General Assembly Resolution 319 (IV) A:

> "The definitions contained in Article 1 of the draft Convention and *Annex I* of the Constitution of the IRO differ somewhat. Since this difference between the two definitions may make the task of the High Commissioner unnecessarily complicated, the General Assembly may wish to decide that the later definition (i.e. the one in the draft Convention) should determine the persons falling within the competence of the High Commissioner's Office."

In paragraph 5 of the draft Resolution submitted by the Secretary-General to the Economic and Social Council, paragraph 3 of the *Annex* to General Assembly Resolution 319(IV) A would be replaced by the following :

> "Persons falling under the competence of the High Commissioner's Office for Refugees shall be those defined in Article 1 of the draft Convention relating to the Status of Refugees."

140. See *ante* para. 34.

141. Document E/.1669.

72. At the 11th Session of the Economic and Social Council, (Social Committee), the *French* delegation submitted a working paper [142] which was accepted as a basis for discussion, [143] to which was annexed a draft Statute of the High Commissioner's Office for Refugees. Chapter III(C) relating to competence, contained the following draft provision ;

> "1. Persons falling under the competence of the High Commissioner shall be the groups of refugees defined in Article 1 of the Convention relating to the Status of Refugees adopted by the General Assembly and groups forming the subject of recommendations made by the General Assembly in pursuance of Article 1, paragraph B of that Convention [144] or who are brought within his competence under the terms of international conventions or agreements approved by the General Assembly or under amendments to the above Convention approved by the General Assembly ;
>
> "2. In the case of events occurring in Europe, after 1 January 1951, between the Sessions of the General Assembly, the High Commissioner may, with the concurrence of the Economic and Social Council, or in a case of emergency between the sessions of the Council, with the concurrence of the Advisory Council for Refugees, recommend to States, whether members of the United Nations or not, that the benefits of the Convention be extended to refugees who are victims of such events."

73. To this draft provision amendments were submitted by the *United States* and the *United Kingdom*. The *United*

142. Document E/AC. 7/L.60.

143. Document E/AC.7/SR.169, p. 16.

144. See *ante* para. 46.

States proposed amendment, like the draft provision itself, referred to refugees as defined by Article 1 of the Convention whereas the amendment proposed by the *United Kingdom* contained a more general definition.

74. According to the proposed *United States* amendment which was ultimately adopted, as paragraph C (1) and (2) of the *Annex* to Economic and Social Council Resolution 319(XI) A of 11 August 1950, the above draft provision would be replaced by the following :

"1. Persons falling under the competence of the High Commissioner's Office for Refugees shall be those defined in Article 1 of the Convention relating to the Status of Refugees, as approved by the General Assembly and such other persons as the General Assembly may from time to time determine. The High Commissioner shall determine whether a person falls within the categories mentioned in paragraph C of Article 1 of the Convention and is therefore excluded from his mandate."

"2. In his discretion the High Commissioner may, after consultation with the Advisory Committee on Refugees, intercede with Governments on behalf of new categories of refugees which might arise, pending consideration by the General Assembly as to whether to bring such new categories within the mandate of the High Commissioner's Office for Refugees. [145]

75. According to the amendment proposed by the *United Kingdom* the draft provision proposed by France would be replaced by the following :

145. Document E/AC.7/L.73, paragraph 14, originally presented as an amendment (E/AC.7/L.62) to the draft Resolution proposed by the Secretary-General in document E/1669. This wording was substituted for the corresponding provision in the French working paper which was withdrawn (Document E/AC.7/SR.172, p.4)

"C. **Competence**

There shall fall under the High Commissioner's competence any person who

(a) is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence owing to well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion.

(b) (i) if he has a nationality, is unable or, owing to such fear unwilling to avail himself of the protection of the Government of the country of his nationality ;

(ii) if he has no nationality, is unable or, owing to such fear unwilling to return to the country of his former habitual residence."

"In the case of a person having more than one nationality.[146]

76. Thus the draft provisions proposed by *France* and the *United States* defined the scope of the competence of the High Commissioner by categories while the draft provision proposed by the *United Kingdom* contained a general definition. The discussion in the Social Committee proceeded on similar lines to that which took place in regard to the draft Convention. The representative of the *United Kingdom* explained that during the discussions on the draft Convention it had been decided to define refugees by categories. There was no need,

146. Document E/AC.7/L.72. Originally submitted as an amendment (E/AC.7/L.61) to draft Resolution proposed by the Secretary-General in document E/1669.

however, to link the definition in the Convention, which imposed definite obligations upon governments, with the definition in the draft Resolution embodying provisions for the functioning of the High Commissioner's Office for Refugees.[147] It had to be remembered that the High Commissioner would be vested with an international authority derived from the United Nations, and would act on behalf of all refugees in the world. In such cases a limited definition was not only unnecessary but would be highly inappropriate.[148] The representative of the United Kingdom considered that the definition for the High Commissioner's Statute proposed by the United States and France was still too restrictive and took no account of refugees other than those defined in Article 1 of the draft Convention. This Article did not, however, cover all refugees in the world and the *United States* proposal held out little hope that they could ever be brought under the aegis of the High Commissioner's Office. The draft convention and the Statute of the High Commissioner's Office were quite different instruments, and although his Government would have preferred a broad definition in both cases, it was evident that those definitions need not necessarily be identical. He also pointed out that under the draft Convention certain legal obligations were to be assumed by countries who acceded to it, while the terms of reference of the High Commissioner laid no obligations on a country unless that country voluntarily agreed to accept them.[149]

147. During the discussions in the Social Committee in the draft Convention the view had already been expressed that the scope of the terms of reference of the High Commissioner need not be identical with the scope of the Convention. In particular, the activities of the High Commissioner were not dependent upon the existence of the Convention; the High Commissioner could be competent with regard to States which were not parties to the Convention and with regard to persons not falling within its scope. The definitions need not therefore necessarily be the same. (e.g. *United Kingdom*, E/AC. 7/SR. 156, pp.14-15; *Canada, Ibid*, p. 17, *Mexico ibid.* p 88, *France, Ibid*, SR. 158, pp. 5-6.

148. Document E/AC.7/SR. 169, pp. 14-15.

149. Document E/AC.7/SR.172, pp. 13-15 *passim.*

77. The representative of *France* considered the difficulty of a general definition to be *inter alia* that in practice the *sine qua non* of any action by the High Commissioner was the consent of States. Certain States were not, however, prepared to agree to relinquish their sovereignty especially to the extent to which the High Commissioner's world-wide competence would imply.[150]

78. The representative of the *United States* supported the more limited definition on various grounds. In particular, the High Commissioner should in principle concern himself with refugees in groups and categories. This was possible under the *United States* definition but not under *United Kingdom* definition in which every individual refugee could be included according to the merits of his case. The High Commissioner would thus be obliged to take up the case of every individual who appealed to him from all over the world which would lead to undesirable consequences from the point of view of administrations and costs. Moreover, the definition should be the same in the Convention and in the Statute. It would create a confusing situation if the High Commissioner could refer to a Convention in some cases but not in others. The *United Kingdom* delegation would have preferred a broad definition for both. The Council had, however, already accepted a definition for categories for the Cenvention, and should therefore do the same for the High Commissioner's mandate. The essential difference between the *United States* and the *United Kingdom* definitions lay in the terms "Europe" and "1951". The *United States* delegation had supported the addition of the reference to "Europe", its intention being simply to include those persons who ought to be included and excluded those who ought to be excluded. There was no desire on the part of the *United States* delegation to limit the definition to Europe. The issue simply was whether any particular group ought to be covered or not. As regards the date

150. *Ibid*, pp. 7-11 *passim.*

"1951", the effect was simply to state what categories were involved. The High Commissioner would have discretion to act provisionally in respect of a new category of refugees pending a decision by the General Assembly for its formal inclusion in his mandate. The *United Kingdom* definition, on the other hand, committed the High Commissioner and the General Assembly in advance.[151]

79. After a discussion in which the representatives of various countries expressed support either for a general definition or for a definition by categories, the *United Kingdom* amendment was rejected,[152] and the *United States* amendment accepted.[153]

80. After consideration by the Economic and Social Council, the draft Resolution and attached Statute prepared by the Social Committee were adopted by the Economic and Social Council, without any change,[154] in Resolution 319 (XI) A of 11 August 1950 and transmitted for consideration by the General Assembly at its Fifth Session.[155]

81. At the Fifth Session of the General Assembly the draft Statute for the High Commissioner's Office was examined by the Third Committee which, as has been seen[156] also considered the draft Convention. As regards the draft Statute the Committee had before it a draft amendment by the *United Kingdom* proposing a general definition both for the Statute and for the Convention.[157]

151. *Ibid*, pp. 15-20, *passim*.

152. By 6 votes (*Brazil, Chile, France, India, Mexico, USA*) to 5 (*Belgium, Canada, Denmark, Peru, United Kingdom*) with 3 abstentions (*China, Pakistan, Australia*) (vote by roll call). Document E/AC.7/SR. 173, p. 11.

153. By 8 votes to 3 with 3 abstentions. (*Ibid*, p. 12)

154. 414th Meeting (E/SR.414)

155. On 16 August 1950 the Economic and Social Council adopted Resolution 319(XI) B in which it took note of the report of the First Session of the Ad Hoc Committee and submitted this report, together with the Comments of governments, and the records of the proceedings of the Council to the General Assembly, and requested the Secretaty-General to reconvene the Ad Hoc Committee in order that it may prepare revised drafts of these agreements and submit them to the General Assembly at its Fifth Session (See *ante* para. 34).

156. *Ante* paras. 35 and 40

82. In a joint draft amendment submitted by *Belgium, Canada, Turkey* and the *United Kingdom*, a draft general definition was proposed for the Statute and for the Convention in the following terms :

> "(a) The term "refugee" shall apply to any person who is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence, because he has well-founded fear for victimization by reason of his race, religion, nationality or political opinion and is unable, or because of such fear, is unwilling to avail himself of the protection of the Government of the country of his nationality or, if he has no nationality, to return to the country of his former habitual residence.
>
> "(b) A person who is a national of more than one country....."[158]

83. For a definition by categories, the Third Committee had before it firstly paragraph C of the *Annex* to Economic and Social Council Resolution 319 (XI) of 11 August 1950 which it will be recalled was worded as follows :

> "C. **Competence**
>
> "1. Persons falling under the competence of the High Commissioner's Office for Refugees shall

157. A/C.3/L.115. The definition was the same as that proposed by the United Kingdom at the 11th Session of the Economic and Social Council. (See *ante* para. 75).

158. A/C.3/L.130. This draft provision with certain differences in wording was also contained in another joint amendment submitted earlier by the same countries and *Chile* (A/C.3/L.27).

be those defined in Article 1 of the Convention relating to the Status of Refugees as approved by the General Assembly, all and such other persons as the General Assembly may from time to time determine. The High Commissioner shall determine which cases fall within the categories mentioned in paragraph C of Article 1 of the Convention and are therefore excluded from his mandate.

"2. At his discretion, the High Commissioner may intercede with Governments on behalf of other categories of refugees pending consideration by the General Assembly as to whether to bring such categories within the mandate of the High Commissioner's Office for Refugees".

84. In addition a proposal for a draft definition by categories was sumbitted by *Venezuela* worded as follows :

"1. The High Commissioner for Refugees shall grant international protection to the refugees defined in this section. For this purpose the term "refugee" means any person :

(a) Who since 1 August, 1914 has been recognized as a refugee under the Arrangements of 12 May 1926 and 30 June, 1928, or under the Convention of 28 October, 1933 and 10 February, 1938 and the Protocol of 14 September, 1939, or under the Constitution of the International Refugee Organisation;

(b) Who, as a result of events in Europe before 1 October, 1951 and owing to well-founded fear of persecution for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or,

owing to such fear, unwilling to resort to the protection of the government of the country of his nationality; or who, not having a nationality, being outside the country of his former habitual residence, is unable, or owing to such fear as aforesaid, unwilling to return to that country....."

If a person has more than one nationality..... A decision concerning eligibility taken by the International Refugee Organisation during the period of its activities.....

"2. Cessation provisions.

"3. and 4. Exclusion provisions.

5. The High Commissioner may recommend to the General Assembly the inclusion of other categories of refugees in his terms of reference and may, pending a decision by the General Assembly on his recommendation, intercede with the Government on behalf of any additional category".

85. The refugee items were discussed in the Third Committee during seventeen meetings.[159] In regard to the definition of refugees in the Statute, the discussion again centred largely around the basic question whether this definition should be general or by categories.[160] The representatives of

159. Document A/C.3/SR.324-338, 341 and 344.

160. A general definition in the Statute was supported by: *Belgium* (A/C.3/SR.324. p.337), *Netherlands* (*Ibid*, SR. 325, pp. 336-337), *Chile*, (*Ibid*, pp.337-338), *Yugoslavia* (*Ibid*, pp. 339-340), *Australia* (*Ibid*, SR. 326, p.341), *United Kingdom* (*Ibid*, pp. 345-346), *Turkey* (*Ibid*, SR.329, pp. 361-362) *China* (*Ibid*, p. 362), *Canada*, *loc. cit*, *New zealand* (*Ibid*, p. 364). A definition by categories was supported by: *France* (*Ibid*, SR. 324, pp. 329-330), *United States* (*Ibid*, SR.326, p. 331 and pp. 343-344, *Venezzuela* (*Ibid*, SR. 325, pp. 338-339, *South Africa* (*Ibid*, SR. 326, pp. 341-342), *Israel*, (*Ibid*, SR. 328, pp. 357-358), *Egypt* (*Ibid*, SR. 328) *Lebanon*, *loc cit*; *Saudi Arabia*, (*Ibid*, p. 329).

various States considered that a definition by categories was more appropriate for the Statute, as such a definition would prevent the High Commissioner from becoming involved in political issues. Thus the representative of *France* considered it essential that the High Commissioner should know exactly which refugees would be placed under his protection. A general definition implied a greater delegation of powers by the General Assembly to the High Commissioner. When a new refugee problem arose, the High Commissioner would be drawn into political controversy and in order to avoid this would tend to await the decision of the General Assembly. This would involve a loss of time and, in practice, a return to a limited definition. The latter was preferable because it did not force the High Commissioner to assume political responsibility.[161] The representative of the *Lebanon* considered that a distinction should be drawn between the universal nature of the refugee problem and the particular tasks which would be imposed on the High Commissioner in the course of actual events. The High Commissioner should not be given the competence to deal with all the refugees in the world on his own initiative. The question of refugees was not invariably a purely humanitarian matter ; it often had important political aspects. If the entire initiative were left to the High Commissioner, his prestige and authority might be imperilled.[162] A similar though not identical view was put forward by the representative of the *United States*. The amendments submitted for a general definition widened the High Commissioner's powers and placed a heavier responsibility on the General Assembly. They did not specify exactly which refugees they proposed should come under the new definition nor which country should be their country of residence. Before adopting such a vague solution, the difficulties which the United Nations had already experienced in meeting its

161. *Ibid*, SR. 326, p. 345 and SR. 328 pp. 364-365

162. *Ibid*, SR. 328-358

obligations in connection with the Palestine refugees should be remembered, and some consideration given to the burden which would be placed on the United Nations by the Korean refugees. The definition proposed by the Economic and Social Council did not, however, prevent the United Nations from later expanding its action on behalf of the refugees if this was considered necessary.[163] On the other hand, the representative of *Canada*, supporting a general definition, considered that since the High Commissioner's Office would have more limited functions than the IRO and would only be concerned with legal protection, his competence should not be restricted. To the argument that the definition of the Economic and Social Council could be extended to other categories of refugees, it could be objected that this would cause not only loss of time but also political controversies in what ought to remain a strictly humanitarian question.[164]

86. A definition by categories was also supported from the administrative and financial point of view. The representative of *South Africa* considered that as the High Commissioner's Office was being established for a particular purpose it would be unwise to broaden its function at that moment.[165] The representative of *Chile* considered that the definition to be applied by the High Commissioner must inevitably be limited by its administrative and financial implications for the United Nations,[166] and the representative of *Venezuela* stated that the question was one of pledging United Nations funds and it was essential that the members of the Organisation which could be called upon to supply the necessary funds should know which persons would benefit from them.[167]

163. *Ibid*, SR. 326, p. 344

164. *Ibid*, SR. 329, p. 362

165. *Ibid*, SR. 326, pp. 341-342

166. *Ibid*, SR. 328, p. 355

167. *Ibid*, SR. 329, p. 365

87. As regards the inter-relationship between the definition in the draft Convention and in the draft Statute, the view was generally expressed at this stage in the Third Committee that the two definitions need not be identical.[168] The representative of *Venezuela* agreed with the view of the Economic and Social Council that the definition should be the same in the draft Convention and in the Statute of the High Commissioner's Office.[169] He drew attention, however, to the possibility that the draft Convention might be referred to a Conference of Plenipotentiaries. Chapter III, Section C of the draft Statute annexed to Economic and Social Council Resolution 319 (XI) was unacceptable to his delegation because the Conference would be free to modify Article 1 of the draft Convention as it chose.[170] His delegation had submitted its amendment[171] in order to minimise the possibility that the Conference would adopt a definition by categories for the purposes of the draft Convention while the General Assembly might approve a general definition for application by the High Commissioner or *vice versa*.[172] The definition in the draft

168. The representative of *Chile* considered that the definition should be as broad as possible in the Convention in order that refugees should obtain the fullest possible rights in receiving countries, whereas the definition applied by the High Commissioner should be limited by its administrative and financial implications for the United Nations. (*Ibid*, SR. 328, p. 355). The representative of *South Africa* supported the adoption of the draft definition proposed by the *United Kingdom* for the draft Convention, but of a more restricted definition for the Statute of the High Commissioner's Office (*Ibid* SR. 326, pp. 341-342). The representative of *France* supported the view expressed by the representative of the *United Kingdom* at the 11th Session of the Economic and Social Council that the definition in the Statute need not be the same as that in the Convention imposed legal obligations on States whereas the obligation under the Statute would be only a moral one (*Ibid*, SR. 328, p. 356.) The representative of the *United Kingdom* considered that while there was no objection to two separate definitions, one definition was adequate and the United Kingdom amendment (A/C.3/L.115) had been submitted with that end in view (*Ibid*, p. 357). The representative of *China* favoured separate definitions (*Ibid*, SR. 329, p. 362).

169. Document A/C.3./SR. 325, p. 339.

170. *Ibid*, SR. 329, p. 365.

171. *Ante* para. 84.

172. *Ibid*, SR. 328, p. 359.

Statute, together with the definition in the draft Convention was referred to the informal working party established during the 329th meeting of the Third Committee.[173] The representative of *United States* described the results achieved by the informal working party in the following terms :

> "The working party had decided that two texts-one for the draft Convention and the other for the draft Statute should be submitted. The two texts had been made consistent with each other. It had been decided to delete the words 'in Europe' from the texts of the definition. The text proposed by the Economic and Social Council in Resolution 319 (XI) had been amended in several respects for the draft Convention, and a combination of that text with the one presented by *Belgium, Canada, Turkey* and the *United Kingdom* (A/C. 3/L. 130) was being proposed for the draft Statute. The informal working party believed that the result of its work would prove reasonably satisfactory to many delegations, though it might not entirely satisfy any one of them. A remarkable spirit of cooperation had characterised the work of the group."[174]

88. The definitions adopted by the informal working party were as follows :[175]

(a) For Article 1 of the draft Convention :

> "A. For the purposes of this Convention, the term "refugee" shall apply to any person who :
>
> "(1) Since 1 August 1914 has been considered a refugee under the arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October

173. *Ante* para. 40.

174. Document A/C.3/SR. 330, p. 367.

175. Document A/C3/L. 131/Rev. 1

1933 and 10 February 1938, the protocol of 14 September 1939 or the Constitution of the International Refugee Organization ;

"Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of the refugee being accorded to persons who fulfil the condition of paragraph 2 of this Article ;

"(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable, or owing to such fear or for reasons other than personal convenience is unwilling, to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear or for reasons other than personal convenience, is unwilling to return to it ;

"In the case of a person who has more than one nationality, the above term 'country of his nationality' shall mean any of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national ;

"B, C, D.....

89. This definition was finally adopted in almost identical terms as an *Annex* to General Assembly Resolution 429(V) of 14 December 1950.

(b) For the Statute it adopted the following definition :

"1. The persons to whom the competence of the High Commissioner extends shall include :

"(a) Persons who are refugees within the terms of Parts A and B of Article 1 of the draft Convention,"

(i.e. the above definition)

"(b) Any other person who is outside the country of his nationality, or, if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of victimization because of his race, religion, nationality or political opinion and is unable or, because of such fear is unwilling to avail himself of the protection of the government of the country of his nationality or, if he has no nationality, the country of his former habitual residence ;

"2. Provided that the competence of the High Commissioner as defined in paragraph 1 above shall extend to

.....(Exclusion provisions)

90. This definition, as subsequently amended by the Third Committee was finally adopted by the General Assembly as paragraphs 6 A and B of the Statute of the Office of the United Nations High Commissioner for Refugees, i.e. the *Annex* to Resolution 428(V) of 14 December 1950, in the following terms :

"6 A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions

of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1938 or the Constitution of the International Refugee Organisation ;

(ii) Any person who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country ; or, who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph ;

"The competence of the High Commissioner shall cease to apply to any person defined in section A above if ;

(Cessation provisions)

"B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence because he has or had well-founded fear of persecution by reason of his race, religion nationality or political opinion and is unable or because of such fear, is unwilling to avail himself of the protection of the government of the

country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence."

91. It will be seen that apart from paragraph 6B, which also covers persons who are refugees otherwise than as a result of events occurring before 1 January 1951, there are certain slight differences between the definition adopted by the General Assembly in the Statute, and in the draft definition for the Convention recommended by the General Assembly to the Conference of Plenipotentiaries. The definition in the Convention was subjected to certain further amendments when considered by the Conference of Plenipotentiaries.

(iii) Widening of the framework of the High Commissioner's activities

(a) Extension of the material scope of the High Commissioner's functions in the social field

92. As mentioned above [176] when the Office of UNHCR was established in 1950, the main emphasis was placed on the basic task of international protection. The original mandate, however, already envisaged in the social field and the material scope of these activities has been progressively extended by various General Assembly resolutions. These resolutions indicate an increasing awareness that the need of refugees for assitance in this field was perhaps more far-reaching and more lasting than was originally believed when the Statute was adopted.

93. Thus by Resolution 538 (VI) of 2 February 1952 the High Commissioner was authorized under paragraph 10 of his to Statute [177] for appeal funds for the purpose of enabling *emer-*

176. *Ante* para. 13.

177. "The High Commissioner shall not appeal to governments for funds or make a general appeal without the prior approval of the General Assembly."

gency relief to be given to refugees within his mandate. In Resolution 832 (IX) of 21 October 1954, the General Assembly noted that, in spite of efforts made, "there was little hope that at the present rate of repatriation, resettlement or integration—a satisfactory solution to these problems will be reached *within a reasonable period of time*. "Going beyond the scope of its earlier Resolution 538 (VI) which was limited to emergency relief, the General Assembly, authorized the High Commissioner to undertake a programme designed to achieve permanent solutions for refugees within the period of his current mandate. Furthermore, arrangements were made for creating a fund known as the United Nations Refugee Fund (UNREF) to be devoted principally to the promotion of permanent solutions, and also to permit emergency assistance to the most needy cases, such fund to incorporate the fund authorized by Resolution 538 (VI), and the High Commissioner was authorized to appeal for funds for this purpose. At the same time the Economic and Social Council was requested either to establish an Executive Committee responsible for giving directives to the High Commissioner in carrying out his programme and for exercising the necessary financial control, or to revise the terms of reference and composition of the High Commissioner's Advisory Committee to enable it to carry out the same duties. The Advisory Committee was reconstituted as an Executive Committee, known as the United Nations Refugee Fund (UNREF) Executive Committee, by Resolution 565 (XIX) of the Economic and Social Council of 31 March, 1955.

94. In Resolution 1166 (XII) of 26 November, 1957, the General Assembly noted with approval that the UNREF programme, if it received the necessary funds, would by 31 December, 1958, have reduced the number of non-resettled refugees under the programme to a point where most countries of asylum would be able to support these refugees without international assistance. It was, however, recognized that after 31 December, 1958, there would be a residual need for international aid in

certain countries and among certain groups and categories of these refugees. Furthermore, *new refugee situations requiring international assistance had arisen to augment the problem since the establishment of the fund and other situations might arise in the furture wherein international assistance might be appropriate.* [178] Recalling its earlier resolutions the General Assembly authorized the High Commissioner to appeal for additional funds needed for closing the refugee camps. It also requested the Economic and Social Council to establish an Executive Committee of the High Commissioner's Programme whose terms of reference were *inter alia* :

(i) To give directives to the High Commissioner for the liquidation of the UNREF Fund;

(ii) To advise the High Commissioner as to whether it is appropriate for international assistance to be provided through his Office in order to help solve specific refugee problems *remainining unsolved after 31 December. 1958 or arising after that date* [179].

(iii) To authorize the High Commissioner to appeal for funds to enable him to solve these refugee problems. At the same time the High Commissioner was given a general authorization to appeal for funds, under conditions approved by the Executive Committee.

95. It has thus to be recognized that in the social field UNHCR is called upon to deal with continuing refugee problems and new refugee problems which may arise in the future. This development is emphasized by the establishment,

178. Underlining added.

179. Underlining added.

on the institutional level, of the Executive Committee of the High Commissioner's Programme and the general authorization given to the High Commissioner to appeal for funds subject to the Executive Committee's approval.

(b) **Development of the "Good Offices" function**

96. As mentioned above, there have also been certain developments, resulting from various General Assembly resolutions regarding the personal scope of the competence of UNHCR to deal with refugee problems in the social field as distinguished from the field of international legal protection.

97. The beginning of this development may be found in Resolution 1167 (XII) of 26 November, 1957 concerning Chinese refugees in Hong Kong. In this resolution the General Assembly *inter alia* recognized that this refugee problem was of concern to the international community. It took into account the need for emergency and long-term assistance, and authorized the United Nations High Commissioner for Refugees to use his good offices to encourage arrangements for contributions. The problem of refugees from Mainland China gave rise to particular difficulty owing to the reluctance of United Nations bodies to take a decision on their eligibility due to the issue of the "two Chinas". In view of this difficulty it was clearly for UNHCR to take an interest in the problem otherwise than on the basis of the Statute. [180]

98. The problem of Algerian refugees in Tunisia and Morocco was also the subject of various General Assembly Resolutions. In Resolution 1268 (XIII) of 5 December, 1958, the General Assembly *inter alia* noted

180. In Resolution 1784 (XVII) of 7 December 1962, also concerning Chinese refugees in Hong Kong, the General Assembly requested the High Commissioner to use his good offices, in agreement with the governments concerned, to provide assistance to these refugees.

the action taken in 1958, by the High Commissioner on behalf of refugees from Algeria in Tunisia and, considering that a similar problem existed in Morocco, recommended the High Commissioner to continue his action on behalf of those refugees in Tunisia on a substantial scale and to undertake similar action in Morocco. In Resolution 1389 (XIV) of 20 November 1959, the General Assembly recommended that the High Commissioner continue his efforts on behalf of these refugees pending their return to their homes and in Resolution 1500 (XV) of 5 December 1960 the General Assembly recommended that the High Commissioner should continue his present action on behalf of refugees from Algeria in Morocco aud Tunisia and use his influence to ensure the continuation of the operation carried out jointly by the Office of UNHCR and the League of Red Cross Societies. Finally, in Resolution 1672 (XVI) of 18 December, 1961, the General Assembly *inter alia* requested the High Commissioner to : (a) continue his present action jointly with the League of Red Cross Societies until the refugees from Algeria in Morocco and Tunisia returned to their homes; (b) 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 homeland as soon as circumstances permit; (c) persist in his efforts to secure the resources which will enable him to complete his task. The fact that a formal eligibility decision could be avoided was of considerable importance with regard to widening the scope of the measures which UNHCR, in cooperation with the League of Red Cross Societies, could carry out to help governments of asylum countries to assist these refugees and certainly made it easier for UNHCR to obtain the required support for this important programme, especially also from the French Government.

99. In Resolution 1671 (VI) of 18 December, 1961 the General Assembly dealt with the problem raised by the situation of Angolan refugees in Congo. The General Assembly *inter alia* recommended that the United Nations in the Congo,

in close co-operation with the United Nations High Commissioner for Refugees and the League of Red Cross Societies and other voluntary organisations, should continue to provide emergency assistance for as long as necessary and enable the refugees to become self sufficient as soon as possible; requested the High Commissioner to continue to lend his good offices in seeking appropriate solutions to the problems arising from the presence of Angolan refugees in the Republic of the Congo (Leopoldville), *inter alia*, by facilitating, in close collaboration with the authorities and organisations directly concerned, the voluntary repatriation of these refugees, and urged States Members of the United Nations and members of the specialized agencies to make available to the competent organs of the United Nations the means required for such measures of assistance.

100. In addition to the above Resolutions dealing with specific refugee problems, there are also various General Assembly Resolutions which give the High Commissioner a general authorization to act in refugee situations by extending his "good offices". In Resolutions 1388 (XIV) of 20 November, 1959, the General Assembly *inter alia* invited the States Members of the United Nations and members of the specialized agencies to devote, on the occasion of World Refugee Year, special attention to the problems of refugees coming within the competence of the United Nations High Commissioner for Refugees, and authorized the High Commissioner, in respect of refugees "who do not come within the competence of the United Nations" to use his good offices in the transmission of contributions designed to provide assistance to these refugees.

101. In Resolution 1499 (XV) of 5 December 1960 the General Assembly noted that pursuant to Resolutions 1167 (XII) of 26 November 1957 and 1388 (XIV) of 20 November 1959, increasing attention was being paid in many countries, by Governments and by non-governmental organisations, to

the problems of refugees "who do not come within the immediate competence of the United Nations." It also invited States Members of the United Nations and specialized agencies *inter alia* to continue to consult with the High Commissioner in respect of measures of assistance to groups of refugees "who do not come within the competence of the United Nations."

102. In Resolution 1673 (XVI) of 18 December 1961 the General Assembly *inter alia* noted with satisfaction the efforts made by the High Commissioner in his various fields of activity for groups of refugees for whom he lends his good offices and requested the High Commissioner to pursue his activities on behalf of refugees within his mandate or those for whom he extends his good offices.

103. In Resolution 1783 (XVII) of 7 December 1962 the General Assembly *inter alia* commended the High Commissioner for the efforts he had made in finding satisfactory solutions of problems affecting refugees within his mandate and those for whom he lends his "good offices". Finally in Resolution 1959 (XVIII) of 12 December 1963 the General Assembly *inter alia* requested the High Commissioner to continue to afford international protection to refugees and to pursue his efforts on behalf of the refugees within his mandate and of those to whom he extends his good offices, by giving particular attention to new refugee groups in conformity with the relevant resolutions of the General Assembly and the directives of the Executive Committee of the High Commissioner's Programme.

(G) Legal techniques considered or adopted in other fields

104. The above examination of the definition of the term "refugee" in the pre-War instruments, and in the Constitution of the IRO and of the historical development of the definitions in the 1951 Convention and in the Statute has shown the various problems which have arisen as regards legal technique, when it has been sought to make provision for new

groups of refugees. Mention has already been made [181] of the possible reluctance of Governments to assume unrestricted obligations as regards new refugee groups, and of the need which may therefore arise to permit the introduction of some limitation by means of appropriate legal techniques. It is, therefore, proposed to mention briefly various legal techniques adopted with regard to multilateral treaties in certain other fields which may be of relevance to the present problem.

(i) **Provision in international instruments for their adoption in their entirety or in part**

105. It has been seen that Article 23 of the Refugee Convention of 1933 permitted the Contracting Parties, at the moment of signature or accession, to declare that their signature or accession did not apply to certain Chapters, Articles or Paragraphs (exclusive of Chapter XI) ("General Provisions") or to submit reservations. A variant is to be found in Article 25 of the Refugee Convention of 1938. This enabled the Contracting Parties at the time of signature, accession, etc. to indicate that such signature, ratification, accession, etc. applied to specifically enumerated chapters or to the Convention in its entirety. Failing such indication, the signature, ratification, accession, etc. was deemed to apply to the Convention as a whole. In addition, the Contracting Parties were permitted to make reservation to articles in chapters to which their obligation extended[182]. The technique whereby the obligations of an international agreement may be adopted in their entirety or in part can also be found in certain other pre-war multilateral instruments not dealing specifically with refugees. Mention may be made in this connexion of the Inter-American Radio Communications Convention of 1937[183] and of the General Act

181. *Ante* para. 17.

182. *Ante* para. 30.

183. *Article* 25. "The ratifications or adherences to the present Convention may refer to the totality thereof or to two or more of its parts; provided that, in every case Parts One and Four (Conferences and General Provisions) be ratified or adhered to." Hudson, *International Legislation*, Vol. VII, p. 910.

for the Pacific Settlement of International Disputes of 26 September 1928[184]. The latter instrument also enabled the Contracting Parties to make reservations[185]. The Revised General Act for the Pacific Settlement of International Disputes adopted by the United Nations General Assembly on 28 April 1949, contains corresponding provisions[186].

106. The "partial adoption" technique, which bears a certain similarity to but is different from the legal technique enabling the Contracting Parties to make specifically defined reservations[187] has also been employed in a number of conventions adopted by the ILO prior to but mainly after the Second World War.

184. *Article* 38. "Accessions to the present General Act may extend: A. Either to all the provisions of the Act (Chapters I, II, III, and IV); B. Or to those provisions only which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV); C. Or to those provisions only which relate to conciliation (Chapter I), together with the general provisions concerning that procedure (Chapter IV). The Contracting Parties may benefit by the accessions of other parties only insofar as they have themselves assumed the same obligations." Hudson, *Ibid*, vol. IV, p. 2541.

185. *Article* 39. 1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make his acceptance conditional upon the reservations exhaustively enumerated in the following paragraphs. These reservations must be indicated at the time of accession. 2. These reservations may be such as to exclude from the procedure described in the present Act: (a) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute; (b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States; (c) Disputes concerning particular cases or clearly specified subject matters, such as territorial status, or disputes falling within clearly defined categories. 3. If one of the parties to a dispute had made a reservation, the other parties may enforce the same reservation in regard to that part 4. In the case of Parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.

186. United Nations Treaties Series 71/12, p. 101, Reg. No. 912.

187. For examples of this latter technique see *Handbook of Final Clauses*, United Nations Document ST/LEG (16, 5 August 1957, pp. 99-103)

107. It would seem that within the framework of the ILO, the "partial adoption" technique has been considered especially suitable for securing extensive ratification where, owing to their special circumstances, Member States might not be able to accept the full or more onerous obligations of a Convention. As used in the ILO conventions the technique has a number of variants:

(a) **Exclusion of a specified part or parts**

108. Convention No. 63 of 1938 concerning Statistics of Wages and Hours of Work contains six parts. Of these Part II relates to Statistics of Average Earnings and of Hours Actually Worked in Mining and Manufacturing Industries and Part III to Statistics of Mining and Manufacturing Industries and Part III to Statistics of Time Rates of Wages and of Normal Hours of Work in Mining and Manufacturing Industries. During the Conference at which this Convention was adopted, it was decided that both classes of statistics had their uses and that the Convention should provide for both on an equal footing[188]. A paragraph was, however, inserted in the Preamble stating that although it was desirable that all Members of the Organization should compile statistics of the type covered by Part II, it was nevertheless desirable that the Convention should be open to ratification by Members which are not in a position to comply with the requirements of that Part. Article 2, paragraph 1 of the Convention thus provided that a Member might, by a declaration appended to its ratification, exclude from its acceptance of the Convention (a) Parts II, III or IV, or (b) Parts II and IV; or (c) Parts III and IV. (Parts IV concerned Statistics of Wages and Hours of Work in Agriculture.)

109. The Labour Inspection Convention (No 81) of 1947 contains two parts requiring mention: Part I—Labour Inspection in Industry and Part II-Labour Inspection in Commerce.

188. ILO Conference, 24th Session, Report VI, Part. I, Section III, p. 56.

Article 25 provides that any Member may, by a declaration appended to its ratification, exclude Part II—from its acceptance.[189]

110. The Wages, Hours of Work and Manning (Sea) Convention (Revised) (No. 109) of 1958 included a Part I (General Provisions), Part II (Wages) Part III Hours of Work on Board Ship) and Part IV (Manning). According to Article 5, paragraph 1, each Member was permitted to append to its ratification a declaration excluding Part II of the Convention.[190]

(b) **Acceptance of one of two parts in the alternative**

111. The Fee—Charging Employment Agencies (Revised) Convention (No.96) of 1949 contains a provision (Article 2) enabling Members to indicate in their instrument of ratification whether they accept Part II of the convention (Progressive *Abolition* of Fee--Charging Employment Agencies) or Part III of the Convention (*Regulation* of Fee-Charging Employment Agencies).

(c) **Acceptance of part containing basic provisions and possibility of acceptance of other parts**

112. Article 2 of the Social Security (Minimum Standards) Convention (No. 102) of 1952 provides that each Member shall comply with Part I, at least three of Parts II to X and the relevant provisions of Parts XI, XII and XIII and Part XIV. Parts I and XI-XV contain provisions of a general character

189. During the Conference which adopted the Convention, the question arose as to whether there should be a single Convention covering inspection in industrial and commercial undertakings or separate instruments for each of these categories. It was considered that a single Convention would not be ratified by a substantial number of Members, unless, perhaps, it was framed in such general terms as to have the undesirable effect of weakening the entire Convention. On the other hand, there would be certain disadvantages in adopting two separate Conventions. *Ibid.* 30th Session, *Report IV*, pp. 155 *et seq.*

190. This provision was included on the proposal of several government representatives that Members should be enabled to exclude the wage clause from their ratification. 41st Session, *Report II*, pp. 1 *et seq.*

and Parts II to X deal with specific kinds of social security benefits. In connexion with the preparation of the Convention the ILO had prepared a study with a view to determining the extent to which the various Members would be able to apply Parts II to X. This showed that, especially in the less developed countries, Parts III (Sickness Benefit) and V (Old-Age Benefits) and Parts VIII Maternity Benefit), IX (Invalidity Benefit) and X (Survivors Benefit) could be immediately applied. In the less developed countries, however, Medical Benefits (Part II) were rarely granted to members of an insured person's family and the system of Family Benefits (Part VII) and Unemployment Benefits (Part IV) had not yet been established.[191]

113. Similarly, the Equality of Treatment (Nationals and Non-Nationals) Social Security Convention (No. 118) of 1962 lays down general obligations regarding equality of treatment. According to Article 2 each Member may accept these obligations in respect of one or more of the branches of social security listed in that Article [192] for which it has ineffective operation legislation covering its own nationals within its territory. This provision was introduced in order to give the Convention a character favourable to numerous ratifications and for this reason no obligations had been adopted imposing acceptance of more than one branch of social security.[193]

(d) Acceptance of entire Convention containing basic provisions and optional acceptance of one or several annexes

114. Finally, the Migration for Employment (Revised) Convention (No. 97) 1949 contains provisions covering migration for employment in general and 3 *annexes* dealing with

191. *Ibid.* 35th Session, Report (V) a (2), p. 78.

192. i. e. medical care, sickness benefit, maternity benefit, invalidity benefit, old age benefit, survivors benefit, employment injury benefit, unemployment benefit and family benefit.

193. *Ibid.* 46th Session, *Report* V (1) pp. 4-5.

specific matters: *Annex I*—Recruitment, Placing and Conditions of Labour for Employment recruited *otherwise* than under Government-sponsored arrangements for Group Transfers; *Annex II*—The same for Migrants for Employment recruited *under Government-sponsored arrangements for Group Transfers; Annex III*—Importation of Personal Effects, Tools and Equipment of Migrants for Employments. Article 14 enables Members to append to their ratification a declaration excluding any or all of the *Annexes* from their acceptance of the Convention.

115. It is a feature of the ILO Conventions referred to above that they all provide that the part or parts which have not been accepted, may be accepted at a later date. This dynamic aspect is emphasised by the provisions in several of the Conventions as to reporting in regard to that part of the Convention which has not been accepted. Thus article 2 paragraph 3 of Convention No. 63 provides that "Any Member for which a declaration made under paragraph 1 of this article is in force shall indicate each year in its annual report on the application of this Convention the extent to which any progress has been made with a view to the application of the part or parts of the Convention excluded from its acceptance.[194]

116. A variant is to be found in Article 3 paragraph 2 of Convention No. 102 which provides that "Each Member which has made a declaration under paragraph 1 of this Article shall include in its annual report.....a statement in respect of each exception of which it avails itself; (a) that its reason for doing so subsists; or (b) that it renounces its right to avail itself of the exception in question as from a stated date." Finally, in certain Conventions it is expressly provided that in respect of a part

194. Similarly Convention No. 81, Article 25 paragraph 3; Convention No. 96, Article 2 paragraph 2; Convention No. 109, Article 5 paragraph 3.

which has not yet been accepted, a Member may declare its willingness to accept that part as having the force of a recommendation.[195]

117. The technique of enabling the parties to a multilateral Convention to accept it in its entirety or in part has also been employed in the European Social Charter[196] in a similar manner to that adopted in the ILO Conventions referred to above.

(ii) Recommendation relating to de facto stateless persons in the Final Act of the Status of Stateless Persons Convention

118. It has been seen above that Economic and Social Council Resolution 116 (VI) of 1 and 2 March 1948, in pursuance of which the Secretary-General prepared the *Study of Statelessness* did not mention refugees, but only "stateless persons." In the further preparatory work for the 1951 Convention, only the problem of refugees received detailed

195. Similarly Convention No. 97, Article 4 paragraph 4; Conevntion No. 109, Article 5 paragraph 5.

196. *Article* 20. "1. Each of the Contracting Parties undertakes:

(a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part;

(b) to consider itself bound by at least five of the following Articles of Part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19;

(c) in addition to the Articles selected by it in accordance with the preceding sub-paragraph, to consider itself bound by such a number of Articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of Articles or numbered paragraphs by which it is bound is not less than 10 Articles or 45 numbered paragraphs.

"2. The Articles or paragraphs selected in accordance with sub-paragraphs (b) and (c) of paragraph 1 of this Article shall be notified to the Secretary-General of the Council of Europe at the time when the instrument of ratification or approval of the Contracting Party is deposited.

"3. Any contracting Party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any Articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of Paragraph 1 of this Article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification or approval, and shall have the same effect as from the thirtieth day after the date of the notification."

attention. The Conference of Plenipotentiaries which adopted the 1951 Convention did not deal with the draft Protocol relating to the Status of Stateless Persons originally prepared by the Ad Hoc Committee at its First Session[197] and adopted the following Resolution in its Final Act :

> "The Conference
>
> "Having considered the draft Protocol relating to the Status of Stateless Persons,
>
> "Considering that the subject still requires more detailed study,
>
> "Decides not to take a decision on the subject at the present Conference and refers the draft Protocol back to the appropriate organs of the United Nations for further study."

119. The Economic and Social Council, therefore, convened a special Conference of Plenipotentiaries to consider the Protocol, which was held in New York in September 1954. The Conference adopted not the Protocol, but an independent Convention relating to the Status of Stateless Persons closely modelled on the Refugee Convention.

120. For the purpose of the Convention the term "Stateless person" is defined by Article 1 as "a person who is not considered a national by any State under the operation of its law" (i. e. *de jure* stateless persons).

121. The question of so-called *de facto* stateless persons,[198] i. e. persons who possess a nationality, but do not enjoy the protection of the State of nationality, nor of any other State, gave rise to much discussion at the Conference. The Belgian delegation proposed the inclusion in the definition

197. *Ante* para. 34.

198. For the difference between *de jure* and *de facto* stateless persons, see *ante* para. 34.

of "persons who invoke reasons recognized as valid by the State in which they are resident for renouncing the protection of the country of which they are nationals. A drafting Committee on the definition of stateless persons submitted in addition to the definition of stateless persons which has been incorporated in Article 1 of the Convention, three alternatives for a second paragraph designed to cover *de facto* stateless person :

Alternative A

"For the purpose of this Protocol (Convention), the team "stateless person" shall also include a person who invokes reasons recognized as valid by the State in which he is resident, for renouncing the protection of the country of which he is a national."

Alternative B

"A Contracting State may, at the time of signature, ratification or accession make a declaration extending the paovisions of the Protocol (Convention) to any person living outside his own country who, for reasons recognized as valid by the State in which he is resident, has renounced the protection of the State of which he is, or was a national.

"Any State which has not made a declaration at the time of signature, ratification or accession may at any time extend its obligations by means of a notification addressed to the Secretary-General of the United Nations."

Alternative C

"Nothing in this Protocol (Convention) shall be construed to mean that its provisions cannot be made applicable to any person living outside his country who, for reasons recognized as valid by the State in which he is resident, has renounced the protection of the State of which he is, or was, a national."

122. It will be seen that the legal technique proposed in Alternatives B and C bear some resemblance to the legal technique adopted in Article 1 of the Refugee Convention of 1933.[199] When a vote was taken, the definition of *de jure* stateless persons and Alternative C were adopted.[200] Doubts, however, arose as to whether the inclusion of *de facto* stateless persons by a Contracting State by virtue of the permissive clause adopted, would have extraterritorial effect, i. e. whether it would bind other Contracting States to apply the provisions of the Convention to *de facto* stateless persons. The Conference finally decided not to include in the Convention a clause concerning *de facto* stateless persons which would have extra-territorial effect,[201] but adopted the following recommendation which was included in the *Final Act* of the Conference :

"*The Conference*

"Recommends that each Contracting State when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons, and

"*Recommends further* that in cases where the State in whose territory the person resides has decided to accord the treatment referred to above, other Contracting States also accord him the treatment provided for by the Convention."

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199. *Ante* para. 36

200. The United Kingdom delegation subsequently proposed to add to the wording adopted for paragraph 2 of the definition the words "or who has been refused protection and assistance by the State of which he is a national."

201. Document E/CONF.17/SR.14, p. 10

123. It will be seen that there is a certain difference between this Recommendation and Recommendation E of the Final Act of the 1951 Convention.[202] The latter expresses in general terms the hope that the Convention will serve as an example exceeding its contractual scope and that all nations will be guided by it in granting, as far as possible to persons in their territory as refugees, and who would not be covered by the terms of the Convention, *the treatment for whlch it provides*. The Recommendation in the Final Act of the Conference on the Status of Stateless Persons would, however, seem to be stronger in that it contains an element of reciprocity, i. e. *if a State in whose territory a de facto* stateless persons resides, decides to accord him the treatment provided for in the Convention, *other Contracting States are recommended to accord him the same treatment*.

124. On the other hand, being only a recommendation, the Recommendation in the Final Act of the Conference relating to the Status of Stateless Persons gives rise to the difficulties already mentioned above[203] in connexion with recommendations in general. In particular, it is unlikely that a decision by a State to grant treatment for which the Convention provides to *de facto* persons would have extra-territorial effect to the extent to which such extra-territorial effect is not recognized by other States Parties to the Convention.[204]

202. *Ante* paras. 8, 51-54.

203. *Ante* paras. 8 and 41.

204. See generally P. Weis: "*The Convention relating to the Status of Stateless Persons*". *International and Comparative Law Quarterly*. April 1961.

III. THE PROBLEM RESTATED IN THE LIGHT OF THE LEGAL TECHNIQUES CONSIDERED

125. It has been seen that, although definitions in the Convention and in the Statute are not identical, such identity existed in practice at the date when the two instruments were adopted. With the passage of time, the discrepancy between the groups of persons covered by the two instruments has gradually grown due to the increasing number of refugees for whom the High Commissioner is competent under the Statute but who are not covered by the Convention due to the dateline of 1st January, 1951. In addition there are new groups of refugees to whom the High Commissioner extends his good offices not on the basis of the Statute, but of various Resolutions of the General Assembly.[205] Moreover, by various General Assembly Resolutions the High Commissioner's competence has been extended as regards the tasks entrusted to him.[206] When considering the historical development of the definition of the term "refugee" both in the Convention and in the Statute, it has been seen that various States did not favour a general solution but adopted a more restrictive approach. The possibility cannot be excluded that a similar approach might be adopted with regard to measures, proposed for solving the present problem. In proposing such measures, therefore, it might be desirable to provide for the introduction of certain limitations, should this prove necessary, and it is here that the possibilities provided by the various legal techniqnes may be of interest.

205. *Ante* paras. 96-103.

206. *Ante* paras. 93-95.

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 disadvantages[207] 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 Convention [208] 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 Convention [211] and in the Statute[212] 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 Charter[214] 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 Portocol 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 is 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)