

HUMAN RIGHTS AND REFUGEES *

by Paul Weis

II

IV. The Convention relating to the Status of Refugees

The 1951 Convention contains other important provisions relating to expulsion, even to a third country, not to a country where the person would be subject to persecution. In the case of refugees lawfully staying in the territory, expulsion shall only be resorted to for reasons of public order or national security.

“ 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 clear himself, and to appeal to and be represented for the purpose before the 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 that period such internal measures as they deem necessary.” (Art. 32).

The Convention also provides for the issuance of identity and travel documents to refugees and such travel documents must contain a return clause—the right of the holder to return to the issuing country. This so-called “ Convention Travel Document ”, which is in passport form with a United Nations-blue cover, has largely superseded the Nansen Passport.

* The first part of this article appeared in the previous issue of *International Review*.

As to the rights of refugees, the Convention establishes three standards: national treatment, i.e. treatment as is accorded to nationals of the country in which the refugee finds himself; most favoured nation treatment, and treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally in the same circumstances. The third standard means therefore general aliens treatment with a recommendation for more favourable treatment. *National* treatment is provided for as regards the freedom of refugees to practise religion and the religious education of their children; access to Courts; protection of industrial property; rights in literary, artistic and scientific works (copyright); wage-earning employment after the refugee has resided for three years in the country; primary education; public relief and assistance; labour legislation and social security. *Most favoured nation treatment* is provided for regarding the right of association in non-political and non-profit-making associations and trade unions, and regarding wage-earning employment for refugees who have not yet been for three years in the country. *Treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally* in the same circumstances is to be granted as to rights concerning movable and immovable property; self-employment in agriculture, commerce, industry and handicrafts; exercise of the liberal professions; housing; rationing; secondary and higher education, recognition of foreign diplomas and the award of scholarships.

The treatment provided for refugees is thus defined in a relative manner, in relation to the treatment accorded to nationals or aliens in the country concerned. All action for the protection of human rights in general is therefore also of importance for refugees.

V. The Protection Activities of the Office of the United Nations High Commissioner for Refugees

The Statute of the United Nations High Commissioner for Refugees is an Annex to Resolution 428 (V) of the General Assembly of 14 December 1950. The resolution itself asks Governments to co-operate with the High Commissioner in the exercise of his

functions. His main functions are to provide, under the auspices of the United Nations, international protection for refugees falling within the scope of the Statute, and to assist Governments and, with the approval of Governments, private organizations, in seeking permanent solutions to the problem of refugees by their integration in the country of asylum, their voluntary repatriation or their resettlement in other countries.

As regards protection, the Statute enumerates certain tasks specifically (Sec. 8). Thus, it provides that protection shall be accorded to refugees by "promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto". This task of supervision of conventions for the protection of refugees by an international body has become a contractual obligation under the Refugee Convention for States Parties thereto. In addition, the High Commissioner has the task of promoting the conclusion of conventions and proposing amendments.

An example is the Protocol relating to the Status of Refugees of 31 January 1967 established under Resolution 2198 (XXI) of the General Assembly of the United Nations. The definition of "refugee" in the Convention is more limited than that in the Statute which has been mentioned before, in that it limits refugee status for the purpose of the Convention to persons who became refugees as a result of events before 1 January 1951, the date when the High Commissioner's Office was established. Thus persons who became refugees as a result of later events (particularly the great number in Africa who became refugees after 1951) are excluded. The Final Act of the Conference which adopted the Convention does contain a recommendation that its provisions should be applied beyond its contractual scope, but this is a mere recommendation. The High Commissioner's Office took, therefore, the initiative for the establishment of a Protocol under which States undertake to apply the substantive provisions of the Convention as if the dateline of 1 January 1951 were omitted. It is an independent Protocol, open to accession not only to States Parties to the Convention but also to

other States. It came into force on 4 October 1967 when the sixth instrument of accession, that of Sweden, was deposited with the Secretary-General, six being the quorum for the entry into force of the Protocol.

As to the tasks involved in the international protection of refugees, the Statute mentions further "Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection".

This is most important in the practical work of the Office. Under the supervisory function specified in the Convention, representatives of the Office take part to a varying degree in the procedure for the determination of refugee status for the purposes of the Convention and also for the purpose of municipal law. To an increasing degree States parties to the Convention take the definition of the Convention also as a yardstick for the granting of asylum itself, and the recognition of refugee status according to the Convention thus gains even more in importance, as it gives the person concerned the right to asylum.

In one country, Belgium, the High Commissioner's Representative has been delegated to determine refugee status for the purposes of the Convention and of Belgian law. In other countries, too, the Office plays a role in the procedure for the recognition of refugee status. In France, for instance, where this task is performed by a special office, the *Office Français de Protection des Réfugiés et Apatrides* (OFPRA), the High Commissioner's Representative participates in the meetings of the Board of this Office and is a member of the three-member Appeals Board, the *Commission de Recours*, presided over by a member of the *Conseil d'Etat*, to which appeals against the decisions of OFPRA may be lodged; in Italy, the function of determining refugee status is assumed by an Eligibility Commission—the term "eligibility" has become accepted for this determination of refugee status—consisting of representatives of the Italian Government and of representatives of the High Commissioner's Office.

As regards measures to reduce the number of refugees requiring

protection, the Office seeks to facilitate the acquisition of nationality by refugees by naturalization or similar measures. A number of countries have, in fact—and there is also a recommendation to this effect in the 1951 Convention—enacted legislation shortening the period of residence for naturalization in the case of refugees, or enabling refugees to acquire nationality by option, or administrative measures such as reduction of fees, thus facilitating the naturalization of refugees.

The Statute then mentions that the protection task shall be exercised by “ assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities ”. In accordance with Article 13, paragraph 2, of the Universal Declaration of Human Rights, the Office considers it one of its primary tasks to promote the voluntary repatriation of refugees. In the legal field this is done by trying to overcome any difficulties in the way of repatriation, such as obtaining travel documents, transit and entry visas. The High Commissioner has, moreover, under his second function of “ seeking permanent solutions ” to the refugee problem, a material assistance programme for refugees, based on voluntary contributions by Governments and non-governmental sources, enabling him to assist refugees in integration, repatriation or resettlement, and from projects under this programme he can defray the transportation costs for voluntary repatriation where these expenses cannot be covered from any other source. Within this programme of material assistance there exists also a small legal assistance programme which enables the Office to assist non-governmental organizations for aid to refugees to give legal advice and assistance to refugees or to allow indigent refugees to retain lawyers in legal proceedings. Considering that international diplomatic protection may, under general international law, only be resorted to after the exhaustion of local remedies, it is essential that such local remedies should be available to all whether or not they have the means to defray the expenses involved. In this sense the programme for gratuitous legal assistance to refugees is an essential supplement to the efforts of the international agency for the protection of refugees and for the safeguarding of their human rights.

In the exercise of its protection function the High Commissioner's Office also seeks to promote the reunion of refugee families, the members of which have become separated.

The Statute mentions, further, among the tasks of protection, "Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States". In the exercise of this task the High Commissioner's Office facilitates the resettlement of refugees by seeking to induce Governments to relax their immigration criteria in the case of refugees, and in particular in the case of physically and socially handicapped refugees. Thus, for instance, the Immigration and Nationality Act of the United States contains special provisions facilitating the admission of refugees and authorizes the Attorney General to admit refugees under parole.

Then, and that is most important, the High Commissioner shall exercise protection by "keeping in close touch with the Governments and intergovernmental organizations concerned". The High Commissioner has Branch Offices and Correspondents in more than forty countries, some of whom are also accredited to the Governments of neighbouring States. They keep in touch with the Governments and also with the refugees themselves and with voluntary organizations working for refugees.

Thus, the High Commissioner seeks to improve the status of refugees and to safeguard their rights, not only on the international level by promoting the conclusion of conventions or the incorporation of special provisions relating to refugees in international legal instruments and by supervising their application, but also on the national level by promoting legislation or administrative measures in favour of refugees. For example, in the field of aliens legislation there had in the past hardly ever been a reference to refugees, since refugee status as a special legal status was unknown. Recently aliens legislation has been enacted in the Netherlands¹⁸ and the Federal Republic of Germany¹⁹ which contains special safeguards and legal remedies regarding the rights of refugees, in particular against their

¹⁸ *Staatsblad* 1965 No. 40.

¹⁹ *Bundesgesetzblatt* 1965 I, p. 353.

expulsion, in view of the extreme seriousness which measures such as non-admission and expulsion constitute in their case.

The Statute provides that protection shall be exercised by “establishing contact in such manner as the High Commissioner may think best with private organizations dealing with refugee questions” and by “facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees”. The High Commissioner closely co-operates with such non-governmental organizations not only in the exercise of his protection function but particularly in the exercise of his function of seeking permanent solutions for the problem of refugees.

Under the High Commissioner’s material assistance programme, the implementation of projects for material assistance to refugees is often entrusted to voluntary agencies such as the League of Red Cross Societies, the High Commissioner’s Office being non-operational.

The Statute provides that “The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees”. Emphasis must be placed on the words “as a rule” because it is inevitable that the High Commissioner’s Office in the exercise of its functions has also to deal with individual cases. If an individual case raises a protection problem or a problem of a general nature, the Office takes it up with the Government of the country concerned, and it has been one of the most heartening experiences in the course of the present writer’s work in the High Commissioner’s Office that such intercessions have never been objected to by Governments on the ground that the Office has no competence to intervene. The High Commissioner has no possibility of enforcement, he has only a persuasive and moral authority of influencing Governments. But the question of *locus standi* has never been raised.

VI. The Protection of Refugees and the International Protection of Human Rights

The existence of refugee problems is the very result of the fact that human rights are not yet observed everywhere and that the efforts for the international protection of human rights have so far met only with limited success.

In view of this situation, the international community has created international agencies to provide a substitute for the national protection which those fleeing from persecution or fear of persecution, the refugees, are lacking, and has established multi-lateral treaties providing for basic minimum standards for the treatment of refugees. While the status of refugees in customary international law is most precarious, it has, by treaties and the creation of international safeguards for their observance, been integrated rather closely into international law. This may be due to the recognition that a problem which follows from the conception of international law as a law between sovereign States but which is international in scope and character, can only be solved by international co-operation, by the methods of international law.

In the field of the general international protection and safeguarding of human rights, progress on the universal level has been slow. The difficulties which arose regarding the so-called implementation measures during the preparation of the Covenants on Human Rights are well-known. The Covenant on Economic, Social and Cultural Rights,²⁰ which is essentially promotional in character, merely provides for a reporting procedure. The Covenant on Civil and Political Rights²¹ provides for the establishment of a Human Rights Committee of eighteen members to which States Parties shall submit reports. In case of disputes between States regarding the observance of their obligations under the Covenant, the Committee shall seek a friendly solution on the basis of respect for the human rights recognized in the Covenant.

²⁰ U.N. doc. A/Conf. 32/4 p. 3.

²¹ U.N. doc. A/Conf. 32/4 p. 8.

The International Convention on the Elimination of All Forms of Racial Discrimination²² goes somewhat further in that a dispute which cannot be amicably solved by the eighteen-member Committee on the Elimination of Racial Discrimination may be referred to a Conciliation Commission of five members which, in the absence of an amicable settlement of the dispute, may transmit its report and recommendations and the declarations of the Parties concerned to the other States Parties to the Covenant.

On the other hand, a proposal for the establishment of a United Nations High Commissioner for Human Rights has been recommended for adoption by the Economic and Social Council to the General Assembly. Such a body would be complementary to the contractual implementation procedures provided for under the human rights treaties. Although the Commissioner's terms of reference would be rather modest and would, in particular, not authorize him to examine individual complaints but solely to bring them to the attention of the Government of the State concerned, the proposal has made little progress in the General Assembly; a number of States oppose it strongly, mainly on the ground that the activities of the High Commissioner may constitute interference in the domestic jurisdiction of States.

The greatest difficulty arose about the so-called question of individual petition, namely whether individuals should be entitled to have complaints about violations of their human rights by States examined by an international forum. The Covenant on Civil and Political Rights has been supplemented by an Optional Protocol²³ providing for a right of individual petition in relation to States which accept the Protocol. The consideration of individual petitions under the Convention on the Elimination of All Forms of Racial Discrimination also depends on an optional declaration of the State Party against which the complaint is made. The Committee on the Elimination of Racial Discrimination shall only be competent to

²² U.N. doc. A/Conf. 32/4 p. 23.

²³ U.N. doc. A/Conf. 32/4 p. 16.

examine individual petitions when at least ten States Parties have made the optional declaration.

On the whole, however, the measures and proposed measures for the safeguarding of human rights on the universal plane are modest and do not mention the right of supervising the application of the provisions of the treaties by an international body.

It is against this background that the fact has to be seen that for a period of 50 years the protection of the rights and legitimate interests of refugees has been entrusted to international agencies and that States have freely accepted the supervision by an international agency of their treaty obligations regarding refugees. Raestad, the Norwegian jurist, once said: "the study of an abnormal state of affairs may give us a better idea of the normal state, and the study of the status of stateless persons and refugees consequently gives us a more profound understanding of important aspects of international law".²⁴

This brief description of legal developments in the field of refugees has been meant in this sense. The evolution in the special field of the protection of the human rights of refugees may be of interest for the general problem of the protection of human rights and the question of the position of the individual in international law.

Paul WEIS

Dr. jur., Ph. D.

Former Director of the Legal Division of the
Office of the United Nations High Commissioner for Refugees

²⁴ Cf. *Nordisk Tidsskrift for International Ret* vol. 5 (1934) p. 179 (in Norwegian), vol. 6 (1935) p. 59 (in French).