Appendix III

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Review of Foreign Laws*

AUSTRALIA

Law


Synopsis

No statute provides specifically for the admission of refugees to Australia. The minister of immigration and ethnic affairs may therefore issue entry permits to refugees under normal immigration procedures. Immigration Act § 6. In the case of Vietnamese refugees, for example, Australia accepted approximately 40,000 persons as ordinary immigrants, including 2,011 persons arriving by boat, between July 1976 and June 1979. This represents the largest per capita intake of Indochinese refugees of any country. In order to discourage future arrivals by boat, however, Australia adopted in 1980 the Immigration (Unauthorized Arrivals) Act, which imposes substantial penalties on persons who bring large numbers of prohibited immigrants to Australia by ship. See Goodwin-Gill at note 99.

Although Australia has acceded to both the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, these instruments have not been enacted by the Australian Parliament and therefore do not carry the force of law internally. There is, furthermore, no statutory procedure for the application for or the granting of asylum. It is the policy of the Australian Government to grant asylum to all Convention refugees, however, and applications are referred to a Committee for the Determination

of Refugee Status before a final decision is rendered by the minister of immigration and ethnic affairs. See U.N. Doc at 2.

The decision as to which refugees shall be admitted to Australia from camps overseas, and general coordination and development of refugee policy, is the responsibility of the Standing Interdepartmental Committee on Refugees. Responsibility for newly arrived refugees is delegated to a private corporation, Commonwealth Accommodation and Catering Services, which administers hostels under contract with the government to provide temporary assistance to refugees pending permanent resettlement. See U.S. Congress.

The right of refugees under the Convention not to be deported to countries where they are likely to be subject to persecution is not guaranteed by statute. However, protection from extradition for crimes of a political character is provided by section 4(1A) of the Extradition (Commonwealth Countries) Act and section 4(1A) of the Extradition (Foreign States) Act, which designate those offenses for which extradition is available. Extradition treaties typically further provide that a person shall not be extradited for purposes of prosecution or punishment on account of race, religion, nationality, or political opinion.

Secondary Sources


Goodwin-Gill, Guy S. Entry and Exclusion of Refugees: The Obligations of States and the Protection Function of the Office of the United Nations High Commissioner for Refugees, this volume.


AUSTRIA

Law


Synopsis

Austria is a party to the 1951 Convention on the Status of Refugees and has enacted legislation pursuant to it. Section 5(1) of article I of the Federal Law on the Right of Residence of Refugees entitles a person seeking asylum to remain in Austria pending a decision granting or denying refugee status. The alien must apply for asylum within two weeks after entry or after having learned of a reason why he or she might be subject to persecution in his or her country of origin.

The criteria for obtaining refugee status are the same as those described in Article 1(A) of the 1951 Convention. Residence Law, art. I, § 1. Any person who has already been recognized as a Convention refugee in another state, or who has obtained protection from persecution in another state, is disqualified from receiving asylum in Austria. Residence Law, art I, § 7(2). Persons who are a danger to national security are also excludable. Residence Law, art I, § 4.

Refugee status is determined by the governor of the Land in which application is made. The authority of the governors has been delegated to the directors of security (sicherheitsdirektor) of the various Länder. See U.N. Doc. at 3.

Article I, section 9 of the 1968 law requires that the office of the UNHCR be notified of refugee recognition proceedings, and that it be entitled to present its views before a final decision is reached on any application. The UNHCR representative may contact applicants orally or in writing. Residence Law, art. I, § 9(2). The security directors must inform the Ministry of the Interior of a proposed decision. In Land Wien and Land Lower Austria, UNHCR is represented in the offices which determine refugee status.

A decision denying refugee status may be appealed to the minister of the interior, and from there to the Supreme Administrative Court (Verwaltungsgerichtshof). An Asylum Advisory Board (Asylberat), composed of rep-
representatives of certain ministries, Parliament, and UNHCR, advises the minister of the interior on asylum questions. See UN Doc at 3.

A positive decision on recognition is irrevocable, but a person's refugee status may be terminated if he or she establishes a residence elsewhere, returns to his or her country of origin, or fulfills any of the other circumstances described in Article 1(C) of the Refugee Convention. Residence Law, art I, § 3. A person recognized as a refugee receives a certificate of refugee status, according to Article 27 of the Convention, which conveys the right to permanent residence in Austria. Residence Law, art I, § 10(1).

Persons not covered by the Convention are subject to ordinary legislation applicable to aliens, the Aliens Police Law.

Secondary Sources


BELGIUM

Law

Loi sur les extraditions, October 1, 1833, 8 Bull. Off. no. 1195.


Synopsis

Belgium has not only enacted as domestic law the texts of both the 1951 Convention and the 1967 Protocol, but has taken the further step of delegating to the UNHCR representative in Belgium the task of determining which persons are Convention refugees. Any alien entering Belgium, whether lawfully or otherwise, upon giving notice to the minister of justice within forty-eight hours of his or her arrival, is entitled, according to article 2(A) of the Loi sur la police des étrangers of March 28, 1952, as amended by a law of April 30, 1964, Moniteur, June 30, 1964, [1964] Pasinomie 543, to seek protection from refoulement under the 1951 Convention or under article 2(B) of the law. It is not clear whether article 2(B), which contains language very similar to that of Article 1 of the Convention, in fact encompasses persons not included within the Convention definition. Upon the giving of such notice, and until such time as the application for refugee status is acted upon, the minister of justice is prohibited from expelling or returning the applicant by article 3(2) of the 1952 law.

The 1951 Convention was ratified by a law of June 26, 1953, and the Protocol by a law of February 27, 1969, Moniteur, May 3, 1969, [1969] Pasinomie 110. Article 5 of the 1953 law designates the minister of foreign affairs as the appropriate official to receive applications for refugee status under the Convention, but permits this task to be delegated to the international body vested by the United Nations with the duty to protect refugees. Such authority was delegated to the UNHCR representative in Belgium by a ministerial decree on February 22, 1954, Moniteur, April 18, 1954. If the UNHCR representative refuses to grant refugee status, then the application passes to the Commission consultative des étrangers, an advisory committee created under article 10 of the Loi sur la police des étrangers for the purpose of making determinations under article 2 of that law.

The length of time a refugee must reside in Belgium after entry to

Belgian extradition laws also provide protection for aliens. Article 6 of the Loi sur les extraditions of October 1, 1833, provides that extradition treaties entered into by Belgium shall prohibit extradition for crimes of a political nature. Article 6 was amended by a law of March 22, 1856, Moniteur, March 27, 1856, which added a second clause, the so-called "Belgian attentat" clause, excluding from the definition of a political crime the assassination of a foreign head of state. Persons recognized as refugees under the process outlined in the previous paragraphs are protected from extradition on any grounds.

SECONDARY SOURCES


BRAZIL

Law


Decree-law no. 941, October 13, 1969, which defines the juridical situation of foreigners in Brazil and grants other provisions, 7 Colecao 136 (1969).


Synopsis

Brazil is a party to the 1951 Refugee Convention and has provisions in its law regarding foreigners which are specifically designed to afford protection to political refugees. The Regulation of June 11, 1970, repeats everything contained in Decree-law no. 941, and expands certain of its
provisions, thus constituting the principal legislation on the subject. Political refugees may be granted permanent asylum and protection from extradition, although they are otherwise subject to the laws applicable to all other immigrants and foreign visitors.

Article 153, section 19 of the Brazilian Constitution mandates the protection of political refugees by declaring that such persons may not be extradited. This attitude is reiterated in article 115(VII) of the 1970 Regulation. Article 115 defines a political crime as including an attempt against the life of a head of state or other person in a position of authority, anarchy, terrorism, sabotage, distribution of war propaganda, and any other acts against the political or social order. In addition, section 2 of article 115 grants the Supreme Federal Tribunal the authority to define political crimes. The definition of a political crime is narrowed under section 1 of article 115, which declares that no crime which is a mere violation of "ordinary criminal law" shall be deemed a political offense, nor is an offense political if committed in conjunction with an "ordinary crime" where such ordinary crime is the principal offense.

Persons seeking refugee status must enter Brazil under normal visa procedures. Title I, chapter I of the 1970 Regulation, which describes the classes of entrance visas, does not include political refugees. Persons seeking refugee status might apply for a "permanent visa" according to the provisions of articles 18 and 19. However, no standards for the granting of such visas are described in the statute. In addition, the Regulation does not describe any processes by which a foreigner resident in Brazil may petition for refugee status. Article 136 declares that no person may be deported for remaining in Brazil beyond the length of time permitted by his or her visa where such deportation would amount to an impermissible extradition. Thus, the question of refugee status may be resolved in the course of deportation proceedings.

Asylum is discussed most completely in the sections of the 1970 Regulation which deal with extradition. Article 119 describes the extradition process, by which the Ministry of Foreign Relations delivers the person sought to be extradited to the Ministry of Justice, which must place the subject alien in prison and present the extradition request to the Supreme Federal Tribunal. Article 139 declares that a person waiting to clarify his or her status as a political refugee may be placed in prison for no more than ninety days. The Regulation does not indicate what facts are sufficient to demonstrate the existence of a political crime, nor does it describe how the burden of proof shall be allocated.

Even if it should be found in the course of extradition proceedings that the alien does not qualify for political asylum, the president of the Republic may grant relief under article 102 by a decree revoking any expulsion order. The law does not state whether or not the alien is thereby granted
permanent asylum or whether such a decree merely restores the alien to his or her former visa status.

Once granted permanent asylum, the alien receives a political asylee identification card according to section 2 of article 60. See replica reprinted in Bezerra-Neto at 35. Article 140 permits the government to impose special restrictions on the activities and movements of political asylees, and these conditions appear on the reverse side of the asylee's identification card.

Political refugees may not leave Brazil without previously notifying the Brazilian Government, and must obtain a visa which permits departure and reentry. Failure to do so constitutes a waiver of the right to asylum, and the alien may not reenter Brazil with the status of a political refugee. Article 96, section 1 grants political refugees the right to receive Brazilian passports, but only if they are admitted and registered as political refugees.

Resident political refugees may seek naturalization under ordinary procedures described in article 153. Requirements for naturalization include four years of residence in Brazil, knowledge of Portuguese, ability to support self and family, no record of condemnation of Brazil, and no conviction of any crime which carries a penalty of over one year in prison.

**Secondary Source**


**Canada**

Law


**Synopsis**

Canada acceded to the Convention and Protocol relating to the Status of Refugees in 1969, [1969] Can. T.S. No. 6, [1969] Can. T.S. No. 29, but these treaties will not become part of Canadian domestic law without a specific federal legislative enactment. Consistent with its obligations under the Convention, Canada recognizes the right of *nonrefoulement* and the deportee's right to due process of law. See Wydrzynski at 156-57.
The Convention definition of refugee was first incorporated into Canadian law in 1953. See Stat. Can. 1973, c. 27. Sections 6(2) and 115(1)(d) of the Immigration Act, 1976, made possible the extension of refugee status to displaced persons and persecuted persons still within their home countries. The Cabinet also has discretionary power to admit individual victims of natural disasters, civil wars, or other dire circumstances. See Wydrzynski at 166.

Persons at a Canadian port of entry or already lawfully within Canada may claim Convention refugee status only during the inquiry stage of deportation proceedings if threatened by deportation or exclusion. The claim to refugee status will be considered only if the claimant has been found deportable by a special inquiry officer. Once found deportable, the claimant is referred to a senior immigration officer and given an opportunity to present evidence, under oath, in support of the claim to refugee status. Immigration Act, 1976, § 45(1). The claimant has a right to counsel, Immigration Act, 1976, § 45(6), and to the aid of an interpreter, Immigration Regulations, 1978, § 28. The senior immigration officer sends the record to the minister of employment and immigration, who then refers it to an appointed Refugee Status Advisory Committee. Immigration Act, 1976, §§ 45(2), 45(4), 48. After receiving the committee's view on the matter (which is merely a recommendation), the minister decides if the claimant is entitled to refugee status under the Convention. If the minister finds that the claimant is a refugee, the claimant and the senior inquiry officer are informed of that decision, Immigration Act, 1976, § 45(5), and the original inquiry is resumed, Immigration Act, 1976, § 47. The refugee will be allowed to enter and/or remain in Canada if the special inquiry officer finds that the refugee is not a threat to public order or national security, Immigration Act, 1976, §§ 4(2), 19(1)(c)-(g), 27(1)(c)-(d), 27(2)(c), and has not been convicted of a crime punishable by five years imprisonment under Canadian federal law, Immigration Act, 1976, § 4(2)(b).

The case is also returned to the inquiry officer if the minister decides that the claimant is not a Convention refugee. The original inquiry is resumed, and either a deportation order is made under Immigration Act, 1976, § 46(1), or the claimant may petition the Immigration Appeal Board for reconsideration of the claim to refugee status under Immigration Act, 1976, § 70(1). The petition is granted only if the information in the application convinces the board that the claimant is "more likely than not" to be successful if granted a full rehearing. Immigration Act, 1976, § 71(1). Rejection of the application for reconsideration is tantamount to a decision that the claimant is not a Convention refugee. The person is returned to the original inquiry proceeding and the deportation order is issued. Immigration Act, 1976, § 46(2)(b).

Should the Immigration Appeal Board accept the application for recon-
sideration, it holds a full hearing in which a representative of the minister may participate. Immigration Act, 1976, § 71(2). After the hearing, the claimant will again be returned to the original inquiry. If the board's decision is adverse, the claimant is deported pursuant to Immigration Act, 1976, § 46(2)(b). If the board accords the claimant refugee status, he or she is admitted unless the inquiry officer finds that the refugee is excludable on the grounds discussed above. Immigration Act, 1976, § 47.

The refugee may be able to appeal to the Immigration Appeal Board an order of deportation issued by the inquiry officer on public order or national security grounds. The appeal usually must be based on a question of law, or fact, Immigration Act, 1976, § 72(3), but sometimes an appeal can be made to "the Board's compassionate and humanitarian jurisdiction." See Wydrzynski at 165.

Aliens outside Canada may also seek to be recognized and admitted as Convention refugees. Applications must be made at a foreign branch of the Canadian Employment and Immigration Commission. See id. at 165.

Non-Convention refugees may be admitted under Special Refugee Relief Programs, similar to those employed by the United States and other nations in response to situations not covered by the Convention. See id. at 166. Each year, the Canadian minister of employment and immigration establishes how many immigrants will be admitted the following year under the Immigration Act, 1976, §§ 3(a), 7. A quota is established for refugees who will be admitted and given special government resettlement aid. Refugees sponsored by nongovernmental organizations or families are not part of the refugee quota, but are part of the general annual immigration quota. Special Refugee Relief Programs operate independently of the regular immigration quota. See KALEIDOSCOPE CANADA, May-June 1980, at 24-25. Once admitted, refugees have the same rights and duties as other residents of Canada. See Dirks at 232.

Secondary Sources


KALEIDOSCOPE CANADA, May-June 1980.


DENMARK

Law

_Lov om udlaendiges adgang til landet_ (Law on aliens’ entry into the country), No. 344 of June 22, 1973, 5 Love og Anordninger 975 (1973).

_Bekendtgørelse om udlaendiges adgang ti og ophold i landet_ (Ordinance on aliens’ entry into and residence in the country), No. 345 of June 22 1973, 5 Love og Anordninger 981 (1973).

Synopsis

Denmark is a party to the 1951 Refugee Convention and the 1967 Protocol. As no Danish law deals specifically with refugees, the Law on Aliens’ Entry into the Land and its accompanying ordinance govern refugees, as well as other aliens. There are no special provisions for the entry or recognition of refugees.

Denmark has no procedure for granting asylum. A refugee wishing to stay in Denmark will request a regular residence permit. Denmark’s adherence to the 1951 Convention implies that refugees will receive preferential treatment, and such is indeed the practice. See Melander, *Nordic Refugee Law and Policy*, this volume. The refugee’s application will go first to the Central Aliens’ Police, and then to the Ministry of Justice for final decision if political grounds are invoked for requesting residence.

The Ministry may do one of three things: accord the applicant A-status as a Convention refugee; accord him or her B-status as a _de facto_ refugee; or reject the application. To receive A-status, the refugee must establish a well-founded fear of persecution on the grounds stated in Article 1 of the 1951 Convention. A-status entitles the person to a residence permit, a work permit, and formal protection against _refoulement_. B-status is an administrative practice intended to help those in need who do not meet the strict Convention definition of refugee. It grants the person essentially the same privileges as A-status. If the application is rejected, the person is normally returned to his or her country of origin. The Ministry will take no final action, however, until the Danish Refugee Council, a private organization, has had a chance to express an opinion on the matter. See U.N. Doc. at 7.

Aliens may be refused entry into Denmark for the reasons listed in section 2 of the Aliens’ Entry Law. There is no right of entry for refugees. Refugees may also be excluded if they are part of an overwhelming influx or if they could have received asylum in their state of first refuge. The normal grounds for deportation of aliens also apply to refugees. Section 6(3) does provide a procedural safeguard by requiring a decision by the
minister of justice before a person claiming a fear of political persecution in his or her homeland can be deported.

A residence permit entitles a refugee to all social services. The Danish Refugee Council is especially active in helping refugees to obtain the necessary permits and to adjust to Danish life.

SECONDARY SOURCES


FRANCE

Law

Constitution, September 28, 1958, preamble.


Synopsis

France established the Office for the Protection of Refugees and Stateless Persons (OFPRA) under Law No. 52-893 of July 25, 1952, which, along with the implementing Decree No. 53-377 of May 2, 1953, gave that office authority to determine refugee status and to give assistance to refugees. Article 2 of Law No. 52-893 recognizes as a refugee any person who falls within the mandate of the UN High Commissioner for Refugees, or within the definition in Article 1 of the 1951 Convention. With Law No. 70-1076 of November 25, 1970, France enacted as domestic law the 1967 Protocol relating to the Status of Refugees. France bases its refugee laws on a statement in the Preamble to the 1958 Constitution, which confirms the right to asylum implied in the Declaration of 1789 and stated more explicitly in the Preamble to the 1946 Constitution.

OFPRA is an autonomous body attached to the Ministry of Foreign Affairs, and is comprised of a director and an advisory council (conseil de
A representative of the Ministry of Foreign Affairs chairs the council, which is composed of representatives of the Ministries of Justice, Interior, Finance, Labor and Population, Health and Social Security, and an appointed representative of officially recognized nongovernmental organizations concerned with refugees. According to article 3 of the 1952 law, the representative of UNHCR may take part in council meetings and present his or her views and proposals. The act creating OFPRA also provides in article 1 for cooperation with UNHCR, and subjects OFPRA to its supervision as required by international agreements to which France is a party.

OFPRA is the only authority that can initially determine whether a person qualifies for asylum as a refugee. Law No. 52-893, art. 2. The procedure for gaining asylum as a refugee begins when the refugee arrives at the French border. If the refugee comes to France from another country of refuge, the frontier officials may have grounds for refusing entry. When the refugee flees directly to France, however, the frontier officials must refer him or her to the préfecture of the locality in which he or she wishes to reside and issue a "safe-conduct" if he or she is without proper documentation.

Once the refugee arrives at the préfecture and submits an application for recognition and residence as a refugee, a one to three month renewable residence permit and a corresponding work permit are issued and the alien is referred to OFPRA so that a formal application for recognition can be submitted. If OFPRA grants refugee status, article 3 of Decree No. 53-377 requires the office to issue the refugee a certificat de réfugié, generally valid for three years and renewable. Normally, the refugee can concurrently obtain a work permit. The refugee must then apply again to the local préfecture for a regular residence permit, which will place him or her on the same footing as other aliens with that type of permit. Generally, a person with such a permit possesses the freedom to travel and work, but must report any changes of residence. See Goodwin-Gill, this volume.

If OFPRA denies the applicant refugee status or fails to render a decision within four months, the applicant has one month to lodge an appeal with the Commission des recours. The commission, established by article 5 of the 1952 law, comprises a member of the Conseil d'État and representatives of OFPRA and UNHCR. If OFPRA and the commission refuse to permit residence in France, the applicant will be given three months to locate an amenable host country; France will not force the applicant to return to a hostile country of origin.

Any refugee threatened by expulsion or deportation may petition the commission to stay the carrying out of such an order. The commission reviews the petition and advises the minister of the interior of the legality.
of the threatened action under Articles 31 to 33 of the 1951 Convention. Decree No. 53-377, arts. 27-29.

Although OFPRA supervises resettlement of refugees in France, a significant role is delegated to private voluntary agencies, in particular in the case of the many Indochinese refugees admitted in the late 1970s. On a per capita basis, France admitted as many refugees from camps in Indochina as did the United States. See U.S. Congress at 413.

Article 4 of the 1952 law and article 5 of the 1953 decree authorize the director of OFPRA to issue such documents to refugees as are necessary to give recognition under French laws to family status, educational degrees and certificates, professional qualifications, and other matters governed by the laws of the refugee's country of origin, and to certify translations into French of official documents issued in foreign languages.

**Secondary Sources**


**German, Federal Republic of**

*Grundgesetz* (Federal Constitution), May 23, 1949, art. 16(2)(2).

Article 16(2)(2) of the Federal Constitution states that, "Politically persecuted individuals enjoy the right of asylum." The constitutional right of asylum includes the rights of entry, nonextradition, and nonrefoulement. The Federal Republic of Germany (FRG) is also a party to both the 1951 Convention and the 1967 Protocol.

Both the constitutional right of asylum and the right of nonrefoulement under the 1951 Convention are implemented by the Aliens Law of 1965. Article 28 of the Aliens Law guarantees a right of asylum both to Convention refugees and to other foreign nationals subject to political persecution within the meaning of Article 16 of the Constitution. Article 14 of the Aliens Law contains a nonrefoulement provision corresponding to Article 33(1) of the Refugee Convention.

In addition to the rights of asylum under the Convention and Protocol
and the Constitution, refugees who were residing in the FRG prior to the adoption of the Convention, and other displaced persons formerly under the mandate of the International Refugee Organization, are protected from forcible return to conditions of persecution by the Homeless Foreigners Act, art. 23(3). Persons not within any of the above categories may also apply for permission to be "tolerated" in the FRG. If approved, the applicant receives an "Evidence of Toleration" document that permits residence in Germany. See Melander at 167.

The constitutional right of asylum may be forfeited, according to Article 18 of the Constitution, if it is misused for the subversion of the free and democratic order. Article 14 of the Aliens Law contains additional exceptions to the rule of nonrefoulement corresponding to those found in the 1951 Convention. An asylum seeker may be deported, for example, if he or she is considered a danger to security or to the general public, or has been convicted of a serious nonpolitical crime. These exceptions also apply to homeless foreigners under Aliens Law, art. 55(2). The constitutionality of these exceptions has been challenged, however, on the grounds that the right of asylum guaranteed by Article 16 of the Constitution contains no such limitations. See Kimminich, Asylrecht, at 157.

The procedure for review of asylum applications is regulated by articles 29 to 38 of the Aliens Law and by the 1978 and 1980 Laws for the Acceleration of the Asylum Procedure. An alien seeking refugee status must report to the border police or aliens authority (Ausländerbehörde). A preliminary examination is conducted at the Ausländerbehörde, at which point the following cases are excluded from the ordinary eligibility procedure: (1) the refugee may be excluded if he or she has been granted asylum or found protection from persecution in another country; (2) persons convicted of a serious nonpolitical crime are subject to expulsion; (3) applications for asylum which are found to be manifestly an abuse of legal process may be summarily dismissed.

After completion of the preliminary examination, the asylum seeker is sent to a collection center (sammellager) where a final determination of refugee status will be made by the Federal Agency for the Recognition of Refugee Status (Bundesamt für die Anerkennung ausländerischer Flüchtlinge). Aliens Law, art. 29. Applications are judged by a single official from the Bundesamt after a hearing which a UNHCR observer is entitled to attend. A federal commissioner for asylum affairs represents the government in the proceedings. The asylum seeker has the right to confer with the UNHCR representative and to be represented by counsel. Aliens Law, arts. 32, 41.

A negative decision may be appealed to the administrative court of the area of the applicant's residence, and from there to the administrative court of the Land, unless the court of first instance rules unanimously that the application is manifestly unfounded. Law for the Acceleration of the Asy-
lum Procedure, art. 3. Appeal therefrom may be had, if leave is granted, to the Federal Administrative Court in Berlin. A final decision at any stage granting recognition is binding on all other administrative and judicial authorities except in extradition proceedings. Aliens Law, art. 45.

Once recognized, refugees are distributed to the various states according to a distribution key issued by the Federal Council in Bonn. Aliens Law, art. 42. Upon assignment to a state, the refugee is given a residence permit valid for five years by the local Aliens Office. The recognized refugee enjoys almost all the rights and duties of a German citizen, such as the right to vote and run for public office, and the obligation of military service.

Refugee status may be terminated through revocation proceedings initiated by the director of the Bundesamt only upon a change in circumstances on which recognition was based or if the decision was based on incorrect statements or omission of material facts. Aliens Law, art. 37.

SECONDARY SOURCES


Goodwin-Gill, Guy S. Entry and Exclusion of Refugees: The Obligations of States and the Protection Function of the United Nations High Commissioner for Refugees, this volume.


------. Die Entwicklung des Asylrechts in der Bundesrepublik Deutschland, 27 Juristenzeitung 257-263 (1972).


**HONG KONG**

**Law**

Immigration Ordinance, April 1, 1972, Laws of Hong Kong ch. 115.

**Synopsis**

No provisions of domestic or treaty law give refugees any special recognition. The 1972 Immigration Ordinance is controlling on the question of admissions. Those without Hong Kong or Commonwealth ties are admitted only by permission of the immigration officer. The director of immigration has the right to exempt any person or any class or description of persons from compliance with any or all of the immigration provisions. Immigration Ordinance, § 11(1), (9). Refugees arriving by boat from Vietnam are currently admitted to Hong Kong and granted temporary asylum through this procedure. See United States at 443. Fines, imprisonment, and/or deportation follow unauthorized landings unless the governor of Hong Kong provides an exemption under the Immigration Ordinance of 1972, § 38(3).

An amendment to section 37 of the Immigration Ordinance of 1972, Ord. No. 61 of Aug. 2, 1979, provides penalties up to life imprisonment for shipowners, crewmembers, or other persons aiding the entry by ship to Hong Kong of unlawful entrants as defined by an order of the governor in council. Such an order was issued on August 7, 1979, defining as unau-
authorized entrants all persons formerly residents of either Macau or Vietnam. Immigration (Unauthorized Entrants) Order, L.N. No. 194 of 1979.

SECONDARY SOURCES


ITALY

Law

Constitution, December 27, 1947, art. 10.


Synopsis

Italy's Constitution provides in Article 10(3) that "the alien who in his country is denied the enjoyment of the democratic liberties guaranteed by the Italian Constitution has the right of asylum within the territory of the Republic in accordance with the conditions established by law." Although the Italian Parliament has enacted no implementing law which sets forth the conditions for the enjoyment of asylum, the court of appeals at Milan held in Pubblico Ministerio v. Grsetic, Sentenza n. 1566/64 (1964), that the inertia of the legislature could not be a proper basis for the denial of a right which is positively sanctioned by the Constitution. It was further held that the executive branch of the Italian Government does not possess the power to refuse asylum at will. A rejection of a request for asylum must be supported by a proper reason, and in any case must be communicated to the alien, who is entitled to challenge the legality of the rejection in court. See 2 Grahl-Madsen at 117.

In addition to the constitutional right of asylum, Italy has acceded to the 1951 Convention and the 1967 Protocol. Italy has limited the application of these provisions, however, to persons displaced as a result of events
occurring within Europe. There is no procedure for determining whether a person who is refused Convention refugee status may nevertheless be granted asylum under Article 10 of the Constitution.

The procedure for recognition of Convention refugee status is governed by an exchange of notes on July 22, 1954 between the Italian Ministry of Foreign Affairs and the Office of UNHCR. See U.N. Doc. at 11. Convention refugee status is determined by a Joint Eligibility Commission, established by a law of December 15, 1954 giving effect to the agreement with UNHCR. The commission is composed of representatives of the Ministry of Foreign Affairs, the Ministry of the Interior, and UNHCR. Decisions of the commission are not appealable, but a rehearing may be granted upon the presentation of new facts.

An additional procedure is available to persons within the mandate of the UNHCR but excludable from Italy on the basis of the geographical limitation upon Italy’s accession to the 1951 Convention. Such persons may obtain certification of their status from the UNHCR representative in Italy, in which case they may be allowed to remain in Italy pending resettlement elsewhere. See U.N. Doc. at 11.

In exceptional cases, certain groups of non-Europeans have been granted permanent residence, but the general policy of Italy is to discourage both immigrants and refugees from resettling in Italy. Pursuant to its policy of granting temporary asylum to persons within UNHCR’s mandate, however, Italy permitted approximately 13,000 refugees from the Soviet Union and Eastern Europe to be processed through UNHCR centers in Italy in 1978 alone. It has been estimated that in recent years there are at least 1,500 such refugees in transit in Italy at any given time. See United States at 439.

Secondary Sources


APPENDIX III


JAPAN

Law

Immigration Control Order, Law No. 126 of 1952 and Law No. 268 of 1952, as amended.


Synopsis

Japan is not a party to the 1951 Refugee Convention and has not enacted legislation specifically providing for the admission of refugees. Refugees are therefore subject to ordinary immigration and deportation procedures. However, as Article 98(2) of the Japanese Constitution obligates Japan to follow the "established law of nations," Japan has declared that customary international law with regard to political refugees will be followed in judicial proceedings, and that the Universal Declaration of Human Rights, which recognizes, in Article 14, the right to seek and enjoy asylum from persecution, will be respected. See Takano at 267.

Various provisions of the Immigration Control Order prevent the entry of both economic and political refugees who arrive without valid visas, and prevent the granting of visas to indigent immigrants, or immigrants who cannot demonstrate a previously-arranged business or educational reason for entry. Articles 3 and 4(5) of the Immigration Control Order specify that a valid visa and passport are necessary before an alien may enter Japan. Unless the alien enters Japan to pursue a trade, or as a student, tourist, or diplomat, entry will be denied unless special permission is granted by the Ministry of Justice pursuant to article 4(1)(16). No guidelines are provided in the statute for the granting of such special permission.

A refugee who flees to Japan without a valid passport and visa may be admitted for a seventy-two hour stay while in transit to another destina-
tion under article 14, for emergency medical treatment under article 17 (but only for the duration of such treatment), or for relief from disasters at sea under article 18 (but only for a limited period at the discretion of the immigration inspector).

"Boat people" may be effectively denied entry to Japan under the provisions of articles 57(2), 58, and 59, by which the captain of a vessel is required to notify the immigration authorities of any aliens on board who, to his or her knowledge, do not have valid passports or visas. The captain is required under article 58 to prevent such aliens from landing, and under article 59 to remove such aliens from Japan at the expense of the carrier.

Indigent refugees may be excluded under article 5(3), which denies entry to paupers, vagrants, disabled persons, and anyone else who may become a burden to the state.

Only political refugees are accorded protection under Japanese law. Protection of political refugees is afforded by article 2(1)-(2) of the Law for the Extradition of Fugitives from Justice, which declares that political refugees shall not be extradited. The status of a political refugee and the granting of permanent asylum are determined only as a result of the prosecution of deportation proceedings. Persons seeking asylum may enter Japan illegally, or overstay the period granted them on otherwise valid visas. Deportation procedures, which are detailed in chapter V of the Immigration Control Order, consist of repeated review of illegal residency as a matter of law. The special circumstances of individual appellants are not considered until the final stages of review by the Ministry of Justice, which alone may grant special permission to remain in Japan according to article 50 of the Order. See Oda at 27-28. An adverse decision by the Ministry of Justice may be appealed to the local district court, high court, and to the Japanese Supreme Court.

Appellant aliens in these cases have the burden of demonstrating (1) that the activities prior to or during their stay in Japan constitute political offenses against the country to which they are being deported, and (2) that they will be subjected to certain punishment upon return. The Yoon Soo Kil case includes the fullest discussion of these issues. The Japanese Supreme Court has held that the definition of a political offense will be interpreted broadly, and that the burden of proof as to the probability of punishment may be met by demonstrating extreme instability in the country of destination, see Yoon Soo Kil, or by proof of foreign law.

Adjudicated Cases

Yoon Soo Kil v. Tokyo Immigration Control Office, 334 Hanrei Taimuzu 105 (Sup. Ct., January 26, 1976), translated at 20 Japan Ann. Int'l L. 127 (1976) (political criminals may not be extradited from
Japan as a matter of customary international law, and the political situation in Korea affords sufficient evidence of certain punishment on return).

Japan v. Kono, Case No. 2,681 (ne) (Tokyo High Ct., March 30, 1971), translated at 17 Japan Ann. Int’l L. 87 (1972) (damages denied to female companion of deportee as nonextradition of political offenders is not a principle of customary international law, and in any event, there is unsufficient evidence of certainty of punishment if extradited).

SECONDARY SOURCES


NETHERLANDS

Law


Synopsis

The Netherlands is a party to both the 1951 Convention and the 1967 Protocol, and provisions of both documents are automatically given binding force in domestic law by Article 65 of the Netherlands Constitution.
The task of enforcing these provisions is assigned to the minister of justice by the Aliens Act of 1965.

Article 6(2) of the Aliens Act provides that admission to the Netherlands cannot be refused at the border to refugees who state that refusal will force them to return immediately to a country in which they fear persecution for reasons of religion, nationality, political opinion, or membership in a particular social group or race. Article 22(2) prohibits the return of any person already present in the Netherlands if the same conditions are alleged. In each case the minister of justice may order the return of the alien if the conditions are not proven as alleged.

There are three procedures available to refugees for admission to the Netherlands, with different consequences for refugees in each case. In order to obtain the full rights of a refugee under the 1951 Convention, as well as permanent residence in the Netherlands, an alien may apply for admission as a refugee under article 15 of the Aliens Act, which permits the minister of justice to admit aliens who meet the Act's definition of refugee. The statute does not require admission of refugees, and the minister of justice may deny admission to persons already admitted as refugees in other states. See Oostvogels at 181.

A second route to entry is to obtain a mandate certificate issued by the UNHCR representative in the Netherlands. The representative may issue a certificate only to a person already in the Netherlands after verifying that the applicant meets the definition of refugee in the 1951 convention. By an unpublished 1954 agreement between the Netherlands Government and UNHCR, the Netherlands is obliged to extend to the applicant refugee status equivalent to that obtained under article 15. See Oostvogels at 180, Melander at 170.

The third procedure is to apply for an ordinary residence permit, conferring the status of an ordinary alien admitted to the country. Requirements of entry, such as possession of a valid passport, may be waived by the minister of justice for humanitarian reasons, and admission may be granted although the applicant does not meet the definition of refugee under article 15 of the Aliens Act or the 1951 Convention. This procedure, formalized by the 1974 circular letter, has been used, for example, to admit U.S. draft evaders. See Oostvogels at 182, Vierdag at 288-290. An ordinary alien does not possess the rights guaranteed by the 1951 Convention, however, and must seek a renewal of the residence permit once a year. Aliens Act, art. 9; Regulation, art. 24. The alien may apply for refugee status by any of the procedures identified above at any time and is protected by article 104 of the Aliens Decree from expulsion pending consideration of the application or renewal of a residence permit.

Automatic review of any decision of the minister of justice refusing refugee status lies with an Aliens Advisory Commission, Aliens Act, art.
31(1)(b), and Aliens Decree, art. 105, at which stage the advice of the representative of the UNHCR is sought, Aliens Decree, art. 16(1). If the decision of the Advisory Commission affirms the minister of justice, appeal may be had to the Crown and the Judiciary Committee of the Council of State. Aliens Act, arts. 34(5), 37(2). Review of a refusal of admission at the border is available only through civil proceedings against the state. See Oostvogels at 184.

Secondary Sources


Norway

Law

*Lov om utlendigers adgang til riket* (Fremmedloven) (Law on aliens entry into the realm), July 27, 1956, Norges Lover 2479 (1682-1957).

Synopsis

Norway is a party to the 1951 Refugee Convention and the 1967 Protocol. The legal definition of refugee in Norwegian law, found in section 2 of the Aliens Act, closely parallels that of the 1951 Convention. Refugee status is accorded only to applicants satisfying the statutory definition. To obtain formal recognition of refugee status, the applicant must file with the Ministry of Justice. Should the application be denied, the refugee may request review by the Aliens Office of the Ministry of Justice, and then if necessary appeal to the King in Council. See U.N. Doc. at 14.

Under section 2 of the Aliens Act, a political refugee must be granted asylum in Norway if he or she seeks it. This is the chief advantage of formal recognition of refugee status. There is, however, no special procedure for asylum seekers; the alien simply requests a regular residence permit, which must be granted if the alien meets the statutory definition of refugee. Even if the alien does not meet the statutory requirements, de facto refugee status may nevertheless be recognized under current administrative practice. This quasi-official procedure protects persons with worthy
claims who nevertheless do not fall within the narrow ambit of section 2. *De facto* refugees enjoy the same rights as statutory refugees, although by definition they do not enjoy the same statutory protection. See Melander, this volume.

Refugees have a special status in matters of rejection at the frontier or expulsion. If they allege a fear of political persecution in their homeland, they may not be rejected or expelled until the Aliens Office has investigated the matter fully. *Refoulement* is forbidden. The king can refuse admission in cases where entry would threaten the security of the kingdom, for example, if a mass influx of refugees might overwhelm Norway's resources.

Refugees with residence permits have access to all the normal social services. A 1966 Order-in-Council exempts refugees from the residency requirements for social security benefits.

**Secondary Sources**


**PHILIPPINES**

**Law**

Immigration Act of 1940 (Commonwealth Act 613)-1978.

**Synopsis**

Refugee admissions are governed by the Immigration Act of 1940, in which three routes for entry and subsequent naturalization are provided. Quota immigrants not in excess of fifty of any nationality or without nationality may be admitted during any calendar year by the Commission on Immigration and Deportation. Nonquota immigrants are admitted without regard to total numbers on the basis of marital status and consanguinity. The president is also empowered under section 47(b) of the Immigration Act of 1940 to admit "for humanitarian purposes, and where not opposed to public interest, . . . aliens who are refugees for religious, political or racial reasons, in such classes of cases and under such conditions as he may prescribe."

The declared policy of the Philippines is not to admit or grant asylum to refugees, although temporary asylum is granted to refugees entering Philippine territorial waters by *force majeure*, if the boats in which they arrive are no longer seaworthy and cannot proceed to their final destination without risk to the lives of the passengers, or if those on board lack food
or have become seriously ill and can no longer proceed to another country. See Montes at 190. The Philippines is not a party to the 1951 Convention or the 1967 Protocol.

**SECONDARY SOURCES**


**SINGAPORE**

*Law*


**Synopsis**

Section 6 of the Immigration Act prohibits the entry into Singapore of all immigrants not possessing a valid entry permit. Entry permits are denied to all prohibited immigrants, who are defined by the Act, § 8(3)(a), to include any person unable to show either means of support or definite employment in Singapore, or who is likely to become a public charge. The minister responsible for administering the Immigration Act may also prohibit the entry of any person or class of persons where he or she deems such prohibition to be in the interests of the public security or "by reason of any economic, industrial, social, educational or other conditions in Singapore." Immigration Act, § 9(1)(a)

Although section 55 of the Act permits the minister to exempt from the requirements of the Act any person or class of persons, Singapore at present accepts no refugees for resettlement and only grants temporary asylum to refugees accepted for resettlement elsewhere. Singapore officials are reported to have used force on occasion to prevent landings by vessels carrying refugees. See United States at 446.

Recent amendments to section 56(1) of the Immigration Act, Immigration (Amendment) Act 1973, adopted March 1, 1974, increase the penalties
for persons engaging in the business or trade of carrying to Singapore on any vessel, vehicle, or aircraft any person known or who should reasonably have been believed to be a prohibited immigrant. Section 65(5) was also amended to give rise to a presumption that any person carrying a prohibited immigrant, absent proof to the contrary, is engaged in the business of transporting such persons, and that he or she had knowledge or should reasonably have believed that the persons transported were prohibited immigrants.

Sections 7(1) and 20(1) of the Extradition Act prohibit the extradition of persons alleged to have committed offenses of a political character. Sections 8 and 21(1) further prohibit the extradition of a fugitive to a country where he or she may be prejudiced at trial or punished, detained, or restricted in his or her personal liberty on grounds of race, religion, nationality, or political opinion.

Secondary Source


Spain

Law

Orden por la que se regula provisionalmente el reconocimiento de la condición de refugiado en España (Ordinance regulating provisionally the recognition of refugee status in Spain), May 16, 1979, 124 Boletín Oficial del Estado [Bol. Of.] 11485 (May 24, 1979).

Decreto 522/1974 pro el que se regula el régimen de entrada, permanencia y salida de los extranjeros en España (Decree regulating the admission, conditions of stay, and departure of foreigners), February 14, 1974, 50 Bol. Of. 4008 (Feb 27, 1974).

Decreto Real 1874/1978, Concesión y renovación de permiso de trabajo y permanencia y autorizaciones de residencia (Royal Decree regarding the grant and renewal of permission to work and authorization of residency), June 2, 1978, 190 Bol. Of. 18759 (Aug. 10, 1978).

Synopsis

A party to the 1951 Refugee Convention as well as the 1967 Protocol, Spain
has enacted an Ordinance of May 16, 1979, which is specifically intended to aid refugees in conformity with the convention.

A refugee who seeks to reside in Spain may apply for refugee status either before or after entry into Spain, according to procedures in the 1979 Ordinance. Anyone who enters Spain by means of ordinary passport and visa procedures may apply for refugee status by personally presenting documents requesting such status and identification papers to the State Security Directorate, General Commissioner of Documentation (Dirección de la Seguridad del Estado, Comisaría General de Documentación), to the State Police (Jefatunas Superiores), or the Provincial Police Commissioner (Comisaría Provincial de Policía). The Security Directorate passes on these applications after consulting with the Ministry of Foreign Affairs and the UNHCR representative in Spain. See Ordinance, paras. 2, 3. The decision is referred to the minister of the interior in the event of a disagreement between the Security Directorate and one or both of the other two bodies consulted, or in case a decision is not rendered by the Security Directorate within forty-five days of application. Ordinance, para. 4.

Travel Documents are issued under paragraph 6 of the Ordinance to those who receive favorable decisions, in accordance with Article 28 and the Annex of the Convention relating to the Status of Refugees. Paragraph 7 of the Ordinance requires residency permits to be issued according to Decree 522/1974.

In the event of a negative decision, the person seeking refugee status may appeal the decision through procedures which must be described in the notice of refusal, Ordinance, para. 4, or he or she may reapply for refugee status if new facts substantially modify the information on which the negative decision was based, Ordinance, para. 8.

Applications for refugee status are also accepted from persons residing in their country of origin, even if in prison there, and from persons located in third countries if they have come under the care of UNHCR. Such persons must contact the Spanish embassy or consulate, and the Security Directorate will decide whether to grant a visa for entry to Spain after the request is transmitted via the Ministry of Foreign Affairs (Ministerio de Asuntos Exteriores). Ordinance, paras. 9-10. Refugees arriving in Spain from third countries automatically receive travel documents. Ordinance, para. 10. Refugees arriving directly from their countries of origin must follow the procedures described in paragraphs 1-6 of the Ordinance, like all other refugees who arrive under ordinary passport and visa procedures. Ordinance, para. 11.

In accordance with Article 1(F) of the Refugee Convention, persons who have committed serious nonpolitical crimes outside Spain may be denied refugee status. A "serious crime" is defined by paragraph 6 of the Ordi-
nance as a crime for which a prison term is prescribed under the Spanish Penal Code.

Aliens who have been granted refugee status are required to regularly notify the Security Directorate of their current address, and must present themselves to the police chief with jurisdiction over their place of domicile at designated intervals. Ordinance, para. 12. Refugees are prohibited from engaging in activities which prejudice the domestic or foreign relations interests of Spain. Ordinance, para. 12. To work, refugees must obtain a work permit in accordance with Royal Decree 1874/1978. Ordinance, para. 7.

An immigrant with refugee status is entitled to reside in Spain and may be expelled only in accordance with the provisions of Article 32 of the Refugee Convention. Potential deportees and the UNHCR representative in Spain must be notified of the decision to expel, and the refugee immigrant is entitled to be notified of all available avenues for appeal. Ordinance, para. 13.

SECONDARY SOURCE


SWEDEN

Law


Utlänningskungörelse (Aliens Ordinance), July 1, 1980.

Synopsis

Sweden is a party to the 1951 Refugee Convention and the 1967 Protocol. The legal definition of refugee, in section 3 of the Aliens Act, mirrors the Convention definition, as modified by the Protocol, although it includes stateless persons as well. An alien may apply for refugee status in the process of applying for a residence permit. A statement of refugee status will appear on the residence permit. Residence permits and declarations of refugee status are issued by the National Immigration and Naturalization Board. Aliens Act, § 19.

Formal recognition as a refugee entitles a person to asylum in Sweden. Section 3 of the Aliens Act declares that, “A refugee shall not without grave reasons be refused asylum in Sweden when he has need of such protection.” The Aliens Act, §§ 5-6, extends this protection as well to persons needing protection who do not meet the definition of refugee in
section 3, and to deserters and war service resisters. A refugee may be expelled from Sweden only for the national security grounds stated in section 78.

An alien, including a refugee, may be refused entry into Sweden for a number of reasons listed in sections 28 to 30 of the Aliens Act. A person at the Swedish frontier claiming protection under sections 3, 5, or 6 who is denied entry by the police for reasons other than those stated in sections 28 to 30 may appeal the matter to the National Immigration and Naturalization Board. The refugee may appeal denials by the board of an entry permit, residence permit, or recognition of refugee status, or issuance of an expulsion order, through the normal administrative processes. Aliens Act, § 65. A refugee, de facto refugee, or war service resister may not be expelled to a state where there is a risk that he or she will be subjected to political persecution or military service, Aliens Act, §§ 77, 79-80, unless there are especially good reasons for doing so, Aliens Act, § 78.

In addition to refugees admitted at the border, the Swedish Parliament also adopts an annual quota for admissions of persons whose passage from refugee camps elsewhere to Sweden will be paid by the Swedish Government. See U.S. Congress. Once admitted and granted a residence permit, regular social services are available to refugees, de facto refugees, and war service resisters. The individual must apply separately for a work permit, however. The care of newly arrived refugees is entrusted to the National Labor Market Board.

SECONDARY SOURCES


SWITZERLAND

Law

Constitution, Art 69.


Synopsis

Article 2 of the Law on Asylum of October 5, 1979, provides that refugees be granted asylum upon application. Refugees are, under article 3, persons exposed to serious prejudice in their country of origin on account of their race, religion, nationality, membership in a particular social group, or political belief, or who have a well-founded fear of being exposed to such prejudice. The law goes somewhat further than the 1951 Refugee Convention, in that paragraph 2 of article 3 states that danger to life, body, or freedom, as well as measures that result in insupportable psychological pressure, are important factors in judging whether or not a person has been subjected to serious prejudice.

A refugee can demand asylum either at the Swiss frontier, in a foreign country, or in Switzerland. In each case, the application is forwarded by border police, cantonal authorities, or Swiss representatives abroad to the Federal Office of Police. The Federal Office of Police may not reject an application for asylum without first granting a hearing required by article 16, at which the applicant must be advised of his or her rights, given access to an interpreter, and given the opportunity to have present a representative of a recognized organization aiding refugees. Article 7 of the Ordinance further requires that the Federal Office consult with the Office of UNHCR before rendering a decision. The decision of the Federal Office of Police may be appealed to the Federal Department of Justice and Police, and from there to the Federal Council.

Article 5 of the Law on Asylum provides for the grant of asylum to persons coming from a country other than their country of origin who have resided in Switzerland for at least two years. Under article 6, however, Switzerland will not accord refugee status to aliens arriving from third countries to which they can return without suffering harm. An exception to this provision is provided in article 7 for spouses and children of refugees.

Asylum may be denied under article 8 to persons representing a threat to Swiss security or guilty of reprehensible conduct. The Federal Council is also given the power to deny asylum or to grant only temporary asylum under article 9 in exceptional circumstances. Large groups of refugees and aged, ill, or handicapped refugees who have already been offered asylum in a third country may also be admitted at the discretion of the Federal Council. Law on Asylum, art 22.
Once recognized as a refugee, the individual is guaranteed by article 25 all rights accorded to refugees by the 1951 Convention. The principle of nonrefoulement is adopted in article 45. Resettlement assistance, supervised by the federal government, is governed by chapter 4 of the Law on Asylum.

The Ordinance of November 2, 1980 refines the 1979 law. Both the Ordinance and the Law became effective on January 1, 1981.

UNITED KINGDOM

Law

Immigration Act 1971, c. 77.

House of Commons Papers 394 of 1979-80.

Synopsis


The basic law regarding immigration, the Immigration Act 1971, does not mention refugees. Grants of asylum are conditioned on conformity to the definition of refugee contained in the 1951 Convention and the 1967 Protocol. The United Kingdom adheres to the doctrine that the right of asylum is the right of the sovereign to grant or deny admission, and not a status to which the asylum applicant is entitled. Consistent with its treaty obligations, the United Kingdom also recognizes the individual’s right of nonrefoulement. See Cmnd. No. 7750, para. 64.

An alien who arrives at a port of entry claiming to be a refugee is referred to the Home Office for a determination of refugee status under the UN definition. If the person is found to be a refugee and if a denial of entry would force the return of the refugee to a country of persecution or feared persecution, then that refugee is granted admission, regardless of other grounds for exclusion. Cmnd. No. 7750, para. 64. A person within the United Kingdom who is subjected to deportation proceedings may raise refugee status as a defense before an adjudicator or the Immigration Appeal Tribunal. See Hartley at 440. If deportation would require the alien to go to a country of persecution or feared persecution, the deportation order
will not issue. Cmnd. No. 7750, para. 150. The refugee may be excluded or deported if she or he may be received in another country where the threat of persecution does not exist.

Under the Immigration Act of 1971, a Commonwealth citizen seeking asylum in the United Kingdom must follow the same asylum procedure outlined above. An exception to this rule is made in two circumstances: (1) If the Commonwealth citizen was born to or legally adopted by a parent who was by birth a citizen of the United Kingdom at the time of the birth or adoption of the Commonwealth citizen, then the Commonwealth citizen has a right of abode in the United Kingdom, Immigration Act 1971, § 2(l)(d); (2) If a Commonwealth citizen seeking work in the United Kingdom can prove descent from a grandparent born in the United Kingdom, then that Commonwealth citizen is granted an entry clearance and the work permit requirement is waived. Cmnd. No. 7750, para. 29.

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