

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/SR.619
18 August 1959
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifteenth Session

SUMMARY RECORD OF THE SIX HUNDRED AND NINETEENTH MEETING

Held at Headquarters, New York,
on Monday, 23 March 1959, at 3.45 p.m.

CONTENTS

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

PRESENT:

<u>Chairman:</u>	Mr. GUNewardENE	(Ceylon)
<u>Rapporteur:</u>	Mr. KITTANI	Iraq
<u>Members:</u>	Mr. QUIJANO	Argentina
	Mr. BASYN	Belgium
	Mr. KANAKARATNE	Ceylon
	Mr. CHENG)	
	Mr. HU)	China
	Mr. CASSIN	France
	Mr. JHA	India
	Mr. ADAMIYAT	Iran
	Mr. COHN	Israel
	Mr. DOMINEDO	Italy
	Mr. HAKIM	Lebanon
	Mr. CAMPOS-ORTIZ	Mexico
	Mr. DELGADO)	
	Mr. BRILLANTES)	Philippines
	Mrs. WASILKOWSKA	Poland
	Mr. NEDBAILLO	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
<u>Also present:</u>	Mr. HEIBL	Austria
	Mr. KANG	Cambodia
	Mr. DIPP-GOMEZ	Dominican Republic
	Mr. HOLLAI	Hungary
	Mr. NAGASHIMA	Japan
	Miss PELT	Netherlands
	Mr. VIANU	Romania

Representative of a specialized agency:

Mr. GAGLIOTTI	United Nations Educational, Scientific and Cultural Organization
---------------	---

/...

PRESENT (continued):

Representatives of the United Nations High Commissioner for Refugees:

Mr. WEIS

Miss COHN

Secretariat:

Mr. HUMPHREY

Director, Division of Human Rights

Mr. YAP

Secretary of the Commission

/...

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

Mr. ADAMIYAT (Iran) emphasized that in international law all questions of human rights - of which the right of asylum was only one - were closely linked to the basic question of the position of the individual in international law.

According to the positivist theory, which arose in the nineteenth century, the State alone had international legal personality, never the individual. To say, however, that recognition of the right of individuals to asylum would be opposed to the traditional tenets of international law would not dispose of the matter, for that branch of the law, like the others, could and should evolve to take account of new circumstances.

There was now a tendency to consider the individual in his relationships with the world in general and not only with the State and that attitude was reflected in many multilateral treaties. The Charter, in particular the provisions of which were binding on Member States, expressly imposed on them the obligation to respect human rights and it was in direct compliance with the responsibilities vested in it that the General Assembly had adopted the Universal Declaration of Human Rights. The right of asylum was explicitly embodied in that Declaration and again the American Declaration of the Rights and Duties of Man, adopted by the Bogotá Conference in 1948, and it occupied an important place in the inter-American legal system. The same right, moreover, had inspired the action taken to safeguard the interests of refugees.

There was no point in recognizing a right if nothing could be done to ensure effective observance of it. Although the rights of the individual had admittedly been duly protected on many occasions, it was nevertheless true that, where the interests of the State and those of the individual seeking asylum were in conflict, the interests of the State prevailed, with the result that the situation was uncertain and unstable. Considerable attention should therefore be given to the question of ensuring effective observance of the right of asylum, a question which could be solved only through international co-operation.

The debates already devoted to the right of asylum had shown that there were still many difficulties in the way of adopting a convention on the subject, but the French draft declaration (E/CN.4/L.454/Rev.1) provided a practical and

/...

(Mr. Adamiyat, Iran)

constructive starting point for the definition of a certain number of principles. It did not in any way make it obligatory for States to grant asylum, but it endorsed the principle that a State could not challenge the right of another State to grant asylum. The draft could, however, be improved on the basis of the proposed amendments, on which his delegation reserved the right to speak, if necessary.

Mr. JHA (India) said that his delegation had listened with interest to the very full statements made by previous speakers, which should be taken into account before any decision was taken.

It was clear from those statements that the members of the Commission were in agreement on four points, namely: any individual fleeing from political persecution had the right to seek asylum - a right enshrined in article 14 of the Universal Declaration; any State had the sovereign right to grant or refuse such asylum; hitherto, most States had granted asylum for humanitarian reasons, even in the absence of any legal obligation to do so, and they should continue to follow that policy; lastly, account must be taken of certain practical considerations, such as a State's economic capacity for absorption, its security or problems of social assimilation, particularly acute when mass displacements of population were involved.

Differences of opinion persisted, firstly, on the need for a new draft declaration, in view of the fact that the matter was already covered by a provision in the Universal Declaration and, secondly, on whether the French draft declaration, possibly with the Israel amendments, was acceptable. On the first point, the Indian Government considered it an established principle of international law that the individual had no enforceable right to be granted asylum and that the State had no obligation to grant asylum. Legally speaking, all that could be said was that a State was competent to grant asylum if it pleased. The French draft declaration, which was undoubtedly based on very lofty humanitarian considerations, would have the practical effect (particularly in view of article 5) of imposing such an obligation on States - an imposition to which his delegation could not agree. There were in fact cases where a State could not be compelled to receive refugees on its territory. Nor could

/...

(Mr. Jha, India)

his delegation accept article 1 of the draft declaration: although it was true that the United Nations to some extent represented the conscience of mankind and had on certain occasions assisted refugees, it could not be made to assume a responsibility heavier than that devolving on each of its Members individually. The article in question would impose on States a responsibility which would go beyond the provisions of the Charter.

In his delegation's view article 14 of the Universal Declaration did not impose on States an obligation to grant asylum, anymore than article 15 compelled them to grant nationality to anyone who requested it; in both cases, the State retained the sovereign power of decision. As the United Kingdom representative had pointed out, it was not possible, in the present state of international law, to impose on a State responsibilities with regard to measures taken by another State in respect of its own nationals. Even the Latin American States, for whom the question of the right of asylum had become most important, had expressly stipulated in the Convention on Diplomatic Asylum signed at Caracas in 1954, that the State had no obligation in that respect.

He wished to make it clear that his delegation's position was not inspired by narrow legal considerations; for centuries India had shown tolerance and hospitality towards refugees, but certain important political and economic considerations could not be ignored.

His delegation believed that at the stage reached it would be wiser to be content with article 14 of the Universal Declaration, lest certain problems arose involving the sovereignty of States and the responsibilities of the United Nations. Nevertheless, if it were decided to adopt a new declaration containing humanitarian recommendations on the right of asylum, it should be made absolutely clear at the beginning of the declaration that it imposed no obligation whatever on States.

Mrs. WASILKOWSKA (Poland) listed four factors which illustrated her delegation's position on the right of asylum: (1) that right was guaranteed by the Polish Constitution; (2) her country's delegation to the Commission on Human Rights had voted in favour of inclusion of provisions on the right of asylum in the draft covenants on human rights; (3) it had supported the French

/...

(Mrs. Wasilkowska, Poland)

proposal to place the question of the right of asylum on the agenda of the Commission's thirteenth session; and (4) at that session, it had cautioned the Commission against making too hasty an examination of such an important question.

A careful study of the French draft declaration (E/CN.4/L.454) showed that the latter called for serious reservations which Governments had not failed to express in their replies (E/CN.4/781 and Add.1 and 2).

In the first place, the draft did not define the term "right of asylum" and did not establish the distinctions which were recognized, both in theory and in practice, between the various possible aspects of that right. History showed that the conception of the right of asylum had altered appreciably since ancient times. Her delegation considered that the declaration on the right of asylum should deal solely with what was known as "political" asylum, i.e. with the right of the State which grants asylum to refuse requests for extradition made by the State from which the person enjoying asylum has fled.

Furthermore, the French draft declaration did not include the principle that the State granting asylum must ensure that the person enjoying asylum does not engage within its territory in activities directed against the State from which he fled. That was a well-established principle which had been confirmed by many writers.

The draft also omitted to specify who should decide the nature of the crime committed by the person seeking asylum and decide within which category it falls. Most writers considered that the State granting asylum should qualify the offence, but some held different views.

Article 1 of the draft placed on the international community, represented by the United Nations, the responsibility of providing asylum for those who requested it, which was contrary to the principle of the sovereignty of States, a principle which was stated in article 2 of the Convention on Diplomatic Asylum. Moreover, could it be said that the United Nations represented the non-Member States? The wording of article 1 would therefore restrict the application of the declaration to Member States.

Article 2 of the French draft declaration was also unacceptable to her delegation, as it did not deny the benefit of asylum to common offenders, although

/...

(Mrs. Wasilkowska, Poland)

it was traditional, in international law, to recognize as entitled to asylum only persons prosecuted for political acts, an attitude which was consistent with article 14 of the Universal Declaration of Human Rights. Furthermore, article 2 of the French draft defined in too general terms the persons who were entitled to seek asylum. Article 5, which denied the right to asylum only to those persons convicted by a final judgement of a particularly serious crime and not merely persons accused of such a crime, was also contrary to customary law in the matter.

For all those reasons, her delegation hoped that the Commission would discuss the French draft.

Finally, she wished to emphasize that she was fully aware of the great importance of the right of asylum from the humanitarian point of view. Her only fear was that the excessively broad wording of the draft before the Commission might render the right illusory or might give rise to abuses. Moreover, a mere declaration imposing no legal obligation on States would be of little practical value. Her delegation therefore considered that the best solution would be to include provisions on the subject in the draft covenants on human rights.

Mr. CAMPOS-ORTIZ (Mexico) paid tribute to the draft declaration presented by France, but said that the question of the right of asylum would have to be considered very carefully.

His delegation had every reason to welcome the French draft. The right of territorial asylum had many points in common with the right of diplomatic asylum, which was an American institution and the countries of America, and Mexico in particular, had generously granted asylum to thousands of refugees.

It should be noted, however, that in order effectively to strengthen the right of asylum, the draft must be accepted by all Members of the United Nations. Yet it would seem that the draft did not even have the support of a majority of States, most of them appearing to be satisfied with article 14 of the Universal Declaration of Human Rights. All States recognized that a person had the right to seek asylum and to enjoy asylum. However, for political or economic reasons, or because they did not wish to forego their sovereign rights in the matter, most States were not prepared to assume an obligation to grant asylum. The fact that only five or six States had ratified the Caracas Convention of 1954, despite

/...

(Mr. Campos-Ortiz, Mexico)

the fact that it did not go so far as to impose an obligation to grant asylum, revealed the extent of the reservations felt by States on the subject, even by States of the American continent which were usually generous in granting asylum.

He shared the views presented by Peru on articles 1 and 4 of the draft (E/CN.4/781, page 6).

He was inclined to doubt that the replies from twenty Governments were sufficient to give a true picture of the general attitude of all the Members of the United Nations.

Mr. NETBAILLO (Ukrainian Soviet Socialist Republic) said that the right of asylum was embodied in the constitutions of many countries, including his own. He would therefore support any proposal concerning the right of asylum which would tend to give effect to article 14 of the Universal Declaration of Human Rights, but he considered it unnecessary to draft a new declaration setting forth general principles which would merely duplicate article 14 and would in fact weaken it. It would no doubt be preferable to insert a clause concerning the right of asylum, in the draft covenant on civil and political rights, an instrument which was universal in scope.

The premise on which the French draft declaration was based was incorrect. In the first place, it had the effect of making individuals subject to international law. In his view, such a conception was not in accordance with the United Nations Charter which, contrary to what the Iranian representative had said, contained no provisions directly affecting individuals.

In the second place, according to article 1 of the draft, the responsibility for granting asylum to persons requesting it would lie, not with States, but with the United Nations which would thus tend to become a super-State. However, under international law, the granting of asylum was a matter lying within the exclusive competence of each State. Article 1 of the draft was therefore contrary to the principle of non-intervention in matters within the domestic jurisdiction of States, which was set forth in Article 2, paragraph 7, of the United Nations Charter. In their comments (E/CN.4/781 and Add.1), the Czechoslovak, Indian and United Kingdom Governments had also pointed out that only the States themselves could decide whether or not they would grant asylum. In his view, the United Nations could make only recommendations on the subject.

/...

(Mr. Nedbailo, Ukrainian SSR)

Article 5 of the draft laid down principles which had already been stated in articles 31, 32 and 33 of the 1951 Convention relating to the Status of Refugees. The question of refugees did not fall within the jurisdiction of the Commission on Human Rights. The General Assembly itself devoted part of its session to that question every year.

For those reasons his delegation would not support the draft declaration but would favour the insertion of a clause on the right of asylum in the draft covenant on civil and political rights.

Mr. ADAMIYAT (Iran), replying to the Ukrainian representative, said that his country certainly recognized the principle of non-intervention, but that, pursuant to Article 55 (c) and Article 56 of the Charter, the United Nations had an obligation to take action in favour of human rights.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said that he would present his delegation's views later. For the moment he wished merely to clear up a misunderstanding.

The Ukrainian representative had said that it was States, and not individuals, who were subject to international law and that the United Nations should therefore be concerned solely with States. The articles mentioned by the Iranian representative in no way altered that principle. When the United Nations acted to promote respect for human rights, it did so through the intermediary of States, in particular by making recommendations which the States were required to apply. That was an essential principle upon which all the work of the Commission on Human Rights should be based.

Mr. KITTANI (Iraq) pointed out that the individual had the right to seek asylum but that he had no right to obtain it. It was for the States to grant or to refuse asylum. With those reservations, his delegation had no objection to the preparation of a declaration developing the principle set forth in article 14 of the Universal Declaration of Human Rights.

There was, however, a tendency to go beyond the right of asylum proper and to impose on States a moral obligation to concern themselves with refugees and to integrate them into the economic life of the country. That was doing rather too much, for it should not be forgotten that the principal responsibility lay with

/...

(Mr. Kittani, Iraq)

the State which obliged its nations thus to flee. Moreover, States demonstrating such zeal were the very ones which made such use of their sovereign rights.

No provision of the declaration should be interpreted as detracting from the right of everyone to return to his country, a right which was set forth in article 13 (2) of the Universal Declaration.

Mr. COHN (Israel) said that the Iraqi representative had obviously been alluding to "refugees" from Israel, who had actually fled to escape justice. Israel had always granted and would always be ready to grant asylum to all persons persecuted because of their religion, race or political convictions.

Mr. KITTANI (Iraq) said that there was a United Nations organ, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, in whose title the word "refugees" appeared.

Mrs. LORD (United States of America) recalled that at the thirteenth session, when France had submitted its draft declaration, the United States delegation had stated that it shared the concern which had prompted the French delegation to submit its draft. She wished once again to congratulate Mr. Cassin for having taken that initiative.

However, her delegation had appreciated the tenor of the Government's replies and the comments made during the discussion, and it wondered whether the way was yet clearly indicated that the Commission should proceed to complete a draft declaration. It was not convinced that a declaration was the most effective way of dealing with the question. Experience in recent years had shown that States desiring to do so would act to assist persons who were obliged to leave their country for political reasons. The United States had given asylum to countless persons in that situation. In such cases, international action was always possible and, in her delegation's view, most of the matters sought to be covered in the proposed declaration might be expected to be met adequately in practice on an ad hoc basis.

The right of asylum was expressly stipulated in article 14 of the Universal Declaration. The 1951 Convention Relating to the Status of Refugees also contained provisions which served to give effect to the Universal Declaration. It was therefore questionable whether it was now worth drafting new articles

/...

(Mrs. Lord, United States)

that were general in scope and in application. It was even possible that, owing to the continuing differences of opinion, any new text agreed on might even result in a retrogressive step and cast doubt upon existing accepted practice.

However, her delegation had not reached a final conclusion and was therefore following the discussion with great interest in order to see whether the majority felt, in spite of any doubts that had been expressed, that the Commission should attempt to draft the text of a declaration.

Mr. CASSIN (France) said that the Commission should decide before examining the text of the French draft, whether it considered it desirable to prepare a declaration on the right of asylum.

The CHAIRMAN felt that it was too early to take a decision on that question and suggested that the general discussion should continue.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said that only twenty-six Governments had submitted comments on the draft declaration. A time-limit had been set for the submission of comments, but, owing to the small number of replies received, it had become necessary to extend the limit. The slowness of Governments to submit comments on the draft declaration was reflected in the Commission's discussion, as several delegations had stated that it was undesirable for the time being to prepare a declaration on the right of asylum. As the Ukrainian representative had noted, the draft declaration dealt less with the right of asylum than with the place of sojourn of refugees; that fact also emerged from the rather heated exchange which had just taken place, between the representatives of Iraq and Israel.

As far as his country was concerned, the French draft was entirely unacceptable. It contained clauses which were contrary to the Charter, since it authorized interference in the internal affairs of States.

The Universal Declaration already contained an article on the right of asylum, namely article 14. If another declaration was prepared, it would either reiterate already established principles, in which case it would be entirely useless, or it would set forth principles differing from those to which the United Nations had already subscribed in adopting the Universal Declaration, in which case it would undermine the foundations of that Declaration.

/...

(Mr. Sapozhnikov, USSR)

The Commission's only recourse was to propose to the General Assembly, through the Economic and Social Council, the inclusion in the draft covenants on human rights of an article specifying that the right of asylum should be granted to persons persecuted for their activity in defence of democracy, for their scientific activity or for their participation in a national liberation movement. His delegation saw no other way by which the Commission could avoid doing useless work or infringing on the work of the General Assembly.

Mr. KANAKARATNE (Ceylon) thought that it was wrong to draw conclusions, as the Soviet delegation had done, from the small number of comments submitted by Governments in response to the Secretary-General's request. The Economic and Social Council had extended the time-limit because it thought, on the contrary, that a larger number of Governments would send in comments. In fact, a number of countries, including Ceylon and - among the supporters of the draft - Austria and Belgium, had submitted their replies after the original time-limit. If the number of replies received was compared with the number received from Governments on other matters such as the law of the sea or the status of stateless persons, it would not be found abnormally small. As the United Kingdom representative had stated, Governments took their time in complying with requests for comments addressed to them by the United Nations. That tendency was regrettable, but it was wrong to conclude from it that Governments were not interested in the drafts submitted to them.

Although it should not go so far as to interpret the silence of Governments as a sign of assent, the Commission could not accept the view of the Soviet Union which interpreted it as signifying opposition.

The CHAIRMAN said that the objections voiced by certain delegations against the idea of preparing a declaration on the right of asylum did not justify his concluding that the Commission did not wish to continue the general discussion.

The meeting rose at 6 p.m.