AFRICAN REFUGEES AND THE LAW

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Contents

Preface 7
Introduction 9

Opening Statement 11
Ola Ullsten

Convention Refugees and De Facto Refugees 15
Paul Weis

Determination of Refugee Status under International Instruments 23
Gilbert Jaeger

Refugees in Orbit 27
Göran Melander

African Refugees in Europe 41
Björn Weibo

Political Rights and Freedoms of Refugees 47
Atle Grahl-Madsen

National Law and Model Legislation on the Rights and Protection of Refugees in Africa 58
Peter Nobel

Report of the Seminar Legal Aspects on the African Refugee Problem 77
Emmanuel K. Dadzie, Göran Melander and Peter Nobel

List of Participants 85

Appendix I 87
Extracts from the 1951 Convention Relating to the Status of Refugees
Appendix II
Extract from the 1967 Protocol Relating to the Status of Refugees 91

Appendix III
OAU Convention Governing Specific Aspects of the Problem of Refugees in Africa 92

Appendix IV
Extract from the Swedish Aliens Act of 1954 98
Since 1963 the Scandinavian Institute of African Studies has organized a variety of international seminars. As part of its function as a Scandinavian research and documentation centre on African problems the institute has sought to choose topics for these seminars that would be of interest to academics as well as to planners, administrators and politicians. These topics have included boundary problems, adult education, the role of mass media, cooperative development in East Africa, problems of land-locked countries in Africa, water exploitation, non-capitalist ways of development etc.

Another of our principle tasks over the years has been to promote and sustain the interest in African affairs among Scandinavians. Seminars constitute one way of doing so at an academic level. During these seminars, however, we have also attempted to offer "another point of view" on a variety of topics. The profile, strength and vigour of our institute depends, therefore, to a great extent on our being able to call upon a large number of Scandinavian Scholars with backgrounds and views widely differing from those held in other establishments concerned with African studies.

In 1966 the institute held an international conference on refugee problems in Africa under the direction of Mr Sven Hamrell (Hamrell, S., ed., *Refugee Problems in Africa*, SIAS, Uppsala 1967). The following year, when Mr Hamrell became the director of the Dag Hammarskjöld Foundation he organized a major conference in Addis Abeba, Ethiopia, in co-operation with the ECA and the OAU (*Report on the Conference on the Legal, Economic and Social Aspects of African Refugee Problems*, Uppsala 1968). This was the last large scale attempt to bring together an international and representative body to discuss refugee problems in Africa.

We have since then followed the refugee question at the institute and were very encouraged by the initiative by the All Africa Conference of Churches to call a major consultation on these problems in 1977. The institute participated in the preparatory meeting in early 1977 and decided to hold a preparatory meeting for
the consultation on legal aspects of the refugee problem. This conference was held at Uppsala in October, 1977 and the proceedings are presented in this volume.

The seminar was financed by SIDA through the Refugee Assistance Committee and it is my pleasant duty to record our institute’s deep appreciation to Dr E. Michanek and the members of the Committee for the support.

Uppsala, November 1977

Carl Widstrand
Introduction

Although refugees have existed as long as hostility, history has never known refugee problems of such magnitude as during the present century. After the Second World War millions of refugees from Eastern Europe sought asylum in Western countries. Since the 1960's the new states in Africa have had to deal with refugee problems of enormous proportions. In the last decade new refugee problems have emerged in Latin America and in Asia.

Each refugee situation bears its own characteristics. There are various circumstances forcing an individual to leave his home country. Assistance to refugees must be carried out in different ways and the possibility to find asylum in a country varies from case to case. But all refugee problems have certain elements in common: all refugees are human beings in need of national and international protection. When working with refugee problems the experience of other countries may contribute to better solutions and is of value also as it helps to avoid repeated mistakes.

The purpose of the Uppsala Seminar on Legal Aspects of the African Refugee Problem was to serve as a first and inventory preparation for a new major Consultation in Africa, now being planned, dealing with the specific aspects of African refugee problems as they have developed since the Addis Abeba Conference in 1967.

The United Nations High Commissioner for Refugees and the Organization of African Unity were invited to the Seminar as well as other international organizations and individuals with experience in this field or engaged in the preparatory work for the forthcoming Consultation in Africa. Invitations were also sent to Ministries, Immigration Authorities, legal scientists and practicing lawyers in the Scandinavian countries. That all these invitations were promptly accepted without hardly any exception is seen as an encouraging indication of the timeliness of the initiative by the Scandinavian Institute of African Studies to arrange this Seminar. A list of the participants is found at the end of this volume.

The Seminar was chaired by Mr Lars Gunnar Eriksson, Director of the International University Exchange Fund. H.E. Mr Emmanuel K.
Dadzie, former Director of Protection Division of the UNHCR, and the undersigned were elected rapporteurs.

It was a working Seminar defining and discussing certain problems and areas of concern rather than ending in conclusions or attempting to sum up more than some of the legal aspects on African refugee problems. Considering that so many of the participants were bound to approach the subject under discussion on the basis of Scandinavian and European experience it was felt that the ambitions of the Seminar should be accordingly limited. Nevertheless the Seminar was a valuable exercise and we therefore sincerely hope that this volume, containing the papers presented to the Seminar and the Report on the discussions, as well as a few extracts from some basic documents frequently referred to during the seminar, will prove its worth as a starting point in the preparatory work for the new Consultation in Africa on the refugee problems of the continent.

Uppsala, November 1977

Göran Melander    Peter Nobel
Mr. Chairman

I am pleased and honoured to be invited to open this seminar on Legal Aspects on the African Refugee Problem, a problem which I follow with deep concern and strong interest in both my capacities as Minister of Development Cooperation and Minister of Immigration.

The 10 million refugees and displaced persons in the world constitute one of the biggest political and humanitarian tragedies of our time. The situation of the individual refugees is tragic in itself. It is, however, even more alarming as a symptom of social and political evils in the societies which give rise to refugees.

Political oppression and violations of human rights still exist in most parts of the world. It is a vital task for all of us to increase our efforts to tackle these evil phenomena, which constitute the roots of the refugee problem.

It is natural to place the African refugee situation in focus. In today's Africa we find some of the largest and most serious refugee problems of the world. Many of these problems have been caused by colonial oppression followed by liberation wars, such as in Guinea-Bissau, Angola, Mozambique and now in the entire Southern Africa, with the abhorrent apartheid practices of the Vorster and Smith regimes.

In other parts of Africa, as in Ethiopia, the terror and turmoil have forced large numbers of people to flee.

In the area around the Western Sahara, thousands of refugees are living in camps under terrible conditions.

The crowds of refugees crossing the borders from Uganda bear daily witness of the murderous activities of the Amin regime.

So long as political oppression and violation of human rights and economic and social injustices continue to exist and create floods of refugees it is our humanitarian duty to improve the situation of the
individual refugee. There is very much to be done in this field. Two weeks ago I attended the meeting of the Executive Committee of the UN High Commissioner for Refugees. I was both encouraged and disappointed at that meeting.

I was encouraged by the expressions of solidarity with refugees, shown by many African countries, which generously receive hundreds and thousands of refugees from neighbouring areas, in spite of their own difficulties. This generosity really merits our support and assistance. I was disappointed by the failure of many countries to sign the international conventions on refugees and failure to contribute to the programmes of the UNHCR.

As far as Sweden is concerned we consider it a duty both to have a liberal policy of asylum and immigration and to contribute generously to different refugee programmes.

The Swedish contributions to UNHCR have recently been increased from some 2.5 million dollars to some 7.5 million dollars.

This year Sweden expects to contribute with at least the equivalent amount. Except for our contributions to the UNHCR activities in Africa, we have granted a total of almost 60 million Sw.Cr. this year for special activities in Southern Africa. In doing so we have become the single biggest foreign contributor to refugee programmes in Southern Africa. We see no reason to rejoice in this, but rather to deplore it. The bigger countries ought to be the bigger contributors, but unfortunately this is not the fact.

The different channels we have used have all been very effective: the UNHCR, the Governments of the Frontline States, liberation movements – such as SWAPO, ANC and the Patriotic Front – and, not least, voluntary organizations which play an important role in this field.

It goes without saying that all our contributions are exclusively used for humanitarian purposes, such as food, clothes, shelter, education and health of refugees. Recent allegations that aid which we have channelled through the UNHCR and the Red Cross for refugees in North Angola, would have been used for military programmes are thus completely unfounded.

Giving assistance to refugees on the spot through the channels I have mentioned is, of course, the most urgent task. It is however vitally important to work in the field of legislation and international agreements on the protection and the rights of the individual refugee. The main actors in this area are of course the states themselves.
However, voluntary organizations and UNHCR have done an important job in this field, giving legal advice to refugees and acting as pressure groups.

In 1979 a Conference will be held in Arusha, where refugee problems in Africa will be discussed.

This seminar is an important part of the preparations for the discussions in Arusha. The legal difficulties are numerous and the more light we can throw on them, the greater will be the contribution we can make. I should like to give only a few comments on this matter.

As a result of the huge refugee problem in Europe after the Second World War, the Convention relating to the Status of Refugees was adopted in Geneva in 1951. Growing awareness of the fact that the refugee problem was not limited to Europe alone resulted in the Protocol of 1967 relating to the Status of Refugees, whereby the time limit and the optional geographical limit were abolished.

Further international co-operation on the refugee problem on a regional basis was considerably broadened in 1969 when a convention relating to African refugees was adopted by the Organization of African Unity.

Today, many people who have been forced to leave their home countries are regrettably not protected by the international agreements on refugees, although they may have very valid reasons for not wishing to go back to their native countries.

Many of these people find themselves in a grave situation, because of the present definition of the term “refugee”. The international community must find ways of obtaining adequate protection also for those known as de facto refugees.

The definition of the term “refugee” is one of the main difficulties in this field. Who decides if and when the requirements of refugee status are fulfilled?

Today, it is widely accepted that the individual state has the right to decide whether to grant asylum or not. But it could be argued that when the criteria laid down in the Geneva Convention are met, the state in question should not only have the right, but, within certain limits, the duty to grant asylum to the refugee. This implies a right for the individual similar to those listed in the Declaration of Human Rights and in the Covenant of Civil and Political Rights.

We need broad international efforts aiming at an agreement which improves the status of refugees. This and other important questions have already been examined at the United Nations conference on
territorial asylum. The difficulties to attain results in this field are evident from the little progress which was made at the conference.

A renewed tackling of this legal problem is necessary. A regional approach might be more fruitful, for instance in Africa.

These are but a few questions involved in the refugee issues. A continued discussion of these matters is essential. I therefore welcome the initiative taken by the Scandinavian Institute of African Studies and I hope that this seminar will contribute to a deeper understanding of these problems, which are vital to so many of our fellow human beings.
Paul Weis

Convention Refugees and De Facto Refugees

While the title of my lecture is "Convention and De Facto Refugees" I do not have, I believe, to say much about Convention refugees before this audience; on the other hand the existence of de facto refugees is a consequence of the definition of refugees under the 1951 Convention or rather of the interpretation and application of this definition. This definition as amended by the Protocol of 1967 is known to all of you. It falls into two parts:

1.A (i) persons who have already been considered as refugees under previous agreements, the so-called Statutory refugees; and
1.A (ii) which contains the definition including the concept of "well founded fear of persecution".

As one who has participated in the drafting of the convention, I can say that the drafters did not have specific restrictions in mind when they used this terminology. Theirs was an effort to express in legal terms what is generally considered as a political refugee. The Convention was drafted at a time when the cold war was at its height. The drafters thought mainly of the refugees from Eastern Europe and they had no doubt that these refugees fulfilled the definition they had drafted.

The difficulties which have arisen and which have led to the existence of the so-called de facto refugees, are a consequence of changed political circumstances and the emergence of new refugee problems outside Europe, of which the drafters of the definition had not been aware.

The 1951 Convention does not provide for a special eligibility procedure and not all countries parties of the Convention have such a procedure. Those which have a procedure have in the course of time developed a certain jurisprudence as to who is in their view a
Convention refugee and what should be considered "well founded fear of persecution". This concept contains a subjective element "fear" and an objective one "well founded". The ad hoc Committee which drafted the Convention stated in its report\(^1\) that the term meant that the person has actually been a victim of persecution or can show that he has good reasons why he fears persecution. There is no doubt that the definition was drafted with regard to individual refugees i.e. that it has to be ascertained whether the fear of the person concerned is "well founded" in his particular circumstances. But those determining eligibility are rather inclined to think in stereotypes i.e. that a political situation in a particular country is such that the fear can be regarded as "well founded" and that in another country it is not, and here political considerations often play a role. The Convention concerning certain aspects of the refugee problems in Africa of 1969 definitely constitutes progress in that it adds to the "well founded fear" definition a definition\(^2\) which mentions certain circumstances which make a person leave his country and become a refugee: "external agression, occupation, foreign domination or events seriously disturbing public order in either a part or the whole of the person's country of origin or nationality", i.e. an objective definition.

An investigation made by Professor Melander and myself in various countries of Europe has shown that the application of the definition and therefore the rate of recognition varies greatly. At the time the investigation was made it was 85.6% in Switzerland, 85.5% in France, 59.2% in Denmark, 57.8% in Belgium, 56% in the Netherlands, whereas it was only approximately 40% in Germany, 30.2% in Italy, 26.5% in Austria, 10.2% in the United Kingdom. In Sweden and Norway nobody is, as you know, officially recognized as a refugee except when he applies for a Convention travel document or when the question of deportation arises. The figures quoted are, it is true, not easily comparable as the composition of the refugees naturally varies from country to country and the methods of computation of the figures vary also from country to country. In Germany, in particular, while the rate of recognition of asylum seekers from Eastern Europe is high, that of asylum seekers from outside Europe is extremely low. It is this situation which has led to the existence of de facto refugees,

\(^1\) U.B. Document E/1618.
\(^2\) Article 1 para 2.
i.e. of persons not recognized as Convention refugees who are nevertheless, for political reasons, unable or unwilling to return to their country of origin. The designation as "de facto refugee" comes from a very valuable study which has been made by Miss Anne Paludan of Denmark on "The New Refugees in Europe" on behalf of a Working Group on Refugees and Exiles in Europe, consisting of six voluntary agencies (CIMADE of France, the Danish and Norwegian Refugee Councils, the Otto Benecke Stiftung of Germany, the University Assistance Fund of the Netherlands and the International University Exchange Fund).

One can argue about the appropriateness of the term "de facto refugees". Other terms such as "refugees without official status" or "non-statutory refugees" have been suggested.

It is true that the existence of de facto refugees is not exclusively due to the refugee definition under the 1951 Convention. There are refugees who do not want to seek asylum and/or refugee status. Particularly among the Latin-American refugees there are relatively many who consider themselves not as emigrants but as militants, as exiles, who regard their stay abroad as a temporary one and do not seek integration but want to return as soon as possible to their countries of origin and fight for their cause, or hope for an early change of the regime there.

Then there are those who do not wish to seek asylum because they think to be better off if they stick to their national passport than as refugees, those who fear being rejected if they apply and those who fear for reprisals against their relatives in their countries of origin if they declare themselves as refugees. Then there are those who do not seek asylum and/or refugee status out of sheer ignorance of the procedures and then there are lastly those who have applied but whose cases have not yet been decided. As you know, in some countries, particularly in Germany, the procedure may take a very long time. Broadly speaking one can distinguish among the de facto refugees the following eight groups, which however are not necessarily exhaustive:

a. Persons who have passed through the eligibility procedure in their country of residence and whose applications have been rejected or eliminated but who are unable or, for one of the reasons mentioned, i.e. race, religion, nationality, membership of a particular social group or political opinion, unwilling to return to their country of origin (political dissidents);

b. Stateless persons not recognised as refugees who are unable or,
for the reasons mentioned, unwilling to return to the country of their habitual residence;

c. Political offenders who are not extradited to their country of origin;

d. Persons who have applied for asylum and for refugee status pending determination of their status;

e. Persons who fulfil the other conditions of the definition of refugees in the 1951 Convention as amended by the Protocol but who still avail themselves of their national passports. This is frequently the case with Latin American refugees.

f. "Exiles" and/or "crypto-refugees". The term exile has the connotation of a temporary stay outside the country of origin pending return. The term "crypto-refugees" connotes refugees "hidden" in other social categories, such as tourists, visitors, students or migrant workers. Their refugee character becomes apparent in connection with some event affecting their status such as non-renewal of scholarships, cancellation or expiry of their work permits or contracts, summons by the authorities of the country of residence to leave the country or by the authorities in the country of origin to return there.

g. Persons whose passports have expired and who have been told that their passports will be extended or renewed only on the condition that they return to their country of origin but who are unwilling to do so for the reasons mentioned. A considerable number of persons from Africa and Asia fall into this category.

h. Draft evaders (manquants), draft resisters (réftractaires) and deserters for one of the reasons mentioned, not recognised as Convention refugees.

Draft evaders are persons who have evaded their call-up; draft resisters, persons who have been called up but who have not presented themselves for military service; deserters are persons who have left while serving in the armed forces of their country of origin.

The following definition of the term has been drafted by me:

'\text{De facto} \text{ refugees}' are persons not recognized as refugees within the meaning of Article 1 of the Convention relating to the Status of Refugees of 28 July 1951 as amended by the Protocol of 31 January 1967 relating to the Status of Refugees and who are unable or, for reasons recognised as valid, unwilling to return to their country of nationality or, if they have no nationality, to the country of their habitual residence.

As valid reasons shall be recognized:

(a.) a person's reasonable belief that he will be

i. seriously prejudiced in the exercise of his human rights as proclaimed in the European Convention of Human Rights and Fundamental Freedoms of 30 November
1950 and Protocol No. 1 thereto, in particular discriminated against for reasons of race, religion, ethnic or tribal origin, membership of a particular social group or political opinion;

ii. compelled to act in a manner incompatible with his conscience.

(b.) war or warlike conditions, occupation by a foreign or colonial power, events seriously disturbing public order in either part or the whole of the person's country of nationality, or, if he has no nationality, the country of his habitual residence.

I would like to emphasise the word "seriously prejudiced" since every prejudice to human rights can hardly be considered as constituting a person even a de facto refugee. This definition was accepted by a legal panel which was convened by the aforementioned Working Group of voluntary agencies, although there was unanimity that it would not be desirable to establish a legal definition in a legal instrument and that it might even be counter-productive; the definition has been included in a document of the Parliamentary Assembly of the Council of Europe.\(^3\)

As to the legal disabilities of de facto refugees, a distinction has to be made between those who are de jure stateless – a small minority – and the others. The former have in countries which have ratified the Convention relating to the Status of Stateless Persons of 28 September 1954, the status for which this Convention provides and which is rather similar to the status provided for by the 1951 Refugee Convention.

Unless they have a special status, as the "asilés" in France, the persons with B status in Denmark and the so-called B Refugees in the Netherlands, de facto refugees normally will, if they have no valid national passport, have difficulties in getting residence permits and/or have their residence permits extended.

Their main disability is of course that – since they do not have the special benefits of Convention refugees – they do not enjoy the exemption from restrictions on the employment of aliens provided for in article 17 of the 1951 Convention and do not benefit from special measures for the promotion of employment, such as vocational training, retraining or free language classes.

Major difficulties often also exist in the field of secondary and higher education. As you know, persons from developing countries often benefit from special scholarship schemes which, however, normally require a recommendation from the authorities of the

\(^3\) Report on the Situation of De Facto Refugees, document 3642 par. 31.
country of nationality and/or an undertaking to return after the termination of their studies — conditions which therefore automatically exclude refugees.

De facto refugees who do not hold a valid national passport have less freedom of movement than Convention refugees as they do not qualify for the Convention travel document and do not benefit from the European Agreement on the Abolition of Visas for Refugees of 1959; they sometimes have difficulties in obtaining a travel document in lieu of a passport from the authorities of their country of residence and need in any case a visa for travel to another country.

Where refoulement is concerned, Article 33 of the 1951 Convention protects only refugees recognized as such. In some countries national laws or regulations go further: in Belgium the Law concerning the Aliens Police of 28 March 1952 provides that an alien whose removal or expulsion is impossible on account of factual circumstances may "être mis à la disposition du gouvernement" and be detained for a period not exceeding six months. In France an alien under an expulsion order who can show that it is impossible for him to leave, may be subjected to assigned residence (Article 28 of Ordinance number 45-2653 of 2 November 1945). The Aliens Law of the Federal Republic of Germany reproduces in paragraph 14 Article 33 of the 1951 Convention, but this provision may also be invoked by aliens not recognized as refugees. The Aliens Law of the Netherlands of 13 January 1965 contains special procedural safeguards against the expulsion of aliens if they claim that the expulsion would compel them to proceed to a country where they fear persecution. In Norway, under the law on the Admission of Aliens of 27 July 1956, and in Sweden under the Aliens Law of 30 April 1954, an alien may not — except in criminal cases — be expelled to a country where he risks being exposed to political persecution or where he risks being sent to such a country.

Where no such special safeguards exist de facto refugees, although they are not usually forcibly returned (except in Germany) are not legally protected against refoulement.

The Parliamentary Assembly of the Council of Europe has on the proposal of its Commitee on Population and Refugees, unanimously adopted a Recommendation recommending that the Committee of Ministers of the Council instruct the competent Committee of

\[^{4}\text{Recommendation 773 (1976).}\]
Government Experts to prepare an appropriate instrument, preferably an agreement, on *de facto* refugees covering the following points:

a. to provide for the granting of residence and work permits;

b. to make applicable to *de facto* refugees as many articles as possible of the Convention relating to the Status of Refugees of 28 July 1951, especially those relating to wage earning employment (Article 17), public relief (Article 23), labour legislation and social security (Article 24) as well as the provisions concerning refugees unlawfully in the country of refuge (Article 31), expulsion (Article 32) and, especially, prohibition of expulsion or return (Article 33);

c. to enable *de facto* refugees to find adequate housing;

d. to extend as far as possible the recognition of professional qualifications, particularly those pertaining to the liberal professions;

e. to enable *de facto* refugees to receive language and vocational training free of charge and to award grants and scholarships to students;

f. to issue to *de facto* refugees not possessing valid travel documents, travel documents enabling them to travel abroad and to return to the issuing country and to exempt holders of these documents from visa charges;

and to invite member governments,

i. to apply *liberally* the definition of "refugee" in the Convention relating to the Status of Refugees of 28 July 1951 as amended by the Protocol relating to the Status of Refugees of 31 January 1967;

ii.a. not to expel *de facto* refugees unless they will be admitted by another country where they do not run the risk of persecution;

ii.b. not to refuse admission and residence to persons who have found "protection or asylum elsewhere" unless they will in fact be admitted by another country;

iii. not to subject *de facto* refugees to restrictions regarding their political activities – with the exception of political rights in the strict sense which depend upon possessing the nationality of the country of residence – other than those applicable to their own nationals.

The Committee of Ministers has set up an *Ad Hoc* Committee of Government Experts which has *inter alia* to consider this Recommendation. The legal directorate which acts as secretariat to the Committee has submitted a paper C.M (76) 264 in which it suggests an agreement complementary to the 1951 Convention. The Committee is likely to consider the recommendation later this year. It
will also have to examine the Recommendation of the Assembly on harmonisation of eligibility practice. The two questions are obviously interconnected.

The best solution would obviously be an agreement extending the definition of the 1951 Convention so as to cover de facto refugees. I do not consider this likely to happen in the near future. Meanwhile one will have to strive in order to make the eligibility practice of certain countries more liberal, in particular concerning non-European refugees, to provide information on the conditions in the countries of origin of these refugees to the competent authorities, in order to remove certain misconceptions and prejudices. Moreover de facto refugees ought to be properly counselled and assisted in proceedings before the authorities of their countries of residence.

5 Recommendation 787 (1976).
Determination of Refugee Status
under International Instruments

Determination of refugee status is a subject to which considerable attention has been paid in recent months in various fora, including the Executive Committee of the High Commissioner’s Programme. At its twenty-eighth session held in Geneva from 4 to 12 October 1977, the matter was examined in detail by the Sub-Committee of the Whole on International Protection on the basis of a document\(^1\) prepared by UNHCR, a copy of which was made available to the participants in this seminar. A further document, also circulated to the seminar, was prepared on the actual procedures existing in a number of countries.\(^2\)

In its Report on the twenty-eighth session, the Executive Committee\(^3\) endorsed the conclusions of the Sub-Committee as follows:

*Determination of Refugee Status*

a. Noted the report of the High Commissioner concerning the importance of procedures for determining refugee status.

b. Noted that only a limited number of States parties to the 1951 Convention and the 1967 Protocol had established procedures for the formal determination of refugee status under these instruments.

c. Noted, however, with satisfaction that the establishment of such procedures was under active consideration by a number of governments.

d. Expressed the hope that all governments parties to the 1951 Convention and the 1967 Protocol which had not yet done so would take steps to establish such procedures in the near future and give favourable consideration to UNHCR participation in such procedures in appropriate form.

e. Recommended that procedures for the determination of refugee status should satisfy the following basic requirements:

\(^1\)EC/SCP/5.
\(^2\)A/AC.96/INF.152.
\(^3\)A/AC.96/549.
(i) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State, should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

(ii) The applicant should receive the necessary guidance as to the procedure to be followed.

(iii) There should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance.

(iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.

(v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.

(vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.

(vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

f. Requested UNHCR to prepare, after due consideration of the opinions of States parties to the 1951 Convention and the 1967 Protocol, a detailed study on the question of the extra-territorial effect of determination of refugee status in order to enable the Committee to take a considered view on the matter at a subsequent session taking into account the opinion expressed by representatives that the acceptance by a Contracting State of refugee status as determined by other States parties to these instruments would be generally desirable.

g. Requested the Office to consider the possibility of issuing – for the guidance of governments – a handbook relating to procedures and criteria for determining refugee status and circulating – with due regard to the confidential nature of individual requests and the particular situations involved – significant decisions on the determination of refugee status.

The core of the conclusions of the Executive Committee are the basic requirements as listed under (e). The basic requirements are self-explanatory but one may emphasize that they essentially provide for determination of refugee status in accordance with the general principles of due process of law. Considerable attention is given to the right of appeal and to the prevention of refoulement during the procedure.

Another important aspect is the recommendation that, as is in fact already the case in a number of countries, UNHCR should be
associated in the implementation of the procedure in an appropriate form.

It will further be noted that some discussion took place on the extra-territorial effect of determination of refugee status. While the general trend of the Sub-Committee of the Whole on International Protection was that determination of refugee status made in a given Contracting State in accordance with the 1951 Convention and the 1967 Protocol should be accepted as valid in any other Contracting State, there was no consensus. UNHCR will submit a further study on this subject at the next session of the Executive Committee.

Discussion also took place on the problem of the so-called harmonisation of procedures for determination of refugee status, a problem which was also recently discussed in a committee of experts of the Council of Europe. UNHCR takes the view that on account of the diversity of legal and administrative systems in the 71 States which are parties to the 1951 Convention and/or the 1967 Protocol, it is not possible to aim at identical procedures in all these countries. It would suffice if each national procedure satisfied a number of basic requirements as now adopted by the Executive Committee.

Concerning the harmonisation of the refugee concept, UNHCR takes the view that there is one single criterion valid for all Contracting States, namely the refugee definition as contained in the Convention and Protocol. This reasoning also applies to States parties to the 1969 OAU Convention, where the same definition is valid in all countries concerned. It is accepted that there could be different interpretations of the definition and that it is desirable to narrow the discrepancies of interpretation. To the extent that UNHCR is associated in the implementation of the various procedures, the Office could contribute in a significant manner to achieving this objective. It is unlikely, however, that divergencies could be totally eliminated.

Turning to the specific situation on the African continent it should be observed that of the 18 formal procedures identified and described in Document A/AC.96/Inf.152, procedures have been instituted in 7 African countries, viz. Algeria, Benin, Botswana, Morocco, Senegal, Tunisia and Zambia. In the meantime, other procedures have been or are being established in Gabon and Kenya. Relatively speaking, the number of countries in Africa which have established a formal procedure compares favourably with the situation on other continents, including for that matter Europe.

UNHCR aims naturally at promoting the establishment of formal
procedures in all States where there are refugee problems and particularly in the States parties to the 1951 Convention and the 1967 Protocol. The decisions made in this respect by the Executive Committee are very important and significant. It is indeed the first time that an official international body deals in such a specific manner with the determination of refugee status and, in our opinion, the conclusions of the Executive Committee are valid for situations in Africa as they are for situation in other continents.

On the other hand it is known that refugees in Africa belong generally speaking to two categories:

- massive, very often numerically important refugee groups of rural origin, and
- scattered individual refugees or refugee families living in urban areas.

The latter category is very similar, from the point of view of our subject, to refugees in European countries or for that matter in Latin America, and calls for no specific comment with respect to determination of status.

Rural refugees are living to a large extent in organised rural settlements or are spontaneously settled in rural areas. They enjoy a number of economic and social rights. Quite apart from logistical difficulties in determining individually their refugee status, such systematic determination is not immediately called for. For members of these groups determination of refugee status is, however, necessary when an individual needs to benefit from a specific right under the international instruments: the issuance of an identity card, of a Convention Travel Document, documents for marriage, family reunion etc.

In conclusion basic directives for the establishment of procedures for the determination of refugee status, or for the amendment of such procedures as may exist, have now been established and UNHCR will endeavour to co-operate with African governments on this basis.
Refugees in Orbit

1. Introduction

In the field of refugee assistance, a common expression is the term "international solidarity", by which is normally understood the necessity to assist an asylum state, which has been faced with such a mass influx that the state might find it difficult to grant or continue to grant asylum. "In a spirit of international solidarity" the burden of that state must be shared by other countries.¹

The most effective way in which other states can assist an asylum state is to accept refugees for resettlement.² In principle such assistance can be given in three different ways.

(a) Refugees can "collectively" or individually be allowed to move to and resettle in another country. The refugee is given permission to enter and to resettle in that state.

(b) Legal entry into the second country, but without permission to resettle there. Normally the refugee enters as a tourist but after a certain period his presence in the country might become illegal (for instance, when his tourist visa expires).

(c) Illegal entry into the second country, but the refugee applies for a residence permit and/or refugee status.

In the 1950's and the 1960's the majority of the refugees came from Eastern Europe and asked for asylum in the West. Most of them first entered Italy, Austria or the Federal Republic of Germany. In order to contribute to a solution of the European refugee problem assistance was given by other states, generally by accepting refugees for resettlement. Some of them were admitted into other Western

¹ See, for instance, the 1951 Refugee Convention, Preamble; OAU Refugee Convention, art. 2 para. 4.

² Another possibility is to support the asylum state financially. Cf. UN Doc. A/AC.96/SR.262, p. 33.
European states. The majority, however, were transferred to overseas countries, like the United States, Canada, Australia, New Zealand and Latin American States, while others were sent to Africa.

During recent years an increasing number of states seem to have become more reluctant to assist asylum countries by accepting refugees for resettlement. Only on rare occasions are refugees permitted to move to another state under "collective" migration schemes, and individual migration is almost impossible. Exceptions are found in cases of family reunification, or when the applicant's professional skill can be useful to the new country of asylum.

When the presence of the asylum seeker/refugee in the second country is illegal (alternatives (b) and (c)) he is only seldom allowed to resettle there. A pragmatic approach to solving the refugee problem is generally encountered. It is considered that an asylum seeker should ask for asylum in the state he first enters after his flight from a country in which he has a well-founded fear of persecution. Normally he has no right to choose his country of asylum. The movement of refugees should be controlled – with the self-evident exception of applicants coming directly from a country of persecution. If he wants to resettle in another state he should apply for a residence permit, before actually going to that state.

The applicant may have valid reasons to leave for another country. He may know or fear that he will not be granted asylum in the first country because of restrictive practice, but that he may have good chances in another state. He might have certain links with another state; for instance, relatives or friends, a cultural or linguistic connection, etc. Consequently there is some movement of refugees between states, but methods to stop an influx have been introduced. Since these methods are generally applied in different ways from country to country they have resulted in a considerable number of asylum seekers/refugees who are unable to find a country that accepts them. They are refugees in orbit.

The problem under review is the situation of persons who, although they have not been placed in immediate jeopardy by being rejected at the frontier or otherwise sent back to the country where they are liable to persecution, are not granted asylum, still less refugee status, in any country in which they make an application for asylum. As a result they are shuttled from one country to another in a constant quest for asylum.

The longer a region has been faced with refugee problems, the
more acute are the difficulties regarding refugees in orbit. In Western Europe, where there have been refugees ever since World War I the situation today is precarious, because states have had time to enact legislation in order to restrict the movement of refugees. In Africa the problem of refugees in orbit is increasing and it is only recently that States have started to introduce restrictions. Legislation in this respect is only in an initial stage and African states still have the opportunity to regulate the movement of refugees by taking into account the negative experience of Western European states.

2. Methods to restrict the movement of refugees

2.1 Methods used in Western Europe

Western European states have made use of one or several of the following methods to restrict the influx of refugees.

1. *Punishment for unauthorized entry or sojourn.* Municipal aliens legislation in Western Europe always contains provisions on the punishment for unauthorized entry and sojourn. These provisions serve both as a general control of foreigners present in a state's territory and to restrict the movement of foreigners.

2. *En route provisions.* In a few states a prerequisite for asylum is that the applicant asks for asylum within a certain period from the day he left the country in which he has a well-founded fear of being persecuted. The length of that period varies between states.

3. *Preclusion.* Some states have provisions to the effect that the application for asylum must be made within a specified period after the entry into the country of asylum.

4. *Refusal of asylum.* In the Federal Republic of Germany an applicant who has not made his application for asylum "in time" will risk being denied Convention refugee status. It is assumed that a late application has the only purpose of prolonging an illegal residence, and that the application is an abuse of rights.

5. *Asylum elsewhere.* It is a generally accepted rule that any asylum seeker who has found asylum in a country, is disqualified from asylum in another state, unless he invokes a well-founded fear of persecution in the first asylum state.

6. *Protection from persecution has been granted otherwise.* It is considered that an asylum seeker can find protection from persecution, although he has not been granted asylum. In such a case asylum will normally
be refused in another country, but the application of this rule varies from country to country. In some states asylum is denied already when the asylum seeker has had the formal possibility to make an application in another country, i.e. if he has passed through a state in which the rule of non-refoulement is applicable.

7. Refoulement agreements. A number of so-called refoulement agreements have been concluded between Western European countries, i.e. agreements which under certain conditions impose an obligation for a Contracting State to receive back, at the request of the other Party, any alien who has entered the requesting state. At present sixteen such agreements are in force between Western European states, four of them on a plurilateral basis and the remaining twelve on a bilateral basis. There is flagrant lack of uniformity in these agreements.

8. Pre-screening. In all Western European states asylum is granted by a special authority or a special branch of an existing authority. In some countries a kind of pre-screening procedure has been established, by which it is decided which cases should be referred to the ordinary eligibility procedure.

9. Differences in the eligibility practice. One reason for the existence of refugees in orbit is the fact that the eligibility practice varies between Western European states. A person might be recognised in one country but another person who invokes the same circumstances might be refused Convention refugee status in another country.

10. The geographical limitation. One European country, Italy, still maintains the geographical limitation to the 1951 Refugee Convention and the 1967 Protocol. During the past few years the Italian practice has become more liberal, and non-European refugees might be allowed to remain in Italy as de facto refugees on a temporary basis.

11. In France refugee recognition does not automatically entitle the asylee to get a residence and a work permit. As a consequence a refugee might feel himself obliged to go to another state, although he will have difficulties to get a residence permit there.

12. In the Federal Republic of Germany the concept of de facto refugees is only of marginal significance. There are, however, a number of persons in that country who, at least in other Western European states, would have been considered as de facto refugees. Recently decided measures in Germany as regards family reunification, residence permits, doles, social security, etc. have
resulted in a number of persons belonging to this category feeling obliged to leave for other states.

These various provisions to restrict the movement of refugees cannot be seen in an isolated context. They constitute a system of rules and have mostly been adopted with the same purpose, viz. to restrict the influx of refugees. Sometimes it is the person's own fault that he has become a refugee in orbit, as he has little or no knowledge of the various municipal provisions. At the same time it is not intentional that states create refugees in orbit. It is the secondary effect of measures to restrict the influx of refugees.

2.2 Methods used in Africa

The problem of refugees in orbit is serious also in Africa, although the absolute number of persons in this situation might not be as high as in Western Europe.

As regards this problem it is necessary to differ between so-called "urban" and "rural refugees", a terminology which is inexact. Normally only the former category is faced with this problem.

The methods to restrict the movement of refugees in Africa are less sophisticated than in Western Europe, and a special legislation in this respect has only seldom been enacted. In cases where it is considered that another state is the country of first asylum a person might in practice be refused entrance and expelled from the second country. The origin of the problem is the same, i.e. a lack of a generally accepted definition of the term "country of first asylum", but the practice to return or expel a refugee is not carried out by all African countries. A certain possibility to move between states still exists.

The following methods to restrict the movement of refugees are at present being applied in Africa.

1. Punishment for unauthorized entry or sojourn. In states where there is an aliens (immigration) legislation unauthorized entry or sojourn is an offence. Sometimes a person entering from a country of first asylum is not considered as a refugee, and he will be prosecuted and punished by virtue of this legislation.

2. Asylum elsewhere. A person who formally has been granted asylum in another country is in many cases disqualified from asylum in a second state. In this respect a special problem arises when a refugee who is holding a Convention travel document is outside the issuing country when the return clause (but not the travel document itself)
expires. The solution to these cases varies from case to case and from country to country. Sometimes the refugee is allowed to remain in the second country, but he might also be obliged to leave that state. The first country is seldom willing to readmit the refugee.

3. Protection from persecution has been granted otherwise. Some African states keep very strictly to the concept of country of first asylum and the mere fact that an asylum seeker has passed through a country, in which he does not have a well-founded fear of persecution, might result in refusal of asylum and a decision on return or expulsion. If the applicant is refused entry into another state, he is faced with the risk of being detained.

4. Refusal to issue a Convention travel document. The international agreements on the status of refugees clearly state that a refugee is entitled to a Convention travel document. The refugee agreements concluded before World War II also contained similar provisions. At that time it was argued that the problem of refugees could never be solved unless refugees were given the possibility to travel and consequently they must be given the right to hold travel documents.

In Western Europe, art. 28 of the Refugee Convention has been implemented to the effect that recognised Convention refugees more or less automatically are given a travel document. It is also the policy of the UNHCR in Europe that a recognised refugee is entitled to such a document.

In Africa the situation is the reverse and a refugee is entitled to a Convention travel document, provided certain prerequisites are fulfilled. Besides being a refugee, the applicant must have valid reasons for an application; for instance, that he has been granted the possibility to study in another country or that he has been offered employment in another state. A second prerequisite is that he has been granted a residence and/or a work permit in another state. Sometimes the applicant has to present his ticket for the journey to the country in question. Finally, the application for a Convention travel document must have been approved by the Branch Office of the UNHCR.

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3 According to the Schedule to the Refugee Convention, para. 5, the document shall have a validity of either one or two years, but para. 18:3 provides that a Contracting State "in exceptional cases" may limit the period during which the refugee may return to a period of not less than three months.

4 Cf. OAU Refugee Convention art. VI para. 3.
The motive behind this is said to be to prevent misuse of a Convention travel document. It has been argued that another procedure only would create difficulties for the UNHCR and the Governments involved, as holders of travel documents otherwise would be tempted to travel to another state in order to settle there.

This practice is contrary to the international agreements providing for the issuance of travel documents. According to art. 28 of the Refugee Convention, Contracting States “shall issue to refugees lawfully staying in their territory travel documents for the purpose to travel outside their territory unless compelling reasons of national security otherwise require”. Art. VI para. 1 of the OAU Refugee Convention provides for a corresponding obligation. From the travaux préparatoires of the 1951 Refugee Convention it is quite clear that it is only in grave and exceptional circumstances that a Contracting State may refuse to issue a travel document to a refugee lawfully staying in its territory, provided he applies for it for the purposes laid down in art. 28.

The practical motive, invoked by the UNHCR and by Governments, is hardly relevant, because the fact that a person is holding a travel document does not mean that he can enter another country. As distinguished from the situation in Europe, the African refugee is in need of a visa to enter any other African country. There is no general agreement concerning the abolition of visas in force between African states. Today a refusal to issue a Convention travel document only makes difficult or even impedes the possibility for a refugee to arrange his future by himself.

3. Proposals for future action

3.1 General Remarks

The origin of the problem of refugees in orbit is mostly lack of information as regards the overall situation. It is believed by Governments that the measures undertaken in order to restrict the movement of refugees are unavoidable in order to prevent a mass

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influx. States can admit that the individual ought to be regarded as a refugee and that he cannot be returned to his country of origin, as the person in question is not to be the responsibility of the expelling state. Unfortunately, only the negative aspect is decided, i.e. that a state is not responsible for the individual. At present there are no means to find a positive solution, i.e. to determine which state should be responsible in a given case and which state should grant him asylum and/or a residence permit, when the applicant is to be regarded as a refugee.

Thus, the basic problem lies in finding means to decide the problem of responsibility. It is necessary to work out a system by which in a given case, it is possible to determine which state should be responsible. Such a system must be worked out by international co-operation.

The problem of refugees in orbit is of universal character, a fact which speaks in favour of universal co-operation. On the other hand, there seems to be a quiet understanding that refugee problems should be solved on a regional basis. A refugee who has entered a Western European state will, as a rule, be allowed to remain in Western Europe, if he so wishes, the problem being to determine in which country. An often repeated postulation is that the African refugee problem should be solved within Africa. The Latin American refugee problem should likewise be solved within Latin America, albeit that refugees are "collectively" transferred to European and African states, but only after having arranged a country of second asylum before entering another continent.

This argument speaks in favour of a regional co-operation. Logical forums are, as regards Western European states, the Council of Europe, and as regards African states, the Organization of African Unity. Regarding the practical solution, it might be preferable to deal with them region by region.

3.2 The solution in Western Europe

In Western Europe the procedure for the determination of Convention refugee status is well institutionalised. The problem of refugees in orbit concerns cases where no state is willing to admit a refugee. The origin of the problem lies in the fact that states have different opinions as to how to decide which country should be obliged to grant asylum.
A recommendation by which certain provisions regarding the readmission of refugees and the granting of asylum and residence permit is certainly better than the present situation, where no co-ordination between Western European States takes place. As already stated, the prevailing procedure is supported in national legislation, which has the result that a solution to the problem sometimes presupposes amendments of existing laws and regulations. This is a weighty reason for a European Convention being the best alternative in Europe.

As regards the content of such a Convention it is obvious that there must be an article on the personal scope. As almost all Western European states are Parties to the 1951 Refugee Convention and the 1967 Protocol, it is logical that a Convention concerning refugees in orbit at least should cover all persons who are to be considered as refugees according to these treaties.

During the past few years there has been an influx into Europe of new asylum seekers who fall outside the well-known categories of refugees, so-called de facto refugees. This category is faced with the same problem as Convention refugees as regards the possibility to move from one country to another. If a Convention to mitigate the problem of refugees in orbit is restricted to Convention refugees, only a part of the problem will be solved. It is highly desirable to extend a solution to also cover the de facto refugees.

A convention on refugees in orbit should contain an article on the extra-territorial effect of refugee recognition. The eligibility practice in Western Europe as regards Convention, eligibility determination varies from country to country. This fact adds to the difficulties relating to solving the problem of refugees in orbit. According to the 1951 Refugee Convention a decision on recognition in one country does not have to be binding in other Contracting States. This does not mean that a foreign eligibility determination has no legal effect in another state. Par courteous Contracting States accept a foreign decision in this respect. Consequently, it would not be an unsurmountable problem for states to undertake to be legally bound by foreign eligibility determination.

The situation is more problematic as regards the de facto refugees and a number of reasons can be invoked for a different system.

(a) No eligibility decisions take place regarding de facto refugees and there are good reasons not to introduce an eligibility procedure.

(b) So far the concept of de facto refugees is not regulated in any
international treaty, although there are corresponding terms in municipal legislation in a few countries. It is likely that states at this stage would hesitate to undertake what could be considered as too far-reaching obligations.

(c) The concept of de facto refugees has developed in a similar way in most Western European States and the practice is more or less identical. Therefore, it is not so important to introduce any legal obligations for other states to accept an eventual and foreign eligibility determination concerning de facto refugee status.

The most crucial provisions in a Convention on refugees in orbit are those by which it will be decided which state should be responsible for the granting of asylum, i.e. provisions on readmittance of foreigners.

The aim of a convention is to avoid the problem of refugees in orbit. If a person is the responsibility of a Contracting State, but is found in another state, he should be returned directly to the responsible state. Or to put it in other words: the origin of the present problem is that each state has its own definition of the term "country of first asylum", and that the solution presupposes an identical definition of that term. In all cases it is necessary to determine which country should be the country of first asylum and that a state could be obliged to readmit the asylum seeker.

The provisions to readmit an alien must be clear and easy to apply, and they must to the least possible extent give rise to any controversy between states involved.

From a principle point of view these provisions can be based on formal or material criteria. In this context formal criteria imply that indisputable facts are decisive to determine the conditions of readmittance, such as presence or previous presence in a country, that the person has been formally recognised as a Convention refugee, etc. Of the methods used at present in Western Europe to restrict the influx of refugees, some are based on formal criteria, viz. en route provisions, preclusion and asylum elsewhere.

Material criteria imply an evaluation of various circumstances, such as length of stay in a country, social, cultural or economic links, or any other connection to a certain state. The use of material criteria sometimes presupposes a balance between various circumstances, which are related to two or more countries in order to decide to which state the person has the strongest links or connections.

Formal criteria have the advantage that they are easy to apply and that in the majority of cases there will be no difficulty in deciding the
question of responsibility. They can, however, lead to unsatisfactory results if they are applied too strictly. The use of material criteria will normally lead to a satisfactory result but has a decisive disadvantage: in many cases it will be necessary to balance the links and connections between two or more states, the links and connections are difficult to formulate, and it can be anticipated that the states concerned will be of different opinions as regards the evaluation of circumstances. If the solution is based only on material criteria, it must be combined with a well-developed system concerning the settlement of disputes.

Taking all these aspects into account it is more favourable – at least as a main rule – to make use of a system based on formal criteria. In this context it should be stressed that any Contracting State is free to grant asylum beyond its contractual obligations. If, for instance, a country in a given case considers it reasonable to grant asylum, although another state – according to an eventual agreement – is obliged to readmit him, the country in question is certainly competent to grant asylum.

A very first rule to be applied as regards the determination of responsibility is the obligation to readmit a person who already has been granted asylum in a Contracting State, an obligation which should be applicable until another Contracting State grants him asylum and/or a residence permit.

A second question is to decide which country should be considered as the country of first asylum. A suggestion close to hand is to make use of an en route provision, i.e. that the applicant has to ask for asylum within a certain time-limit. This means that the country of first asylum should be any Contracting State, whose territory the applicant has entered within a certain period, after having fled from his country of origin. A complementary rule is necessary in cases where the applicant asks for asylum in a third state on the expiration of the period in question. In such a case the country of first asylum should be a Contracting State, in which he has been physically present during the period, according to the choice of the applicant.

A Convention on refugees in orbit should also contain an article on family reunification. Furthermore, it must be complemented with a provision on international solidarity in cases when a country has been faced with a mass influx of refugees.

Finally, the convention should contain an article on the settlement of disputes, an article on the relation between the present Convention and other agreements, as well as the usual final clauses.
3.3 The solution in Africa

The refugee situation in Africa differs considerably from that in Western Europe. In Africa only few countries have established an eligibility procedure. In countries where such a procedure exists the number of recognised refugees is low, although the number of refugees might be considerable. This is not only due to the fact that the majority of African refugees are "rural refugees". Other reasons are behind, for instance, the fact that eligibility determination implies that a country of asylum is obliged to make an evaluation of the political conditions in the asylum seeker's country of origin and that this evaluation might lead to political complications between the country of origin and the country of asylum.  

Another difference between Africa and Western Europe is that only a limited number of the OAU members have ratified or acceded to the 1951 Refugee Convention and/or the 1967 Protocol; or the 1969 OAU Convention, and consequently a considerable number of African states are not under an international obligation to assist refugees.

It is also a fact that in Africa the term "refugee" has an enlarged meaning and sometimes includes what in Europe has been called de facto refugees, a category concerning which a normal eligibility determination cannot and should not take place.

One of the most important provisions of the draft European Convention on refugees in orbit is the article providing for the extra territorial effect of foreign eligibility determination. A corresponding article in an African Convention on refugees in orbit would only have a marginal effect, as it only concerns refugees who formally have been recognised. And, as stated before, it is not possible to establish a principle on extra-territorial effect regarding de facto refugees.

The conclusion will therefore be that – at least for the time being – not much will be gained by adopting a Convention on refugees in orbit between African States. A recommendation on this subject seems to be more adequate. A recommendation can have the form of a general resolution formulating a number of principles by which states should be guided.  

As an alternative stands the adoption of a separate

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7 Cf. GA Res. 1962 (XVIII) of 15 December 1962, Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space.
declaration in which principles are described in a more legal manner but without having any binding force.\textsuperscript{8}

An African recommendation on refugees in orbit should contain a provision on the personal scope, where art. I of the OAU Refugee Convention can be used as a minimum standard. It can, however, be argued that enlarged criteria should be used.

A recommendation ought to reflect the principle that a country which has granted asylum ought to readmit a refugee upon the request of another state. When a person has been granted asylum in more than one state, the state in which the last decision has been taken, ought to readmit him.

The principle of family unity ought to be upheld, and a state which has granted asylum to a person ought to admit other members of the same family. One possibility to describe the scope of the family is to make use of the wording of the draft article on the subject, as adopted by the UN Conference on Plenipotentiaries on Territorial Asylum, where it was limited to “the spouse and the minor dependant children of that person”. It might, however, be desirable to enlarge the scope of the family in this context.

A pertinent question is whether the definition of the term “country of first asylum” should be based on formal or material criteria. The use of formal grounds to determine which state should be responsible in a certain case, might not be equally well-founded in a recommendation. When a refugee has certain links or connections to a country he ought to be allowed to resettle in that state. A provision, by which the term “country of first asylum” is described must not, however, exclude that a person is granted asylum and/or a residence permit in another state. The definition should help in solving cases where no state is willing to accept a refugee and ought to contain undisputable guide-lines determining which state ought to grant asylum. Also, if the definition is contained in a recommendation, it might be preferable to base the responsibility to readmit a refugee on an \textit{en route} provision.

As stated above, the problem of refugees in orbit does not create as serious difficulties in Africa as it does in Europe. So far a legislation to restrict the movement of refugees had been enacted only to a limited extent in Africa. The African states are in a position to avoid

\textsuperscript{8} Cf. GA Res. 2312 (XXII) of 14 December 1967, Declaration on Territorial Asylum.
a situation existing in Europe, by international co-operation already at the initial stage. A recommendation on refugees in orbit could express the principle that a state should consult neighbouring asylum countries before enacting legislation restricting the movement of refugees.

Finally, a recommendation ought to contain a provision on international solidarity in cases of a mass influx of refugees.
Björn Weibo

African Refugees in Europe

The title of the subject we are now going to discuss was formulated in very general terms by the preparatory committee. I suppose that the committee expected me to prepare a broad survey of the conditions and problems of the African refugees in Europe. I am sorry to say that such a survey is not possible as there is no information available, as far as I know. I am not even able to give you the number of African refugees in Sweden as we do not register people as refugees or non-refugees.

A couple of years ago it was discussed whether Sweden should introduce some sort of a declaration of refugee-status or not. The background is that we lack a special determination procedure. If we find that a man claiming that he is a refugee has got sufficient political reasons he will be allowed to stay and will get a residence-permit and a work-permit in the same way, for example, as the man who gets such permits because of family reasons. The only way to get a decision on the question of status is to apply for a travel document according to the Geneva Convention.

The Government and the Parliament found that such a declaration given by the Immigration Board should not be introduced as it would not be legally binding for other authorities in Sweden. In other words: a declaration would not improve the protection of the refugee.

As we do not register refugees and as all refugees do not apply for a travel document it is impossible to say how many refugees we have from different parts of the world without a close examination of thousands of files.

Consequently I will not be able to keep to the subject.

Three of the most important legal instruments we have today to grant asylum and protection to refugees are the 1951 Convention, the 1967 Protocol and, as regard African States, the OAU Convention. These instruments only give minimum standards of protection. We
are, however, lucky to have them as it would be more or less impossible today to unite countries around a convention of the same contents. Perhaps this is a too pessimistic view of the question, but if you look at the results of the Conference in Geneva in January this year about the draft convention on territorial asylum, I am quite sure that you understand my position. In these circumstances it is understandable but most regrettable that less than 50% of the Member States of the United Nations have ratified the 1951 Convention and that only 18 out of 48 states in Africa have signed the OAU Convention.

The Swedish legislation concerning protection is to be found in the Alien's Act of 1954. But as early as in 1914 the expulsion of an alien to a country where he could be prosecuted or punished for a political crime was prohibited. In 1937 this protection was extended to the one who had escaped because of political reasons.

The present Alien's Act contains a declaration of the principle of the right for a political refugee to be granted asylum in Sweden if he needs it. Our definition of a political refugee corresponds on the whole to the definition of the 1951 Convention. We have, however, gone one step further by giving the right of asylum even to the person who fears severe punishment for a political crime.

But it is not only those who are looked upon as convention refugees who have a particular right to some kind of asylum in our country. In recent years the Immigration Board and the Government have established a practice concerning those who have left their home countries because of political reasons without being refugees. One and a half years ago this practice was incorporated into the Alien's Act and now gives protection to de facto refugees. This is most important and we sincerely hope and wish that other states will follow our example.

It would hardly be possible to widen the interpretation of the definition of the term "refugee" in the 1951 Convention or the corresponding provision in our Alien's Act to such an extent that we would be able to give protection to all those who might be considered as de facto refugees. Such a widening would mean that we would have to bring into practice quite another definition of "refugee" than the one in the Convention.

In connection with Dr Weis's remarks yesterday on Convention refugees and de facto refugees I would like to stress the fact that those who are considered as de facto refugees in Sweden have the same position as convention refugees with regard to different benefits such
as vocational training, retraining, free language classes and scholarships for studies.

Refugee policy is, however, not only a question of technicalities and regulations together with their application. To the same extent it is also a question of sharing the responsibility we all have for refugees and displaced persons in various countries, living within or outside their country of origin, within or outside refugee camps, etc. It is a question of readiness to support the individual country with problems resulting from a mass influx of refugees. It is a question of solidarity with the refugees.

There are of course different ways of supporting refugees. One way is to make political efforts, another is to contribute generously to different refugee programmes. A third way is to play an active role in the field of legislation and international agreements concerning the protection and rights of the individual refugee. A fourth way is to accept refugees for resettlement, irrespectively of whether they came spontaneously or by collective transfers.

At least 30 000 persons have come spontaneously to Sweden during the last 30 years and have been granted asylum in one way or another. More than 25 000 refugees have been resettled here in co-operation with the UNHCR. The refugee immigration to Sweden in the 1970's has brought us in close contact with the Third World. We have accepted several hundred Asian refugees from Uganda and thousands of victims of the political repression in Chile, Argentina and other Latin American countries. Every day we accept refugees from all countries of the world.

A fortnight ago the Swedish minister for immigration affairs attended the meeting of the Executive Committee of the UN High Commissioner for Refugees. In his statement to the Committee he emphasized the fact that, in order to eliminate or reduce the world's refugee problems the first line of action will have to start with national and international efforts to eliminate oppression and grant human rights. It is, he said, equally important to meet basic human needs through a policy of equity and solidarity.

Since these rights are very far from being fulfilled we are now facing refugee problems of enormous proportions. Therefore the minister's second line of action is to ensure the acceptance of refugees by individual countries.

There are countries in all parts of the world which generously accept refugees from neighbouring regions. This is especially true in
Africa, where several countries do their very best to take care of refugees in spite of their own serious economic problems.

The question of accepting refugees for resettlement is not only a matter of lives or of freedom. It is equally important to arrange for the adjustment of those who are going to be members of a community.

As a result of the post-war immigration, Sweden has acquired a considerable number of linguistic minorities. Today roughly 125 nationalities are represented in Sweden.

In the spring of 1975, the Swedish Parliament adopted guidelines for the future immigration policy. These guidelines imply that measures on behalf of immigrants and linguistic minorities must be based on principles of equality, freedom of choice and partnership.

Equality implies that continued efforts must be made to secure for immigrants – including refugees – the same opportunities, rights and obligations that are enjoyed by the rest of the population. This has obvious cultural and linguistic implications.

Freedom of choice implies that members of linguistic minorities must be able to decide for themselves the extent to which they wish to retain and develop their original identity.

Partnership implies mutual co-operation as well as solidarity between immigrant and minority groups and the rest of the population. It will be very difficult to reach this goal for immigration policy. Or will it be possible to reach it at all?

There is, however, an important difference between an immigrant, a job seeker and a refugee. The job seeker has been able to plan his immigration. He has had the possibility to get information about his new home country, especially about questions concerning housing, education, social benefits and cultural conditions. The refugee has no such possibility. He has no choice. This means that the refugee might jump out of the frying-pan into the fire.

Thus the acceptance of a refugee must be followed by proper adjustment arrangements to ensure that he and his family are not subjected to mental conflict, mental stress that might be even worse than the situation in his country of origin.

Most states seem to agree that neighbouring states must be the first ones to open their doors to those who have to escape from political persecution. Culture, language and pattern of society in these states may often be familiar to the refugee and make his stay less difficult. This may also mean that the same adjustment arrangements are not
needed. Probably it will also be easier for the refugee to return to his country when the conditions allow it.

The gap between the developing and the developed countries concerning culture in its widest sense and social patterns causes us to discuss whether the countries in Europe should accept refugees from developing areas of the world or not.

From my point of view it is clear that we must not hesitate to accept the refugee who is in an emergency situation. But it is by no means so obvious that we should accept collective transfer of refugees from developing countries to the highly industrialized countries. I doubt that such a transfer would be the best solution for the refugees. Of course, one might have saved a single person's life or freedom. But this is not enough. You have not fulfilled your obligation by just taking him to your country where he can survive physically but perhaps not mentally.

I believe that another and a far better solution would be to arrange for the refugee's acceptance in the neighbouring states as I mentioned earlier.

Somehow it seems to me that we – at least the Swedes – avoid this question. As far as I know there is no official Swedish standpoint concerning collective transfers of refugees from Africa to Europe.
Atle Grahl-Madsen

Political Rights and Freedoms of Refugees

The question of political rights and freedoms of refugees has many aspects. For me as an international lawyer, it is natural to focus attention on the position of international law, but also the legal position in a few selected countries should be considered and I shall endeavour to see if it is possible to learn some lessons, on that basis too, of value for the African scene.

In international law, the pertinent questions may be formulated as follows:

1. Are countries of refuge obliged to deny political rights and freedoms to refugees, or conversely.
2. Are countries of refuge obliged to afford political rights and freedoms to refugees.

As political rights and freedoms cover such a broad spectrum, it cannot be assumed a priori that the answer to these questions will be the same in all cases.

Moreover, there may be geographical differences. Some international instruments apply to some countries, but not to others. And, as we shall see, there are some regional conventions which directly relate to the questions before us.

The question whether a State is obliged to deny political rights and freedoms to refugees, may also be phrased in somewhat different terms: Are there any rules of international law demanding that a State should in any way restrict or curtail the enjoyment of political rights and freedoms of refugees in its territory.

The question whether a State is more responsible for the acts of refugees than for the acts of any other persons in its territory has been discussed at great length, notably by Arnold Raestad, Hans Häfliger and Otto Kimminich. The Institut de Droit International debated the question in connexion with its Resolution on Asylum in Public International Law (Bath 1950). The discussion is interesting but can be
found elsewhere. I shall jump to the conclusion: As far as general international law is concerned, a State is no more responsible for the acts of refugees than for the acts of any other persons committed within its territory. In other words, customary international law does not demand that a State shall impose stricter control on the activities of refugees than on those of other persons in its territory.

This is not the same as to say that anything goes. To the extent that a State may become responsible for the acts of private individuals, it may, of course, also become responsible for the acts of refugees.

Political rights and freedoms cover a broad spectrum of activities, from the exercise of some freedoms which appear conspicuously in most international human rights instruments, such as freedom of expression, freedom of peaceful assembly, freedom of association, and freedom of movement, to the carrying out of propaganda activities or even acts of violence.


There are certain limits to this freedom. For our purpose the provisions of Article 20 of the Covenant are significant. Any propaganda for war, and also any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Within the limits thus set, any State admitting refugees to its territory must be considered entitled to give them full freedom of expression in the sense of the cited provisions.

Provisions concerning freedom of movement and of residence are set forth in Article 18 of the Universal Declaration, in Article 2 of Protocol 4 to the European Convention, in Article 12 of the International Covenant, as well as in Article 26 of the Refugee Convention and the corresponding Article of the Stateless Persons Convention. Also Article 22 of the American Convention on Human Rights, 1969, should be mentioned in this context.

Provisions effectively restricting the freedom of movement and/or residence are found in different Latin American asylum conventions, and also in Article III (6) of the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, 1969.
The provisions of the European Convention and the International Covenant (to cite but the two most important of the first mentioned instruments) set forth that everyone lawfully within the territory of a State shall, within that territory have the right to liberty of movement and freedom to choose his residence. These freedoms are subject to the normal reservations, and there is nothing to indicate that Contracting States are under any obligation to restrict these freedoms. The provisions of the Refugee Convention and the Stateless Persons Convention should be well-known. They to, allow, but do not oblige a State to impose certain restrictions.

Some of the Latin American asylum conventions provide that refugees shall not be landed too near to the frontier of their country of origin, and even that they shall in some cases be interned at a reasonable distance from that frontier, in order to prevent subversive activities directed against the country of origin.

It is in the same vein that Article II (6) of the OAU Convention provides that ‘for reasons of security countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin’.

This certainly makes an inroad on the right of the State to grant refugees in its territory unconditional freedom of movement and of residence. But it would seem that Article II (6) may only be implemented in cases where there exists a real concern that the refugees in question may engage in subversive activities; if no such concern is justified, application of Article II (6) would probably conflict with the provisions of Article 26 of the Refugee Convention.

A restrictive interpretation of Article II (6), as here suggested, appears to be completely consistent with the Charter of the Organisation for African Unity, 1963. I refer notably to its Article II (1)(b) and (2)(f) and Article III (3) and (5), according to which subversive activities against Member States shall be suppressed.

Provisions of the freedom of assembly and of association are found in Articles 20 and 23 (4) of the Universal Declaration, in Article 11 of the European Convention, and in Articles 21 and 22 of the International Covenant; also in Article 15 of the Refugee Convention and in the corresponding Article of the Stateless Persons Convention.

The three general human rights instruments lay down the rule that everyone has the right to freedom of peaceful assembly and association, including membership in a trade union, to the extent that national security and public safety are not threatened. The Refugee
and Stateless Persons Conventions merely speak about non-political and non-profitmaking associations and trade unions, but from this we may not conclude that Contracting States are compelled to exclude refugees from participating in political associations.

Article 16 of the European Convention, which reserves for Contracting States the right to impose restrictions on the political activity of aliens, does not compel us to draw any different conclusion. That a State may prohibit a certain activity does not imply that it is obliged to do so. And it is interesting to note that Article 16 has no counterpart in the International Covenant.

There are in fact numerous examples of political organizations and committees formed by refugees with the full connivance of governments. They may be ‘national committees’, claiming to represent the entire community in exile from any given country, or they may be fractional or ‘party’ organizations.

So long as such organizations address themselves merely to their compatriots in exile or to the general public in their country of asylum, there can be no question of international responsibility for the host State.

As pointed out by Kimminich, it is only an ‘activity with external effect’ (‘Betätigung mit Aussenzwirkung’) which is of interest from the point of view of international law. The implication is clear: the existence of a political refugee organization does not by itself incur the responsibility of the host State. Moreover, such an organization need not be restricted to the territory of one State only. It may include members residing in a number of different countries, and it may also address itself to the public at large in several countries.

However, problems of international law may arise if a political refugee organization directs its activity towards a country whose government the refugees would like to see changed (in particular their country of origin), and also if the methods employed go beyond certain bounds. Moreover, if such an organization is supported by the government of the country of asylum, the activities of the organization may be put to a stricter test than if no such support was given.

We shall a little later discuss activities which are of particular interest from the viewpoint of international law, to wit: propaganda, paramilitary activities, acts of violence, and infiltration into the refugees’ country of origin. Those are kinds of ‘activity with external effect’, to which Kimminich refers.

To the extent that the host State is able to prevent refugee
organizations from undertaking or carrying on any such activity, it may avoid international responsibility.

Sometimes this may be achieved without prohibiting the organization as such. Thus, it is possible to forbid the use of broadcasting while allowing the publication of a newsletter or the like. And of course it is possible to forbid the use of the host State's territory for military training or as a base for raids into another country, while not declaring illegal more peaceful activities.

But sometimes the employment of certain means is so closely connected with the purpose of an organization, that the only possibility seems to be the prohibition of the organization as such. For example, a guerilla organization, a terrorist group, or a revolutionary council will hardly be content with activities without any possible present or future effect in their home country, and the only credible way to prevent their carrying on activities which may be objectionable under international law might be to dissolve and declare illegal the organization in question as such.

The kind of propaganda which interests us here, is propaganda directed against the refugees' country of origin.

According to the International Convention concerning the Use of Broadcasting in the Cause of Peace, 1936, Contracting States are obliged to outlaw, in so far as the medium of broadcasting is concerned, war-mongering and incitement to disorder and subversion in a foreign country, and likewise wittingly incorrect transmissions likely to harm good international understanding.

The Convention on the International Right of Correction, 1952, provides a remedy with respect to any news dispatch which is capable of injuring a Contracting State’s relations with other States or its national prestige or dignity.

We have already mentioned that Article 20 of the International Covenant represents an attempt to outlaw entirely any propaganda for war and incitement to group hatred.

To the extent that a State is bound by any of these conventions in its relations with a certain other State, it may become liable under international law if it does not take the necessary steps to curb activities as mentioned in the respective conventions within its territory.

In general international law, we may recognize a prohibition of incitement to terrorist acts as well as of libel against an accredited foreign diplomat. On the other hand, neither a foreign Head of State
nor a foreign State as such are protected against libellous attacks by private persons.

We may therefore conclude that under present-day international law, a state will not incur liability for propaganda activities carried on by refugees or other private persons in its territory, acting on their own, unless

- they constitute incitement to terroristic acts;
- they constitute libel against an accredited foreign diplomat; or
- broadcasting (radio or television) is employed.

However, in Africa this situation is modified by provisions of the OAU Charter and the OAU Convention, to which we shall revert presently.

The question whether a State may, under international law, tolerate in its territory the existence of para-military units composed of refugees is a very delicate question.

It is closely related with the question whether a State may allow its territory to be used as a base for military or other expeditions into the territory of another State.

The maintenance of ordinary armed forces may be – and regularly is – explained by the need for national defence. And there is no rule of international law which forbids a state to enlist refugees and other aliens volunteering for service in its regular forces. The formation of a brigade of refugees is a different matter. Its very raison d’être will more often than not be the desire to see a change of government in a foreign country. Some authors, notably Kimminich, have no doubt that the creation and support – even the toleration – of such a brigade is contrary to international law. And they may find support for this view in certain resolutions of the General Assembly of the United Nations, according to which every State has the duty to prevent the organization within its territory of activities calculated to foment civil strife in the territory of another State.

Other authors, such as Skubiszewski, are not so sure: The crucial point is whether there exists any serious threat of use of force – that is to say a threat to peace. The likelihood of the organization ever being used for an illegal intervention is a vital factor. According to Article 39 of the Charter of the United Nations it is for the Security Council to determine whether there exists any threat to peace, breach of the peace, or act of aggression, and what measures shall be taken in given circumstances.

The Definition of Aggression, approved by the General Assembly
on 14 December 1974, does not mention the organization, maintenance or toleration of para-military forces of the nature here contemplated. But this is hardly conclusive, as the Definition is not exhaustive.

The question whether a State is obliged to suppress violence is not so interesting in the present context, as hardly any State condones it, anyway.

But let us briefly make it clear that a State has a duty to protect diplomatic missions, accredited diplomats and visiting statesmen. Also other foreigners have a certain claim to protection. The State has in fact two duties: a duty of prevention and a duty of redress. But there are limits as to what may be demanded. Human rights must be respected.

We shall now pose the question: To what extent will a State giving asylum be liable under international law if refugees use its territory for invading or infiltrating their country of origin?

We may distinguish the following kinds of actions:

– military (including guerilla) expeditions;
– smuggling of agents, propaganda material, arms, etc.; and
– intelligence operations.

Here we shall concentrate our attention on the first-mentioned category.

To the extent that armed intervention is condemned by international law, it is no excuse if an aggressive State uses a brigade of refugees instead of its ordinary armed forces.

But from the case of the host State using the refugees as an instrument of its own aggressive policies, we must distinguish the case of refugees using the territory of the host State for an attack on their own country of origin.

Does the host State have a duty to prevent such use of its territory?

It appears that this question must be answered in the affirmative. States have on a number of occasions considered themselves bound to prevent the use of their respective territories as bases for hostile expeditions against the territories of other states.

I shall not go into all facets of this interesting subject. I shall only focus on the case that an armed intervention by refugees takes place with the connivance of the State from whose territory they operate. In such a case Article 3 (g) of the Definition of Aggression is directly applicable:

52
— Substantial involvement in the sending of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state shall, if of a certain gravity, qualify as an act of aggression.

It should be noted that in the Definition, according to its Article 1, the term 'State' is used without prejudice to questions of recognition or to whether a State is a member of the United Nations.

I believe that with respect to the world at large, the legal position is relatively clear. But in the African context, there are certain unique features.

According to the Charter of the Organisation of African Unity, Article II (1)(c), it is one of the purposes of the Organisation to defend the sovereignty, territorial integrity and independence of the African States, a concept which clearly does not include the racial minority regimes in southern Africa.

In Article III, the Member States solemnly affirm and declare their adherence to the following principles, among others:

(3) respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence;

(5) unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring States or any other State; and also

(6) absolute dedication to the total emancipation of the African territories which are still dependent.

These purposes and principles constitute an independent basis for the contention that armed expeditions as well as other kinds of subversive activities are strictly prohibited, as amongst African States.

For good measure, the Signatory States have undertaken, by the terms of Article III (2) of the OAU Convention, 1969, to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

In Article III (1) of the same Convention, it has been spelled out that the individual refugee shall abstain from any subversive activities against any Member State of the OAU. We have seen that, according to Article II (6), refugees shall, for reasons of security, be settled at a reasonable distance from the frontier of their country of origin. And Article I (4)(g) and (5)(c) makes it mandatory to withdraw the benefits of the Convention from a person who has seriously infringed the
purposes and objectives of the Convention or who has been guilty of acts contrary to the purposes of the Organisation of African Unity.

As between the African States, the position seems crystal clear: Subversive activities on the part of refugees shall not be tolerated. However, the actual effect of Art. I (4)(g) on the status of the individual is more complex. He may lose the benefit of the OAU Convention but not his refugee status, if that status is based on the Refugee Convention and Protocol, not merely on the special provisions of Art. I (2) of the OAU Convention.

But what about the preparation and launching of hostile expeditions against the territories under white supremacy in southern Africa? That they are not prohibited by the OAU Charter or by the OAU Convention is obvious. But should the connivance and toleration of such activities be branded as aggression under general international law or, more specifically, under the Charter of the United Nations, taking in particular into account the cited provisions of the Definition of Aggression?

In order to release the tension which the very posing of this question may have created, I shall hasten to state that I believe the question has to be answered in the negative.

The General Assembly has on a number of occasions passed resolutions condemning the racial minority regime in self-styled Rhodesia, or Zimbabwe, which is the African name for the territory in question; also the continued South-African possession of Namibia (South West Africa); and last but not least, the policy of apartheid and in fact the minority rule in South Africa itself.

Moreover, the General Assembly has recognized the African National Council of Zimbabwe as the sole and authentic representative of the true aspirations of the people of Zimbabwe, and likewise the South West Africa People's Organization as the authentic representative of the people of Namibia.

To be sure, the resolutions express perhaps a certain amount of wishful thinking. Thus, it may be illusionary to consider the United Kingdom as the administering power, and to assert that there can be no independence before majority rule has been established. The contention that Rhodesia is de facto a state, and thus prima facie falling under the terms of the Definition of Aggression, is not altogether without merit.

On the other hand one cannot close one's eyes to the fact that the General Assembly, in the Preamble to the Definition of Aggression,
reaffirms the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence. And it may therefore be argued that a racial minority regime like the one which styles itself Rhodesia, which undeniably denies those very rights to the African majority in Zimbabwe, cannot claim the benefit of the Definition.

To be sure, there are other racial minority regimes in the world, also outside Africa, but the ratio of 200,000 whites to 8 million blacks, or 1 to 40, is quite unique.

If we follow Skubiszewski's line of reasoning, that the Security Council is the final arbiter of whether there exists any threat to the peace, breach of the peace, or act of aggression, and we further consider how soundly, I dare say, every organ of the United Nation has denounced the Rhodesian regime and the occupation of Namibia, there is no reason to fear that support of the liberation movements, including their armed branches, could be considered an act of aggression and thus against international law.

Thus there is a legal basis for the so-called double standard apparent in Africa: on the one hand the unreserved condemnation of subversive activities directed against African States, on the other hand the absolute dedication to the total emancipation of the African territories which are still dependent, as it is expressed in the OAU Charter.

We shall now consider to what extent States may be obliged to afford political rights and freedom to refugees.

It is important to note that both the European Convention and the International Covenant apply to any and all persons in the territories of Contracting States, not only to citizens.

The rights laid down in those instruments are subject to certain reservations. Thus the right of expression may be restricted by law to the extent necessary for the protection of national security or of public order.

The same goes for the rights of association and peaceful assembly.

Both instruments forbid discrimination on a number of grounds. But according to Article 16 of the European Convention, this does not prevent Contracting States from imposing restrictions on the political activity of aliens. As Article 16 contains a direct reference to the Articles on freedom of expression and the rights of association and peaceful assembly, it follows that a Contracting State may deny these very rights and freedoms to refugees.

However, the International Covenant does not contain a similar
clause; and we may therefore draw the conclusion that similar restrictions are not permissible for those States which have ratified the Covenant.

On the other hand, the Covenant contains, in Article 25, provisions concerning certain specific political rights, not mentioned in the European Convention, such as the right to take part in public affairs and to have access to public service. This Article does not refer to "everyone", like the preceding articles, but only to "every citizen", thus excluding refugees and other aliens, from its ambit.

It is quite clear that beyond the terms of ratified international instruments, no State has any obligation to let refugees exercise any political rights and freedoms.

The practices of States with respect to the political rights and freedoms of refugees differ considerably.

In Switzerland, Article 21 (8) of the Aliens Act, 1931, lays down the rule that, in principle, every political activity on the part of refugees shall be prohibited. This rule, which applies to refugees and not to aliens generally, is chiefly motivated by reference to Swiss neutrality and a desire to keep out of internal conflicts in the refugees' countries of origin. But the rule is more categorical than required for these purposes, and there is at present a move to have the provision repealed.

§ 6 of the German Aliens Act (Ausländergesetz), 1965, contains more elaborate provisions: The political activity of aliens may be restricted or even prohibited, when it is necessary in order to prevent disturbances of public order and safety or to protect important interests of the Federal Republic. The political activity of aliens is definitively prohibited, if it offends against international law, threatens the liberal democratic order of the Federal Republic, or if it aims at promoting parties, other societies, institutions, or movements outside the Federal territory, which are not commensurate with the said liberal democratic order.

The Swedish Aliens Act, 1954, and the Norwegian Aliens Act, 1956, do not contain any provisions restricting or prohibiting political activities on the part of refugees or other aliens. It is in the democratic tradition of these Nordic countries that anybody shall be free to carry out political activities, so long as no public or private interests of such importance that they are protected by the criminal law are affected. And the criminal law is the same for citizens and foreigners.

However, there is a difference between the two categories. § 34 of
the Swedish Aliens Act and § 15 of the Norwegian Aliens Act make it possible for the government to expel (deport) a foreigner if it is necessary in order to safeguard national security or if it otherwise is in the public interest. These provisions indicate that there is indeed a limit to the political freedom of aliens. But it should be added that these provisions are used very sparingly, and that generally refugees and other aliens are granted considerable latitude. They are given freedom of expression and freedom of association and peaceful assembly, and as long as they do not seriously jeopardize the national security, they experience hardly any limitation to their freedom.

Here to mention the special legislation which was enacted in Norway in the nineteen-thirties in order to curb the political activities of Leo Trotsky, and the Swedish terrorist legislation, which singled out foreign terrorists for special treatment, merely adds colour to a picture which otherwise might appear all too rosy.

Recently Sweden has given resident foreigners, including refugees, the right to vote in municipal elections and to be elected into local governments, and Norway is about to follow this lead. Of course, this also means that aliens may be active in the political parties.

That this is an enlightened policy is, in my opinion, beyond any doubt. It contributes to the successful integration of refugees, and in the long run makes them less vicious in their hatred of the regime in their respective countries of origin. It also adds an interesting dimension to the political life of the host country itself.

To what extent the experiences of European countries may be of any help to African nations is, of course, not easy to gauge.

It is only too obvious that provisions in one or two countries should not be slavishly copied in other countries with different conditions and a different legal and political framework.

But I may nevertheless conclude that, as long as a State keeps within the bounds of international law, and there are no compelling circumstances which dictate otherwise, it may indeed prove beneficial to adopt a liberal policy towards the political activities of refugees, as, among other things, it tends to give active people a legitimate outlet for their aspirations and passions and in the long run relieves tension.
National Law and Model Legislation on the Rights and Protection of Refugees in Africa

1. Introductory remarks

Universal principle and international law can and should be discussed and criticized in order to achieve their continuous improvement. Their value or usefulness in solving the problems at which they are aiming depend, however, in the first place on whether they are known and conformed to in a place and period of crisis or not. The adoption in 1969 of the OAU Convention governing the specific aspects of refugee problems in Africa was a very important and promising beginning on the road to the legal part of a solution. This Convention, and those principles and instruments of international law included in the Preamble, contain a collection of rules and guidelines which signify a far-reaching guarantee for the fundamental right and protection of refugees. But only if, and when, they come into full operation.

It is true, that the Convention imposes special obligations on the refugees. It does not only require the refugee to abide by the laws of the country in which he resides – which is quite natural – but also, for example, to abstain from any subversive activity against any Member State of the OAU: even by non-violent methods, such as attempting to rouse opinion through press or radio, Art. III. Whether a refugee who does not conform to these requirements can forfeit his right of asylum according to Art. I, 4g and 5c depends on the interpretation. It can be debated whether the interests of African Unity and the Member States have not been given unnecessarily much weight, to the detriment of refugees, and whether the fears, thus expressed, are not exaggerated. It can also be argued that too rigorous an application of the articles just mentioned might conflict with Art. 19 of the Universal Declaration of Human Rights, which affirms everyone's right to
freedom of opinion and expression “and to seek, receive and impart information and ideas through any media and regardless of frontiers”

Notwithstanding the problems indicated, the distinctive provisions in the OAU Convention are, of course, reflections of the special difficulties meeting many independent African States as well as of the Purposes and Principles laid down in the Charter of the OAU of 1963. They do not alter the fact that the Convention and the Treaties and Resolutions recognized and recalled in the Preamble, specially the UN Convention of 1951 and the Protocol of 1967 relating to the status of refugees, form the most important source of good and basic legal instruments designed to deal with the African refugee problems. The Convention shall, according to its Art. VIII. 2. be the effective regional complement in Africa to the 1951 UN Convention.¹

This essay, therefore, intends to discuss the implementation of African refugee law – as it can justly be called – through national law and to what extent and by what method some kind of model legislation could promote a legislative development in the various states. With “national law” in this context I simply mean statute /or written/ law enacted by a sovereign state with the purpose of directing the actions of the government, the administration and individuals of, and within, that state. Some authors use the term “municipal law” and the American Convention on Human Rights (also of 1969) refers to “domestic law”. “National law” is preferred here as it seems easy to handle and difficult to misunderstand.

2. The importance of national legislation

Some illustrations shall be given on the importance of giving universal principle and international law a firm footing and a way to function, in provisions of national law.

To begin with the 1951 UN Convention and the 1967 Protocol, their applicability in Africa offers various difficulties. Some are related to the fact that most African countries, which were still under colonial power when the Convention was adopted, had gained independence at the

time of the Protocol. A precise establishment of the validity of these instruments in Africa would therefore require a thorough examination of state succession in relation to them and the mechanisms of separate adherences. Another complication is that 3 (possibly 4) countries have adopted the Convention but not the Protocol, which raises the question whether the Convention can be applied in these countries at all considering its 1951 deadline. Finally 9 out of the 25 countries which are signatories to both Convention and Protocol have entered more or less comprehensive reservations limiting their application. It should be evident that the greater value of the UN Convention and Protocol lies in the guidelines for legislators when drafting rules for their countries and not in an immediate applicability.

The OAU Convention is not afflicted by any similar uncertainty or complications. It applies to the States which have ratified it. But even so there is a link missing before a provision of the Convention becomes a binding rule for the administration in such a state. The Convention itself makes the statement in Art. II, 1: "Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who... etc."

A particular problem exists in those African States having inherited British legal tradition, where a question related to the application of a convention cannot be brought in to the Court.

The question of how and when the stipulations of an international agreement become part of the national law of a state according to that agreement, as well as the entire relationship between national legislation and international law by treaties are problems bound to require much penetrating and learned effort.

Such theorizing will, however, be left aside here for the benefit of a practical approach. The Convention – any convention – settles the principles and gives the general direction. It also contains some clear directives on what shall be done and some concrete prohibition on

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2For a discussion of these problems in an African context, see F.C. Okoye, International law and new African states, London 1972, pp. 21–120.
what shall not. But the Convention has little to say on how it is going to come into effect in real life. If therefore, a government, after having adopted it, sincerely intends the full implementation of that treaty it will have to take some steps and measures. Officers and agencies, for the administration of the provisions agreed upon, must be appointed and instructed. The rules involved must be made known to those who are going to administer them and preferably also to as many as possible of those still more directly concerned. Methods and proceedings have to be drawn up, etc. The transplantation of the provisions of the Convention into the national context necessitates observation of the special conditions and traditions of the state in question. All this can be done by national legislation.

Let us consider for a moment the refugee who after having crossed the frontier is first confronted by the foreign authorities. In this situation all the international law, conventions and universal declarations are of little value to him if they are not reflected in the valid law of the country into which he has fled. The same is true about the frontier police and other authorities of the receiving country, and indeed of anyone attempting to counsel or assist the refugee. Without the direction of national law they will hardly know how to handle a refugee situation. – It would be surprising if more than a handful of all officers at passport controls in Western Europe were very familiar with the 1951 UN Convention in spite of their daily dealings with refugee cases. They are all acting directly under national law.

The impact of national legislation compared to that of international law by treaty shows itself also clearly in the cases where national law has been enacted but is cutting across the provisions of the Conventions. As examples from African states of such legislation and practices to the detriment of refugees could be mentioned: the condition that a refugee must be accepted as such by a specific political party from the country of origin; the declaration of refugees as “Prohibited Immigrants” with several disadvantageous consequences: the burdening of aliens who apply for working permission with a high fee regardless of whether the applicant is a refugee or not.

Evidently regulations directly affecting the situation of refugees are not only to be found in immigration acts or special refugee legislation but in a variety of enactments governing labour, education, naturalization, settlement, etc. with regard to aliens. Generally there is no ground to assume that a conflict between a national law and the provision of a refugee convention was originally intended. But there
are instances when the readiness to make amendments, bringing national law into harmony with African international law, could have been more obvious.

However deep the concern for the increasing masses of refugees in Africa, it should not be forgotten that many countries on the continent have done and are doing as much for the refugees as their resources allow. There seems to live in many African civilizations a strong tradition of hospitality which is naturally extended to refugees from violence and disaster. This is natural when, as so often is the case, people belonging to the same tribe, or of very similar ethnic origin, live on both sides of the border between two states. Undoubtedly refugees are thus protected by customary law in many places of Africa. But I would not agree that this makes adoption of refugee conventions and legislative enactments superfluous.

It makes a great difference if a refugee enjoys the official protection of the country of asylum or only a favourable reception from those whom he happens to meet there. It can mean direct security from attack over the frontier he has just crossed but moreover it turns the refugee from someone living on the mercy of fellow men to a bearer of well-defined rights and obligations. Furthermore, the risk of misunderstanding and friction between states must be reduced if they adhere to the same rules.

One state, which has adopted the 1951 Convention and the Protocol, stated in response to an inquiry from the UNHCR, that it had not passed any legislation but did observe the Convention in principle and in practice. This leads to two questions: How do they do it, and how do they know that they do it? Without any kind of law there can hardly be an efficient mechanism, and without a mechanism no regular effect, and certainly no sure knowledge of what is really happening.

A few final points shall be made on the importance of national law.

4 A letter from a Sudanese official to the representative of UNHCR referred to “the African Philosophy”.

5 African Governments, through the OAU, should take a more forthright and positive view of the problems presented by this class of refugee (from independent African states), especially since it includes large numbers of people. The situation also has a built-in and potentially explosive political element which can only be ignored to the detriment of the stability, which the OAU seeks to promote.” P. Omos, “From Refugee to Emigré: African Solutions to the Refugee Problem”, Refugee Problems in Africa, ed. S. Hamrell, Uppsala 1967, p. 95. See also R. Fredland, African Affairs 1973, p. 312.
The law provides procedures ensuring that decisions can be based on as much relevant information as possible. The ultimate purpose of legal procedures is to guarantee a correct decision.

The law specifies criteria for the exercise of discretion thus restricting excesses of power. Law is becoming increasingly important, setting forth for bureaucrats how public power is to be used.⁶

A member of the Swedish government once introduced a proposed law to the parliament saying: "... a regulation by law of an alien's possibilities to reside in the country, whereby he is protected against arbitrary and capricious treatment, securing his position as far as possible".⁷

There is no other way to effectively implement refugee conventions than by national legislation,¹ the enactment of which seems to be in the interest not only of the refugee but also of African Unity and of the country of asylum. In the legislative process, attention must be paid to other national laws in order to avoid conflict and contradiction between them and international refugee provisions.

3. On the character of a model legislation

The question is: can a model legislation be drafted, with the effect of promoting the enactment of national law on refugees?

It may be that a detailed model, skilfully put together and scrutinized by experts on the subject, can inspire example and debate. But there are reasons to be very sceptical about this idea. Had it been that easy, it would probably have been done already. Only the very different legislative traditions and techniques in various countries in Africa obstruct the acceptance of any completed text. Furthermore, the reluctance to adopt conventions and pass legislation, combined with the many reservations entered in relation to the 1951 Convention should be taken as an explicit warning. A model made up mainly with the purpose of protecting refugees will easily fail to observe certain matters over which individual African states wish to maintain their


¹On the need for legislation in African States, see also the above mentioned article by Weis pp. 9 and 16.
own control. This leads to the conclusion that a model legislation on
refugees is not a thing that can be artificially constructed, but it does
not mean that there are no models at all.

If a model legislation is visualized not as a complete codification
according to someone’s vision of the ideal law, but as collection of
useful and maybe interchangeable legal elements, it should be a very
different matter. The man who hesitates to move into a house already
erected might be very interested in an offer of building materials.

The African law concerning refugees which exists today can be
derived from various sources. One is the international law by the
treaties already referred to several times. Another is the total amount
of African national legislation which in one way or another affects the
refugees in their quality as such. A third is the customary law. Under
this category shall be included not only the more or less traditional
customs and ethics, which are mentioned above, but also all modern
practises and methods by which states and agencies do in fact deal
with refugee problems. To these obvious sources of law should be
added a fourth which must also be allowed as a check as to the
righteousness and justification of anything originating from the
others. What I have mind is of course the general spirit of compassion
and humanitarianism which expresses itself in the Declaration of
Human Rights,\(^9\) and is the motivation behind every honest effort on
behalf of refugees.

One can make use of these sources, in order to draw up a list of
various legal constructions and procedures already in existence, by
searching the different national legislations for common
denominators and useful inventions. From the articles of the
conventions another list suggests itself of such areas and issues, which
have evidently been of special and unanimous concern to the drafters.
There need be no hesitation to complete that list with other problems
neglected or unsolved in the Conventions but well known in practical
experience. One can then examine what kind of solution international
African law or the codifications and procedures of states have to offer
for each of these crucial points. The findings may result in the
maintenance of certain minimum standards for the rights and
protection of refugees suited to serve as models for national legislators.
Finally, neither the compiler of such model rules nor anybody else

\(^9\) Also referred to in the Preamble to the OAU Convention.
engaged in the promotion of national law-making in this field should overlook the work done for the OAU by the Commission on African Refugees, established in Lagos 1964, and the Committee of Legal Experts formed in Nairobi the next year. In the various drafts of these bodies should be found among developing stages of the Convention text, ideas and suggestions which, even if they did not reach the dignity of treaty, could well deserve consideration on the national level.

In the following two chapters an attempt will be made to explain how model legislation can be worked with according to the method here described. A sketch it has to be, vary far from anything exhaustive, perfect or complete, due to the limitations of time, materials and knowledge. Still it is made with the hope that it will clarify the idea.

4. Some elements in existing national legislation

Four national laws, those of Botswana, Senegal, Tanzania and Zambia, which explicitly deal with refugees have been looked through. This does not imply that others do not exist, but they have not been available. So, for example, it is reported to the UNHCR that the Parliament of Sudan passed a law in 1974 regulating matters of immigration and residence, but there is no copy or translation from Arabic available. Also, as has already been pointed out, any complete investigation on national law related to refugees has to include the careful scanning of a lot more than what is clearly cited as a refugee's act.

On the other hand ordinances and decrees of varying fullness of detail, dignity and - I assume - effect, have been issued in order to handle refugee problems, but have not been passed into national law. In the case of Senegal, the law on the status of refugees has been amended once by law and twice by decree. Benin (formerly Dahomey)

\[\text{\textsuperscript{10}}\text{Botswana: Refugees (Recognition and Control) Act 1967, Amendment 1970;}
\text{Senegal: Loi 24/7 (cited as 5/8) 1968 portant statut des Réfugiés, Amendements: Decret 28/7 1972, Loi 20/12 1975, Decret 9/1 1976.}
\text{Tanzania: Refugees (Control) Act, 1965 with several Refugee Declaration Orders.}
\text{Zambia: Refugees (Control) Act, 1970.}
\text{\textsuperscript{11}An English translation has appeared since.}\]
has an ordinance which according to its final article shall be carried out as a law ("... Sera exécutée comme Loi de l'Etat").11 A very specified description of rights accorded to refugees in Burundi does not appear in any law or decree at all, but in a Note from the Ministry of Foreign Affairs12 concerning the UN Convention to which Burundi had acceded. Therefore, it would be too formalistic a study to focus the interest on what legislative or other method a Government has chosen to realize and communicate its intentions. The important thing is firstly what the rules and legal elements are like and secondly to what extent they actually operate among the refugees in the country. It is the first which will now be looked into.

Authorities dealing with refugee matters:
The essential decisions to recognize a person as a refugee or to cease to attribute that status to him are made in practically every African state by the Government; by a minister made responsible for them or even by the Head of State. In some states under the pressure of burdensome refugee problems of long duration, like Sudan, special offices for handling them have been set up within a ministry and cooperating with the UNHCR. Others have established separate commissions or committees where UNHCR is usually invited to observe proceedings and to express opinion. If such a commission, as is the case in Botswana and Senegal, has been invested with investigative powers and instructed to give recommendations and carry out other functions in asylum cases, then it is indeed an institution for the practical administration of refugee law. But only in one country, Benin, can I find that the power of decision has been entirely delegated to a Commission.14 A similar delegation was also prescribed in the original refugee law enacted by Senegal but abrogation and replacement by Law in 1975 has reduced the commission to advisory functions. This also meant the disappearance

11 Ordonnance 16/7 1975 portant statut des réfugiés.
12 Bujumbura 4 October 1968.
14 Art. 3. of the Ordinance which reads: "Les décisions admettant une personne au bénéfice du statut des réfugiés ou constatant la perte de ce bénéfice sont prises par une commission Nationale."

Le Représentant du haut Commissaire des Nations Unies pour les Réfugiés peut être invité assister aux réunions de la Commission en qualité d'observateur et peut être entendu."
of one of the extremely few legal remedies for wrongful decisions in African refugee law, namely the possibility of recourse to The Supreme Court in a complaint against excess of power.

In an earlier stage of putting law into practice, committees can be appointed with a mandate only to examine the situation and make proposals without taking action.15

An interesting model is found in Gabon, where an Ordinance has created a General Delegation for Refugees giving to it a vast responsibility, some power and what seems to be significant resources.16 Thus the Delegation is charged with the legal and administrative protection of refugees and, in connection with interested Ministries, matters related to the realization of conventions and international agreements concerning refugees, ratified by Gabon. It shall manage the collection and distribution of financial assistance as well as settlement areas reserved for refugees and inform the Government about the problems caused by their presence in the country. The Delegation is on the other hand authorized to issue to refugees – in some cases after inquiry – the documents necessary to perform various civil acts or to enjoy the provisions for their protection in the legislation of Gabon or international agreements. Upon the advice of the Supreme Court it also has the authority to revoke the refugee status of persons no longer fulfilling the conditions in international conventions and the law of Gabon. The Ordinance prescribes cooperation with the UNHCR and lays out an organisation assigning to each functionary his task and assuring the necessary assistance in the performance of duties. Thus the Delegation is placed under the authority of a “Délegué Général”. A legal advisor is also provided for, to whom questions can be submitted and who is responsible for the keeping and classification of conventions, laws, regulations and generally all documents concerning the legal and administrative protection of refugees. Except for rather general references to international17 and national law there is no definition of refugee and no other rules containing their rights and obligations in

15E.C. Acte Constitutif 12/12 1967 portant création d’un Comité Consultatif, chargé de l’examen des questions relatives aux réfugiés résidant au République Centrafricaine (now an Empire).
16Ordonance, 2/10 1976 créant une Délégation Générale aux Réfugiés.
17To which Gabon has been late to accede.
the Ordinance. But if a country finds its people and its authorities already engaged in efforts to solve the problems caused by the presence on its territory of a population of aliens who, with or without determination (or eligibility\(^{16}\)) proceedings, are refugees by definition in convention or de facto, then that country will need an administrative instrument to coordinate the work and the contributions, to guarantee the implementation of treaty and law, to observe the development and to make proposals to the government. It is in this – one may say very African – context that the General Delegation for Refugees in Gabon should attract interest as an executive complement to conventions and legislation. Now the Refugees Acts of Tanzania and Zambia which differ very little from one another, also allot responsibilities to various levels of administration and local areas.

The point is that a ministry, or other centralized authority with limited resources and no extensions enabling it to act and see outside the capital, might feel itself adequate to cope with the difficulties of intellectual or urban refugees but will have to leave the more voluminous problems of rural populations fleeing in over the borders to the logic of uncontrolled events.

*Refugee definitions etc.*

One way to define “refugee” in a national provision and at the same time implement the definitions of international law is to declare that the provision shall apply – or refugee recognition be given – to every person who corresponds to the definitions of the UN Convention, the Protocol and the OAU Convention. This method, employed by Benin and Senegal, has the clear advantage of leaving no doubt as to the applicability of convention definitions. But it is not intelligible for others than those who have access to, and can understand, the text of the provision and the three international instruments – a limited circle of specialists.

For practical purposes therefore, a verbal description could be added to the reference to the Conventions. Art. I. 1. in the OAU Convention is closely modelled on the definition in the UN instruments and Art. I.2. (both quoted below under Minimum

\(^{16}\)I sympathize with those who wish to eradicate the unclear word 'eligibility' in favour of 'determination'.}
Standards) is a valuable addition specially designed to meet the requirements of African reality, where most refugee emigrations have been mass-movements. Therefore, it is not necessary to go into the definition of the UN agreements. It is sufficient to copy – or base a description on – the definition of the OAU Convention. An example of this technique is seen in the Schedule to Botswana’s Refugees Act, where a “political refugee” is defined in wording almost identical with that of Art. I. 1. (– omitting, however, the important Art. I. 2.).

Benin has entered into the refugee definition also seekers of asylum “upheld” by the UNHCR 19 which seems to be somewhat vague but is still a codification of what is hoped to be general practice in many places.

Tanzania has enacted what is probably the most detailed refugee legislation in independent Africa, which has served as a closely followed model also for Zambia. It stipulates for a variety of situations, from how to deal with cattle imported by refugees to the protection of officers having acted bona fide while doing their duty. This interesting collection of rules also has a very special answer to the question of who is a refugee. There is no general definition in the act, but the Minister may by published order “declare any class of persons who are, or prior to their entry into Tanganyika were, ordinarily resident outside Tanzania to be refugees for the purposes of this act”.20

The absence of a general legal definition and individual refugee declarations causes concern. But the collective handling of categories or classes of refugees stands out as a legal construction well worth considering. The Refugee Declaration Orders so far issued in Tanzania show how the refugee classes allowed are ringed in by geographical and time limits, persons from a specific country after the date of certain events there.21 They can easily be shaped after objective criteria, namely the conditions and events in the country of origin, of the Art.

19 “... tout personne ... qui relève du mandat du Haut Commissaire des Nations Unies pour les Réfugiés...”
20 Sections 2(b) and 3(1) (a) corresponded in the Zambian Act by sections 2 and 3(1).
21 For example, Ugandan Nationals having entered Tanzania from the Republic of Uganda after the 25 of January 1971. Refugees (Declaration) Order, 1971. There is some resemblance to the definitions according to Art. 1 A(1) in the UN Convention 1951, very important before the 1967 Protocol. Zambia has, however, in The Refugee Order No 2, 1971 adopted a class by a definition close to the OAU Convention, Art. 1. 1, with the subjective criterion “well-founded fear of being persecuted”.
I.2. in the OAU Convention. In this way Tanzania and Zambia have relieved themselves from the quite impossible task of carrying out determination proceedings in tens of thousands of cases while still maintaining a certain control of the situation which seems compatible with legalistic principles.

Now, by collective selection, individuals can be included who do not qualify as refugees. This difficulty is dealt with in a rule which also places the burden of proof: "If any question arises in any proceedings, or with reference to anything done or proposed to be done, under this Act, as to whether any person is a refugee or not, or is a refugee of a particular category or not, the onus of proving that such a person is not a refugee or, as the case may be, is not a refugee of a particular category, shall lie upon that person." 32 Somehow this vaguely resembles the model from Gabon, where also individuals are not dealt with more directly until first when their qualifications are questioned, and where the burden of proof may be placed according to what is prescribed in the court.

There is no general definition of refugees in the acts of these two states, but there are stipulations protecting a refugee from being returned if, according to the Tanzanian text, "... he is in danger of being tried or punished for an offence of a political character after arrival in the territory from which he came or is in danger of physical attack in that territory." 33

This limited survey has paid attention to legal elements, implementing especially the refugee definition of the OAU Convention and such constructions which are realistically drafted for refugee categories. However, the question remains: What happens to a refugee, who is in fact a refugee but does not belong to a recognized class and does not meet anybody who knows about the definitions of the conventions?

Protection:

Benin and Senegal have rules of non refoulement of similar wording with Art 33 of the UN Convention to which the latter also refers in a decree containing instructions for a commission. 34

32Section 9(3) in both Acts.
33Section 9(4) and (6), 11(s) and (4). Almost identical in Zambia, sections 10(4) and (6) and 11 (2).
34Ordinance, Art. 4 and Loi Art 4, Decree 9/1 1976, Art. 3.
Under the Tanzanian Act, the Minister, or any competent authority appointed by him or a court convicting a refugee, can order his return or his deportation to the territory from which he entered Tanganyika. Further, a refugee is not allowed to remain if he is not within seven days issued with a permit to remain by an authorized officer. But if the refugee upon return to his territory of origin will be tried or punished for a political offence, or is likely to suffer a physical attack there, he is, as mentioned above, protected by territorial asylum because if the Minister, the authority or the court are of the opinion that these conditions prevail, no order for return or deportation shall be made. Neither shall the officer in that case refuse a permit to remain. But it is worth noting that these decisions are made under discretionary powers. A refugee who has been present in Tanzania for at least three months is a little bit better protected, as he may make representations against the decision on the grounds that he is in danger of such trial, punishment or attack, as has been mentioned, and he shall forward these representations in writing to the Minister, who shall then decide the case. Pending the determination, action against the refugee is inhibited.\(^5\)

This legislation has the merit of clearly describing the conditions under which a refugee cannot be expelled or returned – non refoulement. On the other hand some remarks can be made about the proceedings, but they will appear as more general observations below. Suffice it to say, that even if much power is given to the Tanzanian Minister’s discretion and there is no right to appeal, the refugee may at least submit a request for reconsideration and there are some administrative provisions to effectuate the right.

**Procedures:**
Determination proceeding resulting in formal recognition of each individual refugee is, of course, an absolute impossibility in all those places in Africa, where a sudden influx can be of such a scale that it is uncountable, leaving it to open dispute whether the refugees are numbered in tens or in hundreds of thousands.\(^6\) In this situation, the

\(^5\)Section 9(1), (2), 11(1) and (6) and sections in Note 23.

\(^6\)When writing this in October 1977 I hear that such a dispute is going on in the mass media concerning the number who have recently entered into Angola from Zaire.
legislators may, as we have seen, choose to determine the status of refugee for certain categories. These can be defined more or less generally and abstractly in conformity with the conventions. But if they are directly naming countries of origin, the decisions behind might easily be seen as more political and less “peaceful and humanitarian” than if asylum is granted only to individuals.

In all those African countries where large numbers enter, seeking a refuge, without being declared as classes of refugees, determination procedures do not seem reasonable unless necessitated by some specific demand. Such demands can be made by the refugee, for example application for a travel document or admittance to education, vocational training or professional activity where the more favourable treatment has been reserved for aliens who have been recognized as refugees. A demand can come from abroad, when another state wants a person extradited. Finally, authorities in the country of residence can refer to various grounds to have a refugee expelled or deported or just to refuse him refugee rights, in which cases question arises concerning not only the qualifications for refugee status but also the applicability of grounds for the cessation of such status.

The refugee commissions, of which some examples have been given, seem to be suitable instances provided that they are given investigative powers and necessary assistance by police and other authorities. They should, as is often the case, avail themselves of the advisory services of the UNHCR which might to some extent prevent differences between interpretation and practice in various countries.

The Refugee Commission of Senegal is obliged to present the motives for all its conclusions. Such a rule favours a firm practice and a further development of the legal system. It is also informative to the government as well as to the refugee.

The right of a refugee to appeal is lacking, if not in all so at least in the overwhelming majority of the states in independent Africa. This is a matter of serious concern. As you cannot lodge complaints with a Minister against his own decisions, the power of decision should always be delegated to one – or more – refugee commission(s) according to the model of Benin and to some extent, Gabon. This should mean relieving the Minister from the burden of routine but not

17 Decree 9/1 1976, Art. 9.
from the political responsibility. The commissions will have to be instructed, for example concerning categories of refugees or informed about aspects of new refugee situations. The appeals against the commission can be separated, sending those of a legal character, e.g. complaints against excess of power, interpretation of law or valuation of evidence, to a judicial instance and those of political implications to the government.

*Treatment in the country of asylum:*
The Benin ordinance stipulates that the refugees shall receive the same treatment as nationals regarding admittance to education, scholarships, the right to work and social security. 28

Senegal applies Arts 3–34 of the UN Convention as minimum standards. 29

Both countries grant refugees the benefits of a convention establishing reciprocally the most favourable treatment to aliens of liberal professions. 30

A specified list of refugee rights in Burundi has been mentioned earlier. As it is a diplomatic document and not an act of legislation, it should not be quoted for legal elements. But it is very interesting as it demonstrates a method of stating in detail the intended applicability of the UN Convention by a state. First are listed, under the same keywords which headline the Articles, those points, which Burundi finds indisputable (ne sont pas sujet à discussion"). For each follows a short confirmation as if to avoid any misunderstanding about the intentions to conform to the Article in question. Thereupon follows a second list of 16 points, each corresponding by keyword to an Article of the Convention, followed by a code;
a. for the same treatment as for nationals;
b. for better treatment than for other foreigners; and
c. for the same treatment as for foreigners in general.
Thus it gives exhaustive information and is easy to read parallel with the text of the convention.

28 Art. 6.
29 Art. 6.
30 Art. 5 resp. Art. 7.
5. Some suggested minimum standards

A. Definition of the term "refugee"

From Art. I of the OAU Convention:
1. For the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.
2. The term "refugee" shall also apply to every person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

It is maintained with support of arguments in a previous chapter, that these two definitions together contain the minimum standard for an African refugee definition. They can be widened but should not be restricted and they are complementary to each other as the first is describing the individual with the subjective criterion of fear while the second is suited to apply to members of a group driven away by objective circumstances. It might be practical to use refugee declarations for classes, but preferably within the frame of those definitions and not as separate political actions.

B. Protection:
The principle of non refoulement must apply to every refugee – who has not because of changing conditions ceased to be a refugee. Excepted only he who had committed crime against peace, in war, or against humanity: is a fugitive from justice after having committed a serious non-political crime; has acted contrary to the Purposes and Principles of the OAU or performed acts of subversion against any of its member states.

C. Proceedings:
The UNHCR should always be invited to attend sessions and give advice. Decisions should be based on information preferably gathered from assistant authorities and the refugee, and the ground for conclusions of commissions and other authorities should always be given. The refugee should be granted the right of any reasonable
appeal. He must be allowed to remain in the country pending a final decision."


These are areas of concern subjected to stipulations in the UN Convention. It may have been difficult for many African states to live up to these requirements, but it should at least be a minimum standard that the refugee receives more and not less favourable treatment than foreigners in general who are not there under so hard a compulsion. Many of these problems would find a simple and satisfactory solution if refugees could be naturalized as citizens of the country of asylum within a reasonable time in all those cases where voluntary repatriation does not stand out as a realistic alternative.

E. Travel documents shall be issued according to the Conventions.

F. Divided families and child refugees:
These offer problems which may be more of a social and administrative than strictly legal character. Nevertheless, even law should lay down the principle that the reunion of families and the welfare of children must be taken into consideration by those who are managing settlements and aid as well as by those who make decisions.

There are certainly many other areas of concern where minimum standards need to be carefully worked out and where little has been done.

G. As examples can be mentioned rules concerning refugees in custody and in detention.

H. Access to, and communication of, refugee law:
In every state there should be an authority or officer assigned to the task of giving legal opinion on refugee matters and to classify and collect all international agreements, national laws or any other

"There should be by far more detailed and extended considering the basic requirements for determination procedures accepted as conclusions in the report of the UNHCR Executive Committee 1977."
document concerning the legal administrative protection of refugees. The contents of these shall regularly be reported to the relevant organ of the OAU, to the UNHCR and by request to those recognized, non-governmental organizations, which assist in the work with refugees.

National legislations, whether in the name of law, ordinance or decree, should prior to their coming into force, be published in an official journal or Gazette and thereafter be printed separately and distributed wherever they are going to apply or are asked for among the authorities and refugees.  

6. Conclusions and suggestions

National legislation is the only visible way to implement international principles and agreements. Such legislative developments can hardly be promoted by constructed model law on refugees. But comparative studies of various sources of law can lead to the discovery of useful legal elements, as well as of deficiencies, and also inspire an necessary discussion on minimum standards for the rights and protection of refugees. Considerable collecting of materials and research remains to be done in this field. Especially – and that is where it is most difficult – into such national law which is not cited as refugee law, but which affects the refugees as such in various areas of concern.

Even after the finishing of such an investigation, the quickly changing situation must be continuously observed. All the findings should be regularly redistributed to all those in African countries, and elsewhere who are engaged in the debate or the legislative procedures.

The suggestions I would like to make are:

– That a well-manned African research office is opened. It should serve the UNHCR and the OAU. It may be connected with a Law Faculty and cooperate as long as needed with non-governmental organizations. The office should conduct the investigative work here outlined;

– That all OAU Member States are recommended to assign authorities or officers to deal with the legal and administrative protection of refugees.

This might seem to ask for very much as a minimum standard, but who would seriously argue that a valid law should best be kept in a typewritten copy in someone’s drawer in a Ministry?
1. Convention Refugees and De Facto Refugees

Regarding the problem of Convention refugees and de facto refugees it is necessary to differentiate between the concept of that term in Africa and in Europe.

Article I of the 1969 OAU Refugee Convention provides for two categories of refugees: paragraph 1 corresponds to the definition of the term in the 1951 Refugee Convention relating to the Status of Refugees, as amended by the 1967 Protocol as well as the mandate of the UNHCR; paragraph 2 of the OAU Refugee Convention, i.e. persons who are refugees because of war, warlike conditions, events seriously disturbing public order, etc., provides for a category of persons which in Europe would be considered as de facto refugees, and which is outside the mandate of the UNHCR.

In Africa the term “Convention refugees” applies to persons who may be recognized either by virtue of paragraph 1 or by virtue of paragraph 2 of art. 1 of the OAU Convention. The concept of de facto refugees can only have relevance, if there are persons outside the scope of that article, and provided they are in a refugee-like situation and in need of protection.

It was generally felt that there are persons in Africa who can be considered as de facto refugees. Even if this might well be the case, the

* The report reflects the discussions which took place but not necessarily the views of each individual participant.
widened definition of the term “refugee” in the OAU Convention stands out as an important rectification of the 1951 Refugee Convention and the 1967 Protocol. However, a systematic study of the situation of \textit{de facto} refugees in Africa should be undertaken.

Attention was drawn to the fact that only 29 African States had acceded to the 1951 Refugee Convention, 27 States to the 1969 Protocol and 18 States the OAU Refugee Convention, and efforts must be made to convince the African States not yet acceded to these instruments, to do so.

Another aspect of this question referred to the application of the OAU Convention, as some States interpreted the term “refugee” in the OAU Convention as being identical to the term in the 1951 Refugee Convention, i.e. that paragraph 2 of the former Convention has no independant significance. This problem is related to the question of harmonization of refugee determination practice in Africa. Although the Branch Offices of the UNHCR can act as a co-ordinator it was considered that further investigations were needed into this problem.

The introduction in Africa of an additional paragraph in the definition of the term “refugee” as well as the concept of \textit{de facto} refugees should not lead to a more restrictive practice regarding Convention refugee determination. Reference was made to the OAU Refugee Convention Art. II paragraph 2, which provides that “The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.”

2. Determination of Convention Refugee Status

The establishment of a refugee determination procedure has close links with the problem of the stage at which it should be decided, if a person is to be considered as a refugee. One possibility is to do so immediately upon arrival at a country of asylum, a practice which has the advantage that from the very beginning it is decided who is entitled to the benefits of refugee status. Not least from an administrative point of view such a course can be advantageous. On the other hand, it was pointed out that it might be counterproductive to establish a mandatory procedure. For example, there are no guarantees that a State does not apply a restrictive practice and that non-recognized asylum seekers can be returned or expelled to the country of origin.
It was suggested that refugee determination should take place only when the question of refugee status has been raised, as for instance, when an alien has made an application for a Convention travel document or when the question of expulsion to the country of origin has been raised.

Another problem is whether a determination procedure should apply both to urban and rural refugees. For practical reasons, normally only the former can have their status decided, although rural refugees who have left a settlement shall also have the possibility to have their status testified.

To restrict recognition by making use of formal hindrances, for instance, by a provision according to which an application for asylum must be made within a specified time after the entry into the country of refuge, is unacceptable.

In cases when formal refugee determination has been established such a procedure should fulfil some basic requirements. In this connection a reference was made to the resolution on the subject adopted by the Executive Committee of the High Commissioner's Programme at its twenty-eighth session in 1977. The necessity of adequate counselling and dissemination of information on the rights of refugees was stressed.

Not only the refugee determination procedure ought to be harmonized, but it was also considered that the determination practice should be as similar as possible in the various countries. To a limited extent the UNHCR could contribute to this harmonization. As a complement it was suggested that an appeal or review Board should be established within the framework of the OAU, which could hear appeals on the decisions of the national authorities determining refugee status. Apart from deciding appeal cases, the Board could also be requested to give advisory opinions on general questions as well as in individual cases. It was felt that a Board could also have a salutary effect, not only by securing a more uniform interpretation and application of the Refugee Conventions and the Protocol.

An important problem raised, concerned the international validity of refugee determination, the so-called extra-territorial effect. Although this does not follow from existing instruments, Contracting States in most cases accept a foreign decision in this respect. There was agreement that it would be desirable that positive decisions should be considered binding in all respects not only within the country where the decision was made, but also in other Contracting States.
3. Refugees in Orbit

The problem of refugees in orbit in Africa is increasing day by day. An additional restriction of the movement of refugees has recently arisen, when one African country, contrary to a valid return clause, refused to readmit from another Contracting State a number of recognized refugees.

A distinction ought to be drawn between refugees who involuntarily find themselves in this situation and those who voluntarily have left the country of first asylum, for instance, as tourists. A solution to the problem should primarily be devoted to the first group. On the other hand, refugees belonging to the second group can at a later stage easily be forced to travel from country to country because of circumstances beyond their control, i.e. that a refugee at a later stage becomes a "genuine" refugee in orbit.

It was confirmed that Governments sometimes refuse to issue Convention travel documents in spite of the provisions laid down in the international instruments. It was argued that there are good reasons for such a refusal, *inter alia* to prevent difficulties for an individual and even to avoid him becoming a refugee in orbit. It was, however, stressed that some African refugees may also have a need to travel, that there are no valid reasons to apply a different procedure towards them, that many of the problems could be solved by adequate counselling, and consequently, that Contracting States ought to issue travel documents in accordance with the international instruments.

It was also pointed out that in Africa nationals were not always entitled to a passport and that it was only a logical consequence of this practice that refugees were not placed in a more favourable position. On the other hand, refugees do not have the same status as nationals in other respects, *inter alia* they lack the protection of any country, and this fact motivates a more favourable treatment as regards travel documents.

One reason for the origin of the problem of refugees in orbit is the fact that a return clause in a travel document is shorter than the validity of the travel document itself. Sometimes it is issued with the aim of inducing the refugee to leave the country. The remedy is that States should refrain from issuing a travel document and a return clause of varying durations.

As regards the solution to the problem, the adoption of a legally binding instrument, i.e. a treaty, might be unrealistic. A more
workable approach is the adoption of a recommendation or, even better, a declaration on the subject, i.e. an instrument which has no legal force, but which can be morally binding. Such an instrument, which can be worked out within the framework of the OAU, can be based on the principles mentioned in Dr Melander’s paper. Further studies are, however, indispensable, for example concerning the scope of a family in connection with a provision of family reunification. As regards the definition of the term “country of first asylum”, where the choice stands between formal and material criteria, the latter alternative might be of greater importance in Africa. The need for adequate counselling should also be stressed and be mentioned explicitly. Finally, States should, when issuing a Convention travel document, be advised not to make use of the possibility to issue a return clause and a travel document of varying durations.

4. African Refugees in Europe

It was generally accepted that European States should continue to admit so-called emergency cases from Africa for resettlement in Europe.

The debate mainly concerned the question if European States should contribute to a solution of the African refugee problem by accepting refugees for resettlement also in other cases, i.e. the solution that was dominant in Europe after World War II, when States on other continents, Africa included, assisted Europe by admitting refugees. The counter-argument for a corresponding solution was that refugees should be resettled in an area where the cultural and linguistic links are closer, and that African refugees in Europe could have difficulties as regards adjustment.

It was made clear that so far no research has been undertaken regarding the adjustment of African refugees in Scandinavian countries, and there was no knowledge of any similar investigation in other Western European countries. Nor had this problem been studied in African asylum states, which makes any comparison impossible. The debate was based on personal experience as regards the adjustment in Europe of African refugees.

Most participants were of the opinion that the possibility of admitting African refugees into Scandinavia should not be
encouraged, because of a negative experience as regards adjustment. As an alternative, European States could assist African asylum states by financial contributions.

However, it was also pointed out that the problem of adjustment of African refugees in Europe can also be mitigated by intensive and adequate counselling.

5. Political Rights and Freedoms of Refugees

The interpretation of art. III of the OAU Refugee Convention (Prohibition of Subversive Activities) and the relation between this article and art. I paragraph 4 g) (Cessation of refugee status) was discussed. Some speakers were of the opinion that a person who was guilty of subversive activities had forfeited his right of asylum, while others expressed the opposite view, arguing that there was no explicit connection between the provisions under review.

From a legal point of view the wording of art. III was unclear, as there was no clear definition of the term “subversive activities”. It was suggested that a distinction can be drawn between subversive activities against a State and against its Government: the article under review only covered the first case. Other speakers meant, however, that an attack on a Government was equal to an attack on a State and that a distinction of that kind cannot be drawn.

Another aspect of political rights and freedoms of refugees is to what extent a refugee should be allowed to take part in the political life in the country of asylum. It was pointed out that conditions at present varied considerably from country to country both in Europe and in Africa, and that it was far from realistic to suggest a uniform practice in this respect, and perhaps not even desirable.


A serious problem connected with refugee legislation concerns the observance of international treaties in national jurisprudence. The problem is of relevance both in Western European States and in Africa. It has a special importance in Africa, because of its
heterogeneous legal tradition, where the jurisprudence of the former colonial power is sometimes contradictory to the new legal system in the country in question. Sometimes it is unclear if an international treaty becomes incorporated with national legislation immediately upon ratification, or if an act of transformation is necessary. It was felt that the problem needed further study.

The drawing up of a model legislation in Africa concerning refugees must be evaluated against the background of the various legal systems on the continent. At present it is necessary to differ between at least three systems: the Common Law system, the Civil Law system and the Muslim Law system. In view of this fact it is obvious that the drafting of a detailed legislation is both inappropriate and impossible. Only some basic principles can be formulated.

An important question is whether refugee legislation, if enacted, should constitute a separate law on the status of refugees, or whether it should be incorporated in an aliens legislation. The latter alternative was felt to be less attractive, as it stressed the aspect of control and protection of the country of asylum. A separate refugee legislation emphasizes the very special situation for refugees and can be an expression of a more positive attitude. The choice between the two alternatives can, however, be due to the legal tradition of the country in question.

For practical reasons it is sometimes necessary to differentiate between urban and rural refugees. As regards legislation it might, however, be advisable not to stress the difference.

Some minimum standards which could be contained in refugee legislation were discussed. A logical consequence of the OAU Refugee Convention, art. II paragraph 2, is a provision on asylum, meaning that States should do their best to grant asylum. The term "refugee" should be defined at least as wide as the concept of the term in the OAU Refugee Convention. The inclusion of de facto refugees in national legislation might be desirable. As regards the status of refugees, provisions must vary from country to country, according to their resources. However, the rule of non-refoulement ought to be mentioned expressly in a refugee legislation.

An important question in Africa concerns detention of asylum seekers and refugees, and provisions laying down detailed criteria for detention ought to be adopted. It was mentioned that the present practice varied considerably between States, but that further study on this subject ought to be carried out.
7. Other questions

During the debate a number of subjects were mentioned which ought to be included on the agenda of the forthcoming African Consultation. An important item was the problem concerning the relation between international treaties and national legislation, as this question is unclear in many states.

A serious problem in Africa is the fact that asylum seekers/refugees are sometimes detained pending decision regarding asylum. The practice differs from country to country, as do the legal prerequisites in the legislation of African states. Cases of detention are those where it is most difficult to find practical solutions. A detailed study of the problem should be undertaken before the African Consultation.

The present legislation as well as the practice concerning asylum and the status of refugees ought to be analyzed further and so-called country reports should be worked out, i.e. reports concerning the refugee policy in a number of important asylum countries.

As regards the proposal on the establishment of a body responsible for continuous study and research on African refugee problems, various views were expressed. Whether to use an already existing body or to establish a new institute must be investigated further.

An important aspect of refugee legislation is dissemination and information. Publishing of leaflets informing asylum seekers on their rights and duties can easily be achieved.

The need of a more detailed handbook containing reports on the status of refugees in the various countries as well as the procedures, was raised. It was mentioned that the AACC already have had a lengthy discussion concerning this problem and that it had recommended the publishing of a handbook for refugees. Reference was also made to the decision of the Executive Committee of the UNHCR in 1977, by which the Office was requested "to consider the possibility of issuing – for the guidance of governments – a handbook relating to procedures and criteria for determining refugee status and circulating – with due regard to the confidential nature of individual requests and the particular situations involved – significant decisions on the determination of refugee status."

84
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Appendix I

Extract from the 1951 Convention Relating to the Status of Refugees

Article 1
DEFINITION OF THE TERM "REFUGEE"
A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

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

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either

a. "events occurring in Europe before 1 January 1951"; or

b. "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a.) may at any time extend its obligations by adopting alternative (b.) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:
(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
(2) Having lost his nationality, he has voluntarily re-acquired it; or
(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is 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.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
   a. he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
   b. he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
   c. he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2
GENERAL OBLIGATIONS
Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 7
EXEMPTION FROM RECIPROCITY
1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extend exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 26
FREEDOM OF MOVEMENT
Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27
IDENTITY PAPERS
The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28
TRAVEL DOCUMENTS
1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 31
REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGE
1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.
Article 32
EXPULSION
1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33
PROHIBITION OF EXPULSION OR RETURN ("REFOULEMENT")
1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34
NATURALIZATION
The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Article 35
CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS
1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
   (a) the condition of refugees,
   (b) the implementation of this Convention, and
   (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.
Appendix II

Extract from the 1967 Protocol Relating to the Status of Refugees

Article I
GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and ..." and the words "... as a result of such events", in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a.) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.
Appendix III

OAU Convention Governing Specific Aspects of the Problem of Refugees in Africa

PREAMBLE

We, the Heads of State and Government assembled in the city of Addis Ababa from 6 to 10 September 1969,

1. Noting with concern the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future,

2. Recognizing the need for an essentially humanitarian approach towards solving the problems of refugees,

3. Aware, however, that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord,

4. Anxious to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside,

5. Determined that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problem of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965,

6. Bearing in mind that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

7. Recalling Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum,

8. Convinced that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context,

9. Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment,

10. Recalling Resolutions 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa,
11. Convincéd that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High Commissioner for Refugees.

Have Agreed as follows:

Article I
DEFINITION OF THE TERM “REFUGEE”

1. For the purpose of this Convention, the term “refugee” shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.

2. The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

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

4. This Convention shall cease to apply to any refugee if:
   a) he has voluntarily re-availed himself of the protection of the country of his nationality, or,
   b) having lost his nationality, he voluntarily re-acquired it, or
   c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or,
   d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or,
   e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or,
   f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or,
   g) he has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:
   a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
   b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
   c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity;
d) he had been guilty of acts contrary to the purposes and principles of the United Nations.

6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

Article II
ASYLUM

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.

5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article III
PROHIBITION OF SUBVERSIVE ACTIVITIES

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member States of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any Member State of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Article IV
NON-DISCRIMINATION

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.
Article V
VOLUNTARY REPATRIATION

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.

Article VI
TRAVEL DOCUMENTS

1. Subject to Article III, Members States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.

3. Travel documents issued to refugees under previous international agreements by States Parties thereto shall be recognized and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.

Article VII
CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE ORGANIZATION OF AFRICAN UNITY

In order to enable the Administrative Secretary-General of the Organization of African Unity to make reports to the competent organs of the Organization of African Unity, Member States undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning:

a) the condition of refugees

b) the implementation of this Convention, and

c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.
Article VIII
CO-OPERATION WITH THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
1. Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees.

Article IX
SETTLEMENT OF DISPUTES
Any dispute between States signatories to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the Commission for Mediation, Conciliation and Arbitration of the Organization of African Unity, at the request of any one of the Parties to the dispute.

Article X
SIGNATURE AND RATIFICATION
1. This Convention is open for signature and accession by all Member States of the Organization of African Unity and shall be ratified by signatory States in accordance with their respective constitutional processes. The instruments or ratification shall be deposited with the Administrative Secretary-General of the Organization of African Unity.
2. The original instrument, done if possible in African languages, in English and French, all texts being equally authentic, should be deposited with the Administrative Secretary-General of the Organization of African Unity.
3. Any independent African State, Member of the Organization of African Unity, may at any time notify the Administrative Secretary-General of the Organization of African Unity of its accession to this Convention.

Article XI
ENTRY INTO FORCE
This Convention shall come into force upon deposit of instruments of ratification by one-third of the Member States of the Organization of African Unity.

Article XII
AMENDMENT
This Convention may be amended or revised if any Member State makes a written request to the Administrative Secretary-General to that effect, provided however that the proposed amendment shall not be submitted to the Assembly of Heads of State and Government for consideration until all Member States have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the Member States Parties to the present Convention.

Article XIII
DENUNCIATION
1. Any Member State Party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.
2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing State.
Article XIV

Upon entry into force of this Convention, the Administrative Secretary-General of the OAU shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

Article XV
NOTIFICATIONS BY THE ADMINISTRATIVE SECRETARY-GENERAL OF THE ORGANIZATION OF AFRICAN UNITY

The Administrative Secretary-General of the Organization of African Unity shall inform all Members of the Organization:

a) of signatures, ratifications and accessions in accordance with Article X;
b) of entry into force, in accordance with Article XI;
c) of requests for amendments submitted under the terms of Article XII;
d) of denunciations, in accordance with Article XIII.

IN WITNESS WHEREOF WE, the Heads of African State and Government, have signed this Convention.


DONE in the City of Addis Ababa this 10th day of September 1969.
Appendix IV

Extract from the Swedish Aliens Act of 1954

Section 2
A political refugee shall not be refused asylum if he is in need thereof, and if there are no serious reasons for refusing him the grant of asylum.

For the purpose of this Act a political refugee is an alien who, in his country of origin, fears political persecution. Political persecution implies that a person because of his origin, membership of a particular social group, religious or political opinion or otherwise because of political conditions fears persecution which constitutes a danger to his life or freedom or otherwise is of a serious nature, or that he fears a severe punishment for a political offence.

An alien who, without being a refugee, invokes weighty reasons not to return to his country of origin because of the political conditions in that country, shall not be denied a residence permit without special reasons. The same applies with regard to a person who has deserted from a theatre of war or who has escaped from his country of origin to avoid the participation in a war (draft evader).