

BERICHTE UND URKUNDEN

The Work of the Asian-African Legal Consultative Committee on the Legal Status of Refugees*)

Introduction

Since the end of World War I when the first refugee situations of this century arose in Europe, the international community has sought to define the legal status of refugees. Under the auspices of the League of Nations, and later of the United Nations, a series of international instruments was drawn up to regulate the legal status of refugees which is precarious in many ways involving serious disabilities and often unintentional discrimination through the normal operation of law¹⁾.

The latest international instrument of this kind is the Convention relating to the Status of Refugees of 28 July 1951²⁾. This Convention, by which now 50 States are bound, is an instrument capable in principle of universal application although States may limit their obligations to persons who left their home country as a result of events which have occurred in Europe. However, the personal scope of the Convention is at present limited by the dateline in Art. 1 A (2) by virtue of which the Convention is only applicable to persons who have become refugees as a result of events occurring before 1 January 1951. This limitation did not give rise to any particular problem when the Convention was first adopted since at that time the Convention extended in practice to all known groups of refugees. In various new refugee situations which arose subsequently the Convention was applied to the refugees concerned through the recognition by governments of a causal link between the plight of refugees who left

*) The views expressed in this article are those of the author. They do not necessarily reflect the opinions of the Office of the United Nations High Commissioner for Refugees.

¹⁾ P. Weis, The international protection of refugees, *The American Journal of International Law*, vol. 48 (1954), p. 193, and F. Schnyder, *Les aspects juridiques actuels des problèmes des réfugiés*, lecture at the Hague Academy of International Law with full Bibliography, published in *Recueil des Cours*, The Hague, 1965, pp. 22-450. For the developments up to 1949 see in particular: United Nations, *a Study of Statelessness*, New York, 1949.

²⁾ Doc. UN/A/CONF. 2/108, August 1951. For the English text see *ZaöRV* vol. 14 (1951/52), p. 479; for history: A. N. Makarov, *ibid.*, p. 431.

their country after 1 January 1951 and events occurring before that date. However, in other new refugee situations, particularly those which have arisen in Africa, and on which at present the interest of the international community is very much focussed, it has become increasingly difficult if not impossible for governments to recognize the existence of such a long-term historical causal link.

Some States in new refugee situations, in fact, grant the protection provided for by the Convention following a recommendation contained in the Final Act of the Conference by which the Convention was adopted. However, in most of these new situations the legal status of refugees is not satisfactorily regulated. For this reason, the United Nations High Commissioner for Refugees has initiated measures to fill the gap caused by the limitation of the scope of the Refugee Convention resulting from the dateline. After consultation with the interested governments, the High Commissioner's Office has prepared a draft protocol which would make the terms of the Convention applicable in new refugee situations³⁾.

It is interesting to note that more recently regional organizations, like the Organization of American States and the Organization of African Unity, have been endeavouring to regulate certain specific aspects of refugee situations in the context of their particular region⁴⁾. At the Sixth Session in 1964 the Asian-African Legal Consultative Committee, upon request of the United Arab Republic, commenced its work on this subject. It completed its work at its Eighth Session in August 1966. The Committee was assisted in this work by the Office of the United Nations High Commissioner for Refugees, which was represented at the three Sessions concerned.

The Principles concerning the Treatment of Refugees finally adopted by the Committee may be considered an important step towards the development of the rights of refugees in Asia and Africa. The Committee agreed on a minimum standard of treatment which a refugee should enjoy in the country which has granted him asylum. With regard to asylum, it is of greatest significance that the African and Asian States which in the past have strictly adhered to the classical theory of State sovereignty, have now acknowledged the principle of "non-refoulement" of asylum-seekers and the principle of "provisional asylum". Other principles adopted concern "respect by other States of the grant of asylum"

³⁾ Doc. UN/A/AC. 96/346.

⁴⁾ E. J a h n, Developments in Refugee Law in the Framework of Regional Organizations outside Europe: Association for the Study of World Refugee Problems, Bulletin 1966, p. 77.

and the "prohibition of subversive activities", the latter principle being of special relevance in the new refugee situations in Africa.

Finally, two articles adopted by the Committee are of special interest; those concern the "right of return" and the "right to compensation". These articles, although perhaps of somewhat limited practical importance at the present time, will find greatest attention in various parts of the world.

In the course of the work of the Committee which led to the adoption of "Principles concerning the Treatment of Refugees", the Secretariat of the Committee, in co-operation with the United Nations High Commissioner for Refugees, assembled an important collection of relevant documentation on the various subjects dealt with which can be found in the Briefs of Documents for the three Sessions concerned and which represent a most valuable basis for further studies on the subject⁵⁾.

The Work of the Committee

The subject "rights of refugees" was placed on the agenda of the Asian-African Legal Consultative Committee⁶⁾ at its Sixth Session in Cairo in 1964. The subject had been referred to the Committee by the Government of the United Arab Republic which emphasized in their memorandum that "the impact of the increased number of refugees after the second World War led to much international understanding of refugee problems which were not previously met with adequate attention by the international community. In addition, it encouraged States to procure more assistance

⁵⁾ Asian-African Legal Consultative Committee, Brief of Documents for the Fifth, Seventh and Eighth Sessions.

⁶⁾ The Asian Legal Consultative Committee, as it was originally called, was constituted by the governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria as from the 15th 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 Prime Minister of India, 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 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 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 October 1958, Pakistan from the 1st January 1959, Morocco from the 24th February 1961, Thailand from the 6th December 1961, and Ghana from the 28th October 1963 (see Introductory Note to Report of Sixth Session, Cairo, 1964, p. 1; see also M. K. Y a s s e n , Le Comité juridique consultative africano-asiatique, *Annuaire Français de Droit International*, vol. 10 (1964), p. 653.

and more legal protection to the refugees in the 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 the refugees' problems". The Secretariat was directed to "prepare a report and present the same for discussion at the next session of the Committee" ⁷⁾). The Government proposed, *inter alia*, the following issues: definition of refugees, the relation between the problems of refugees and the preservation of peace and justice in the world, principles guiding the solution of refugee problems such as the right of asylum, the right of repatriation and the right of indemnification, the rights of refugees in the country of residence and international assistance to refugees.

At its Sixth Session in Cairo, the Committee, after a general discussion on the subject, decided "that the Governments of the participating countries be requested to send their comments on the subject together with the texts of constitutional provisions, laws and practice, particularly on the issues of compensation, the minimum standard of treatment of a refugee in a State where he has been admitted and also on the question of constitution of competent international tribunals for determination of compensation that could be claimed by a refugee". It directed the Secretariat "to prepare a fresh report on the basis of the materials which may be received from the participating governments and from other sources and to place the same before the next session" ⁸⁾).

At its Seventh Session in Baghdad in 1965 the Committee gave detailed consideration to the subject on the basis of the report of the Secretariat and of draft "General Principles concerning the Status and Treatment of Refugees" likewise prepared by the Secretariat as basis for discussion ⁹⁾). These Principles were formulated in six articles dealing with the definition of a refugee, the right of asylum, the right of repatriation, the right of indemnification, personal and property rights and expulsion and deportation ¹⁰⁾).

During the Seventh Session these Principles were discussed and formu-

⁷⁾ Asian-African Legal Consultative Committee, Eighth Session, Brief of Documents, vol. I, p. 3.

⁸⁾ Asian-African Legal Consultative Committee, Sixth Session, Cairo, 1964, Resolution No. VI (8) and Report of same Session, p. 43.

⁹⁾ Asian-African Legal Consultative Committee, Seventh Session, 1965, Brief of Documents, vol. II, p. 173.

¹⁰⁾ R. A g o, Report on the Seventh Session of the Asian-African Legal Consultative Committee, 1965, UN/A/CN/180.

lated in the light of comments made by participating countries and by the High Commissioner for Refugees. The latter pointed out in his opening speech that "his Office naturally welcomes the increased interest on the part of regional organizations in the question of the rights of refugees", but emphasized that "any regional arrangements should not lead to a duplication of the 1951 Convention relating to the Status of Refugees which is universal in scope and whose principles are applicable to any refugee in any part of the world. On the other hand that Convention is neither perfect nor all-inclusive and there are a number of specific points which could be usefully included in any regional instrument without in any way invalidating the practical significance or the moral force of the original Convention. Any new instrument should therefore be aimed at filling gaps left by the mother document and in bringing it up to date without supplanting it". He mentioned in particular the problem of the removal of the dateline of 1 January 1951, the right of asylum and the principle of voluntary repatriation¹¹).

The Committee decided at that Session to formulate certain general principles on the rights of refugees. These principles were set out in the form of revised articles adopted by Resolution VII (14)¹²). In the "Interim Report on the Rights of Refugees" adopted by the same resolution the Committee also 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". Furthermore, "the Committee, having regard to the urgency of the problem, decided to draw up this Interim Report and to submit the same to participating Governments for their comments and observations before the next session of the Committee, when it proposes to give further consideration to this subject"¹³).

At its Eighth Session in August 1966 in Bangkok the Committee "having regard to the importance of the subject to the participating States and

¹¹) Asian-African Legal Consultative Committee, Report of Seventh Session, 1965, p. 425 (mimeographed version).

¹²) Asian-African Legal Consultative Committee, Report of Seventh Session, 1965, p. 489 (mimeographed version).

¹³) Asian-African Legal Consultative Committee, Report of Seventh Session, 1965, Doc. VII (31), p. 26 *et seq.*

the urgency of the problem decided to take up this subject as the first item of the session" and, in fact, nearly all plenary Sessions were devoted to this item¹⁴).

The Committee discussed in detail the draft articles adopted in Baghdad and considered them in the light of comments received from participating States and from the United Nations High Commissioner for Refugees. It adopted a final report¹⁵) on the "Rights of Refugees" and "Principles concerning Treatment of Refugees" embodied in nine articles. The Committee furthermore came to the conclusion that "having regard to the fact that the Committee's function under its Statute was 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".

The Committee also "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". There was, however, no uniformity of views on this subject and some delegates felt that such a provision "would not be practicable", others felt that "the circumstances were not ripe for making any recommendation on this question" and again others expressed the view that "it was neither possible nor necessary to make any provisions for an implementation of these rights". While the Committee adopted articles on the right of return and the right to compensation, it did not include any provisions regarding implementation but decided that this latter question "would be kept pending and might be examined by the Committee

¹⁴) Besides the item concerning refugees the Committee dealt with problems connected with "peaceful coexistence" and "double taxation". The Committee furthermore had a general discussion on the decision of the International Court of Justice on South-West Africa and decided to give detailed consideration to the latter subject during the next Session.

¹⁵) Doc. No. VIII (17).

at a suitable time". The Committee finally came to the conclusion that "it was not necessary to examine in detail the provisions of the 1951 Refugee Convention as the same has been taken note of by the Committee in formulating the principles on the subject".

Principles concerning the Treatment of Refugees

Refugee definition (Articles I and II)

The Principles concerning Treatment of Refugees cover in practice refugees as defined in Article 1 of the Refugee Convention but is broader in that there is no date-line as regards the events, as a result of which a person has become a refugee, and includes "colour" as additional reason for fear of persecution.

There was a great deal of discussion as to what extent the definition should refer to the State of the nationality of the person concerned or the country of nationality. At the wish of the representatives of some Arab States the word country was added to the word State wherever suitable, and it was also specifically noted that the term "refugee" includes a person who is obliged to leave his country of origin "under the pressure of an illegal act or as a result of invasion of such State, wholly or partly, by an alien with a view to occupying the State". The delegate of Iraq explained that the expression "illegal act" should be interpreted to mean "aggressive act by another State or another people from outside the State".

It is also of interest to note the definition of "persecution" put forward by the delegations of Ceylon and Japan which expressed the view that the term "persecution" means "something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilized nations".

With regard to the exclusion of persons from refugee status (Exception (II)) the majority of delegations insisted on the addition of the words "prior to his admission into the country of refuge" in order to make it quite clear that a non-political crime committed in the country of refuge does not automatically deprive a refugee of his protection.

The provision for cessation of refugee status in Art. II corresponds to Art. I. C of the Refugee Convention although the wording is slightly different. The addition of the word "permanently" in para. 1 (e) was meant to make it clear that short visits to the country of origin, e. g. for family reasons, do not necessarily result in the loss of refugee status.

It is furthermore interesting to note the explanation according to which it would be for the State of a s y l u m of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist. By explicitly adding that explanation, the participating delegations wanted to make it clear that the country of origin should not be allowed to influence the decision of the country of asylum in this matter. Furthermore, the delegations of the Arab States reserved their position with regard to whether the acquisition of a new nationality would automatically lead to loss of refugee status. Finally, the delegation of Thailand wished it to be recorded that re-availment of the protection of the authorities of the country of origin by a refugee should only lead to loss of refugee status if he has been s u c c e s s f u l in obtaining protection of that country.

A s y l u m

The article on asylum adopted in Baghdad was limited to the statement that "a State has the sovereign right to grant or refuse asylum in its territory to a refugee". The principles adopted contained three additional paragraphs which are very much along the lines of the United Nations Draft Declaration on the Right of Asylum¹⁶). The additional paragraphs embody *inter alia* the principles of "non-refoulement" and "temporary asylum", the latter being formulated even more strongly than in the U.N. Draft Declaration. Furthermore, it is explicitly stated that the exercise of the right to grant asylum shall be respected by another State and shall not be regarded as an unfriendly act, a provision to which the African delegations and Thailand attached greatest importance. The provision concerning the prohibition of subversive activities contained in Art. 4 of the U.N. Draft Declaration was reproduced in a somewhat modified form in Art. VII of the "Principles" (see below).

R i g h t o f r e t u r n a n d r i g h t t o c o m p e n s a t i o n

Art. IV embodies the principle of a refugee's right to return to his country of nationality and the duty of that country to receive him. At the

¹⁶) As adopted by the Commission on Human Rights at its 62nd meeting on March 15, 1960. United Nations General Assembly Doc. A/5145 and Amendments A/C. 3/L. 1035 to 1050.

The views expressed by the members of the 3rd Committee during the debate at the Seventeenth Session are to be found in Summary Records of the corresponding meeting (A/C. 3/SR. 1192 to 1202). At that Assembly the Preamble and Art. 1 of the Draft Declaration were adopted. The matter has now been referred to the 6th Committee and is to be discussed at the Twenty-first Assembly in 1966. For latest developments see P. Weis, Territorial Asylum, *The Indian Journal of International Law*, vol. 6 (1966), pp. 173-194.

9 ZaöRV Bd. 27/1-2

Baghdad Session there was considerable discussion as to whether one should not also stipulate the right of stateless persons to return to the country of their former habitual residence, but already the text adopted at Baghdad contained no such clause. The majority of the participating countries felt that according to present international law no such right of a stateless person existed.

With regard to the right to compensation which was originally in the same article as the right of return it is interesting to note that 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 of aliens under international law" should be added at the end of para. 2. This remark is somewhat connected with the work of the Committee on "State Responsibility arising out of Maltreatment of Aliens" which has been on the agenda of the Committee for a considerable time but the handling of which was again deferred, as well as the subject of Diplomatic Protection of Citizens Abroad with which it is closely interconnected¹⁷⁾. Other delegations were furthermore of the opinion 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 para. 2 of Art. V after the words "mob violence".

With regard to both paragraphs some doubt was expressed as to the practical effect of these provisions which was the reason why the Committee did not accept any special provision for safeguarding the implementation of these rights, as suggested at the 1965 Session¹⁸⁾.

Minimum standard of treatment of refugees

The original Secretariat draft contained one provision concerning "personal and property rights" in which reference was made to Articles VII, VIII and IX of the Principles concerning Admission and Treatment of Aliens, adopted by the Committee at its Fourth Session in Tokyo in 1961¹⁹⁾. In the Draft Principles adopted at the Seventh Session in 1965,

¹⁷⁾ At the Baghdad Session the Secretariat was asked to re-draft some of the draft articles drawn up before 1961 taking into account subsequent developments. This refers in particular to the Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens, prepared in 1961, and the work of the International Law Commission on the same subject (see in particular the report by García Amador on International Responsibility, U.N. Doc. A/CN.4-125 of 9 February 1960; Yearbook of the ILC 1960, vol. II, pp. 41-68).

¹⁸⁾ See p. 126 above.

¹⁹⁾ See Asian-African Legal Consultative Committee, Principles concerning Admission and Treatment of Aliens, adopted by the Committee at its Fourth Session in Tokyo,

some of these rights were spelled out explicitly, such as the "Right of Movement and Residence", "Personal Rights" and "the Right to Property". However, at the Bangkok Session the participating States wondered whether this would be the correct method to deal with the subject.

The Representative of the United Nations High Commissioner for Refugees drew the attention of the Committee to the fact that the rights stipulated in the draft articles at the Baghdad Session were made subject to local laws, regulations and orders and some of them subject also to the conditions imposed at the time of the granting of asylum and questioned whether it was logically correct to make a principle subject to an exception so broadly defined that the exception may nullify the principle itself. He furthermore drew the Committee's attention to the dangers to which any enumeration of rights may give rise, particularly in the light of the Refugee Convention of 1951 which in some respects goes further than the Principles on the Treatment of Aliens adopted by the Committee, and furthermore to the fact that a refugee is in a somewhat special situation in so far as any rights stipulated would normally not apply to him unless he were exempted from the requirement of reciprocity and from other requirements which by their nature a refugee is incapable of fulfilling. In view of this, the Committee decided to establish a "minimum standard of treatment of refugees" and to leave it to the participating States to regulate the status of refugees in a more detailed manner, be it by multilateral or bilateral arrangements or by their own municipal laws.

The standard chosen by the Committee is that of a "treatment in no way less favourable than that generally accorded to aliens in similar circumstances" which should include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens which it was decided to annex to the Principles on the Treatment of Refugees. In addition to the provision relating to the minimum standard, paragraphs concerning exemption from reciprocity and from the fulfilment of certain requirements were drafted and accepted.

The views of the Committee as to the legal status of refugees in their country of asylum were on the whole divided. This may be due to a general tendency in the States of Africa and particularly of Asia to make the status of aliens dependent on the internal law of the country²⁰). While

February 1961, Report pp. 46-51 (for text see below) and commentary of the Secretariat pp. 52-180.

²⁰) Bulletin of the International Commission of Jurists (1960) No. 11, p. 53 and International Law Association, Committee on the Legal Aspects of the problem of Asylum, Tokyo Conference, 1964, p. 22.

the African participants were in favour of a mere reference to the 1951 Refugee Convention, there was considerable reluctance on the part of the Asian participants to undertake explicit obligations in this matter. On the other hand, the delegations of Iraq and Pakistan wanted it to be specifically noted that in their opinion "a refugee should generally be granted the standard of treatment applicable to the nationals of the country of asylum"²¹).

Obligations

Art. VII corresponds to the clause in the U.N. Declaration of Asylum concerning prohibition of activities contrary to the purposes and principles of the United Nations²²), but mentions in addition "activities endangering the national security of the country of refuge".

This article was particularly supported by the African delegations which felt that specific mention should be made of "activities against the security of the country of origin"²³). The delegations of India, Japan and Thailand were of the opinion that the words "or any other country" should be added to cover that situation. It was finally decided, however, that this addition was not necessary because any activities against the security of other countries including the country of origin would be inconsistent with the purposes and principles of the United Nations.

Expulsion and deportation

Art. VIII differs slightly from the corresponding provisions of the Refugee Convention (Art. 32 and 33), particularly by replacing the reasons justifying expulsion, namely "grounds of national security or public order" by "national or public interest or on the ground of violation of conditions of asylum". There was considerable discussion on the subject in the Committee and the delegations of Ceylon, Ghana and Japan in particular expressed the view that the wording should be somewhat strengthened to increase the protection of refugees. The Committee did not see its way to follow these suggestions which may, to a certain extent, be due to

²¹) In this connection see also Law No. 114 of 1959 of the Republic of Iraq (published in Official Gazette No. 194 of 12 July 1959) which deals with the status of refugees and goes very far in giving refugees a status similar to nationals.

²²) See note 16 above.

²³) See in this connection Art. III No. 5 of the Charter of the Organization of African Unity of 25 May 1963 and Declaration of the Assembly of OAU Heads of State and Government, on the problem of subversion, adopted at the Second Session, Accra, October 1965, text of the Charter in ZaöRV vol. 24 (1964), pp. 155 *seq.*

the time pressure under which the Committee was working when this article came up for discussion.

The effect of this somewhat weaker protection of refugees against expulsion is, however, to a great extent, compensated by para. 3 of Article VIII which provides for an absolute protection of a refugee against being deported or returned to a country where he would have to fear persecution. This goes further than Art. 33 of the Refugee Convention which contains the proviso that a refugee may not claim protection against such deportation in certain circumstances, e.g. if having been convicted by a judgement of a particularly serious crime he constitutes a danger to the community of that country.

Rights granted apart from these Principles

Art. IX contains a provision similar to Art. 5 of the Refugee Convention. According to Art. IX the Principles should not impair any right or benefits granted or which may be granted by States to refugees. This article makes it quite clear that the Principles should not result in a diminution of the rights of refugees and is in line with the general policy of the Committee that it would be up to the government of each participating State to decide how it would give effect to the Committee's recommendations.

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Anhang

Principles Concerning Treatment of Refugees as adopted by the Asian-African Legal Consultative Committee at its Eighth Session Bangkok, August, 1966

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 dependants of a refugee shall be deemed to be refugees.

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

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, 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.

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 to 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.

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, annexed 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.

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.

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.

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.

Asian-African Legal Consultative Committee Principles Concerning Admission and Treatment of Aliens Adopted by the Committee at its Fourth Session Tokyo, February 1961¹⁾

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.

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;

¹⁾ A/CN. 4/139 Ann. 1, Yearbook of the ILC 1961, vol. II, pp. 82 *seq.*; notes with the exception of the note to art. 1 are omitted for containing only views of single delegations.

- (iv) who is a stowaway, a habitual narcotic user, an unlawful dealer in opium or narcotics, 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 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 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.

Article 9. A State may prohibit or regulate professional or business activities or any other employment of aliens within its territory.

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.

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.

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.

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.

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.

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.

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.