Nordic Refugee Law and Policy

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INTRODUCTION

Since the end of World War II, the Nordic states\(^1\) have shown an interest in refugee policy and have taken part in work on behalf of refugees through various international organizations. In the 1940s and the 1950s, when Western Europe was faced with a huge refugee problem, the Nordic states shared the burden with countries of first asylum in Central Europe by admitting refugees for permanent resettlement. In the 1960s and 1970s, when other continents were confronted with refugee problems, the Nordic states also generously contributed material assistance to refugees resettled in neighboring countries. In 1979, for instance, the Nordic states contributed 22 percent of the UNHCR budget.\(^2\)

The Nordic countries are each party to the 1951 Convention relating to the Status of Refugees,\(^3\) the 1967 Protocol relating to the Status of Refugees,\(^4\) and the 1951 Convention relating to the Status of Stateless Persons;\(^5\) all but Finland are parties to the 1957 Hague Agreement relating to refugee seamen\(^6\) and the 1973 Protocol thereto,\(^7\) and to the 1959 European Agreement on the Abolition of Visas for Refugees.\(^8\) The Nordic states also have humanitarian refugee policies that are sometimes viewed as models for other countries. Some people within the Nordic states believe that, if refugees could do so, they would all try to enter there because of this humanitarian reputation.\(^9\)

To protect themselves from too great an influx of new refugees, however, the Nordic states have built barriers making further immigration difficult. Taking into account the geographical, climatological, and cultural conditions of the Nordic area, and the current concentration of the world's refugee problems on the other continents of Africa, Asia, and Latin America, the fear of a mass influx of refugees is exaggerated. The actual number of refugees arriving independently in the Nordic states is relatively small,
and the Nordic states have been able to accept refugees for resettlement from other countries of first asylum.

Since the early 1950s some limited cooperation has developed among the Nordic countries on both internal and external refugee policy. The Charter of the Nordic Council requires member states to aim at cooperation in fields of law susceptible to joint efforts such as aliens legislation. To date the most striking result of this cooperation is the 1957 Agreement on the Waiver of Passport Control at the Intra-Nordic Frontiers. In 1967 an Intra-Nordic Committee investigated the possibility of a uniform aliens law. The report of the committee was published in 1970. It concluded that the climate for a common aliens law was lacking, but that the Nordic countries should act in similar ways under similar circumstances. Accordingly, the work of the committee was first and foremost an attempt to propose a more uniform policy, and a number of suggestions were produced, such as uniform criteria for issuing deportation orders.

In practice, the Nordic states have failed to achieve even this limited goal, and currently the differences in aliens policies have increased. It has not, for instance, been possible to establish common visa regulations. At present Turkish citizens need a visa for Sweden, but not for Denmark, Norway, and Finland. Poland has concluded an agreement with Sweden on the abolition of visas, but such an agreement does not exist with the other Nordic states. It is indicative of the situation that Sweden has expanded the possibility of spot checking of passports under the above-mentioned agreement of 1957, to the control of passports for all non-Nordic citizens at the border between Sweden and the other Nordic states.

Sweden has recently adopted a new aliens law drafted without any intra-Nordic cooperation. The former aliens law of 1954 had been amended repeatedly and had finally become almost incomprehensible. A governmental committee, established in 1975, drafted a new aliens law containing provisions on the right of entry and sojourn of foreigners, and their legal status in Sweden. The Swedish Parliament adopted an aliens law which came into force on July 1, 1980. At the same time the government issued a new aliens ordinance containing complementary provisions.

New aliens laws which in the near future will be introduced in Denmark, Finland, and Norway probably also will be drafted without any cooperation. Apparently, each Nordic state is adopting its aliens law without considering the corresponding laws in other Nordic states and legislative work takes place without any kind of cooperation. The various government committees visit other Nordic countries, and occasionally an exchange of views takes place, but there is no attempt to establish regular
coordination. The likelihood of adopting uniform aliens laws is less than ever.

THE RIGHT OF ENTRY

The Legislation

Traditionally, the right of asylum means the right for a state to grant asylum. A corollary to this right is that granting asylum is a sovereign act which the asylee's country of origin should not consider as an unfriendly one. 19

During the past few years, the right of asylum has developed toward the right to be granted asylum. Such an individual right can, however, hardly be traced in international law. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 20 merely provides that member states of the OAU "shall use their best endeavors 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." 21 At the 1977 UN Conference on Territorial Asylum the majority of the delegates explicitly denied the existence of an individual right to be granted asylum. 22 A positive right to asylum has, however, been expressed on the national level, and numerous provisions in constitutions and in municipal legislation provide for the individual's right to be granted asylum. 23

Among the Nordic countries, Norway and Sweden acknowledge a right to be granted asylum. 24 The two countries' laws have the same meaning, although there are some formal differences in expression. The Norwegian law grants asylum as a positive right, while the Swedish law declares negatively that a refugee shall not be refused asylum. 25 Neither country grants an unconditional right to asylum. It can be refused if there are grave reasons to do so. 26 In Sweden, another explicit limitation is that the applicant must be in need of asylum; in Norway, the applicant must actually apply for asylum.

The right to be granted asylum is limited in both countries to refugees. The definition of the term refugee is based on the corresponding definition in the 1951 Refugee Convention (amended by the 1967 Refugee Protocol). 27 There is no explicit reference to these treaties in the law texts, but the legislative histories (travaux préparatoires) clearly indicate that the term refugee should have the same meaning as in these treaties. 28 The dateline in the 1951 Refugee Convention, however, was never applied in Norway and Sweden. 29 Thus the adoption of the 1967 Protocol which eradicated the dateline has no practical relevance in those countries.

In Sweden, unlike the right to be granted asylum, the right of entry and
to receive a residence permit is not restricted to Convention refugees. In an amendment to the 1954 aliens law, introduced in 1975, a special category of asylum seeker was granted a limited right to enter and to remain in the country. According to the law, a person in this group is described as "[a]n alien . . . who, although not a refugee, is unwilling to return to his home country on account of the political situation there, and is able to plead powerful circumstances to this effect. . . ." The same also applies to "[a] person . . . who has deserted a theatre of war or fled from his home country in order to escape imminent war-service (war-service resister). . . ." Thus the Swedish aliens law provides for a certain protection in favor of so-called de facto refugees or "B-refugees" as opposed to the Convention or political refugees. The right to be granted a residence permit is, however, more restricted for de facto refugees than is the corresponding right for political refugees, and a de facto refugee can be denied entry to Sweden when there are "reasons for such denial."

In Finland, the Ministry of Interior may grant a residence permit to an alien who immediately asks for asylum and invokes plausible reasons for this request upon arrival in the country as a political refugee. In Denmark, neither the law nor the ordinance contains provisions on the right for asylum seekers or refugees to enter and to remain in Denmark. Section 6(3) of the Aliens Act states that an alien who claims refuge in Denmark as a political refugee cannot be returned (refoulé) unless such a decision is taken by the minister of justice, and provided the claim is "not manifestly unfounded." Although the Danish and the Finnish aliens laws do not contain provisions on the granting of asylum, it is unlikely that this has any practical import. In practice, an asylum seeker has rights equal to those in Norway and Sweden concerning the right to enter and to be granted asylum and a residence permit—a practice grounded in Denmark's and Finland's participation in the 1951 Refugee Convention and the 1967 Refugee Protocol.

The Practice

Granting Asylum and Refugee Status

As noted above, all the Nordic states have ratified the 1951 Refugee Convention and the 1967 Refugee Protocol. The interpretation of who is a refugee varies among the four states under review, and a person who might be considered a political refugee in one country could be denied refugee status in another Nordic country. Analysis of the differences is difficult, for the aliens authorities in the various states seldom articulate reasons for a rejection or a grant of refugee status. Certain criteria contained in the definition are occasionally interpreted differently. In Denmark, for instance, the criterion "well-founded fear of persecution" means that a per-
A person cannot be considered as a *bona fide* refugee unless he or she already has been persecuted in the country of origin and provided he or she can prove such a persecution. A similar practice is followed in Norway, but in Sweden the mere fear of persecution can qualify one for refugee status.

The concept of persecution and the necessary severity of the persecution also varies among the Nordic states. An example is of the different interpretations of so-called *Republikflucht* when the applicant fears and wishes to base refugee status on punishment in the country of origin for his or her illegal departure or for remaining outside the country beyond his or her permit to leave. Swedish practice has been influenced by a famous German court decision of 1971, and normally grants refugee status to those who fear punishment on return. In Denmark, Norway, and Finland, however, refugee status has been rejected in corresponding cases. This does not necessarily mean that the applicant will be returned to the country of origin, for he or she might nevertheless be granted a residence permit as a *de facto* refugee.

Disparate interpretations of the term refugee result primarily from different evaluations of the political conditions in the country of origin and of the likelihood that the applicant's fear of severe repercussions is justified. Clearly, in recent practice, burden of proof is the most serious problem for the refugee, with the exception of asylum seekers from Eastern Europe. In the 1940s and the 1950s, almost all refugees came from Communist countries in Eastern Europe. In fact, the Convention definition of the term refugee was drafted with this category of asylum seekers in mind, for it seemed unlikely that other countries would produce refugees. The repressive situation in Eastern Europe was well known, and only in exceptional cases did applicants have difficulties convincing authorities that they feared persecution in their country of origin.

In the 1960s and 1970s, refugee problems emerged on other continents, driving new asylum seekers to Western Europe. It was not only the Convention definition's dateline that kept them from winning refugee status. Potential countries of asylum were confronting a completely new situation in which the traditional definition was inadequate. One contributing difficulty was the lack of detailed information about the country of origin, which was sometimes far away. Also, the number of asylum seekers from any one specific country might be small, adding to the difficulty of evaluating the information provided by the applicant.

Currently, alien authorities do not give applicants the benefit of the doubt. The alien authorities attempt to collect information concerning the situation in the respective countries of origin, but they do not always get the same information, and they can evaluate it differently. One method of collecting information concerning the situation in a country of origin has been to evaluate reports from the respective Nordic diplomatic missions in
the country in question. The reporter's general attitude toward the host country and other political considerations, however, can color the tenor of the report. Thus, a Danish report can be positive for an asylum seeker in Denmark, while a Swedish report on the same country of origin can conclude that the applicant can be returned. Other Western European states often use the Office of the UNHCR for information concerning the general situation in an asylum seeker's country of origin. This method has been rather effective, and the information collected is considered reliable. Asylum seekers, though, have special difficulties in the Nordic countries. While the alien authorities occasionally try obtaining general information on the situation in a certain country of origin, the possibility for the individual asylum seeker to be assisted by the High Commissioner's Office is limited, for there is no UNHCR representative in the Nordic countries.

**De Facto Refugee Status**

In the 1960s, a considerable number of foreigners in Western Europe were granted a status very similar to that of a Convention refugee without qualifying as Convention refugees. Sometimes these aliens did not have a well-founded fear of persecution within the Convention definition, but they could not be returned to their country of origin because of political disturbances there. On other occasions, political obstacles precluded identifying a person as a Convention refugee. In addition, some countries applied a restrictive interpretation of the term refugee in the Convention, but did not return or expel those denied Convention refugee status. Finally, some applicants would not apply for refugee status for personal reasons such as fear of repercussions for relatives left behind.

Some of these refugees in the 1960s came from Greece, where the military junta still ruled; others came from Portugal, compelled to escape from the fascist regime there. However, a considerable number of these new refugees came from Third World countries. These refugees were new in terms of their geographical origin; they also often presented new problems in terms of their legal status, lacking Convention protection. They were called *de facto* refugees.

*De facto* refugees also migrated to the Nordic countries. Only in Sweden does the aliens law contain provisions on this category of refugee. In Danish and Norwegian practice there is a similar concept, but such a concept seems not to exist in Finland.

In Denmark, so-called B-status is an administrative creation, based on information from an exchange of letters between the Ministry of Justice and the Danish Refugee Council. It entitles the person to a residence and work permit and *de facto* protection against refoulement. B-status is granted to asylum seekers not eligible under the Convention, but for whom a risk remains that they may, on return, be persecuted or subjected to unreason-
able punishment, or for whom a fear of being persecuted, though difficult to verify, cannot be disregarded.\textsuperscript{49}

In Norway too, administrative practice has established the concept of B-status. B-status refugees have been described as persons who, not being political refugees, are outside their country of origin because of political reasons, or who upon return will fear political sanctions.\textsuperscript{50} De facto refugees may be granted a general residence and labor permit.

The Nordic countries—and the majority of Western European states—have adopted similar practices for establishing the minimal qualifications for being a de facto refugee: the borderline between de facto refugees and "ordinary" aliens. Differences in practice persist, however, on the borderline between Convention refugees and de facto refugees.\textsuperscript{51}

When the new category of refugees was added to the Swedish aliens law in 1976, a more restrictive practice regarding the interpretation of a Convention refugee seemed to follow. This restrictive practice could be directly connected to the insertion of the new refugee category into the law.\textsuperscript{52} Such a development is certainly unacceptable. When the new category of refugees was introduced to the aliens law, the intention was only to legalize the practice already existing, and not to change the prerequisites of recognition as a Convention refugee.\textsuperscript{53} The reasons and the logic behind the subsequently restrictive practice is difficult to understand. An explanation, but not an excuse, is that a Convention refugee has a right to broader protection than a de facto refugee, with the result that authorities prefer not to grant Convention refugee status unless absolutely necessary. To the alien authorities, the most important consideration is to allow the asylum seeker to remain in Sweden. To the asylum seeker, however, the distinction between receiving a Convention or a de facto refugee status might be very important.

It has been suggested that the solution to this Swedish problem might be to delete from the aliens law any mention of de facto refugees, as most of such refugees could be granted Convention refugee status.\textsuperscript{54} Consequently, the whole problem could be solved by applying a more liberal interpretation of the Convention definition. The UN High Commissioner's Executive Committee expressed a similar view in 1974 and 1975, when the concept of de facto refugees was discussed at various meetings. It noted that the problem of de facto refugees could be solved if the term refugee in the 1951 Refugee Convention was interpreted in a liberal way. The debate was summarized by a staff member of the Office of the UNHCR as follows:

With regard to de facto refugees, delegations hoped, as did the High Commissioner, that the 1951 Convention and the 1967 Protocol would be interpreted liberally. A number of delegations had expressed the view that the existing international legal instruments in favor of refugees, supplemented if possible
by a convention on territorial asylum, constituted an adequate legal framework for the protection of refugees, provided that those instruments were effectively translated into national laws and regulations and that, in their day-to-day activities, the administrative authorities concerned with refugee problems faithfully observed the spirit and the letter of the law.  

The problem of de facto refugees, though, cannot be solved only by liberally interpreting the 1951 Refugee Convention and the 1967 Protocol. There are cases where an asylum seeker, even with the most generous interpretation, cannot be considered a UN Convention refugee. An example is refugees accepted under the 1969 OAU Refugee Convention, which adds to the definition:

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.

The argument that the problem of de facto refugees could be solved by a liberal interpretation would reject this second part of the African definition of the term refugee which extends to persons not necessarily fearful of persecution by domestic authorities. African practice of determining refugee status indicates the great importance of the African definition.

Another aspect of the de facto refugee issue is the different formulations of the provisions. The term de facto refugee is often misunderstood. Sometimes the term connotes a special refugee category conveying a special status and implying a lower class of refugees. The term de facto refugee should be used to connote any person who is in a refugee-like situation, but who is not recognized as a Convention refugee. Such an interpretation is an enlargement of the term refugee as described in the 1951 Refugee Convention and the 1967 Refugee Protocol, and the Statute of the Office of the UNHCR. It is most important, however, not to create categories of refugees having differing status. The development in some countries, such as the Nordic states, of a special status, has had its negative aspects. All refugees must have equal status once admitted, because the distinction between Convention and de facto refugees is ambiguous at best.

Exclusion Clauses

Asylum can be refused in certain cases. Although the laws in Norway and Sweden provide a positive right to asylum, such a right is conditional. Asylum can be refused when there are "special reasons" or "grave reasons" to refuse asylum. In Denmark and Finland, where the law does not
guarantee asylum to seekers, practice has introduced corresponding delimitations.

A country should be able to invoke "special reasons" to refuse asylum when there is a mass influx situation: when refugees are arriving in such numbers that the country of destination is unable to grant or continue to grant asylum for various economic, social, and political reasons. Since World War II, however, none of the Nordic states have needed to refuse asylum to Convention refugees solely due to a massive influx.

The exclusion clause in mass influx situations is also relevant to de facto refugees. As stated above, the Swedish law prescribes that residence permits can be refused when "special reasons" are involved. The legislative histories indicate that "special reasons" in this context should mean the inability to care for aliens belonging to this category. "The weight of the circumstances these aliens invoke against their unwillingness to return ought to be considered, when deciding the question if 'special reasons' are at stake."  

In Sweden, the alien authorities have invoked the "special reasons" exception against Assyrians, refusing residence permits. The first group of Assyrians, 200 individuals, arrived in 1967 from Lebanon. It was not until 1974 and 1975, however, that a massive migration of Turk-Assyrians left Turkey and the Federal Republic of Germany for Sweden. In 1976 the Swedish Government revoked visas from all Turks, including the Turk-Assyrians. Then, in November 1976, the government also decided that all Assyrians who actually were in Sweden on a specific date would be granted a residence permit, while Assyrians entering Sweden after the actual date would be denied permits. In the same decision, the government declared that the Assyrians allowed to remain in Sweden were de facto refugees (B-refugees). The government did not decide if the Assyrians were also Convention refugees.  

The Assyrian situation is peculiar because the government has invoked "special reasons" against a specific national minority. A desire to hinder further migration of Assyrians to Sweden because of their increasing numbers motivated the decision. This decision, though, has no effect on exceptional cases where an Assyrian asylum seeker could be considered a Convention refugee.

Asylum can also be refused in Sweden when the asylum seeker is guilty of a serious crime before entry into the country of asylum. It is, however, extremely unusual that asylum and a residence permit are actually refused on this ground alone, for an asylum state is not apt to know of a serious crime committed before entry. Even if the state is informed, the normal practice is to allow the applicant to remain in the country and receive refugee status, unless the crime is so serious that the applicant is expellable under the Refugee Convention.
Spectacular cases arise when the asylum seeker commits a serious crime to escape from his country of origin after that country has refused permission to leave. In May 1977, a Soviet citizen hijacked a civil Soviet airplane and ordered the pilot to fly to Sweden, where the hijacker asked for asylum. A Soviet request for extradition was rejected under the Swedish Extradition Act which prohibits the extradition of any person who in the requesting state has a well-founded fear of persecution. With reference to the principle of being either extradited or punished (aut dedere, aut punire) the hijacker was prosecuted in Sweden, found guilty of hijacking and sentenced to four years in prison. Concurrently, the court decided that the hijacker should not be deported. He was later granted a residence permit in Sweden.

Two months later, in July 1977, another hijacking took place in the Soviet Union. This time two men seized a Soviet aircraft on a regular domestic flight. The hijackers shared the same motive as in the Swedish case: to escape from the Soviet Union. They commanded the pilot to fly to Sweden, which he pretended to do, but in reality the aircraft went to Finland. When the aircraft landed at the Helsinki airport, the Finnish police arrested the hijackers. The Finns granted a request from the Soviet authorities to return the hijackers under a Soviet-Finnish bilateral agreement on civil aircraft hijacking. Article 3 of the agreement provides that a contracting party within whose territory the aircraft has landed, shall, at the request of the country in which the aircraft is registered, without delay take measures to return to the registering state those who are suspected of committing the hijacking. The return should take place irrespective of the motives of those who are guilty of the act.

Finland interpreted this provision as imposing a duty to return a hijacker without any exception. The Finnish authorities, however, could have refused to return the hijackers in the above-mentioned case by invoking another article in the Soviet-Finnish agreement providing exceptions, inter alia, when a requested country has exercised its right to grant asylum. It is also necessary to differentiate among various kinds of hijacking, and to note that hijackers are not all terrorists.

Another reason frequently used to refuse asylum, is that another country is considered to be the country of first asylum. The Nordic states all adhere strictly to the principle that the country of first asylum shall be responsible for the granting of asylum, and generally they automatically return or expel asylum seekers to that country. Consequently, the Nordic states greatly contribute to the creation of what has been called “refugees in orbit”: persons who, although not placed in immediate jeopardy by rejection at the frontier or deportation to the country where they are liable to persecution, are granted neither asylum nor refugee status in any coun-
try. As a result, they are shoved to one country after another in a constant quest for asylum.

Western European states use several methods to restrict the influx of refugees. In the Nordic countries, practice has established so-called en route provisions requiring the applicant to ask for asylum within a certain period from the day of departure from the country of origin. In Denmark refugees are allowed to be en route for a fortnight. Consequently, if a refugee enters Denmark within that period, he or she will likely be allowed to remain there. In Sweden and Norway there is no similar rule. Thus, if it is possible to return or expel a refugee to another country in which he or she does not fear persecution, this is done. None of the Nordic states, though, return or expel a foreigner to a country unless there are guarantees that the refugee will be admitted in the country to which he or she will be sent. This does not mean that the refugee must be granted a residence permit in that country, but only that he or she will not be immediately returned.

The Nordic states have concluded a number of so-called refoulement agreements which under certain circumstances impose an obligation on a party to receive back at the request of the other party an alien who has entered the requesting state. On a bilateral basis Denmark, Norway, and Sweden have concluded such agreements with the Federal Republic of Germany. These agreements, which are almost identical, contain a clause on immediate return. They create an obligation to readmit a foreigner without formalities, provided he or she is found within seven days from the day of entry.

Of greater practical impact is the Convention between Denmark, Finland, Norway, and Sweden on the Waiver of Passport Control at the Intra-Nordic Frontiers of 1957. This Convention, in Article 10, provides that each contracting state shall take back an alien who, under the relevant provision of the Convention, ought to have been refused entry by the state concerned at its outer frontier, and who has traveled from that state without a permit into another Nordic state. Refugees and stateless persons will normally be returned by application of this paragraph, for contracting states cannot reasonably be expected to refuse entry to them. Likewise, an alien shall be taken back who, without a valid passport or a special permit, if such is required, has traveled from one Nordic state to another. If $X$ has a visa and a return permit for Nordic state $A$, as well as a visa for Nordic state $B$ which is valid only as long as the return permit, $A$ is obliged to readmit $X$ if $X$ remains in $B$ after the visa expires. Refugees and stateless persons can also be returned by reference to this paragraph. This provision does not apply to an alien who has stayed in the requesting state for at least one year from the time of his or her illegal entry into that state or who has,
after entering illegally, been granted a residence permit and a work permit.\textsuperscript{77}

The underlying motive for this provision in the 1957 Nordic agreement is to prevent a mass influx of refugees from one Nordic state to another. Consequently, each Nordic state is not only competent, but also obliged, to form its own refugee policy to control the flow into neighboring states. The Nordic agreement has, however, only a marginal effect; the number of returned persons is small. But even the limited use of this provision to return foreigners has created a number of personal tragedies. The following case is illustrative:

A Polish woman lived for several years in Sweden. In 1974 her son, who was a member of the crew of a Polish fishing-boat, "jumped off" in a Danish harbour. The man, who at that time was 36 years old, immediately went to Sweden to join his mother and his fiancée, a Polish girl, who five days earlier legally had left Poland and entered Sweden. The girl lived together with her fiancé's mother. By invoking the Nordic Agreement the son was sent back to Denmark. Neither the fact that he most likely was a refugee according to Swedish practice, nor the fact that his mother had lived in Sweden for several years, were reasons not to make use of the Nordic agreement. Denmark was the country of first asylum. He was later given so-called B-status in that state.

When the man was returned to Denmark the girl decided to follow him and she went illegally to Denmark. (A Polish citizen does not need a visa to enter Sweden, but such a permit is necessary for Denmark.) But now the Danish authorities made use of the Nordic agreement and returned her to Sweden. Half a year later she was, however, granted a permission to enter and to remain in Denmark together with her fiancé.\textsuperscript{78}

From a strict legal point of view both the Swedish decision to send the man back to Denmark and the Danish decision to send the woman back to Sweden were correct. The Swedish authorities probably considered it to be a case of family reunification (in Denmark) and the Danish authorities considered it also to be a case of family reunion, but thought that Sweden ought to accept the couple. As a question of this kind is not covered by the Agreement, the practical consequences became absurd. There are good reasons to denounce Article 10 of the agreement or at least to suspend its effect where such hardship results.

An objection to the application of Article 10 is that it does not fulfill its underlying purpose of preventing an influx of refugees to the Nordic countries. The 1957 Agreement arose when refugees came from Eastern Europe, from states the citizens of which needed a visa to enter the Nordic states. Today the situation is quite different. The influx of Eastern European refugees has decreased, but refugees from other continents, primarily
the Middle East, Africa, and Latin America, are arriving in increasing numbers. In many cases these refugees do not need a visa to enter the Nordic area because their countries have concluded agreements with the Nordic states abolishing the visa requirements. The majority of the new refugees can enter the Nordic states legally; the 1957 Agreement and its provision on taking back certain foreigners is inapplicable to them. These refugees are in a more favorable situation than those coming from countries that have not concluded an agreement abolishing visa requirements. Not only is Article 10 of the 1957 Agreement irrelevant to most refugees, it is also discriminatory, permitting certain refugees, depending on their nationality, to be returned while most others are not.

THE REFUGEE DETERMINATION PROCEDURE

Procedural Provisions

Because of the obligation to issue identity papers and travel documents for refugees, many of the contracting states to the 1951 Refugee Convention have introduced varying formal procedures by which refugee status is determined. In many countries, refugee status is related to the right of asylum, in that persons recognized as Convention refugees will also be entitled to asylum. Consequently, a refugee determination procedure might be decisive for the determination of whether a person is entitled to asylum. But in other states, refugee status might only make a person eligible for a Convention travel document. The purpose of the refugee determination differs among countries.

Since there is no provision for a right to asylum in Denmark, an asylum seeker formally asks not for asylum but for a residence permit. When political reasons are involved, the application is referred to the Central Aliens Police (Tilsynet med Udlændinge). After an interview with the Central Aliens Police on personal conditions and the grounds for asylum, the asylum seeker's application is transferred to the Ministry of Justice for a decision. When political grounds are invoked, the Central Aliens Police may only refuse a residence permit if the application is manifestly unfounded. Under a May 11, 1966 agreement between the Ministry of Justice and the Danish Refugee Council, the ministry may not make a negative decision without allowing the council the opportunity to express its opinion. In practice, the council is involved in eligibility questions at an earlier stage, as it has been increasingly common for asylum seekers, when political reasons are involved, to ask for information on rights and procedure before or immediately after applying for a residence permit.

The Danish Ministry of Justice has several options: the applicant might be regarded as an A-refugee (Convention refugee); he or she might be
regarded as a B-refugee (de facto refugee); the application for a residence permit might be rejected. In the latter event, the alien is normally returned to the country of origin. In certain cases, he or she might be assisted to reemigrate to a third country.  

In Finland, an asylum seeker must ask for asylum immediately upon arrival in the country. In practice this means that the applicant must make the request either in connection with the border control or as soon as possible thereafter when he or she can apply with the police authorities. If the alien has resided for a certain period of time in Finland, his or her application cannot be regarded as an application for asylum, unless the situation in the country of origin has changed during that stay in Finland (réfugié sur place). After the asylum seeker has applied, an investigation of the case occurs to assess the prerequisites for asylum. The Ministry of Interior rules on the application after the Ministry of Foreign Affairs submits an opinion. Occasionally divergences from this procedure take place. After 1973, applications from Chilean refugees were accepted at a Finnish embassy and transferred to Finland for decision. 

In Norway, there is no formal refugee determination procedure and, as a rule, an asylum seeker is advised to ask only for a residence permit. An alien who satisfies the criteria for refugee status under the Norwegian Aliens Act, however, can be recognized as a refugee after an application to the Ministry of Justice. Before the application is ruled upon, the ministry must consider the advice of an Advisory Board (Statens Utdøningsråd) composed of five independent members appointed by the King in Council. 

In Sweden, it was not until the adoption of the new alien law of 1980 that a formal refugee determination procedure was established. According to the new procedure, an application for asylum should be made with the aliens police. If the police find that the reasons for refugee status are not manifestly unfounded, the application must be transferred to the Central Immigration Board, which decides whether the applicant is to be accepted as a Convention refugee, a B-refugee, or if the application for a residence permit shall be rejected. There is a right of appeal to the government. 

A peculiarity of the new Swedish legislation is that a decision on refugee status can only be undertaken in connection with an application for a residence permit. Thus, an asylum seeker can ask for refugee status upon arrival in Sweden, or—if he or she already resides there—when the residence permit expires and he or she applies for an extension. However, after two years of residence, when the applicant can be granted a so-called permanent residence permit, he or she can no longer obtain a decision on refugee status. If, for instance, the conditions in the country of origin have changed during the stay in Sweden (réfugié sur place), the alien cannot formally be granted refugee status. In this situation the alien may, however, be
granted a Convention travel document if, as a preliminary question, the Central Immigration Board decides that the applicant is a Convention refugee. Such a preliminary decision, however, lacks binding force and can be revoked at a later stage.

A particular problem with the Swedish refugee determination procedure is the length of the procedure, which might last between two and four years, and in many cases, due to no fault of the applicant, may not result in a final decision. The long procedure is caused not only by legal safeguards and availability of a right of appeal, but also due to unreasonable delays before aliens are questioned by the aliens police, the first step in the process. An appeal to the government generally takes years.

During this waiting period the applicant is not allowed to work. If the alien has no money, which is rarely the case, he or she receives an allowance from the social authorities. Meanwhile, the applicant is reduced to a state of idleness which can be devastating. Although it may be inhumane to expel any foreigner after such a waiting period, the Swedish authorities seem to be unable to solve this problem.

Prescreening

In all Western European states a special authority or a special organ within the central police authority rules on an application for asylum. There is such a procedure in the Nordic states too. In Denmark it is the Central Aliens Police; in Finland, the Ministry of Interior; in Norway, the Ministry of Justice; and in Sweden, the Central Immigration Board. A special authority is deemed necessary because questions on asylum and refugee status are so difficult that extraordinary competence and experience is required. It has been argued that the authority which normally has the first contact with the applicant, the border police or the aliens police, does not have this special knowledge, and, consequently, that such authority should not deal with questions of this kind.87

A pertinent question is whether the border police shall have competence to decide which cases shall be referred to the special authority, and whether it is necessary to refer every case to that authority as soon as the foreigner has mentioned the word “asylum” or a similar expression. In many countries the border police carry out a “prescreening” to sort out manifestly unfounded claims for refugee status. This sorting of claims, of course, carries with it a problem of line-drawing. In the four Nordic countries, the police have the authority to refuse to refer manifestly unfounded cases. But there has been severe criticism of the police for exceeding their authority by rejecting some asylum seekers whose cases should have been referred to the central authority. The main objection to the procedure, however, is that the police go beyond a “manifestly unfounded” test,
making their own estimate of whether the applicant is a Convention refugee. Such a practice is not only unsatisfactory; it is clearly contrary to the Norwegian and Swedish laws.

The problem has been discussed intensively during the past few years without any real solution emerging. In Sweden, however, a new procedure has been introduced in the Aliens Act of 1980. The police are still authorized to carry out prescreening and to return an asylum seeker whose statement is manifestly unfounded, but if the applicant invoked political reasons for a residence permit, then the decision on *refoulement* or expulsion cannot be executed until the Central Immigration Board has approved such disposition. The Immigration Board, which must decide as soon as possible, at this stage only investigates whether the claim for refugee status is manifestly unfounded. The decision does not constitute a final position regarding refugee status. Where the Central Immigration Board considers the statement not manifestly unfounded, the case is automatically transferred to the Immigration Board for its final assessment of the claim.

The new procedure has been in force only since July 1, 1980. Only in a limited number of cases has the Central Immigration Board decided to take over a case and the board has normally not had an opinion contrary to the opinion of the aliens police regarding the claim for refugee status. It is too early to determine if the new procedure is a good solution to the problem of prescreening.

**REFUGEE MIGRATION TO THE NORDIC STATES FROM COUNTRIES OF FIRST ASYLUM**

There are at least three ways to solve a refugee problem: by voluntary repatriation, by integration in the country of refuge, and by resettlement in a third country. The two latter cases both presuppose that asylum is granted. From the international community's perspective, however, the solutions each require both the granting of asylum and contributions in kind or in cash to assist refugees.

Immediately after World War II, the Nordic countries, especially Sweden, became countries of first asylum for a considerable number of refugees coming mostly from the Baltic states and Poland. Geographically the Nordic states are, however, well protected from being a "natural" country of first asylum. When refugees flowed out of Eastern Europe in the 1950s, normally countries in Central Europe, such as Austria, Italy, and the Federal Republic of Germany, became countries of first asylum. In a spirit of international solidarity, the Nordic states accepted refugees from these countries for resettlement. From 1950 to 1976 more than 22,000 refugees
migrated from countries of first asylum (mostly Austria and Italy) to Sweden. 92

Today, the Nordic states accept refugees for migration according to a quota system. In Denmark, quotas for refugees were previously established on an ad hoc basis. On January 1, 1979, the Danish Government initiated a new quota system. 93 Each year the national budget includes a fixed appropriation, starting at thirty-five million Danish Kroner ($7 million) and increasing with an inflation index. This appropriation will cover all expenses, both of refugees already resident in the country and of an average 500 new cases each year, including "spontaneous" refugees, emergency handicapped, family reunion cases, and ordinary resettlement cases. There are no provisions for special nationalities, but the quota currently includes resettlement from Southeast Asia, Latin America, and Southern Africa. 94

In Norway, the government establishes an annual quota of fifty refugees. Of these, ten are reserved for emergency cases and the rest for handicapped and family reunion cases. Norway has also accepted refugees on an ad hoc basis, and during the past few years some 3,000 refugees from Southeast Asia have been resettled in Norway.

At present, the Swedish quota is 1,250 refugees per year. Within the quota, Sweden has accepted mostly refugees from Latin America (Chileans, Argentines, and Uruguayans). In the past two years, special quotas have been established for refugees from Southeast Asia, and so far some 3,000 people from that area have been granted residence permits in Sweden.

Although Nordic states have been farsighted in establishing an annual quota for refugee migration, the quotas should be increased considerably if they are to make a real contribution to the world refugee problem. Furthermore, in practice they are restricted to refugees of a certain national and geographic origin, reflecting the decisiveness of political considerations. Thus, refugees from Africa, who need to migrate to other continents, have had difficulties finding resettlement in the Nordic states. The Pan African Refugee Conference of May 1979 urged "all non-African Governments, in a spirit of international solidarity, . . . to adopt a more liberal attitude towards the admittance and resettlement of African refugees in countries outside Africa, especially those who will benefit from studies outside the African continent. . . ." 95

The recommendation has had no influence on Nordic policy on migration of refugees from Africa. Although there is a need to accept refugees from that continent, the Nordic states—and for that matter also other Western European countries—continue to base their selection more on political than on humanitarian grounds. 96 One can hope that as the cornerstones of refugee assistance—international solidarity, international
cooperation, and burden sharing—become ever more ensconced as key principles in the international order, they will shape to a greater degree national legislation and attitudes, in the Nordic countries and elsewhere.

SOCIAL, ECONOMIC, AND CULTURAL RIGHTS OF REFUGEES

In the respective Nordic countries, foreigners in general, and refugees in particular, possess social, economic, and cultural rights which are in most respects equal to those of nationals.

Social integration of Convention and de facto refugees in Denmark is delegated to the Danish Refugee Council. The expenses for social integration are reimbursed by the Ministry of Social Affairs. The asylum seeker is informed of the decision of the Ministry of Justice through a so-called "letter of transfer," which states his or her refugee status and serves as an "entrance ticket" to the Danish social welfare system and to services of the Danish Refugee Council. The latter assistance is available for refugees for a period up to two years, after which period the refugees, if they still need social assistance, are transferred to their local social services. The assistance for social integration offered by the Refugee Council consists of housing, clothing, furniture (if necessary), medical aid, language courses, job counseling and placement, educational counseling, social and legal counseling, information on emigration, and assistance for family reunion.

After one year of residence, Convention refugees may apply for and obtain social pensions. They will normally obtain the equivalent of the amount granted to Danish citizens.

All refugees are offered a six-month language course free of charge in the beginning of their stay in Denmark and normally before any job placement. During this period, they are paid monthly allowances. Children may be kept in kindergartens while the parents go to the language course. Refugees who intend to study are offered further language training through courses in various People's High Schools. Vocational training and in-service training for refugees may be organized through the Danish Refugee Council in collaboration with various firms and institutions. Assistance for academic education is open for refugees who have passed the relevant language tests under the same conditions as apply to Danish students.

In Norway, the Norwegian Refugee Council, a nongovernmental organization, has been responsible for the social integration of refugees, although all costs for these activities were reimbursed by the government. Since January 1, 1981, the institutional arrangements for refugee assistance
have been reorganized. The social department of the Norwegian Refugee Council has been separated from that organization and now it constitutes an independent organ, directly under the Norwegian Government.

Social integration of refugees is carried out in a manner similar to the Danish system. Refugees enjoy the same social benefits in Norway as citizens. This includes benefits under both the National Insurance Scheme and the Public Assistance Act. Refugees are normally issued a labor permit at the same time which is valid for the same period as the residence permit. They are theoretically equal to nationals in labor rights, with no restrictions on profession, but often additional courses or practice are required, as well as knowledge of the language, before the refugees can work on a level with their qualifications.

Refugees are offered both initial and higher level courses paid for by the state. Students can follow the special Norwegian courses that the universities provide for foreign students. Youngsters are offered places in People’s High Schools, enabling rapid adjustment to the language and culture. Refugee children are entitled to all assistance necessary to become integrated in Norwegian schools, and are often given courses in their native tongue. Preschool children are given priority placement in day-care institutions to promote interaction with Norwegian children, learning of the language, and acquaintance with local customs. Vocational training, adult courses, and in-service training for refugees are also provided. All refugees are entitled to assistance and to state grant loans on an equal footing with Norwegians. Academic education is open for refugees under the same conditions as for Norwegian students.

In Sweden, where no refugee council of the same type as in Denmark and Norway exists, a number of central state authorities are responsible for the social integration of immigrants and refugees. In order to coordinate the integration of refugees, a coordinating body was established in 1979. This body is comprised of representatives of the Central Police Board, the Central Immigration Board, the Labor Market Board, the National Board of Health and Welfare, and the National Board of Education.

Foreigners with a residence permit in Sweden have generally the same social, economic, and cultural rights as Swedes. In addition, the Constitution guarantees them freedoms of speech, religion, and association equal to those of Swedish citizens. Rights to liberty and to personal security also apply, with the only exception that a foreigner can be detained to prevent an unauthorized entry into the country of if action is being taken against the alien with a view to deportation or extradition.

Refugees enjoy the same social benefits as Swedes. Pension insurance in Sweden is composed of a basic requirement pension and a supplementary retirement pension. The latter is based on earned income, and the size
of the supplementary pension depends on how much a person has earned through gainful employment.

According to special legislation, all immigrant employees who have labor permits or are otherwise registered in Sweden are entitled to a leave of absence to attend Swedish lessons. Immigrants are entitled to 240 hours of tuition-free lessons. They are to be paid wages by their employers while studying, whether their lessons occur during working hours or not. Other immigrants are entitled to language training arranged by voluntary adult education associations.

Refugees with insufficient vocational training, or who are unable to obtain work in their present trade or profession, or who are in danger of becoming unemployed can attend special courses sponsored by the National Board of Education and the Labor Market Board. The most common courses of this kind are retraining courses, which provide basic vocational training for unemployed persons, primarily within sectors where there is a labor shortage. Anybody participating in a retraining course or some other form of labor market training can receive training allowances. Academic education is open for refugees on the same conditions as for Swedes.

A reform that has attracted attention from abroad is the right of foreigners to take part in municipal elections. Prerequisites are that the alien has lived in Sweden at least three years and that he or she is eighteen years old. Foreigners eligible to vote are also eligible to be elected to municipal office.

In Finland, there are no special provisions on refugees' social, economic, and cultural rights; Convention refugees are on equal footing with other aliens. In this respect it must be noted that Finland, when acceding to the 1951 Refugee Convention and the 1967 Refugee Protocol, made reservations to Article 7(2) (exemption from reciprocity), Article 8 (exemption from exceptional measures), Article 12(1) (personal status), Article 24(1)(b) and (3) (labor legislation and social security), Article 25 (administrative assistance), and Article 28 (travel documents).

CONCLUSIONS

The response of the Nordic countries toward the world refugee problem today is two-sided. The four Nordic states contribute a relatively greater share to the UNHCR budget than do other countries in the industrialized world. This has contributed to the good international reputation of the Nordic states regarding their refugee policy and evidences their support of international refugee policy. Also, refugees and immigrants who have been allowed to enter and have received residence permits are well cared for, and
in most respects, with the exception of Finland, they have rights equal to those of citizens of the respective countries.

However, refugee assistance does not only mean financial contributions. Sometimes the most pressing need is for admission of refugees for resettlement, and in this respect the Nordic countries are less generous to refugees who do not come from Eastern Europe than those who do. It is true that the Nordic countries have accepted a number of refugees, mostly from Latin America and from Southeast Asia, but only on a limited basis. When it comes to so-called spontaneous refugees who arrive individually in a Nordic country seeking asylum, the refugee policy is restrictive. Nordic geography and climate shield the Nordic states from massive refugee influxes, thus, further artificial barriers seem unnecessarily protective.

Yet refugees and immigrants who do gain admission and receive residence permits are well taken care of in the Nordic countries. Except in Finland, these refugees and immigrants have rights equal to the citizens of the respective countries.

NOTES

1 The Nordic states are Denmark, Finland, Iceland, Norway, and Sweden. In this article, Iceland is not included, as alien law and policy is not a major issue there.


9 See, e.g., Statens Offentliga Utredningar 105 (1979).


13 Utlänningsförordning, No. 377, § 24 (June 5, 1980).

14 Agreement with Poland on the Mutual Abolition of Visas, April 9, 1974, Poland-Sweden, Sveriges Överenskommelser med Främmande Makter 1974:19.

15 Convention Concerning the Waiver of Passport Control, supra note 11, § 8.


17 Utlänningslag, No. 376 (June 5, 1980) [hereinafter cited as Utlänningslagen].

18 Utlänningsförordning, No. 377 (April 30, 1980).


21 Id., art. 2(1).

22 For an analysis of the results of the Conference, see A. Grahl-Madsen, Territorial Asylum 63 (1980).

23 For an extensive list of these provisions, see Weis, Territorial Asylum, 6 Indian J. Int'l L. 173, 180-81 (1966).

24 Lov om utlendigers adgang til riket (Fremmedloven), § 2(2), 3 Norsk Lovtidend 1956, at 481 (July 27, 1956), [hereinafter cited as Fremmedloven]; Utlänningslagen, supra note 17, § 3(2).

25 The Norwegian law reads: "A political refugee shall, unless special grounds can be invoked against it, be given refuge (asylum) in the Realm, if he asks for it." The Swedish law reads: "A refugee shall not without grave reasons be refused asylum in Sweden, when he has need of such protection."

26 See text at notes 59-70 infra.

27 Fremmedloven, supra note 24, § 2(2); Utlänningslagen, supra note 17, § 3(2).

28 See Odelstingsproposisjon No. 1, at 23 (1956) (Norway), and Proposition 1979/80:96, at 40 (Sweden).

29 According to Article 1(A)(2) of the 1951 Refugee Convention, a criteria for refugee status is that the well-founded fear of persecution takes place "as a result of events occurring before 1 January 1951." This restriction was lifted by the 1967 Refugee Protocol.


31 Utlänningslagen, supra note 17, § 6.

32 Id., § 5.

33 In this article the term "de facto refugee" refers to any person who, without being a refugee under Article 1 of the 1951 Refugee Convention as amended by the 1967 Refugee Protocol, is in a refugee-like situation and is granted a residence permit. For a definition of this term, see 2 P. Weis, Problems of Refugees and Exiles in Europe (1975).

34 Utlänningslagen, supra note 17, § 6. See text at notes 52-54 infra.


36 In other cases, decisions on return (refoulement) are taken by the police authorities. See the Danish aliens law, Lov om udlændinges adgang til landet m.v., § 6(1)-(3) (June 22, 1973).

37 Alien authorities are those authorities in their respective countries who are responsible for immigration. Those are in Denmark, the alien police, the Central alien police (Tilsynet med Utlændinge), and the Ministry of Justice; in Finland, the alien police and the Ministry of Interior; in Norway, the alien police, the State Alien Office (Statens Utlendingskontor) and the Ministry of Justice; in Sweden, the alien police, the Central Immigration Board (Statens invandringsverk), and the Ministry of Labor.

38 Cf. Melander, Asyl 44 (Statens Offentliga Utredningar 1972:85).


40 For the Danish practice, see Nielsen, De facto flygtninge i Danmark, Flyktning i Norden, id. at 34; for Norway, see Grahl-Madsen, De facto flykninge i Norge, Flyktning i Norden, id. at 41.

41 In Finland there is no clear practice regarding cases of Republikflycht.


43 Cf. OAU Refugee Convention, supra note 20, art. 1(2).
See Weis, *The "De facto-Refugees."

Id. See also 2 P. Weis, supra note 33.

See text at notes 30-34 supra.

See Weis, supra note 17, § 6. In the law the word "refugee" is not used to denote this category. In the *travaux préparatoires* this category of asylum seekers is described as persons who might be entitled to residence permits because of "humanitarian reasons of a political kind." Cf. Statens offentliga utredningar 1979:64, at 122.

*Cf.* Asylum in Europe, A Handbook for Agencies Assisting Refugees 48 (2d ed. 1979), [hereinafter cited as Asylum in Europe].

Nielsen, supra note 40, at 34.

Grahl-Madsen, supra note 40, at 38.


Weibo, *De facto flyktingar i Sverige, Flykting i Norden*, 49. Supra note 39 at 49.


Statens Offentliga Utredningar 1979:64, at 123.

Summary Record of the Two Hundred and Sixty-second Meeting, 26 Executive Committee of the High Commissioner’s Programme (262th mtg.), UN Doc. A/AC.96/514 (1975).

OAU Convention on Refugees, supra note 20, art. 1(2).


See supra note 25 for the texts of the relevant provisions.


*Cf.* the 1951 Refugee Convention, supra note 3, art. 1(F), which allows exclusion of persons with respect to whom there are reasons to believe have committed a war crime, a serious nonpolitical crime, or acts contrary to the principles of the United Nations.

1951 Refugee Convention, supra note 3, art. 33(2). In practice, the concept of "a serious non-political crime" in art. 1(F) is interpreted as being identical to the concept of "particularly serious crime" in art. 33(2).


*See* The 1974 Agreement concerning Cooperation to Prevent Hijacking of Civil Aircraft. Fordragsserie 86/1973. This is a bilateral treaty between Finland and the Soviet Union. The case has been analysed by Träskman, "Ne punire, sed dedere." En redogörelse för det finsk-sovjetiska kaparavalet av år 1974, reprinted in [1978] Juridiska Föreningen i Finland, 473.


Id. at 107.

Id. at 16.

Agreement concerning Reciprocal Obligation to Accept Certain Persons Deported from

74 Convention on Waiver of Passport Control, supra note 11.
75 Id., art. 10(2).
76 Protocol of February 14, 1958, on a Meeting with the Nordic Aliens Board.
77 Convention on Waiver of Passport Control, supra note 11, art. 10(3).
78 Melander, Recommendation (XXVII) 186-87 (1967); 67/14, June 16)
79 1951 Refugee Convention, supra note 3, arts. 27, 28.
80 Lov om udlaendiges adgang, § 6(3). See also Gammeltoft-Hansen-Paludan, Pre-screening i Danmark, Fløyting i Norden, supra note 39, at 57.
81 Nielsen, supra note 40, at 36.
82 Asylum in Europe, supra note 48, at 48, 51.
84 Tarasti, supra note 67, at 53.
85 See Asylum in Europe, supra note 48.
86 Utlänningslagen, supra note 17, §§ 33, 37.
88 See, e.g., Gammeltoft-Hansen, supra note 80; Nobel, Pre-Screening i Sverige, Fløyting i Norden, supra note 39 at 65; Stensstad, Pre-Screening i Norge, Fløyting i Norden, id. at 61; Melander, Asylfråten i Sverige, Svensk Juristtidning 1980 2 (1983).
89 Utlänningslagen, supra note 17, § 19, 33-35.
90 During the period July to September 1980, only 46 individual cases were taken over by the Central Immigration Board by virtue of section 37 of the aliens act. Letter of October 24, from the Central Immigration Board to the author.
91 A Grahl-Madsen, Territorial Asylum 102 (1980).
93 Paludan, African Refugees in the Scandinavian Countries (Background Document presented to the Pan African Conference on Refugees, REF/AR/CONF/BD. 12) at 3.
94 Id.
98 For a more detailed account on the social, economic, and cultural rights of refugees in Denmark, see Asylum in Europe, supra note 48, at 52. See also Paludan, supra note 93, at 10.
99 Asylum in Europe, supra note 48, at 112.
101 Den Svenska Regeringsformen, ch. 2, § 20(4-5).
102 Id., ch. 2, § 20(4-5).


Eriksson, supra note 69, at 203.


See supra note 2.