

The Refugee Problem:

An International Legal Tangle

by John S. Bradway and Alona E. Evans

The rise of modern dictatorships in Germany and Russia produced an acute problem as thousands of men and women sought to flee from the oppression of Hitler and the tyrants in the Kremlin. The problem of displaced persons has been with us now since World War II and the problem is far from being solved. Mr. Bradway and Miss Evans propose the creation of a new international agency under the United Nations to handle this dilemma.

A significant feature of the modern international scene is the continued existence of "refugeeism". World War II and post-war political crises in Europe, the Middle East and the Far East have created millions of refugees. Although marked success has been achieved by public and private agencies during the past decade in terminating or ameliorating the condition of thousands of refugees, especially in Western Europe, such a political crisis as the revolt in Hungary in the fall of 1956 not only creates many more thousands of refugees but also sharply focuses attention on the variety of problems inherent in refugeeism.

Responsibility for handling the problems of refugees devolves upon many public and private organizations. International agencies currently dealing with refugees include the Office of the United Nations High Commissioner for Refugees, which maintains more than a dozen branch offices or representatives in Europe, the Americas and Asia, and which has supervisory and co-ordinating responsibility for the bulk of refugees, as well as the Intergovernmental Committee for European

Migrations composed of representatives of twenty-six states, which has responsibility for the transportation of refugees to areas of resettlement. Within various countries governmental and voluntary agencies arrange for the admission and resettlement of refugees. In the United States, for example, the admission and resettlement of refugees under the terms of the Refugee Relief Act of 1953 are handled by thirty-one voluntary agencies representing religious, ethnic and service organizations, including the Church World Service, the International Rescue Committee, the Catholic Committee for Refugees and the International Social Service. The agencies work with public groups such as the Governors' Committees for the Refugee Relief Program, established in forty states, and with departments of the Federal Government.¹

Refugees' Legal Problems . . . Public and Private Matters

The legal problems of refugees involve matters of both public and private interest. Because a refugee by his very condition is deprived of the diplo-

matic protection of his own state, international protection of his interests must be assumed by the United Nations High Commissioner for Refugees.² "Identification" of the refugee, i.e., establishing such data as national origin, age, personal status, civil status, both for control purposes in the state in which the refugee first takes asylum and for the acquisition of necessary travel documents to enable the individual to move to and be resettled in another country, is a major problem handled by this office.³ Other legal problems emerge after the resettlement of the individual. For example, in some countries there must be a modification of stringent laws regarding the employment of aliens; in others arrangements must be made for the validation of professional certificates so that refugees may exercise their professions.⁴ The provision of public assistance to unemployed, ill, handicapped or aged persons and to children represents another area in which legal difficulties may arise. Housing, especially difficult for refugees where acute shortages exist and government-sponsored projects

1. United States House of Representatives, Committee on Judiciary, *Fifth Semiannual Report of the Administrator of the Refugee Relief Act of 1953 as Amended, March 6, 1956*, 22-24, 15-19.

2. Paul Weis, Legal Adviser, Office of the United Nations High Commissioner for Refugees, letter of October 10, 1956.

3. Report of the United Nations High Commissioner for Refugees, 1955 (General Assembly, Official Records: Tenth Session, Supplement No. 11 (A/2902 and Add. 1), 5, 9. (cited as Report U.N.H.C.R.)

4. *Ibid.*, 7, 1.

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are the principal source of new dwellings, introduces policy questions in countries of resettlement or integration.⁵ For certain refugees, legal assistance is necessary in the determination of losses through Nazi persecution and in the distribution of compensation to surviving victims or heirs.⁶

The personal affairs of the refugee are bound to be affected adversely by reason of his movement from his former homeland to an asylum state and thence to some permanent location. Numerous difficulties can arise in the matter of inheritance, for example, involving as it does proof of the death of persons, validation of wills, determination of heirs, disposition of real property, transfer of assets, which latter is often complicated by currency restrictions and by the existence of wartime legislation blocking the transfer of "enemy assets".⁷ Safeguarding the interests of refugee orphans, involving arrangements for custody, guardianship and adoption, as well as questions of nationality, introduces another area in which legal assistance may be needed by the refugee.⁸ If to these problems are added those of family maintenance, divorce, not to speak of claims—workman's compensation and insurance—it can be seen that refugees present many more problems than acquisition of travel documents and resettlement in a new country.

Provision of Legal Aid for Refugees

Given the complexity of the legal problems of refugees and bearing in mind the related difficulties arising from the refugee's probably limited financial resources, language barriers and lack of familiarity with the nature of legal protection available to him in the state of asylum or of resettlement, it becomes a matter of some concern as to how the individual is to be advised and assisted in the solution of his legal problems. The Office of the United Nations High Commissioner for Refugees provides legal protection for refugees in regard to a variety of "general" problems.⁹ Legal assistance, including legal advice and representation in administrative and court proceedings is not provided by this office, such

requests being referred to appropriate public or voluntary agencies.¹⁰ Some sixteen states are bound by the 1951 Convention Relating to the Status of Refugees which gives refugees in the contracting states access to courts, legal assistance, as well as exemption from *cautio judicatum solvi* on the same basis as nationals of these states.¹¹ Such "national treatment" clauses in the Convention provide the refugee with means for the general protection of his legal rights reminiscent of similar clauses for the protection of aliens which are to be found in many commercial treaties. The Convention does not envisage, however, any special machinery for legal assistance to refugees, assuring them only of access to that available in member states. In certain countries facilities for the provision of legal aid are quite well developed. In the United States, the services of some 150 legal aid bureaus and sixty lawyers' associations are available to refugees.¹² Representatives of voluntary agencies and of national and provincial authorities in West Germany and Austria, where there is an acute awareness of the problems of refugees, have undertaken to plan procedures for legal assistance to refugees and for publications on the legal position of refugees.¹³ In many other countries in Western Europe and Latin America, legal aid is available to refugees through public or, more often, private agencies. In the Middle East relatively little has been done to provide legal aid services in general or for refugees.¹⁴

It may be asked whether refugees make a demand for legal assistance and whether present facilities meet that demand. A survey of thirty-one voluntary agencies in the United States which work with refugees indicates that there is such a demand although

few of these agencies are prepared to furnish statistical data on the matter.¹⁵ It is also evident that these agencies do not, in general, provide legal advice themselves, preferring to refer such matters to established legal aid services; or where legal assistance is rendered, it is mainly in regard to immigration status and the representation of refugees in administrative proceedings. Apart from referrals by these agencies, the use of established legal aid facilities by refugees is probably limited by lack of information, language barriers and timidity. The provision of such services in this context has something of an *ad hoc* character.

A Suggested Remedy . . . An International Agency

It has been suggested elsewhere and the suggestion is reiterated in the light of the continued existence of a refugee problem that the formal provision of legal aid services on an international level is long overdue.¹⁶ The work of voluntary agencies dealing with refugees and of legal aid organizations has been of vital service in meeting this need, but, of necessity, it has been a stopgap. This situation has been recognized by both groups, at the Conference of Non-Governmental Organizations Interested in Migration in New York in 1955 and at the meeting of the International Bar Association in Oslo in 1956. The former group is actively interested in establishing an international clearing house for information regarding legal aid services and for liaison purposes.¹⁷ It is submitted that a definite program of legal aid should be established under the auspices of a specialized international agency. The possible nature and function of such an agency will be sketched briefly.

Because of its novel and experimental character, it would be desir-

5. *Ibid.*, 7. Report U.N.H.C.R., 1953 (General Assembly, Official Records, Eighth Session, Supplement No. II (A/2394), 4.

6. Report U.N.H.C.R., 1955, 9.

7. *Ibid.*

8. Report U.N.H.C.R., 1953, 14.

9. During the period, June-September, 1956, the Headquarters of this Office received 154 requests for "assistance of a legal nature" with respect to such matters as compensation for Nazi damages, tracing relatives, family reunion including exit visas, and expulsion. Letter of October 19, 1956, from Paul Weis, Legal Adviser to the Office.

10. *Ibid.*

11. Article 16. United Nations, YEARBOOK ON HUMAN RIGHTS FOR 1951, 583.

12. Report of Geneva Working Party to Fifth International Conference of Non-Governmental Organizations Interested in Migration, 1955, 3.

(cited as Report N.G.O.)

13. Report, U.N.H.C.R., 1955, 8.

14. Report, N.G.O., 14-17.

15. The Tolstoy Foundation reports that 297 persons applied for legal advice in 1955 at the weekly legal aid clinic operated by that agency for Russian displaced persons. Their problems mainly concerned "immigration, real estate deals, divorces and accident cases". Letter of October 15, 1956, from Elizabeth Tomashewsky, Immigration Director.

16. Bradway, J.S., and A.E. Evans, *International Aspects of Legal Aid*, 38 AM. J. INTL., 462 (July, 1944); *Project of a Convention for an International Legal Aid Organization*, 4 JOUR. L. AND POL. SOC. 185 (1946-1947).

17. Letters of February 19 and June 19, 1957, from Henri Courcier, Legal Department, International Committee of the Red Cross; Report, N.G.O., Sixth Conference, August, 1957.

able that such an international legal aid office be a "specialized agency" within the meaning of the United Nations Charter. It would be closely associated with the Office of the High Commissioner for Refugees and with public and private agencies dealing with the same clientele, and would have the objective of co-ordinating present services and establishing new facilities for legal assistance. Several problems would have to be considered in establishing such an organization.

1. Location

It would seem desirable that there be a centrally located headquarters for the agency and a number of strategically placed branch offices. The headquarters should be near the United Nations Headquarters in New York in order to facilitate the exchange of non-legal information regarding problems of refugees as well as to advance inter-agency co-operation regarding legal assistance. It should be noted that Geneva would be an appropriate alternative. The local offices, however, should be established wherever the volume of refugees is sufficiently large to warrant this service. As the volume of refugees entering a given area would be subject to fluctuation, branch offices would be opened or closed as local need would dictate.

The relation between the branch offices and agency headquarters could follow one of two possible patterns. The simpler form would make extensive use of existing local facilities, local legal aid societies if existent, local lawyers or voluntary groups interested in the problem.¹⁸ This arrangement would have the advantage of low operating expenses. It would function when the need arose. Its relation to the headquarters would be relatively informal, mainly involving referral and reporting.

In areas in which the volume of refugee applications for legal assistance was large and the problems marked by complexity and delicacy, a more formal pattern of organization would be essential.¹⁹ The international legal aid office would establish branch offices near the branch offices of the Office of United Nations High Commissioner for Refugees, thereby facil-



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itating the co-ordination of the work of these complementary agencies. In the more formal arrangement, considerable direction and control would be exerted over the work of local offices by the headquarters. Staffing and operations would involve more expense than the informal plan but efficiency in handling the problems of the clientele and the accumulation of extensive experience in this new field of endeavor would justify emphasis on this approach to organization, leaving the informal arrangement to areas in which the volume of business was limited.

It will be noted that it has been initially assumed that the new agency would probably be a public one, established under the auspices of the United Nations, or perhaps, by interested governments, for example, the states party to the 1951 Convention Relating to the Status of Refugees. A public agency would have the advantage of prestige and, if associated with the United Nations, the advantage of the facilities of that organization.²⁰ An agency established under private auspices, for example, by the International Bar Association, would have the advantage of flexibility in operation, in the acquisition of contacts, experience

and skills during the early experimental years of the organization. It might also face the disadvantage of difficulty in winning the confidence of governments in its work and securing the co-operation of voluntary groups and hence in being of immediate service to its potential clientele.

Location is an important consideration in regard to the type of service to be rendered. The proposed agency must be able to supply the refugee with legal assistance in the state of asylum and in the state in which the refugee is finally settled. In the state of asylum the refugee should not only be "identified" for purposes of acquiring travel documents or for integration into the state of asylum, but there should be an inquiry into his "legal status", a

18. Legal aid in some states of the United States is organized on the basis of wide geographical coverage. Cf. the program of the Legal Aid Committee of the North Carolina Bar Association as presented in its *Annual Reports* for 1955 and 1956. The establishment of organized legal aid service on an international level using a very informal approach would require much skill, tact and imagination.

19. The experience in some metropolitan areas would be instructive, for example, the operations of the New York Legal Aid Society. See Tweed, *THE LEGAL AID SOCIETY*, NEW YORK CITY, 1870-1951 (1954).

20. For analogous experience in Connecticut with organization for legal aid under public auspices, see Hewes, *The Connecticut Plan for Legal Aid*, 124 *THE ANNALS* (1926), 152. Cf. the English plan under the Legal Aid and Advice Act of 1949, *First Report of the Law Society* (1951); Smith, *The English Legal Assistance Plan*, *THE LAW SOCIETY'S GAZETTE* (November, 1949).

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comprehensive, exhaustive and imaginative inquiry which might do much to reveal what legal problems he may be faced with in the present or future and what his legal rights may be with respect to these problems. In the country of resettlement, the proposed agency would be faced with two tasks in regard to the refugee: it would be necessary to follow up the legal problems previously anticipated, and it would be necessary to provide legal assistance in connection with new problems arising in the course of the refugee's adjustment to his new country. One might think of the two types of service as supplying roughly what would be called in the field of medicine "diagnosis" and "treatment".

Another aspect of location is the necessity for the agency and its branches to be informed about the mass of professional customs, practices and standards which are accepted and acted upon by the local legal profession. These customs not only vary markedly as between the two major international legal systems but also vary appreciably within these legal systems. For example a branch office just opened and anxious to contact every refugee in need of help might violate local professional rules against solicitation of legal employment and stirring up of litigation, not to speak of rules against the unauthorized practice of the law.²¹ It follows then, that the proposed agency's plan of operation will have to be established with great care. The International Bar Association could make an important contribution to the professional standards and policies of the agency.

2. Clientele.

The group of persons for whom international legal assistance is to be made available must be considered. It is not enough to use the general term "refugee" in planning the work of the agency. The clientele must be treated in regard to economic, legal and social status.

Refugees may be divided into at least three groups economically. There are those who can pay a full fee, those who can pay only a small or nominal fee and those who are unable to pay any fee. If a member of the first group

calls upon the agency for assistance, local lawyers may well feel some reservations about the program. They may argue that an international humanitarian program should not function in competition with them. If the refugee applicant can pay only a nominal fee, this objection will be much less. There is not likely to be any adverse reaction to the provision of assistance to the indigent. Therefore, it follows that the work of the agency should be limited, at the beginning at least, to assistance to clients who cannot pay a fee. If, at a later time it appears desirable to widen the coverage to those who can pay a nominal fee, this step can be taken. One exception might be feasible, however, as the agency would have unusual facilities or international "channels" at its disposal for acquiring information, documents, *etc.*, which might be necessary to the well-being of a refugee, it might make such facilities available to local lawyers and their clients as well as to the indigent.²²

In regard to legal status, refugees may be divided into many groups, each characterized by the type of problem presented for solution. Existing legal aid organizations in the United States find that if they accept certain types of cases, they may be subjected to professional or lay criticism. Among these are divorce cases, the criticism running along the line that a divorce is a luxury and the client should pay for it. A similar attitude is taken toward adoption cases.²³ No doubt the proposed headquarters agency would have to establish policies on such matters, while aiming for as legally comprehensive a service as local conditions would permit.

Finally, the refugee group may be divided according to social status. It is to be hoped that local conditions would not interpose objections to a socially inclusive program, for restrictions dependent upon race, class, color, creed, education would seem out of place in this agency's function.

Where the work of the proposed agency might be restricted in the beginning to a given group, the expectation would be that it would become more inclusive in the course of time. Two examples from the experience of

organized legal aid work in the United States illustrate the point. The initial agency in New York City was established to serve German immigrants who were being exploited upon their arrival in what was to them a strange country.²⁴ In Chicago legal aid was originally established to serve women and girls.²⁵ In both cases the service was soon expanded to all poor people. Similarly, the work of the proposed agency should expand from service to refugees to service to all who have need of it.

3. Staff

Staff for the projected agency would depend in size upon the volume of applications; staff members would be distributed between the headquarters and the branch and local offices in asylum states and states of resettlement. The headquarters staff would be concerned with general administration of services, with policy-making and research. The nature of the first category is obvious; a word may be added about the other two. Policy would include the establishment and maintenance of standards of service as well as the selection and development of the specialized personnel required for the conduct of these services. The interest in comparative law which is emerging in law schools in the United States, for example, might receive further impetus through the work of the proposed agency.

Legal Research . . . Significant Activities

Research would be one of the most significant activities of the agency. To take a simple example, a refugee might consult a local lawyer in State A. The lawyer in his efforts to solve the problem finds that he must have accurate

21. See, for example, Canons 27 and 28 of the Canons of Professional Ethics of the American Bar Association. Note also, the draft code of international ethics submitted for consideration by the Fifth Conference of the International Bar Association at Monte Carlo in 1954. *Report*, 134.

22. In recent years a committee of the American Bar Association has been studying the problem of "the lawyer's reference plan". See the following brochures: Porter, *LAWYER REFERENCE PLANS* (1949); Smith, *LLEGAL SERVICE BUREAUS FOR PERSONS OF MODERATE MEANS* (1950).

23. Brownell, *LEGAL AID IN THE UNITED STATES*, 71 *J.*, (1951).

24. See Maguire, *THE LANCE OF JUSTICE* (1926).

25. See Garlepy, *The Legal Aid Bureau of the United Charities of Chicago*, 124 *THE ANNALS* 33 (1926).

and inclusive information about the law of State *B*. In ordinary circumstances he would employ a foreign correspondent versed in the law of *B*, depending upon official, commercial or professional lists for the name of such a correspondent. If the case in question involves a need for information about the laws of States *C*, *D*, and *E*, the difficulties of the practitioner are greatly multiplied. The proposed agency in such a situation would be in a position to do two things: to provide the necessary legal information for the local lawyer or to suggest competent persons in foreign states who could supply the needed information. The former procedure would be appropriate in cases involving indigent clients; the latter would be appropriate where clients could pay a fee.

One can speculate upon the increasing value of the collection in the headquarters office of a continuous flow of briefs of law on various subjects. The collection would in the course of time attract not only the interest of lawyers but also of scholars and government officials.

While we are considering the matter of research, it should be borne in mind that research in facts would be equally important in regard to refugee cases. This research would be the responsibility of branch or local offices acting under the supervision and direction of the headquarters staff. The branch or local offices would be put in the position of acquiring that information for which the local lawyer assumes responsibility in a local case, *e.g.*, interviewing witnesses, visiting the scene of an accident or of a crime and so forming his own first-hand opinion of the nature of the issue presented to him by his client. On the international level acquisition of such information would be difficult and, for the local lawyer in an international case, "second-hand". It would be further complicated by "translation" not only in terms of language but also in terms of differences in legal frames of reference. The

headquarters office presented with a problem involving, for example, Islamic law, Hindu family law, or the Roman-Dutch law of South Africa, would be in a position to answer general inquiries or to undertake specific research. The branch office in Iraq, India or South Africa would be in a position to acquire factual data pertaining to a specific case involving matters arising in one of these countries. Such activities of the agency and its branches suggest an impressive prospect of a living body of comparative law kept constantly up to date in terms of actual cases which arise and which are solved by reference to it.

4. Operation

The above discussion gives a fair idea of some considerations involved in the establishment of the agency. A few words may be added regarding its operation after establishment. Two phases of operation may be distinguished. In the first phase, the matter of clearance of the refugee for resettlement in another country than the state of asylum could be handled by the Office of the United Nations High Commissioner for Refugees. At the same time a representative of the legal aid agency would anticipate through interviews with the refugee any prospective legal difficulties which might arise in regard to resettlement. The state of resettlement might have stringent laws with respect to the validation of professional certificates of aliens or, if the refugee were a minor, questions regarding guardianship would have to be settled. In the second phase, following resettlement of the refugee, the agency would be prepared to handle other types of cases. The refugee might learn of the death of a relative in his former homeland or elsewhere and seek to ascertain whether he is the sole heir or one of several heirs. Or again, the ex-refugee may be owner of certain industrial property rights but may be barred from the enjoyment of it because a certain state has sequestered

them as "enemy assets". Or yet again, the ex-refugee may have married under provisions of Malabar family law and now seeks to alter his marital status in the country of resettlement. Faced with such problems which are complicated by a previous condition of refugeeism, the ex-refugee would turn to the branch office of the proposed agency for legal advice. In turn, the headquarters research staff and other branches would provide the information necessary to the clarification of the individual's case.

Conclusion

There is a demonstrated need for an agency of international character which can supply legal assistance to the refugee and to the ordinary citizen faced with a legal problem involving international considerations. From a humanitarian point of view, the condition of the former client makes the establishment of such an agency desirable while from the professional point of view of providing adequate legal service to the latter client the establishment of such an agency is persuasive. An international legal aid office should be appealing to those who demand a realistic solution to community problems. The agency would be inexpensive as contrasted with the budgets required for service which affords material relief. The legal profession would find value in the proposed agency through its contribution to legal service and to the development of expertise in comparative law.

In the last analysis the value of the agency to the clientele, primarily the refugees, is of the greatest importance. Those who have grievances should be relieved to find a service available specifically for the purpose of solving their legal problems. But the most fundamental consideration is found in the very idea of such an agency as a step toward the advancement of the concept of international community built upon the belief in rule of law. The idea of rule of law comprehends equal protection of the law.