

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/SR.618
18 August 1959

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifteenth Session

SUMMARY RECORD OF THE SIX HUNDRED AND EIGHTEENTH MEETING

Held at Headquarters, New York,
on Monday, 23 March 1959, at 10.45 a.m.

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Right of asylum (E/CN.4/L.454/Rev.1, L.459; E/CN.4/781 and Add.1 and 2,
785)

PRESENT:

Chairman:

Rapporteur:

Members:

Mr. GUNewardENE	Ceylon
Mr. KITTANI	Iraq
Mr. QUIJANO	Argentina
Mr. BASYN	Belgium
Mr. KANAKARATNE	Ceylon
Mr. CHENG	China
Mr. CASSIN	France
Mr. JHA)	India
Mr. MITRA)	
Mr. ADAMIYAT	Iran
Mr. COHN	Israel
Mr. DOMINEDO	Italy
Mr. HAKIM	Lebanon
Mr. CAMPOS ORTIZ	Mexico
Mr. BRILLANTES	Philippines
Mrs. WASILKOWSKA	Poland
Mr. NEDBAILO	Ukrainian Soviet Socialist Republic
Mr. SAPOZHNIKOV	Union of Soviet Socialist Republics
Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. LORD	United States of America
Mr. HEIBLE	Austria
Mr. KANG	Cambodia
Mr. PINOCHET	Chile
Mr. LECHUGA	Cuba
Mr. BERGES	Dominican Republic
Mr. NAGASHIMA	Japan
Miss PELT	Netherlands

Also present:

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Representatives of specialized agencies:

Mr. METALL	International Labour Organisation
Mr. ACHARYA	Food and Agriculture Organization
Mr. GAGLIOTTI	United Nations Educational, Scientific and Cultural Organization

Representative of the High Commissioner for Refugees:

Mr. WEIS

Secretariat:

Mr. HUMPHREY

Director, Division of
Human Rights

Mr. YAP

Secretary of
the Commission

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RIGHT OF ASYLUM (E/CN.4/L.454/Rev.1, L.459; E/CN.4/781 and Add.1 and 2, 785)

Mr. CASSIN (France) recalled that the right of asylum raised a delicate legal point - whether it was the right to grant asylum, which was one of the rights of sovereign States, or the right to seek and enjoy asylum, which as expressed in article 14 of the Universal Declaration of Human Rights was an individual right. The trend of modern thinking had been to conceive it as the latter, but as it might take considerable time to reconcile the two points of view his delegation had proposed a practical solution: a draft declaration on the right of asylum (E/CN.4/L.454/Rev.1), which was intended to ensure that persecuted persons should be able to find refuge abroad.

The draft declaration went a step further by establishing that the responsibility for ensuring that asylum was granted lay with the international community, as represented by the United Nations. That did not mean that the United Nations itself was bound to grant asylum - an impossibility in any case, as it had no territory - but that the international community had an obligation towards all persecuted persons and refugees.

The comments of Governments on the draft declaration, contained in documents E/CN.4/781 and Add.1 and 2, were most encouraging. There were no criticisms. Some countries were willing to adopt the text as it stood and others, such as Spain, would prefer a stronger wording. Still others wished to consider the draft declaration in greater detail before deciding their position and another group were favourable to it in principle but unable to see their way through the legal difficulties.

His delegation had carefully studied those comments, many of which raised very interesting points. It found the amendments proposed by Israel (E/CN.4/L.459) acceptable on the whole, particularly paragraph 3. The important thing now was to find a practical solution and a basis for agreement. The fundamental principles had been accepted: first, that a person fleeing from imminent death should not be refused asylum and, secondly, that not only the countries bordering on those from which the refugees came should be responsible for the refugees' welfare; other countries should contribute in different ways.

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The form of the draft declaration (E/CN.4/L.454/Rev.1) would be improved by the addition of a preamble and by its being presented as a recommendation. It would then be quite clear that it was not intended to be a legally binding international instrument, which should make it easier for Governments to support the text. He hoped that Governments which had not yet made any comment, some of which were members of the Commission, would do so at the earliest opportunity.

Mr. COHN (Israel) welcomed the fact that the Commission was at last taking up the draft declaration on the right of asylum (E/CN.4/L.454/Rev.1). The encouraging response of Governments showed that the right laid down in article 14 of the Universal Declaration of Human Rights was not clearly defined. There could be no doubt that it was an individual right, like all the others set forth in the Universal Declaration. The question now was, therefore, not who was entitled to exercise the right of asylum, but what that right involved. According to paragraph 6 of the Secretary-General's memorandum submitted to the eleventh session of the Commission (E/CN.4/713), article 14 of the Universal Declaration in its final form, meant that every person had the right to seek and to enjoy asylum, but not the right to be granted asylum. He could not accept such a restrictive interpretation. A right which could be claimed but need not necessarily be granted was useless. The right to seek asylum therefore necessarily involved a duty on the part of States to grant it. However, even if the right to be granted asylum had been expressly laid down in article 14, as had been originally suggested, that would have added nothing to the right to seek asylum; the one necessarily involved the other.

Although his own view conflicted with that of many others, he had no hesitation in advancing it, as it was immaterial, in practice, what interpretation was placed on article 14. The Universal Declaration laid no legal obligations upon States. If States agreed to grant the right of asylum, or to respect any of the other rights laid down in the Universal Declaration, they did so of their own free will. The draft declaration proposed by France was a similar document. It did not interfere with the prerogatives of sovereign States, but merely established minimum standards for the treatment of human beings, leaving States free to grant

(Mr. Cohn, Israel)

or refuse asylum as they chose. He failed to understand why the right of asylum should be regarded as an infringement of the sovereignty of States. No such fears had been expressed about the other rights in the Universal Declaration. Although he was a member of one of the most persecuted races in history, he did not challenge a State's right to refuse asylum. He was merely deeply grateful to the countries which had extended a helping hand to the persecuted.

Past experience showed that the principle involved in the right of asylum must be reconsidered and restated. Article 33 of the 1951 Convention relating to the Status of Refugees provided that no Contracting State should expel or return (refouler) a refugee to territories where his life or freedom would be threatened on grounds of race, religion, nationality, membership of a particular social group or political opinion. The Convention did not, however, establish the international community's responsibility for the welfare of refugees. That the international community was aware of that responsibility had been demonstrated only recently, when other countries had come to Austria's help in dealing with the Hungarian refugees. The international community's feeling of responsibility and solidarity should be enshrined in a declaration, which might encourage small States to act with a generosity beyond their means. Moreover, in reaffirming the right of asylum, the United Nations would be lending moral support to States which had granted that right and encouraging other States to do the same. As there would be no legal obligation on States, each would decide whether or not to comply with the standards thus laid down. In no case would the international community or the United Nations interfere if a State refused to adopt those standards. There could therefore be no objection to the adoption of the draft declaration on the right of asylum, which would be a step forward towards the attainment of the Commission's real goal, the formulation of an international code of ethics which would one day replace international law.

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Mr. DOMINEDO (Italy) said his Government would always give its full support to any action which was likely to lead to an improvement in the present position as regards the right of asylum.

He had a few specific observations to make on the French draft declaration. First, he agreed with the Israel representative that the United Nations should affirm the individual's right to asylum as a matter of principle, since it was a natural and fundamental right. That right had not so far been recognized in any convention except the Inter-American Convention on Political Asylum signed at Montevideo in 1933, but he could see no reason why all the free States should not recognize it, since they could do so without derogating from their sovereign rights.

Secondly, once the individual's right to asylum had been recognized, there had to be precise provisions at the international level to ensure that it was respected. If any individual was unable at any given time to exercise the fundamental human rights to which he was entitled under the constitution of his country it became an international responsibility to see that he was granted asylum elsewhere, and provisions to that effect should be included in any international instrument dealing with the right of asylum.

Thirdly, it followed as a logical and moral consequence of the recognition of the right to asylum at both the national and international levels that, once asylum had been granted, the right thereto should not be withdrawn unless the individual concerned violated the conditions under which it had been granted. That too ought to be affirmed clearly in any international instrument on the right of asylum.

The Italian Constitution laid down that the right of asylum could not be refused when it was sought on political grounds except in certain clearly defined and exceptional circumstances and that once an individual had been granted asylum he could not be extradited for a political offence. His Government regarded those provisions as the minimum which should receive universal recognition and would be prepared to support an extension of their scope.

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Mr. BASYN (Belgium) drew the Commission's attention to his Government's comments on the French draft declaration (E/CN.4/781, pages 2 and 3).

The first question which arose in connexion with the right of asylum was whether it was a right of the individual or a right of the sovereign State, which was free to decide whether it would in any particular instance grant asylum to an individual. That point would have to be clarified in any declaration such as that before the Commission. Belgian legal doctrine and jurisprudence held that the right of asylum was not an individual right. Thus from the Belgian point of view the only practical point which had to be examined was whether and in what circumstances a State which had already granted political asylum to an individual was entitled subsequently to expel him. Under Belgian law he could not be expelled unless he failed to comply with the conditions under which he had originally been admitted; he was, for instance, required to refrain from political activities which might create difficulties for Belgium. Similar provisions were in force in many European countries and the Belgian delegation would like to see them extended to apply equally to all refugees and not to political refugees alone. That being so, the Belgian Government would have no difficulty in agreeing to article 5 of the French draft declaration.

On the other hand, he had to point out, as regards article 1 of that text, that responsibility for granting asylum lay with individual countries and not with any international organization. In reaching a decision, the individual country paid attention to the particular circumstances of the case, which had far more influence on it than any legal considerations could have. When refugees sought asylum, the problem was not one of law; it was a human problem which aroused feelings of humanity, as was evidenced by Belgium's own record in the treatment of refugees. He would be reluctant to see that spontaneous action, which had been common to many countries, abandoned in favour of a text which, by attempting to define the conditions under which asylum should be granted, laid itself open to a restrictive interpretation. The Convention relating to the Status of Refugees, which Belgium had ratified, was a case in point. It failed to cover some persons who were deserving of protection and whom Belgium, while observing the provisions of the Convention, had also admitted as refugees.

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(Mr. Basyn, Belgium)

Lastly, he welcomed the recognition in the French draft declaration that the burden on countries of first asylum, in the case of mass movements of population, should be internationally shared. That had happened in the recent past and he hoped that the same international solidarity would be in evidence in the future.

However, for the reasons which he had explained, while he agreed with the draft declaration in principle, he could not give his full support to the present text.

Sir Samuel HOARE (United Kingdom) said that his delegation, for the same reasons as a number of others, was opposed to a convention on the right of asylum, and two years ago had even expressed reservations about the advisability of a declaration on the subject, believing that it would not be useful unless there was strong support for it. However, it now appeared from the comments of Governments (E/CN.4/781 and Add.1 and 2) on the proposed draft that such support was forthcoming, and the United Kingdom was accordingly prepared to accept the proposal. Nevertheless, he emphasized strongly that any declaration should not attempt to establish new principles concerning who was entitled to seek asylum or in what circumstances asylum should be granted.

The United Kingdom, although its record in succouring refugees spoke for itself, upheld the established principle of international law that the right of asylum consisted in the right of States to grant asylum. On those grounds the United Kingdom had sought to ensure that the final text of article 14 of the Universal Declaration of Human Rights did not affirm the right of any individual fleeing from persecution to be granted asylum. In spite of the arguments advanced by the Israel representative, he doubted that the international community could agree that the right of asylum was an inalienable right of the individual. If any such right were affirmed, how was it to be exercised? Rights presupposed obligations, and the rights defined in the Universal Declaration of Human Rights in the main presupposed obligations incurred by States towards persons in their territory. The right of asylum however, if it was considered as the right of an individual, was of a very different character, since it applied to a State's treatment of persons coming from outside their territory. If the right of the individual to asylum were established as a hard-and-fast principle of international law, it would become the duty of all States to give asylum to those seeking it,

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(Sir Samuel Hoare, United Kingdom)

a situation which would be unacceptable to many of them. Nowadays the main problem was the mass movement of refugees; most States felt a humanitarian obligation to do what they could to help. However, it should be remembered that there were also individual cases in which important political figures asked for asylum. The United Kingdom had in the past, even on very few occasions, felt it necessary to refuse some such requests, and did not consider that any State should be asked to abandon its right to decide individual cases on their merits.

It followed that, if there was an inherent individual right to asylum, the corresponding obligation must fall not on separate States but on the international community as a whole. However, it was evident from the comments of Governments, the Government of Peru (E/CN.4/781), for example, that there was not yet sufficient support for such a notion to justify its incorporation in the proposed declaration.

He considered that the declaration could, on the other hand, extend the application of the principle embodied in article 33 of the 1951 Convention relating to the Status of Refugees. That principle was the same as that set forth in article 5 of the French draft (E/CN.4/L.454/Rev.1), but in the Convention it was applicable only to persons defined in the Convention by a number of complicated restrictive conditions; moreover, the Convention had been ratified by only twenty-two States. It would thus be a constructive step to affirm as a general rule and ideal of conduct the principle that refugees should not be sent back to a country where they would be persecuted. As the Israel representative had pointed out, such an affirmation would not be binding, but civilized States would feel a moral obligation to respect it, and it would therefore be likely to have a favourable effect on the fate of present and future refugees.

Whatever the situation in international law, if such a principle were widely applied it might lead to heavy calls on the resources and absorptive capacity of certain countries. As a corollary to such an affirmation, therefore, it might be stated in general terms that in such circumstances the international community, as represented by the United Nations, would have an obligation to lighten the load of those countries and help the refugees to obtain asylum elsewhere.

A declaration that attempted to set forth new principles in the face of widely differing views about the legal meaning of the right of asylum would be likely to

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(Sir Samuel Hoare, United Kingdom)

sink under the weight of controversy. A declaration in general terms such as he had described, on the other hand, would have an undoubted moral effect, and would be of positive assistance to the unfortunate people concerned.

Mr. LEWIN (Agudas Israel World Organization) observed that both the United Kingdom and the United States had at one time recognized the right of asylum to everyone, with the sole requirement that those accorded asylum must observe the laws of their country of refuge. At present, however, although refugees had the right to seek and enjoy asylum, that right was subject to the consent of the Government from which asylum was asked. That was the sense of article 14 of the Universal Declaration and that was the sense in which the right of asylum had been interpreted during the Second World War, when so many European Jews had died because they had been unable to find asylum outside Nazi occupied territories.

His organization welcomed the draft declaration proposed by France (E/CN.4/L.454/Rev.1), although a binding instrument would have been preferable as providing more effective protection to refugees.

He had two suggestions to make. The first was that the declaration should contain a definition of the concept of asylum, in the form of a new article 2, to be inserted before the present article 2, stating that asylum was the protection which a State granted in its territory or in some other place under the control of certain of its organs to a person who came to seek it, a definition which had appeared in the American Journal of International Law (Supplement, Vol. 45, page 15, 1951). The second suggestion was that in the present article 2 the word "religion" should be inserted, so that the phrase would read "life, physical integrity, liberty or religion". That insertion was fully justified in view of the religious persecutions that were still taking place in the modern world.

Mr. NORRIS (International Catholic Migration Commission) said that his organization supported the idea of a declaration on the right of asylum. Governments were sometimes more generous in dealing with large-scale problems, although the need might be equally great where fewer people were involved. It should also be remembered that persecution might have religious and economic, as well as political aspects. He supported the idea that the international community

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(Mr. Norris, International Catholic Migration Commission)

should recognize its responsibility to assist countries which bore the brunt of taking care of refugees, and he paid a tribute to the countries that had done so much for refugees during the post-war years.

The meeting rose at 12.30 p.m.