INTERNATIONAL INSTRUMENTS DEALING WITH THE STATUS OF STATELESS PERSONS AND OF REFUGEES

by

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The question may be asked whether it is possible or wise to deal at the same time with the problems of refugees and these of stateless persons. Are we going to make the mistake, referred to by Georges Scelle, of compounding theses two notions [1] ? Important differences exist between these two categories of people. Refugees are created by the act of their leaving the country of their nationality for political reasons (or if they have no nationality, their country of residence), and by the resultant lack of protection given them by any state [2]. Those persons who are not considered nationals under the law of any state are defined as stateless persons [3]. On first impression it appears that while the question of whether somebody is a refugee or not is defined through situation, the position of statelessness is a legal one. A person becomes a refugee through the mere fact of his leaving his country for political reasons. By the reversed fact of return he ceases to be a refugee. On the other hand, statelessness occurs and ceases not on the ground of mere change of circumstance, but because an internal legal order designates some facts as legally relevant to the loss or acquisition of nationality (birth of a child of stateless parents, service in a

[1] SCELLE, G., « Le problème de l'apatride devant la Commission du Droit international de l'O.N.U. », *Die Friends-Warte,* 1953, 55, p. 52.

In his course at the Hague Academy of International Law, VICHNIAC, M., under the heading « Le statut juridique des apatrides » dealt with documents relating to refugees regardless of their nationality, *R.C.A.D.I.,* 43, 1933, p. 119.

[2] See WEIS, P., « Le Statut international des Réfugiés et Apatrides », *Journal du droit international,* 83, 1956, p. 4.

[3] Art. 1 of the Convention relating to the Status of Stateless Persons, New York, 28 September 1954.

foreign army). Similar flight produces automatically a refugee, but it leads to statelessness only through the special provisions of the state of former nationality [4].

It follows from the above that a person can be qualified as a refugee without regard to his nationality or to whether he is stateless, and that for a stateless person it is of little importance whether he lost his nationality because of a political break with his state, or for some other reason, or, indeed, whether he ever had a nationality. Although it follows that a refugee is not necessarily a stateless person, or vice-versa, it has happened frequently that the characteristics of both are present in the same person as a result of political changes in certain states. The international instruments concluded between the two World Wars for the benefit of refugees dealt at the same time with stateless refugees and with refugees who formally possessed a nationality which was useless to them. International protection had to be afforded to the same extent, as both these groups of persons were not under the protection of any state. It is only the Convention Relating to the Status of Stateless persons (signed in 1954), which deals separately with the legal position of stateless persons, and this includes also stateless persons who are not refugees.

The term « *de facto* stateless persons » is sometimes used for refugees, in order to distinguish them from stateless persons who are called « *de iure* stateless persons » [5]. The point is that neither refugees nor stateless persons enjoy the diplomatic protection of any state. But if a collective term has to be employed, because of this common characteristic, Paul Weis' proposal, to call both groups « unprotected persons », seems adequate [6].

CHAPTER I

DEFINITIONS

All international instruments which dealt with the status of refugees, or which were statutes of international bodies created for their protection, predetermined the group of refugees with which they were to be concerned [7].

[4] Thousands of refugees left the territory of the former Russian Empire in the first years of the revolution, but they were deprived of nationality only by a decree of the Council of People's Commissioners on 25 October 1921. Armenian refugees from Turkey in 1922 were quickly deprived of their property, through the passing of a law, but they lost their nationality only in accordance with a law of 23 May 1927. See VICHNIAC, *op. cit.*, pp. 168, 171, 205 and 206.

[5] See BOLESTA-KOZIEBRODZKI, L., *Le droit d'asile*, Leyde, 1962, p. 114. He also proposed the term « *apatrides techniques* » for stateless persons who have not lost their nationality for political reasons, and the term « *apatrides politiques* » for all the refugees and stateless persons who became that as a result of a political reason.

[6] WEIS, P., loc. cit.

[7] See WEIS, P., « The Hague Agreement Relating *to* Refugee Seamen », *I.C.L.Q.*, 7, 1958, p. 335.

They defined refugees for the purposes of their own articles only (pragmatic definitions). For example the Arrangement concerning the extension to other categories of refugee of certain measures taken in favour of Russian and Armenian refugees, signed in Geneva on 30 June 1928, defined the Turkish refugees as :

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

In a similar way the Russian, Armenian, Assyrian, Assyro-Chaldaean, Kurdish, German and Austrian refugees were defined [8]. All these definitions are based on a description of the ethnic or geographical characteristics of the group in question, and they contain the following conditions for the grant of refugee status : a) these persons must not enjoy the protection of the state of their previous nationality; b) they must not have acquired another nationality.

More extensive was the definition of persons under the protection of the Intergovernmental Committee, established at a Conference in Evian in 1938 :

> « The mandate of the Committee extends to all persons, wherever they may be, who as a result of events in Europe, have to leave, or may have to leave, their countries of residence, because of the danger to their lives or political liberties on account of their race, religion or political beliefs [9]. »

The Constitution of the International Refugee Organization defines as refugees persons who were considered to be refugees before the outbreak of the War, and persons who were victims of fascist regimes. Entitled to the protection of the Organization were also those who did not want to return to their countries of nationality or former habitual residence because of political changes which had come about in these countries after the outbreak of the War (Annexe I, Part I, Sect. A, par. 1 and 2). The definition provides conditions under which persons will not be the concern of the Organization as well as the circumstances which make them no longer its concern (Annexe I, Part I and Part II, Sect. C).

The Statute of the Office of the United Nations High Commissioner for

[8] See *A Study of Statelessness,* U.N. Doc. E/1112, February 1, 1949, E/1112, Add. 1, May 19, 1949, pp. 78, 83, 97, 104 and 118. The Convention relating to the International Status of Refugees, signed in 1933, does not contain a special definition. It refers to the definitions of Russian and Armenian refugees in the Arrangements of 1926 and 1928. As well as this, contracting parties were permitted by this Convention to modify or amplify these previous definitions. League of Nations, *Treaty Series,* vol. CLIX, p. 119. Only in 1945 did France extend, after her signature and ratification of the Convention the application of this Convention to refugees from Spain. See GRAHL-MADESN, A., *The Status of Refugees in International Law,* vol. I, *Refugee Character,* Leyden, 1966, p. 131.

[9] See VERNANT, J., « The Refugee in the Post War World », London, 1953, p. 9, note 1.

Refugees designates the persons to which the High Commissioner's competence will extend. Both categories from the 1951 Convention are mentioned, but there is no geographical limitation (« Europe » or « Europe or elsewhere ») as in the later Convention. But, in art. 6 B the competence of the Office is extended to :

> « 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 a 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 [10]. »

The Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951, also defines refugees for the purposes of its articles [11].

The term « refugee » is applied here to all persons who have been considered refugees under the previous instruments as enumerated in Art. 1 A(1) (« Statutory refugees »). Grahl-Madsen interprets this provision as relating to every person who « must have been — formally or informally, tacitly or expressly — recognized by a competent municipal or international authority as a refugee in accordance with the instrument in question... A contracting state is bound by such a qualification only if it has been made prior to the date on which the Convention enters into force for the said Contracting State » [12].

The conditions under which other persons can be recognized as refugees are laid down in Art. 1 A(2) they are : a) the person must be outside the country of his nationality, or, if he is a stateless person, outside the country of his former habitual residence; b) he must be outside that country because of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion; c) he must thus be unable, or, by reason of his fear unwilling, to avail himself of the protection of that country; d) the reason for his leaving must be an event which occurred before January 1, 1951 [13].

[10] G.A., Res. 428(V). WEIS, P., « Who is a Refugee ? New Definitions », *The Wiener Library Bulletin,* V, 1951, nº 3-4, p. 20.

[11] *U.N.T.S.*, vol. 189, p. 149.

[12] GRAHL-MADSEN, *op. cit.*, pp. 109, 110 and 116.

[13] Some states extended the application of the Convention to refugees who left their home states after 1 January 1951, when their flight had been caused by events which occured before that date. See « Colloque sur l'évolution du droit des réfugiés en ce qui concerne particulièrement la Convention de 1951 et le Statut du Haut Commissaire des Nations Unies pour les réfugiés », Bellagio, 1965, *MHCR/23/65 GE. 65-1767.* Grahl-Madsen gives numerous examples of the practices of municipal courts in interpreting these conditions for considering a person a « refugee »; see GRAHL-MADSEN, *op. cit.*, pp. 142-261.

At the time of signature, ratification or accession, states decided whether the term « events occuring before January 1, 1951 » should, for the purposes of their own obligations, mean only « events occurring in Europe » or « events occurring in Europe and elsewhere » before that date (art. 1B) [14].

In addition, the Convention itself excludes from its application persons who receive protection or assistance from organs or agencies of the United Nations other that the United Nations High Commissioner for Refugees. But when such protection has ceased for any reason, these persons are *ipso facto* entitled to the benefits of the Convention (Art. 1 D) [15]. The following have also been excluded from those entitled to benefit from this Convention : persons who have committed a crime against peace, or a war crime, or a crime against humanity, or a serious non-political crime outside the country of refuge, prior to their admission to a country as refugees, and persons who have been guilty of acts contrary to the purposes and principles of the United Nations (Art. 1 F).

Moreover, the Convention does not apply to persons who enjoy « the rights and obligations which are attached to the possession of nationality » in the country in which they have taken residence (Art. 1 E) [16].

The Convention ceases to apply when persons voluntarily reavail themselves of the protection of the country of their nationality or re-establish themselves in that country, or when persons voluntarily acquire a new nationality and enjoy the protection of their new national state. It further ceases to apply to persons who can no longer plead a well-founded fear of persecution (Art. 1 C). Similar provisions can be found in Par. 6 A, second section of the UNHCR Statute.

As a result of political events which occured after January 1, 1951, many thousands of refugees were disseminated throughout the wolrd. With the approval of the General Assembly, the High Commissioner helped them in many ways, but the extension of the scope of art. 1 of the 1951 Convention was constantly felt to be necessary. Following the recommendations of the Colloquium on Legal Aspects of Refugee Problems (Bellagio, April 1965), the High Commissioner's Office consulted governments as to the possibility of the revision of this article. On the basis of the replies he received and of recommendations from Bellagio, a Draft Protocol was prepared which eliminated from the definition the original limitation of January 1, 1951, and the possibility that countries could apply the Convention only to refugees from Europe. The

[14] Out of the sixty states which had ratified the Convention up to 31 December 1970, twelve limited its application only to European refugees. See « Multilateral treaties in respect of which the Secretary-General performs depositary functions », *ST/LEG/SER.D/4*, p. 90.

[15] GRAHL-MADSEN, *op. cit.*, pp. 141, 263-265.

[16] Details about the application of these « exclusion clauses » in GRAHL-MADSEN, *op. cit.*, pp. 270-304.

General Assembly's Resolution 2198 (XXI), adopted on December 16, 1966, requested the Secretary-General to transmit the text of this Protocol to member states with the purpose of obtaining their agreement to it. It came into force on October 4, 1967 upon the sixth ratification; forty three states bound themselves by it up until December 31, 1970 [17]. The contracting states of the Protocol accept at the same time the content of the 1951 Convention. There are some contracting parties of the Protocol who were not previously bound by the Convention (Swaziland, United States of America).

The purpose of this long list of treaty definitions is to seek an answer to the question of whether a general definition exists in customary international law [18]. Should we agree with Grahl-Madsen in his statement that in « customary (unwritten) international law there is no such thing as a generally accepted definition of « refugee » [19] ? To try to elaborate in this theme of a customary law definition of « refugee » would be to go beyond the limits of this paper, but some reasons which justify the need for research into such a possible definition should be indicated.

The majority of international treaties dealing with refugees have their own definition of refugees, or they refer to the definition of the 1951 Convention [20]. But how is the precise individual application of those instruments which neither contain a definition, nor refer to another to be determined (for exemple art. 47 of the European Convention on Consular Functions and art. 2 of the Protocol to the Convention Concerning the Protection of Refugees). As well, it can be argued that certain rights and obligations concerning refugees exist in customary international law, and even in the general principles of law recognized by civilized nations (duty of « non-refoulement », rights and duties composing

[17] The States which had agreed to the Protocol of 31 January 1967 (up to 31 December 1970) were : Algeria, Argentina, Belgium, Botswana, Cameroon, Canada, Central African Republic, Cyprus, Dahomey, Denmark, Ecuador, Ethiopia, Federal Republic of Germany, Finland, Gambia, Ghana, Greece, Guinea, Holy See, Iceland, Ireland, Israel, Ivory Coast, Liechtenstein, Netherlands, Niger, Nigeria, Norway, Paraguay, People's Republic of the Congo, Senegal, Swaziland, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yugoslavia, Zambia, « Multilateral treaties in respect of which the Secretary-General performs depositary functions », *ST/LEG/SER.D/4*, p. 109.

[18] Definitions of the term « refugee » can often be found also in municipal rules. They ferquently reproduce the international treaties' definitions. But sometimes they give a different meaning to this term. For example the Relief ct of 1953 defined as « refugees » all emigrants from states not under « communist domination », but all refugees from « communist dominated » countries were called « escapees ».

[19] GRAHL-MADSEN, *op. cit.*, p. 73.

[20] E.g., The Agreement Relating to Refugee Seamen, The Hague, 23 November 1957, The Protocol to the European Interim Agreements on Social Security Schemes and the Protocol to the European Convention on Social and Medical Assistance, Strasbourg, 11 December 1953.

« asylum »[21]. Such rights and obligations relate to the widest range of refugees.

In the definitions mentioned above, and in the doctrine, we can find some elements which are frequently repeated. They can be found also in art. 1, par. 2 of the Draft Resolution on the Legal Status of Stateless Persons and Refugees prepared at the Institute of International Law in 1936, which reads :

> « 2)Dans les présentes résolutions, le terme *réfugié* désigne tout individu qui, en raison d'événements politiques survenus sur le terrtoire de l'Etat dont il était ressortissant, a quitté volontairement ou non, ce territoire ou en demeure éloigné, qui n'a acquis aucune nationalité nouvelle et ne jouit de la protection diplomatique d'aucun autre Etat[22]. »

In that definition, as well as in a number of treaty definitions already outlined one of the prerequisite conditions for being defined as a refugee is the break with the country (or countries) of nationality. But some international organizations defined the persons who were their concern more broadly. The Intergovernmental Committee, established in Evian in 1938, and the International Refugees Organization took care of persons who had left the countries of their former habitual residence. According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East a refugee from Palestine is a person who had resided in Palestine for at least two years before the outbreak of the 1948 hostilities, and who has lost his home and the resources necessary for livelihood.

Some municipal definitions are also not based on the prerequisite of departure from the country of nationalty. For example the Norwegian Aliens Act of July 27, 1956 contains the following definition (par. 2, 2) :

> « For the purposes of this Act the term « political refugee » shall mean a person who with justification fears political persecution in his home country[23]. »

Grahl-Madsen describes the term « home-country » as embracing both the notion of « country of nationality » and the notion of « country of former habitual residence »[24].

De lege ferenda a definition along the lines of the Simposon's would be preferred :

> « 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[25]. »

[21] Even GRAHL-MADSEN admits the existence of such rules. GRAHL-MADSEN, *op. cit.*, p. 43.

[22] *A.I.D.I.*, Session de Bruxelles, 1936, II, p. 294.

[23] Grahl-Madsen's translation; GRAHL-MADSEN, *op. cit.*, p. 324.

[24] GRAHL-MADSEN, *loc cit.*

[25] SIMPSON, *The Refugee Problem*, London, 1939, p. 3. See also AGA KHAN, S., « Asylum - Article 14 of the Universal Declaration of Human Rights », *Journal of the International Commission of Jurists*, 8, 1968, nº 2, p. 27.

Including the break with the country of nationality as an element of the definition of refugees appears inconvenient for several reasons. The existence of nationality is sometimes very difficult to ascertain (*e.g.* Namibian refugees from the former mandated area of South West Africa); on the other hand, the question of nationality is often connected with the question of the recognition of governments and their laws (for example, the connection between the problem of Chinese refugees in Hong-Kong and the question of the recognition of the governments of Peking and Taipei) [26]. As well, the crucial problem for persons leaving their « home country », which is not at the same time their country of nationality, is the application of the rules of the international law protecting refugees (*e.g.* duty of « non-refoulement ») irrespective of the possibility of their being later protected by the state of their nationality in which they do not reside.

It is interesting to note the role of new nationality as an impediment to refugee statuts as outlined in the Geneva Convention. Nationality alone plays a decisive role in ending refugee status only when a refugee reacquires his original nationality. The acquisition of a new nationality is a reason for the cessation of refugee status only if it is accompanied by the protection of the country granting this. (Art. 1 C, 3). It can be maintained that this provision is contrary to Art. 1 A, 2) sec. par. which does not confer refugee status if the fugitive possesses the nationality of any third state, even if this nationality is useless to him [27].

With reference to the exclusion clauses, nationality is not even necessary for the prevention of the Convention's application to certain persons. Art. 1 E reads :

> « This Convention shall not apply to a person who is recognized 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. »

It is not stated that these rights are « conditioned by » or « dependent on » the possession of nationality, and it is not necessary to be in possession of all the rights and obligations which together comprise the status of nationality in order to be prevented from enjoying refugee status. Grahl-Madsen defines the measure of rights and obligations which excludes a person from the Convention's application :

[26] See HAMBRO, *E., The Problem of Chinese Refugees in Hong Kong,* Report submitted to the United Nations High Commissioner for Refugees, Leyden, 1955.

[27] See GRAHL-MADSEN, *op. cit.,* pp. 396-397. Annexe I to the Constitution of the International Refugee Organization (Part I, Sect. D, par. b) which provides that refugees or displaced persons will cease to be the concern of the Organization « when they have acquired a new nationality ».

« In order to be excludable under Article 1 E, a person must be granted a status which in no respect is inferior to that of a Convention " refugee " [28]. »

These two different roles of the new nationality can be understood if it is remembered that in certain cases in which nationality and protection are requested, the protected person may be outside the territory of his new nationality, and that the provision in Art. 1 E relates to situations where the person in question resides in a country which allows him his rights to a large degree.

In the matter of protection we are not of the same opinion as Bolesta-Koziebrodzki who excludes from his concept of refugees all those persons who enjoy the protection of their government, even if it is itself in exile [29]. It seems to us that the crucial question relating to the position of a refugee is the lack of diplomatic protection available to him from the government exercising jurisdiction over the country of his former regular residence [30]. The legality of that government or the existence of the state of war are irrelevant questions.

Only complete and permanent diplomatic protection annuls the refugee status. Exceptional acts of protection and assistance by the states of his former or present residence do not bring to an end this status. The same applies to the consular protection of these countries. Consular protection from both countries is provided for in art. 47 of the European Convention on Consular Functions and in art. 2 of the Protocol to that Convention concerning the Protection of Refugees.

Of course, protection granted by international organizations especially created for the protection of refugees has no effect on the continuation of the possession of refugee status.

Leaving aside here any elaboration of a general definition of the term « refugee », we are of the opinion that the question of defining a person as a refugee is not only a matter for decision through deduction from facts, but also a problem for legal definition (as is that of stateless persons). The only criterions for the definition of stateless persons have to be found in municipal law (art. 1 of the 1954 Convention), and for the definition of a refugee in international law [31].

[28] GRAHL-MADSEN, *op. cit.*, p. 270.

[29] BOLESTA-KOZIEBRODZKI, *op. cit.*, p. 61.

[30] « ... a government in exile does not have at its disposal the power of reprisals or the incitement of reciprocity... The protection which a government in exile may provide may be quite efficient, for a time at least, but it is not complete, and we may therefore conclude that it is not the kind of protection which precludes a person from being recognized as a refugee under the provisions of Article 1 A (2) of the Refugee Convention. », GRAHL-MADSEN, *op. cit.*, pp. 260, 261.

[31] For an opposite view see AVRAMOV, S., *Medunarodno javno pravo*, Beograd, 1963, p. 233.

CHAPTER II

ASYLUM AND « REFOULEMENT »

a) « *Refoulement* ».

The first moment at which a refugee seeks special treatment, different from that accorded generally to his compatriots, is the moment at which he appears at the frontier of the state to which he flies. Is this state obliged to accept this person, who, in relation to his home country already is a refugee, but in relation to this new state is still only a « fugitif » ? The question of subsequent expulsion of refugees is inseparably connected with this.

The following is an outline of the treaty provisions which concern this matter :

In the Convention relating to the International Status of Refugees of 1933, states expressly confirmed it as their duty « in any case not to refuse entry to refugees at the frontier of their countries of origin » (par. 2, art. 3). Refugees authorized to stay in a state could be expelled only for « reasons of national security or public order », but this in no case allowed extradition to their country of origin (art. 3, par. 1 and 3). The Convention Concerning the Status of Refugees Coming from Germany contained similar provisions, but it was possible to return a refugee to German territory if he refused without just cause the possibility of proceeding to another territory (art. 5).

As regards the admittance of refugees from their country of origin, the contracting states of the 1951 Geneva Convention accepted express obligations in article 33, par. 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. »

The text of this article leaves no doubt that refugees must not be either « returned » when they appear for the first time on the frontier of the receiving country, nor « expelled » after having resided there. Careful attention must be given to the provision forbidding states to return them not only to the frontier of their country of origin, but to any territory where life or freedom is likely to be threatened. Paragraph 2 of the same article excludes from this provision persons who are regarded as dangerous to the country in which they are [32]. States in any case agree to allow expelled refugees a reasonable period of time to seek legal admission into a third country (par. 3, art. 32).

Refugees coming directly from the country where their life or freedom are threatened will not be punished, even in cases where their entry was illegal.

[32] See POMPE, C.A., « The Convention of 28 July 1951 and the International Protection of Refugees », *HCR/INF/42*, May 1958, p. 18.

They have to « present themselves without delay to the authorities and show good cause for their illegal entry or presence » (par. 1, art. 31).

Similar provisions have also been included in the list of Principles Concerning Treatment of Refugees as adopted by the Asian-African Legal Consultative Committee at its Eigth Session held in Bangkok in August, 1966, and in the Convention Governing the Specific Aspects of Refugee Problems in Africa (art. II), done at Addis Ababa on September 10, 1969 [33].

Some other international instruments also contain the prohibition of the return of refugees to territories where they could be persecuted. These are : Resolution 8(1) of February 12, 1946 voted in the General Assembly; article 45, paragraph 4 of the Convention Relative to the Protection of Civilian Persons in Time of War, signed in Geneva on August 12, 1949; article 25, paragraph 2 of the Model Agreement Concerning Temporary and Permanent Migration for Employment, adopted by the 32nd Session of the International Labor Conference, on July 1st, 1949, as well as Recommendations 293 (1961 and 434 (1965) of the Consultative Assembly of the Council of Europe.

On the basis of these Recommendations the Committee of Ministers of the Council of Europe adopted on 29th June 1967 Resolution 67/14 « Asylum to Persons in Danger of Persecution » embodying the following provision :

> « 2. They should, in the same spirit, ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. »

Finally, Resolution n° 2312 (XXII) adopted by the General Assembly of the United Nations on December 14, 1967 provides in article 3 that :

> « 1. No person referred to in article 1, paragraph 1, shall be subjected to measures as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution. »

Exception to this principle, according to this « Declaration on Territorial Asylum », may be made only in especially dangerous situations for the receiving state. In such cases that state must help the fugitive to find his way to some country (art. 1, par 2 and 3).

Because of this considerable number of international instruments, constant international practice, and many municipal provisions of the same content, we may with considerable certainty maintain that a customary law rule or

[33] JAHN, E., « The Work of the Asian-African Legal Consultative Committee on the Legal Status of Refugees », *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 27, 1967, pp. 132 and 136; AGA-KHAN, « Asylum - Article 14 of the Universal Declaration of Human Rights », p. 32. The African Convention appears at *International Legal Materials*, 8, 1969, p. 1288. It has not yet entered into force.

even a general principle of law exists, which prohibits the rejection and expulsion of refugees to territories where their lives and freedom are in danger [34].

As an important argument for such a conclusion we can quote the Resolution from the Final Act of the United Nations Conference on the Status of Stateless Persons :

> « *The Conference,*
>
> *Being of the opinion* that Article 33 of the Convention Relating to the Status of Refugees is an expression of the generally accepted principle that no State should expel or return a person 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,
>
> *Has not found is necessary* to include in the Convention Relating to the Status of Stateless Persons an article equivalent to Article 33 of the Convention Relating to the Status of Refugees of 1951 [35]. »

There remains the question of the definition on the basis of which the administration of a particular state will evaluate whether it deals with a refugee according to international law or not. This is the question of « eligibility » [36]. Of course, in every particular state its municipal rules will be applied, but for signatories of the 1951 Convention the definition given in it should be obligatory [37]. States have adopted different procedures to determine whether somebody is entitled to refugee status, and they have in different ways included in this work the High Commissioner's representatives [38]. This co-operation is in accordance with article 35 of the Convention, which obliges the contracting states to co-operate with the High Commissioner « or any other agency of the

[34] Paul Weis has found rules prohibiting « refoulement » in the legislation of 37 states. WEIS, P., « Territorial Asylum », *Human Rights Protect Refugees,* UNHCR Reports, p. 7.

[35] See WEIS, P., « Recent Development in the Law of Territorial Asylum », *Human Rights Journal,* 1, 1968, p. 392.

[36] WEIS, P., « The Concept of the Refugee in International Law », *J.D.I.,* 87, 1960, p. 928.

[37] WEIS, P., « Legal Aspects of the Convention of 25 July 1951 relating to the Status of Refugees », *B.Y.B.I.L.,* 1953, p. 480, « The Concept of the Refugee in International Law », *op. cit.,* p. 940. As an example of a municipal definition not completely reproducing the Convention's definition, the Yugoslav « Law on the Movement and Sojourn of Aliens in Yugoslavia » of 12 March 1965 can be quoted : « The status of refugee may be accorded to an alien who left his state of nationality, or the state in which he had regularly resided as a stateless person, in order to escape from persecution for reasons of progressive political tendencies, nationality, race or religion », art. 43, translated B.V., *Sluzbeni list Socijalisticke Federativne Republike Jugoslavije,* XXI, 1965, p. 475.

[38] For procedures adopted by particular states see WEIS, P., « The Concept of the Refugee in International Law », *op. cit.,* p. 946; READ, J., « The United Nations and Refugees - Changing Concepts », *International Conciliation,* n° 537, p. 50; BOLESTA-KOZIEBRODZKI, *op. cit.,* p. 168; GRAHL-MADSEN, *op. cit.,* pp. 341-367. According to the Law quoted in note 37 (art. 43, par. 2), it is the Federal Secretariat for International Affairs who decides on questions of « eligibility » in Yugoslavia.

United Nations which may succeed it ». But these internal decisions remain of a national character, and they do not oblige other states [39].

b) *Asylum.*

As has been stated before, the question of granting asylum becomes actual once the refugee is admitted to a certain country. By means of this admittance alone « preliminary asylum » is granted, and the refugee becomes an « asylum seeker ». Asylum may be granted by the state of preliminary asylum or by any third state, but often refugees are shifted from one country to another (for example, the refugees on the eve of the Second World War). So far international law has not yet succeeded in changing the common stand that there is no obligation for states to grant asylum to refugees [40]. States are deemed to be completely free to decide themselves whether to grant asylum or not. Only after such a decision has been freely taken and asylum granted do some reciprocal rights and obligations arise between the refugee and the state in question. Article 14 of the Universal Declaration of Human Rights provides for everyone the right to seek and enjoy asylum, but not the obligation of states to grant it to asylum seekers, as was originally proposed by the Human Rights Commission of the United Nations [41].

Although the American Declaration of the Rights and Duties of Man (1948), proclaimed the principle that « every person has the right in case of pursuit

[39] Weis says that these decisions are recognized on the basis of international comity, WEIS, P., « The Concept of the Refugee in International Law », p. 944. GRAHL-MADSEN, *op. cit.*, p. 339. The above conclusion was confirmed in the judgment delivered by German Federal Administrative Supreme Court *Yugoslav Refugee - Germany Case, International Law Reports,* vol. 26, p. 499. But on the other hand, in the same award it was said : « Nor did recognition as a refugee by the authorities of a foreign State preclude subsequent recognition as a refugee in Germany », p. 497.

[40] BROWNLIE, J., *Principles of Public International Law,* Oxford, 1966, p. 451; BLOM-COOPER, L., « Right of Asylum », *Journal of the International Commission of Jurists,* 5, 1964, nº 1, p. 129; ROCHETTE, J. « The Right of Asylum in France », *Journal of the International Commission of Jurists,* 5, 1964, nº 1, p. 132; DOEHRING, K., « Asylrecht und Staatsschutz », *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht,* 26, 1966, p. 33; BOLESTA-KOZIEBRODZKI, *op. cit.*, pp. 24, 80, 81; OPPENHEIM, L., *International Law,* vol. I - *Peace,* 8th ed., ed. by H. Lauterpacht, London, 1958, p. 678;In his draft of the International Bill of the Rights of Man, Sir H. Lauterpacht consecrated Article 10 to the Right of Asylum : « Within the limits of public security and the economic capacity of the state, there shall be full and effective recognition of the right of asylum for political offenders and for fugitives from persecution. » LAUTERPACHT, H., *International Law and Human Rights,* London, 1950, p. 345. For the newer theoretical approach : KRENZ, F.E., « The Refugee as a Subject of International Law », *I.C.L.Q.*, 15, 1966, p. 109.

[41] On article 14 of the Universal Declaration of Human Rights see LAUTERPACHT, *op. cit.*, p. 421. The Draft Resolution on Asylum elaborated in the Institute of International Law in 1950 states that states grant asylum « dans l'accomplissemen de ses devoirs d'humanité » (art. 2, par. 1), and not « devoirs de droit », *A.I.D.I.*, 1950, I, t. 93, p. 167.

not resulting from ordinary crimes, to seek and receive asylum in foreign territory... » (art. XXVII), the 1954 American Convention on Territorial Asylum gives to states the right to grant asylum and only in such cases as they consider advisable. International Covenants on Human Right and the European Convention do not contain provisions on asylum.

The Declaration on Territorial Asylum, adopted by the General Assembly in 1967, does not signify a departure from the traditional concept of asylum. It proclaims that asylum is a « peaceful and humanitarian act », and that it is granted by a state « in the exercise of its sovereignty » (art. 1, par. 1) [42]. The state granting asylum remains the only judge in the evaluation of the grounds for the granting of asylum (art. 1, par. 2).

The Resolution « Asylum to Persons in Danger of Persecution » adopted by the Council of Europe has added nothing to the establishment of asylum as a right of the individual. It only recommends that member states be guided by the following principle :

> « 1. They should act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory. »

After examination of the texts quoted above, notwithstanding the inclusion of the refugee's right to asylum in the constitution of some States, we must conclude with Lauterpacht that « it cannot yet be said that such a right has become a « general principle of law » recognized by civilised states and as such forming part of International Law » [43].

CHAPTER III

THE STATUS OF REFUGEES

a) *Travel documents and identity papers.*

The first problem which had to be dealt with after the appearance of the great number of Russian refugees was the necessity for them to be provided

[42] The content is the same in art. III, par. 1 of the Principles Concerning Treatment of Refugees as adopted by the Asian-African Legal Consultative Committee at its eigth Session, in Bangkok, in August 1966. JAHN, E., « The Work of the Asian-African Legal Consultative on the Legal Status of Refugees », pp. 129 and 134.

[43] OPPENHEIM, *op. cit.*, p. 676. For the attitude of different states towards asylum see the answers to the questionnaire circulated by the Raporteur of the I.L.A. Committee on the Legal Aspects of the Problem of Asylum, « The International Law Association, Report of the Fifty-second Conference », Helsinki, 1966, pp. 731-743. See also : MERTENS, P., « Le droit d'asile en Belgique à l'heure de la revision constitutionnelle », cette *Revue*, 1966/1, p. 227. Article 65 of the Constitution of the Socialist Federal Republic of Yugoslavia reads : « Citizens of other countries and persons without citizenship who are persecuted for their defence of democratic ideas and political movements, social emancipation and national liberation, the freedom and rights of the human personality or the freedom of scientific or artistic creation, shall be guaranteed the right of asylum. »

with travel documents (as substitutes for passports) which would enable them to move from one state to another in search of employment and resettlement. In the Arrangement of July 5, 1922 the contracting states promised to issue certificates of identity to Russian refugees [44]. But these certificates did not imply the right of a refugee to return to the state in which he had obtained it. Naturally, this did not make it easy for the refugees to obtain visas for third states. The right to such a « Nansen Passport » was granted also to Armenian refugees (Arrangement of May 31, 1924) [45]. A new Arrangement, signed on May 12, 1926, suggested that states provide certificates of identity as well with visas thus allowing the possibility of return to the state which issued the certificate [46]. The Arrangement of June 30, 1928 extended the application of the earlier agreements to Assyrian, Assyro-Chaldean, Syrian, Kurdish and Turkish refugees [47], and that of July 30, 1935 added to these the Saar refugees [48]. A provisional arrangement dated July 4, 1936 (art. 2) and the Convention of February 10, 1938 extended this right to travel documents also to refugees coming from Germany, and the Additional Protocol of Septembre 14, 1939 made these instruments applicable as well to Austrian refugees [49].

The contracting parties of the Convention relating to the International Status of Refugees, signed in Geneva on 28 October 1933, stipulated that Nansen certificates issued to refugees residing regularly in their territories should be valid for not less than one year. These certificates granted the bearers the right to return (art. 2) [50].

At the end of the Second world war many displaced persons did not want to return to their home countries because of the political changes which had taken place there. To these new refugees, who were the concern of the Inter-Governmental Committee on Refugees, travel documents were granted by the Agreement of October 15, 1946 [51].

[44] *League of Nations Treaty Series,* vol. XIII, nº 355. This Arrangement was adopted by 53 states.

[45] *League of Nations document,* CL 72/A/1924. 35 States adhered to it.

[46] *League of Nations Treaty Series,* vol. LXXXIX, nº 2004, Adopted by 20 states.

[47] *League of Nations Treaty Series,* vol. LXXXIX, nº 2006, vol. XCIII, p. 377, vol. CCIV, p. 445 and vol. CCV, p. 193. 11 states adhered to it.

[48] *Annexe to the League of Nations* Doc. CL 120, 1935, XII. 16 states adhered to this Arrangement.

[49] *League of Nations Treaty Series,* vol. CLXXI, nº 3952 (7 states), vol. CXCII, nº 4461 (3 states) and vol. CXCVIII, nº 4634 (3 states ratified).

[50] *League of Nations Treaty Series,* vol. CLIX, nº 3663 (ratified by 8 states). See the reservations on art. 2 in *A Study on Statelessness,* United Nations, 1949, p. 93.

[51] *U.N.T.S.,* vol. 11, nº 150. Signed by 23 states, ratified by 21. Twelve other states accept the documents issued in accordance with its provisions. See WEIS, P., « The International Protection of Refugees », *A.J.I.L.,* 48, 1954, p. 206.

Article 28 of the 1951 Convention recognizes the value of all travel documents issued under previous international instruments. As well as this, the contracting states are obliged to issue travel documents, for the purpose of travel outside their territories, to refugees lawfully residing in their territories (« unless compelling reasons of national security or public order otherwise require »). They may issue these documents also to any other refugee in their territories, and they agree to give sympathetic consideration to the issue of such documents to any refugees who are unable to obtain them from the country of their lawful residence [52].

States may issue documents with a validity of one or two years (par. 5 of the Schedule to the Convention) and during that period the holder of such a document has the right to be readmitted to the territory concerned (par. 13). In exceptional cases the state may limit the period during which the refugee may return, but not to less than three months.

The contracting states dealt also with the issuing of exit, entry and transit visas (art. 8, 9, 10 of the Schedule) as no state is obliged te receive a refugee only on the basis of a travel document.

As in other international documents, the states reasserted in this Convention that the issue of travel documents does not affect the status of refugees, particularly as regards nationality and diplomatic or consular protection (par. 15 and 16 of the Schedule).

Some states have tried in bilateral treaties (agreements between Belgium and the Netherlands, France and Belgium, Benelux and Austria) and in regional conventions to provide further facilities for the movement of refugees through the abolition of the necessity for visas for refugees lawfully settled in the territories of the contracting parties [53]. On April 20, 1959, the European Agreement on the Abolition of Visas for Refugees was signed [54]. Refugees lawfully resident in the territory of one of the contracting states, and holders of a travel document under the provisions of the Agreement of October 15, 1946 or of the 1951 Convention, are allowed as a result of this to enter the territories of the other signatories without a visa. It is interesting that these states, though

[52] *U.N.T.S.*, vol. 189, n° 2545. In accordance with art. 42, states may add reservations to art. 28. Up until 31 December 1970 out of the 60 states which ratified the Convention only Israel and Zambia notified some possible restrictions. See « Multilateral treaties in respect of which the Secretary-General performs depositary functions », *ST/LEG/SER.D/4*, pp. 93 and 96.

[53] Exchange of letters constituting an agreement to improve the condition and facilitate the movement of refugees settled in Belgium and Netherlands, The Hague, 16 February 1955, came into force on 4th April 1955, *U.N.T.S.*, vol. 211, n° 2846; France and Belgium, Agreement on the movement of refugees, Paris, 15 February 1957, came into force on 28 May 1957, *U.N.T.S.*, vol. 286, n° 4170.

[54] Came into force on 4 September 1960, *U.N.T.S.*, vol. 376, n° 5375.

dealing with refugees, have agreed this provision with the condition of reciprocity. This visit without a visa may last three months, but for a longer stay states may require an entry visa (art. 1). States are free to declare whether the application of the provisions of the Agreement will be extended to territories other than their metropolitan territory (art. 2).

However, the 1951 Convention has not solved the problem of refugee seamen which is a large group of refugees. States were not obliged to apply article 28 to a refugee seamen, as they were not lawfully residing in the territory of any State. Some of them deserted from the ship of their home country immediately to a foreign ship, while the travel documents of others lost their validity owing to a long absence from the state which issued them [55]. In Article 11 of the Convention, states only promised to « give sympathetic consideration » to the establishment of members of this category in their territories and to the issue of travel documents to them.

But after this recommendation there remained thousands of refugee seamen without protection on ships flying different flags, and these were often even denied the possibility of shore-leave. By the co-operation of some international organizations, of the United Nations High Commissioner for Refugees, and of eight European states, the Agreement Relating to Refugee Seamen was signed at The Hague on 23 November 1957 [56].

Article 2 of this Agreement contains the conditions under which refugee seamen will be considered as « lawfully staying » in the territory of a contracting state and, accordingly, authorized to receive travel documents under Article 28 of the 1951 Convention :

> « 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 preceeding 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 Contracting Party where he, while a refugee, has had his last lawful residence in the three years preceeding the application of this Agreement to his case, provided that he has not, in the meantime, had a residence established in the territory of another State. »

[55] See WEIS, P., « The Hague Agreement Relating to the Refugee Seamen », p. 337; VAN HEUVEN GOEDHARD, G.J., « Les marins réfugiés », *Revue internationale du travail,* LXXII, 1955, p. 151.

[56] Came into force on December 27 1961. *U.N.T.S.*, vol. 506, nº 7384. France, United Kingdom, Morocco, Sweden, Norway, Netherlands, Denmark, Monaco, Belgium, F.R. Germany, Switzerland, Yugoslavia, Ireland, Portugal, Italy and Canada have ratified the Agreement. See *Report of the United Nations High Commissioner for Refugees. G.A.Off.Rec.*, Twenty-fifth Session, Supplment nº 12, *A/8012*, pp. 42-44.

Still less stringent conditions were prescribed for those seamen who on the day of entry into force of the Agreement would not be entitled to a travel document under the terms of its Article 2. They were given the right to obtain a travel document from the contracting state : a) which between December 31, 1945 and the day of entry into force of this Agreement last issued, extended or renewed the travel document valid for return to that state, whether or not that document is still in force; b) if there is no such contracting party, than from the state in which they were last lawfully staying during the same period; c) if there is even no such state, than from the state under whose flag in the afore mentioned perdiod they last served « a total of 600 days within any period of three years on ships calling at least twice a year at ports in that territory » (art. 3).

Finally, the contracting parties promised that they would generally extend the application of the provisions of the Agreement also to those refugee seamen who under its terms were not entitled to it (art. 5).

With the travel documents issued in accordance with the present Agreement, a refugee seaman can be granted shore-leave under the same conditions as nationals of the state which issued his document, or at least must receive treatment not less favourable than is granted to alien seafarers generally (art. 6).

The Agreement also defines the circumstances under which a contracting state may regard a refugee seaman as no longer lawfully residing in its territory (art. 4).

b) *Civil rights.*

Even at this point, in 1971, the international community is far from the goal fixed in the Draft Resolution of the Institute of International Law in 1880 :

> « L'étranger, quelle que soit sa nationalité ou sa religion jouit des mêmes droits civils que le régnicole, sauf les exceptions formellement établies par la législation actuelle [57]. »

In fact, there are numerous exceptions to the general rule stated above. And in many countries, especially in European countries, the alien's enjoyment of a number of rights depends upon diplomatic, legislativive or factual reciprocity between two states [58]. In principle these rights should be enjoyed by the refugee (who still possesses a nationality) too, but as soon as to continue to enjoy a right requires any assistance from or protection by his home state, he is not able to ask for it. However, if refugees in foreign countries are not able to enjoy some of the rights allowed to nationals who are under the protection

[57] Principes généraux en matière de nationalité, de capacité, de succession et d'ordre public, 7 september 1880, session d'Oxford, *Résolutions de l'Institut de droit international 1873-1956,* Bâle, 1957, p. 40.

[58] See Weis, P., « The International Protection of Refugees », p. 194.

of their home states, on the other hand, refugees are not included in some measures taken in certain situations against others of their nationality. Thus, in the case of war, measures of control will not be applied against refugees exclusively on the basis of their nationality, as they may be applied to their co-nationals who enjoy the protection of their state (art. 44 of the Convention of August 12, 1949, Relative to the Protection of Civilian Persons in Time of War).

In the 1951 Convention a more general provision has been included : no exceptional measures which can be taken against the nationals of a foreign state shall be applied to refugees, who are formally nationals of that state, solely on account of such nationality. But states may be freed of this obligation by means of their internal legislation (art. 8). Besides this, states are not prevented from taking « in time of war or other grave and exceptional circumstances » provisional measures against particular refugees (art. 9) [59].

However, it can be maintained that refugees, as well as all other aliens, enjoy certain rights, which are in accordance with the « minimum standard » of treatment of all aliens, regardless of their nationality and of reciprocity (*e.g., ius standi in iudicio,* the right to the protection of person and property) [60].

The status of refugees must also be influenced by international instruments which grant certain rights to all human beings. Such are the Universal Declaration of Human Rights, the International Covenants on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms [61].

The first attempt to regulate by a special international instrument the status of refugees was the Arrangement of June 30, 1928, which related only to Russian and Armenian refugees [62]. But this Arrangement contained only recommendations to states [63]. These recommendations concerned : travel documents, the law governing personal status, the cancellation of the necessity for reciprocity for the enjoyment of some rights (*cautio judicatum solvi*), and the abolition of restrictive measures concerning foreign labour, the expulsion of foreigners and equality with nationals in regard to taxation.

[59] See POMPE, C.A., *op. cit.*, p. 32.

[60] See WEIS, P., « The International Protection of Refugees », p. 199; KRENZ, F.E., *op. cit.*, p. 109; BOLESTA-KOZIEBRODZKI, *op. cit.*, p. 122.

[61] An exception is the article 21 of the Universal Declaration. See articles 1 and 14 of the European Convention.

[62] *League of Nations Treaty Series,* vol. LXXXIX, n° 2005. Thirteen states adhered to it.

[63] See the debate on the legal force of the recommendations from that Arrangement and of the Franco-Belgian Treaty of 30 June 1928, concluded on the basis of that Arrangement, in VICHNIAC, M., *op. cit.*, p. 122, and WEIS, P., « Le statut international des réfugiés et apatrides », *J.D.I.*, 83, 1956, p. 18.

The scope of the Convention relating to the International Status of Refugees (1933) and of the Convention concerning the Status of Refugees coming from Germany (1938) was limited, as they had reference only to determined categories of refugees, they protected only some human rights, they were signed and ratified by only a small number of states, and the contracting states had the right to make reservations [64]. In the case of some rights, refugees were much the equals of nationals of the state of residence (access to courts, legal assistance and exemption from *cautio judicatum solvi*), while in some others they were allowed the most favourable treatment accorded to the nationals of a foreign country (industrial accidents, welfare and relief, social security). Finally, with reference to the right to work, restrictions designed for the protection of the national labour market were not « applied in all their severity to refugees domiciled or regularly resident in the country », and they were automatically suspended for some categories (art. 7 of the 1933 Convention and art. 9 of the 1938 Convention).

Although the Convention Relating to the Status of Refugees, signed in Geneva on July 28, 1951, has been ratified by a great number of states, it also retains some of the characteristics of prior instruments : it does not deal with all human rights (for example, political rights are excluded); refugees are not exempted from reciprocity (art. 7, p. 2) it does not accord the same treatment with regard to all the rights granted; some of these rights are granted only in the state of legal residence, and finally it permits signatories to add reservations to many of its articles [65].

As well as this, as has already been stated, it does not relate to all refugees.

According to article 37, the new Convention replaces, as between the contracting parties, previous international instruments. In the doctrine, this article was interpreted in connection with article 5 (« Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention »). Koziebrodzki is of the opinion that refugees' rights granted in the previous instruments (art. 37), but not enumerated in the 1951 Convention, still exist [66].

[64] The first was ratified by 8, and the second by only 3 states. For the number and extent of the reservations see *A Study on Statelessness*, pp. 93 and 112. See also : TRACHTENBERGER, B., « Le nouveau statut légal des réfugiés russes et arméniens », *Nouvelle revue de droit international privé*, I, 1934, p. 301; RIPERT, F., « Le statut du réfugié », *Nouvelle revue de droit international privé*, V, 1938, p. 62.

[65] *U.N.T.S.*, vol. 189, n° 2545, p. 137. Until 31 December 1970 ratified by 60 states. General works on the Convention : ROBINSON, N., *Convention Relating to the Status of Refugees, Its History, Significance and Contents*, New York; POMPE, *op. cit.*; SARRAUTE, R., and TAGER, P., *Le nouveau statut international des réfugiés*, Convention de Genève du 28 juillet 1951, *Revue critique de droit international privé*, XLII, 1953, p. 224.

[66] BOLESTA-KOZIEBRODZKI, *op. cit.*, p. 137.

Article 7 contains the principles on the exemption from reciprocity. In par. 1 it is stated that the contracting parties shall accord to refugees the same treatment as is accorded to aliens generally, except where the Convention contains a more favourable provision. Paragraph 2 provides that only after three years residence shall refugees enjoy exemption from legislative reciprocity. This restriction does not apply to rights, to which refugees were entitled even in the absence of reciprocity, at the date of entry into force of the Convention for the particular state (par. 3) [67]. The provisions of paragraph 2 and 3 are, according to paragraph 5, applied to some rights granted in this Convention (movable and immovable property, self-employment, liberal professions, housing and public education) and to rights and benefits not contained in this Convention. The signatory states promised to « consider favourably » the possibility of granting rights to refugees even if they were not entitled to them under the terms of paragraph 2 and 3 of this article (par. 4). (States are allowed to make reservations to this article).

Every particular right of refugees is compared with the enjoyment of the right by nationals of the contracting states or by other aliens in their territories [68].

a) As regards freedom of religion refugees are accorded treatment at least as favourable as that accorded to nationals of the contracting states (art. 4).

b) For a considerable number of rights and duties refugees are equated with nationals (whether nationals of all the contracting parties, or of the country of their habitual residence, or of their lawful residence) : artistic rights and industrial property (art. 14, par. 1); access to courts, including legal assistance and exemption from *cautio judicatum solvi* (art. 16); rationing (art. 20); elementary education (art. 22, par. 1); public relief (art. 23); labour legislation and social security (art. 24); fiscal regime (art. 29), and the right to gainful employment (under the conditions of par. 2, art. 17).

c) The most favourable treatment accorded to nationals of a foreign country is given to refugees in regard to non-political and non-profit-making associations (art. 15) and generally in regard to wage-earning employement (art. 17, par. 1).

d) Treatment as favourable as possible, and in any event not less favourable than that accorded to aliens generally relates to : movable and immovable property (art. 13), self-employment in agriculture, industry, handicrafts and commerce and the establishment of commercial and industrial companies

[67] Art. 14, par. 2 of the 1933 Convention relating to the Status of Refugees provided that the enjoyment of certain rights granted to aliens on condition of reciprocity shall not be refused to refugees on the ground of lack of reciprocity. See *Alahverdi v. Lanauze*, France, Court of Appael of Paris, *International Law Reports*, 1954, p. 2.

[68] Bolesta-Koziebrodzki, *op. cit.*, p. 143; Avramov, *op. cit.*, p. 233; Weis, P., « The International Protection of Refugees », p. 200.

(art. 18), the right to practice liberal professions (art. 19), housing (art. 21), education other than elementary (art. 22, par. 2).

In accordance with the differentiation between « preliminary » and « final » asylum, whether some rights and obligations for the refugee arise from his mere admitance to a new state should be analysed. Article 2 of the 1951 Convention reads :

> « Every refugee has duties to the country in which he finds himself, which require in particular that he conforms to its laws and regulations as well as to measures taken for the maintenance of public order. »

The duties mentioned above therefore place obligations on a refugee in his relations with any state, regardless of the question of whether he is in that territory provisionally, or has been granted a permanent refuge, or is only in transit. If we examine the rights of refugees as defined in the 1951 Convention, we shall see that the rights which have to be dealt with to solve finally his problems (*e.g.* employment, social security) are his only in the country where he is « lawfully staying » (art. 15, 17, 18, 19, 21, 23, 24 and 26), or where he has his « habitual residence » (art. 14 and 16, par. 2). But these limitations are not imposed on rights which compose the « minimum standard » of treatment of all human beings : the rights to practice a religion (art. 4), the right to the acquisition of property (art. 12), the right to equal treatment in a rationing system (art. 20). As regards access to courts it is further stressed that refugees shall have « free access to the courts of law on the territory of all contracting states » (art. 16, par. 1).

The old problem, that is whether the refugee's personal status should be governed by the *lex patriae* or *lex domicilii* has in this Convention been resolved, so that the law of the country of domicile is applied, and if the refugee has no domicile, then the law of country of his residence governs his personal status. Rights previously acquired and dependent on personal status (for example, rights attaching to marriage) shall be respected by the contracting states, subject to compliance with eventual formalities required by the law of the state « provided that the right in question is one which would have been recognized by the law of that state had he not become a refugee » [69].

In some other international treaties particular rights of refugees have been mentioned :

Protocol 1 annexed to the Universal Convention concerning the Application of that Convention to the works of Stateless Persons and Refugees equated

[69] On the provisions of prior instruments concerning personal status see WEIS, P., « The International Protection of Refugees », p. 202; TUREK, V., « Le statut personnel des Réfugiés », *Annales de la Faculté de Droit,* Université Saint-Joseph de Beyrouth, 1948, nos 1-2, p. 151.

stateless persons and refugees who had their habitual residence in the states parties to the Convention with the nationals of these states [70]. European states obliged themselves in a special Annex to the Social Charter of 1961 to grant to refugees lawfully staying in their territories treatment as favourable as possible, and in any case not less favourable than under the Convention of 1951 or under any other treaty applicable to refugees. The application of the European Convention on Social and Medical Assistance and of the European Interim Agreements on Social Security have also been extended to refugees [71].

Convention nº 118 of the International Labour Organization concerning the equality of treatment of nationals and non-nationals in Social Security applies to refugees and stateless persons without any condition of reciprocity (art. 10) [72].

Rules concerning the treatment of refugees have in these last years been elaborated also on a regional scale. The Principles Concerning Treatment of Refugees were adopted in Bangkok in 1966 by the Asian-African Legal-Consultative Committee, and in the Convention on Refugee Problems in Africa (September 10, 1969) [73].

CHAPTER IV

THE LIMITATIONS TO THE APPLICATION OF THE 1951 CONVENTION

The factual legal position of a refugee (his status) in a particular country depends on the reality of the insertion of a state's international obligations into its internal laws and on the implementation of these laws. An analysis of internal regulations and practices is necessary, but this task exceeds the scope of this work. However, we must examine the limitations to the application of the treaty provisions, that is, the 1951 Convention, which are permitted by its own articles.

[70] The Protocol was signed in Geneva, on 6 September 1952, and came into force on 16 September 1955. See *U.N.T.S.*, vol. 216, p. 176.

[71] See The Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors, and Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors, and the Protocol to the European Convention on Social and Medical Assistance, of 11 December 1953.

[72] Came into force on 25 April 1964, *U.N.T.S.*, vol. 494, nº 7238.

[73] JAHN, E., *op. cit.*, p. 133.

a) Sixty states have bound themselves by the Convention [74]. This number increases in importance when we know that the European and African states which have become a refuge for the largest number of escapees are among the signatories. In addition a considerable number of the states who have not signed the Convention are those whose legal ordering do not make an important distinction between nationals and aliens in the matter of human rights.

In accordance with article 40 Australia, Denmark, the United Kingdom and France extended the application of the Convention to some territories under their administration [75]. Afterwards some of these territories were granted independence, and their governments declared that they considered themselves bound by the obligations accepted by the former administrative power [76]. Those new states (formerly bound as dependent territories) which have not made such a declaration, or have not generally accepted the treaty obligations of the former administrative power, are no more bound by the Convention (for example Malawi).

b) Article 41 of the Convention contains the federal clause, by which federal governments are made responsible only for the enforcement of those articles of the Convention that come within the legislative juridiction of the federal legislative authority. In cases where the provisions of the Convention come within the legislative jurisdiction of constituent states not bound to take the legislative action, «the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States... » (par. 2). At the request of other contracting parties, federal states shall supply a statement of the law and practice of the Federation and its constituent units in regard to the provisions of the Convention (par. 3) [77].

[74] This Convention entered into force on 22 April 1954. Up until 31 December 1970 it was ratified or acceded to by the following states : Algeria, Argentina, Australia, Austria, Belgium, Botswana, Brazil, Burundi, Cameroon, Canada, Central African Republic, Colombia, Congo (Democratic Republic of), Cyprus, Dahomey, Denmark, Ecuador, Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Gambia, Ghana, Greece, Guinea, Holy See, Iceland, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Monaco, Morocco, Netherlands, New Zealand, Niger, Nigeria, Norway, Paraguay, People's Republic of Congo, Peru, Portugal, Senegal, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, Uruguay, Yugoslavia and Zambia. See *Multilateral treaties in respect of which the Secretary-General performs depositary functions, ST/LEG/SER.D/4,* p. 89.

[75] See *U.N.T.S.*, vol. 189, p. 151; vol. 191, p. 409; vol. 252, p. 354; vol. 270, p. 398; vol. 366, p. 414; vol. 380, p. 428.

[76] See *UN.T.S.*, vol. 405, p. 322; vol. 411, p. 301; vol. 415, p. 430; vol. 423, p. 308; vol. 424, p. 349; vol. 437, p. 352; vol. 442, p. 320; vol. 454, p. 554; vol. 463, p. 344; vol. 466, p. 388; vol. 503, p. 334; vol. 550, p. 403; vol. 572, p. 357.

[77] No such request has been mentioned in the High Commissioner's Reports.

c) Except with regard to some fundamental provisions (art. 1, 3, 4, 16(1), 33 and 36-46) states could make reservations at the time of signature, or ratification, or accession (art. 42). Of course, this condition seriously endangered the real extent of the application of the Convention. Several states made reservations, but some of them ware later withdrawn (Italy, Denmark, Sweden, Switzerland, Australia, Ireland) [78]. Some reservations made at the time of signature were not repeated at the time of ratification (Austria), and some others were more declarations of the manner in which particular provisions had been understood than reservations [79]. It is important to notice that the most common reservations were made to some of the important general principles of the Convention and to articles dealing with crucial economic and social rights (art. 17 and 24). An examination of the most important reservations follows [80].

Israel and Sweden dit not accept article 8 (exemption from exceptional measures), while Greece, Cyprus, Jamaica and Great Britain agreed only with reservations to apply articles 8 and 9 (provisional measures in time of war or other grave and exceptional circumstances). Israel did not accept the solution of the Convention on the law of personal status (art. 12), and Sweden stated that the personal status of a refugee should be governed by the law of the country of his nationality.

The limitations of a very important article — wage earning employment — are far reaching. Denmark rejected it, Italy and Austria accepted it only as a recommendation, Liechtenstein, Ireland, Switzerland and Greece did not agree to equate refugees with aliens enjoying most favoured treatment, but granted treatment accorded generally to aliens. France stated that the provisions of this article in no way prevented the application of laws establishing the percentage of alien workers, or affected the obligations of employers in connexion with the employments of alien workers. Cyprus, Jamaica and the United Kingdom only free the refugees from restrictive measures in employment after four years residence (instead of three — par. 2), and Norway states that the allowance of most favoured treatment (par. 1) does not mean the automatic extension to refugees of possible special treatment granted to other Scandinavian citizens.

[78] See *U.N.T.S.*, vol. 189, p. 198; vol. 200, p. 336; vol. 201, p. 387; vol. 202, p. 368; vol. 394, p. 269; vol. 435, p. 322; vol. 453, p. 358; vol. 514, p. 268; « Multilateral treaties in respect of which the Secretary-General performs depositary functions », *ST/LEG/SER.D/4*, p. 91.

[79] *U.N.T.S.*, vol. 189, p. 186; vol. 201, p. 387.

[80] See *U.N.T.S.*, vol. 514, p. 268 and other volumes of the same series quoted there, and « Multilateral treaties in respect of which the Secretary-General performs depositary functions », *ST/LEG/SER.D/4*, p. 91. We have not mentioned reservations of little importance, reservations made to an article, only by one state (especially if that state is not of a great importance to the existing refugees).

Article 24 (labour legislation and social security) is also subject to important reservations. Monaco accepted it as a recommendation, as did Greece with reference to its third paragraph (extension of the benefits of future agreements). Paragraphs 1 and 2 (right to compensation for the death resulting from employment injury) will be applied in the United Kingdom, Cyprus, Jamaica and New Zealand (par. 2 only) in accordance with national laws. Sweden does not accept paragraph 3.

A considerable number of reservations were made to article 25 (administrative assistance). It is interesting to notice the reservation made by the Netherlands to article 26, by which this state reserves the right to designate, in the public interest, a place of principal residence for certain refugees or groups of refugees [81].

All these reservations are in accordance with article 42. The same can be said for the reservations of the Holy See, which states that the application of the Convention must be compatible in practice with the special nature of the Vatican City State. But the permissibility of the general reservation made by Belgium, Luxembourg and Netherlands, that any eventual special treatment granted mutually to nationals of these three states should not necessarily be extended to refugees, could be questioned. The same reservation was made by Sweden in relation to other Scandinavians, and by Portugal for nationals of Brazil [82].

The relevance and impact of these reservations must be judged in the light of the rules on the exemption from reciprocity embodied in Article 7 of the Convention.

CHAPTER V

THE STATUS OF STATELESS PERSONS

It has already been said that the greatest number of refugees between the World Wars were at the same time stateless persons, and that international instruments relating to refugees concerned them too.

A special Convention Relating to the Status of Stateless Persons was signed

[81] Besides these reservations have been made also to articles : 11, 12, 13, 15, 18, 19, 22/1, 23, 28, 29, 30, 32 and 34.

[82] Greece objected to the « reservation » made by Turkey at the time of signature, on the treatment of Turkish refugees from Bulgaria after 1 January 1951. But this was only a question of the interpretation of the content of article 1, as was proved at the time of ratification, when Turkey did not repeat the objection. See *U.N.T.S.*, vol. 189, p. 196; vol. 354, p. 402; vol. 424, p. 349.

on Septembeer 28, 1954, at a diplomatic conference held in New York[83]. A stateless person has been defined as « a person who is not considered as national by any State under the operation of its law » (art. 1, par. 1). The same categories of persons as in the Refugee Convention (art. 1 D, E, and F) are excluded from the application of the Convention (art. 1, par. 2). The contracting states adopted a Recommendation on the accordance of the treatment which the Convention accords to stateless persons also to *de facto* stateless persons.

The Stateless Persons Convention is much the same as the Refugee Convention and it is necessary only to point out some slight differences between them.

As regards the right to engage in non-political and non-profit-making associations, and the right to engage in wage-earning employment, stateless persons are granted treatment not less favourable than that accorded to aliens generally, and refugees are granted the most favourable treatment accorded to nationals of a foreign country (art. 15 and 17, par. 1). No conditions abrogating restrictive measures for the protection of national labour markets are included in the new Convention; and no efforts are demanded of the contracting states for the settlement of skilled stateless persons in their non-metropolitan territories (art. 17, par. 2, and art. 19, par. 2 of the Refuge Convention).

The reasons for the omission of article 35 (« non-refoulement ») are mentioned above.

Article 35 of the Refugee Convention has been omitted because there is no special organ dealing with the problems of stateless persons, and article 37 because no prior agreements concerning stateless persons are in existence.

As both Conventions relate to refugee stateless persons, Paul Weis's statement has to be repeated, that is, that if such persons reside in a state which has

[83] Entered into force on 6 June 1960. *U.N.T.S.*, vol. 360, nº 5158. Up to 31 December 1970 twenty-two states had ratified it : Algeria, Belgium, Botswana, Denmark, Ecuador, Finland, France, Guinea, Ireland, Israel, Italy, Liberia, Luxembourg, Netherlands, Norway, Republic of Korea, Sweden, Trinidad and Tobago, Tunisia, Uganda, United Kingdom and Yugoslavia. See « Multilateral treaties in respect of which the Secretary-General performs depositary functions », *ST/LEG/SER.D/4*, p. 100. Concurrently with the efforts of the United Nations to draft a special Convention relating to the Status of Stateless Persons, the International Law Commission was drafting articles for a Convention on Reduction of Statelessness. This Draft was adopted at the Conference in Geneva on 28 August 1961, but the Convention has not yet come into force. For its text see *Yearbook on Human Rights* for 1961, p. 427. In the framework of the League of Nations some partial results were reached in this regard : on 12 April 1930 the following were adopted at the Hague : the Convention on Certain Questions relating to the Conflict of Nationality Laws, the Special Protocol relating to a Certain Case of Statelessness and a Special Protocol concerning Statelessness. See *A Study on Statelessness*, pp. 172-190. On the causes of statelessness see FRANÇOIS, J.P.A., « Le problème des apatrides », III, 53, 1935, p. 287.

ratified both Conventions, in accordance with their article 5 the more favourable rule should be applied [84].

As can be seen from the above comparison of the contents of some of the articles the Refugee Convention is generally the more favourable. If, however, the reservations made to some articles are taken into account, the real situation can be different. For example, Denmark did not accept article 17 of the Refuge Convention, but made no reservation to that article in the Convention Relating the Status of Stateless Persons [85]. The second part of Weis's assertion, namely that the Refugee Convention must be applied to refugee stateless persons because it is *lex specialis* in relation to the Convention on stateless persons, remains to be expanded. As the definitions of refugees and stateless persons overlap, but are not identical, (some refugees are not stateless persons and vice-versa), it could be argued inversely too : namely, that the Stateless Persons Convention is *lex specialis* for all those refugees who are at the same time stateless persons. In any case, it is also *lex posterior.*

France and Great Britain have declared the Convention applicable also to some territories for whose international relations they are responsible [86]. This Convention allows states to make reservations to all articles, other than to articles 1, 3, 4, 16(1), 33 and 36-46. Sweden profited greatly by this provision, and it did not accept the obligations in article 7, paragraph 2 (exemption of reciprocity), article 8 (exemption from exceptional measures), and article 12, paragraph 1 (law of the country of domicile or residence governing the personal status). The reservations of Great Britain correspond to those made at the time of ratification of the Convention relating to refugee. With regard to stateless persons as well as refugees, the Netherlands reserved the right to designate a place of principal residence for certain persons or certain groups of such persons [87].

CHAPTER VI

INTERNATIONAL BODIES FOR THE PROTECTION OF REFUGEES

Some states, because of their geographical position or liberal traditions, were the first refuge for thousands of refugees. But, they were not able to resolve alone all the refugees' problems. This had to become a charge upon the whole

[84] WEIS, P., « The International Status of Refugees and Stateless Persons », *J.D.I.*, 1956, p. 62.

[85] *U.N.T.S.*, vol. 189, p. 198 and vol. 360, p. 132.

[86] See *U.N.T.S.*, vol. 360, p. 130, and vol. 425, p. 384.

[87] See *U.N.T.S.*, vol. 531, p. 355 and other volumes mentioned there in the same series; *Report of the U.N.H.C.R., G.A. Off. Rec.*, Twenty-second Session, Supplement nº *11/A/6711.*

international community. For this reason, the League of Nations created some bodies whose function it was to deal with the refugees.

The Council of the League took the decision on June 21, 1921 to appoint a High Commissioner for Russian Refugees. Dr. Nansen's competence was in the following years extended also to Armenian, Assyrian, Assyro-Chaldean and Turkish refugees [88]. The main problems with which the High Commissioner had to deal were material aid and the resettlement of refugees, their repatriation and legal position.

In September 1924 it was decided that the High Commissioner should deal only with the political and legal protection of refugees, and that other activities should be undertaken by the International Labour Office. This Office dealt with them until 1929, when they were again entrusted to the High Commissioner [89]. After Dr. Nansen's death, the Secretary-General of the League became responsible for political and legal protection, and for humanitarian protection a special body — the Nansen Office — was created. (This office operated from April 1, 1931 until December 31, 1938 [90].)

For political reasons a High Commissioner's Office for German Refugees, independent of the League of Nations, was created in Lausanne on October 26, 1933, but in 1936 this Office became included in the framework of the League [91]. On September 30, 1938 the Assembly of the League decided to establish a High Commissioner's Office for the joint protection of all refugees (this existed until December 31, 1946) [92]. The international protection of the existing bodies was successively extended to refugees coming from the Saar, from Austria and from Czechoslovakia [93]. From 1938 until 1947 a Intergovernmental Committee for Refugees, composed of delegates from 32 states, offered protection to refugees coming from Austria, Germany and Spain [94]. The United Nations Relief and Rehabilitation (U.N.R.R.A.) was concerned in part of its activities with the protection of refugees.

[88] See *A Study on Statelessness*, p. 35, BOLESTA-KOZIEBROZKI, *op. cit.*, p. 149; WEIS, P., « The Office of the United Nations High Commissioner for Refugees and Human Rights », *Human Rights Journal*, I, 1968, p. 243.

[89] See *A Study on Statelessness*, p. 35, and *Forty Years of International Assistance to Refugees, United Nations High Commissioner for Refugees*, New York, 1961, p. 4.

[90] *A Study on Statelessness*, p. 36, and *Forty Years of International Assistance to Refugees*, p. 5.

[91] *A Study on Statelessness, loc. cit.*, and *Forty Yaers...*, p. 7.

[92] *A Study on Statelessness, loc. cit.*

[93] During this period many semi-official bodies which analysed particular refugee problems existed.

[94] *A Study on Statelessnesse*, p. 38.

The work of all these organizations was taken over by the International Refugee Organization (IRO), a specialized agency which was set up in early 1947 with a Preparatory Commission, and which operated until February 1952 [95]. The present organ of the United Nations dealing with refugees is the Office of the High Commissioner for Refugees (UNHCR) [96]. For the protection of refugees in particular areas special agencies may be established. One such was the United Nations Korean Reconstruction Agency (UNKRA — from 1950 until 1960), which helped refugees from the People's Republic of Korea. In 1950 the United Nations Relief and Works Agency for Palestine Refugees was established also (UNRWAPRNE) [97].

In replacing the International Refugee Organization with the High Commissioner, the United Nations has not extended the protection of refugees. On the contrary his office does not have within its competence certain fields dealt with by the earlier institutions (such as consular protection). The High Commissioner is limited in his functions in the following ways : a) he depends upon other organs of the United Nations; b) the High Commissioner and his Office are not permanent organs of the United Nations; c) their resources are uncertain; d) not all refugees receive their assistance; e) their functions allow of only general actions.

The following is a closer examination of these limitations :

a) The High Commissioner is elected by the General Assembly on the nomination of the Secretary-General (art. 13 of the Statute). In his actions he must « follow policy directives given him by the General Assembly or the Economic and Social Council » (art. 3). This effectively takes from him the degree of independence enjoyed by IRO, which was an independent specialized agency bound with the United Nations only by treaty. He reports to the General Assembly through the Economic and Social Council (art. 11). In his work he may collaborate with other specialized agencies (art. 12). In controversial question he is bound to consult an advisory committee nominated by the Economic and Social Council (art. 1, par. 2, and art. 4). He himself appoints his Deputy High Commissioner and his office staff, and they are responsible to him

[95] Res. 62/I adopted by the General Assembly of the U.N. on 15 December 1946.

[96] The decision te create this institution was taken in Resolution 319/IV, voted in the General Assembly on 3 December 1949. The Statute of the United Nations High Commissioner for Refugees was inserted in Resolution 428/V of 14 December 1950.

[97] U.N.K.R.A. was established on the basis of Resolution 410(V) of 1 December 1950, and UNRWAPRNE of Resolution 302(IV) of 8 December 1949. Earlier the United Nations Relief for Palestine was established on the ground of Resolution 212(III).

U.N.R.W.A. is a provisional agency, financed by voluntary contributions. An Advisory Commission has been set up to assists its Commissioner-General. At its twenty-third session, the General Assembly renewed its mandate until 30 June 1972.

Refugees are also the concern of the « Comité intergouvernemental pour les migrations européennes » established in Brussel in 1951, which began to operate on 30 November 1954.

(art. 14 and 15). By agreement with particular governments he is able to appoint representatives in their countries (art. 16) [98].

In accordance with the Statute the Economic and Social Council did nominate an Advisory Committee, but in 1958 it was replaced by the Executive Committee of the High Commissioner's Programme [99].

b) The High Commissioner's Office is a provisional organ of the United Nations. In 1951 the High Commissioner was elected for a three-year term. Since then the existence of this institution has been four times prolonged, on each occasion for a further term of five years [100]. In 1972 the General Assembly has again to decide the future of this institution.

c) The High Commissioner's work is financed under the budget of the United Nations, but he receives no funds for use for direct help to refugees. Any such activities have to be financed by voluntary contributions (art. 20). He is authorized to administer funds received from governments and private organizations, but he is not allowed to appeal for such funds without the previous approval of the General Assembly (art. 10).

The Executive Committee of the High Commissioner's Programme determines the total budget needed by UNHCR for its annual programme ($ 7,968,900 for 1972). Beside the UNHCR Programme, contributions are collected for the Emergency Fund and for some other special funds.

d) Although the definition of refugees in the High Commissioner's Statute has been drafted in more general terms than any other to date, refugees receiving protection from other organs or agencies of the United Nations are not the responsibility of the High Commissioner. In accordance with the article 6, B, of his Statute, the High Commissioner has extended his help and good offices to Hungarian, Egyptian, Algerian, Chinese, and different African refugees. The General Assembly has subsequently given its approval to these actions. A somewhat indefined general permission to offer his good offices to refugees who are not « within the competence of the United Nations » was given to him in the Resolution 1388 (XIV) of the General Assembly on November 2, 1959 [101].

[98] At the beginning of 1969 there were thirty U.N.H.C.R. Representatives (Brach Offices) and ten Correspondents accredited to more than sixty countries. *Report of the U.N.H.C.R., G.A. Off. Rec.*, Twenty-fith Session, Supplement n° 12, *A/8012*, p. 37.

[99] Resolution n° *393/B/XIII* of the ECOSOC of 10 December 1951; Resolution n° *672/XXV* of ECOSOC of 30 April 1958. It consists today of 31 members.

[100] See the Resolutions of the General Assembly : *727(VIII)* of 23 October 1953, *1165(XII)* of 26 November 1957, *1783(XVI)* of 7 December 1962 and *2294(XXII)* of 11 December 1967.

[101] See also the Resolutions of the General Assembly : *1286(XIII)* of 5 December 1958, *1389(XIV)* of 20 November 1959, *1500(XV)* of 5 December 1960, *1671(XVI)* and *1672(XVI)* of 18 December 1961.

e) The High Commissioner's work must be of a social and humanitarian, and not of a political character (art. 2 of the Statute). His tasks are : 1. the international protection of those refugees who, under the terms of the Statute (art. 6), come within his competence; and 2. the seeking of permanent solutions to the problems of refugees. This second task should be achieved by assisting governments and private organizations in the voluntary repatriation of refugees or in their assimilation within new national communities (art. 1, par. 2).

As the work of the High Commissioner had to relate, as a rule, to « groups and categories of refugees » (art. 2), the means of protection open to him are designed not for the protection of individuals, but for the protection of all refugees as a whole, or for some groups of them. The High Commissioner has : to promote the conclusion and implementation of international conventions relating to refugees, to conclude special agreements with governments, to assist efforts for their voluntary repatriation and assimilation, to promote the admission of refugees and their assets to the territories of states, to obtain informations concerning the conditions of refugees, to co-ordinate the efforts of governments and of private organizations concerned with the welfare of refugees. According to the Statute he is not empowered to deal with quasi-consular questions of the protection of the rights of the individuals (protection in the process of eligibility, protection of the rights granted in the Convention). Nevertheless, his representatives have in some states at least been engaged in the processing of the eligibility of refugees. Their competence to deal with such questions depends upon the rules and practice of particular states[102]. On the other hand, it can be argued that, in accordance with article 35 of the Convention the High Commissioner has the right of general supervision over the process of eligibility in all the contracting states[103].

CHAPTER VII

CONCLUSIONS

The weak nature of the connection of a refugee with the state of his nationality, and the lack of any kind of link with any state in the case of stateless persons, are the reasons that the normal relationship between the rules of international law, of individual states, and of nationals has been disordered. But the weakening of the link with the original state of nationality leads to the development of factual links with the state of actual residence.

[102] See BOLESTA-KOZIEBRODZKI, *op. cit.*, p. 162; GRAHL-MADSEN, *op. cit.*, pp. 341-367.

[103] GRAHL-MADSEN, *op. cit.*, p. 339. On the recent development of the functions of the U.N.H.C.R. see WEIS, P., « The Office of the United Nations High Commissioner for Refugees and Human Rights ».

Article 25 of both Conventions can be interpreted as the first intimation of the extension of quasi-consular protection to refugees and stateless persons by the state of their residence. The European Convention on Consular Functions (art. 46 and 47) and the Protocol to this Convention Concerning the Protection of Refugees (art. 2) provide for the exchange of the consular protection of the state of nationality for the protection of the state of residence.

Although the law in some states did not make a great distinction between the treatment of nationals and that of aliens (including refugees and stateless persons), the intervention of the international community was necessary in order to guarantee minimal rights to these persons in all states. A considerable number of states have accepted these international treaty obligations.

The extent of the present international instruments for the protection of stateless persons and refugees has been developed *rationae personae* and *rationae materiae*. Besides treaties designed specifically for their protection, the provisions of many other international treaties have been applied to them as well. On the other hand, not only substantial provisions of the international treaties for the general protection of human rights (European Convention, Covenants), but also the machinery for the protection of these rights is open to refugees and stateless persons residing in the territory of contracting states.

General international control of the application of these obligations in accordance with the Conventions of 1951 and 1954 is carried out through the communication to the Secretary-General of the United Nations of the laws and regulations which states adopt to ensure that the Conventions are applied (art 36 of the 1951 Convention and art. 33 of the 1954 Convention), and the duty of ruling on interstate disputes relating to the interpretation or application of the Conventions is that of the International Court of Justice (art. 38 and 34 respectively). The general control of the High Commissioner for Refugees in supervising states in carrying out the obligations they have undertaken concerning refugees is stipulated in paragraph 8, a, of his Statute and in article 35 of the 1951 Convention. On the other hand, an international organ for the control of the municipal decisions in individual cases and for dealing with individuals' complaints does not exist.

If a conclusion were to be drawn from the present situation, it should be that international action encourages more the assimilation of refugees and stateless persons into the community of the state of residence, than the development of their individual subjectivity in the international legal order[104].

[104] See articles 32 and 34 of the Conventions, regarding naturalization. See also SCELLE, *op. cit.*, p. 142, and KRENZ, *op. cit.*, p. 115.