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COMMISSION ON HUMAN RIGHTS
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Item 9 of the provisional agenda

RIGHT OF ASYLUM

Comments of Governments

1. At its thirteenth session, the Commission on Human Rights decided to transmit the text of a draft declaration on the right of asylum submitted by France (E/CN.4/L.454/Rev.1) and amendments thereto (E/CN.4/L.459), the memoranda of the Secretary-General (E/CN.4/713 and 738) and the summary records of the Commission's discussions on the matter (E/CN.4/SR.560 and 572 to 575) to Governments of States Members of the United Nations and of the specialized agencies, and to the United Nations High Commissioner for Refugees, for comments, and to consider the matter further at its fourteenth session. These comments were to be submitted by 31 December 1957.
2. The Economic and Social Council at its twenty-fourth session decided that the time-limit for submitting the comments of Governments and of the High Commissioner for Refugees to the Secretary-General should be extended until 31 December 1958 with a view to their consideration at the fifteenth session of the Commission in 1959.
3. The Secretary-General has the honour to circulate herewith the replies received from Governments pursuant to the Council's decision. The following seventeen Government have replied to the request for comments: Austria, Belgium, Cambodia, Ceylon, Czechoslovakia, Haiti, Honduras, Japan, Laos, Morocco, Nepal, Pakistan, Peru, Poland, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

4. The Governments of Cambodia, Laos and Nepal state that they have no comments to make.

1. AUSTRIA

(Note of 23 December 1958)

"... the Austrian Government is in favour of the French Draft Resolution concerning the right of asylum and would prefer to see the Israeli Amendment to that Draft being dropped.

"Furthermore, the Austrian Government proposes to substitute in Para. 4, Sub-para. (b) of the French draft the word 'especially' for the word 'including' and to use the word 'adequate' instead of 'certain' in the same paragraph."

2. BELGIUM

(Note of 26 March 1958)

"I^{1/} consider it apposite to state, first of all, that Belgian legal doctrine and jurisprudence hold that the right of asylum is not a right of the individual but simply a right that any State has under international law to refuse another State's request for the extradition of an individual. It follows from this concept that an alien can seek asylum only if his country of origin or another country has requested his extradition.

"Nevertheless, Belgium considers itself bound in this matter by elementary principles of humanity and by its age-old traditions of hospitality. It has always been guided by those principles and traditions, as well in the enactment of laws relating to aliens as in the part it has played in international refugee relief programmes, and in the application of numerous international conventions designed to improve the lot of aliens deprived of the protection of their own Governments.

"Belgian law does not permit the extradition of political offenders. Moreover, its provisions concerning the admission and expulsion of refugees are based on the various international instruments dealing with such persons, particularly the United Nations General Assembly resolution of 12 February 1946 (A/45), the Constitution of the International Refugee Organization, the Statute establishing an Office of the High Commissioner for Refugees, and the Convention relating to the Status of Refugees, which was signed at Geneva on 28 July 1951. As you know, Belgium ratified the said Convention on 22 July 1953 and has taken the necessary administrative steps to ensure its application; thus, in order to

^{1/} The note is signed by the Minister of Foreign Affairs.

ensure absolute impartiality of treatment for persons claiming the benefit of the Convention, it has entrusted the representative of the High Commissioner with the task of deciding whether such persons are entitled to the status of refugees.

"Furthermore, Belgium has signed the Convention relating to the Status of Stateless Persons, signed at New York on 28 September 1954, which is at present awaiting approval by Parliament. It has also signed the Agreement concerning Refugee Seamen, concluded at The Hague on 23 November 1957, and the International Convention on Stowaways, signed at Brussels on 10 October 1957, both of which contain provisions concerning asylum for refugees.

"Finally, it is scarcely necessary to point out that more than 65,000 political and other refugees are at present settled in Belgium, where they enjoy the status accorded them by Belgian law and by the Convention of 28 July 1951 as well as the effective protection of the United Nations High Commissioner.

"Consequently, the Belgian Government cannot but endorse any action to recommend that States should be generous in granting asylum to refugees and to stress the international character of the problem and the responsibility which it imposes on the United Nations. The Belgian Government therefore fully supports the declaration submitted to that end by the French delegation at the thirteenth session of the Commission on Human Rights as well as the amendments proposed by the Israel delegation".

3. CEYLON

(Note of 17 September 1958)

"Ceylon sees no objection to the adoption of the proposed declaration on right of asylum."

4. CZECHOSLOVAKIA

(Note of 7 January 1958)

"In granting asylum, Czechoslovakia follows the generally acknowledged principle of international law providing that the grant of asylum is an exclusive right of every State and is governed only by its internal laws. In this sense Czechoslovakia also grants asylum in practice. It is the position of Czechoslovakia that the adoption of the Declaration would therefore result in violation of sovereignty of States, interference with their domestic affairs and would be incompatible with provisions of paragraph 7 of Article 2 of the Charter of the United Nations. Accordingly, Czechoslovakia cannot regard an eventual adoption of the Declaration on the right of asylum as desirable."

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5. HAITI

(Note of 11 November 1957)

"The Haitian Government has no objection to this document and is in general agreement with its terms.

"If it should subsequently be deemed advisable to offer any suggestions or observations in the matter, the Secretary of State will promptly notify the Secretary-General to that effect."

6. HONDURAS

(Note of 2 September 1957)

"... The Honduran Government feels that, in order to spare both embassies and the Governments themselves considerable inconvenience, the most effective regulations governing the right of asylum should be established, including a clause stipulating that, within fifteen days after notice has been given by a diplomatic representative that asylum has been granted to an individual who has claimed that right, the appropriate safe-conduct should be issued or refused, as the case may be; in accordance with that principle, the Honduran Government has not approved the Convention on Diplomatic Asylum signed at the Tenth International Conference of American States at Caracas by the Governments of the States members of the Organization of American States, since article II of that Convention, which reads as follows, completely nullifies the right of asylum:

"Article II. Every State has the right to grant asylum but is under no obligation to grant it or to state the grounds for refusing it."

7. JAPAN

(Note of 29 November 1957)

"... the Government of Japan is in favour to adopt the text of the draft Declaration on the Right of Asylum (E/CN.4/L.454/Rev.1) provided that, in Article 5 of the text, the words "no one" could be replaced by the words "no person entitled to seek asylum" as proposed by the Government of Israel in paragraph 3 of the text of its amendment (E/CN.4/L.459)."

8. MOROCCO

(Note of 25 December 1958)

"... The Government of His Majesty the King is in general agreement with the terms of the draft Declaration on the Right of Asylum.

"Nevertheless, the Moroccan Government wishes to state that, in its opinion, the wording of article 2 of the draft Declaration is imprecise and incomplete. It feels that the article should indicate clearly what authority is to be competent to determine whether the principles of the Universal Declaration of Human Rights have been violated and what procedure is to be followed in determining whether such a violation has occurred.

"The lack of precision in this respect would seem bound to complicate greatly the solution of conflicts which may arise when States seek to exercise their legitimate right to administer justice, with respect to persons who regard themselves as justified in claiming the right of asylum".

9. PAKISTAN

(Note of 29 July 1958)

"The Government of Pakistan generally agree with the draft Declaration on the Right of Asylum as amended. They however, consider that article 5 of the draft Declaration imposes an obligation on States to accept a person seeking asylum whose return or rejection at the frontier may be construed to jeopardize his life, physical integrity or liberty, even though he may not be regarded by the States required to grant him asylum as entitled to seek asylum in accordance with the provisions of article 2 of the draft Declaration. Consequently they suggest that the following addition should be made at the end of para. 2 of article 5 of the draft Declaration: 'This principle shall also not apply in the case of persons who are regarded as not entitled to seek asylum'."

10. PERU

(Note of 4 July 1957)

"The Peruvian Government can never have any objection to the adoption by the United Nations of a declaration formulating the principles of the right of territorial asylum. Within the framework of the inter-American legal system, Peru has signed and ratified treaties and conventions recognizing and regulating this right. For its part, Peru is carrying out and complying with the provisions of these conventions. It believes that in them can be found standards and rules for the general recognition of this humanitarian principle.

"With regard to the draft which has been submitted, the Peruvian Government has general observations to make on paragraphs 1 and 4 (a):

"Paragraph 1 appears to confer on the United Nations a competence which excludes that of Member States; this does not seem proper. Paragraph 4 (a) could have the effect of imposing on Member States an obligation to grant asylum to those who seek it, whereas the granting of asylum should always be voluntary".

11. POLAND

(Note of 14 January 1958)

"... in conformity with the position taken by the Polish delegation at the thirteenth session of the Commission on Human Rights, the Polish Government considers the transmission of the draft Declaration on the Right of Asylum to Governments to be premature..

"In its opinion, such an important problem as the right of asylum should be carefully and thoroughly discussed previously in the Commission on Human Rights. Considering its legal implications, a discussion on it in the Commission on International Law would also be desirable.

"Before such a thorough discussion on the draft Declaration takes place, the Polish Government does not consider itself in a position to present its comments on the draft."

12. SPAIN

(Note of 8 November 1957)

Report of the Advisory Department on International Law,
Ministry of Foreign Affairs

"In giving its views on the draft in question, this Department does not feel called upon to evaluate the scope or restrictions of the draft, confined as it is to the so-called territorial asylum, or that granted by States on their territory, when allowing the entry of certain foreign nationals, with the consequent restriction on the sovereign right of a State to deny such persons entry or to take measures for their expulsion. It is of course a well-known fact that 'asylum' from the international point of view, may be granted by a State 'outside its territory', which gives rise to the so-called 'diplomatic' asylum, the international form of the old 'right of religious asylum' which can now be granted not only on the premises housing diplomatic missions, but also in consulates, ships of war or vessels of the State used for public services, military aircraft and on premises occupied by organs of a foreign State allowed to exercise authority in the territory of the State granting asylum; in a word any inviolable place where the person to whom asylum is granted cannot be subjected to any measures of coercion.

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"The draft, which we have examined, does not even touch upon the last aspect, or consider the situation of 'refuge', which presupposes a certain stability, but confines itself, as we have said, to the new form of 'asylum' which the State may, or rather must, grant temporarily in its territory. To that end article 1 lays down the general principle that responsibility for granting asylum to persons requesting it shall lie with the international community; that is to say, it is not a matter of free choice, nor does it lie within the competence of the State, but is the responsibility of an international organization, at present constituted by the United Nations. It is obvious that this is merely an affirmation of principle and that a strict interpretation based on a rigid positivist criterion might consider it lacking in practical importance; yet it is to be welcomed by those who value such statements for themselves only and in that sense it deserves our argument in so far as it places the matter in its true position by removing it from the exclusive competence of the States.

"As a corollary to such a statement, the draft should establish the right of the human person to request asylum and the reciprocal obligation of all States to grant it. It cannot be said that the draft fails to take both points into consideration; but the first is made contingent upon the violation of the principles of the Universal Declaration of Human Rights (article 2) and the second is covered by a merely negative provision to the effect that the State will incur no international responsibility by granting asylum (article 3) and only in article 5, which even then does not objectively and specifically prescribe the granting of asylum as a duty, are States required not to reject at the frontier or to expel a person, if such action would result in compelling him to return to a territory where his life, physical integrity or liberty would be threatened.

"The position of Spain with regard to the right of asylum in general (i.e. 'territorial' and the so-called 'diplomatic' asylum) has been clearly and consistently stated in all the international meetings or organs which have discussed the question. A full explanation of the question can be found in the statements made by Professor Yanguas and Professor Trías de Bes at the meetings of the Institute of International Law in Luxembourg (1937) when the extent and the legal basis for asylum was outlined, or when the question was discussed at the Brussels meeting (1948), and when it was given definitive form at the Bath meeting (1950). The same may be said of the statement made by Professor Barcia Trelles at the first Spanish-Portuguese-American Congress on International Law (October 1951) with the collaboration of his fellow Spanish members of the Commission, Professors Miaja, Sela, and Herrero, although that statement was confined to the so-called 'diplomatic asylum'. Accordingly, every step designed to produce a clear statement of the international obligation of States to grant 'asylum' on their territory is to be supported and defended as the manifestation of a principle deeply rooted in our national consciousness.

"To return to the draft before us, although we agree with it in principle, we think that in its final form the wording should be strengthened to make it clear that all States are under an obligation to grant asylum to any person in the situation described in article 2. To this end, article 5 might be transferred

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and become article 3, and the text amended as follows: 'A State may not return or reject at the frontier any persons who in conformity with the provisions of the previous article are entitled to request asylum, and if such persons have crossed its frontier, it may not in any circumstances expel them from its territory or compel them to return to the country where their lives, physical integrity or liberty would be threatened'.

"The mere statement of this obligation in the form suggested above would do away with the need for article 3 as it stands, and that article could more suitably be transferred to become article 4, but it should be incorporated with article 2, paragraph 2 of the resolution passed by the Institute of International Law at its session in Bath. That might result in the following text: 'By granting asylum in accordance with the foregoing articles, a State shall incur no international responsibility; any such responsibility arising out of the acts of the person to whom asylum is granted, can only occur under the same conditions as would create responsibility on account of acts committed by any other person resident in the territory of that State. This rule shall apply both where the State is prepared to expel a person to whom asylum has been granted and also where expulsion cannot be carried out on account of the fact that other States refuse to receive the person to whom asylum has been granted'.

"In our opinion, paragraph 4 (a) which would then become article 5 should be drafted as follows: 'The United Nations, acting in a spirit of international solidarity, shall examine and decide on the most effective means of providing help and assistance for the persons referred to in article 2.'

"The second paragraph of article 5, the first paragraph of which we are suggesting as article 3 of the draft, should be deleted, as the questions involving denial of the right of asylum cannot be left to the free choice or exclusive interpretation of the receiving State when the life, physical integrity or liberty of persons are threatened in violation of the principles of the Universal Declaration of Human Rights. If the person to whom asylum has been granted is regarded as a danger to the security of the receiving country or constitutes a danger to the community of that country, the State will take the same measures as it would take in respect of its own nationals in similar cases; but it cannot subject to such considerations the existence of an obligation imposed upon it by the international community, of granting asylum to anybody who has been denied in a foreign territory those human rights which constitute the basis or grounds for the existence of the right of asylum.

"In the interests of clarity, and in order to simplify matters we have attached to this report the text of the draft incorporating the changes we have suggested, with the proposed amendments underlined."

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AMENDED DRAFT ANNEXED TO COMMENTS BY SPAIN

"1. Responsibility for granting asylum to persons requesting it shall lie with the international community as represented by the United Nations.

"2. Every person whose life, physical integrity or liberty is threatened, in violation of the principles of the Universal Declaration of Human Rights, shall be regarded as entitled to seek asylum.

"3. A State may not return or reject at the frontier any persons who in conformity with the provisions of the previous article are entitled to request asylum, and if such persons have crossed its frontier, it may not in any circumstances expel them from its territory or compel them to return to the country where their lives, physical integrity or liberty would be threatened.

"4. By granting asylum in accordance with the foregoing articles, a State shall incur no international responsibility; any such responsibility arising out of the acts of the person to whom asylum is granted can only occur under the same conditions as would create responsibility on account of acts committed by any other person resident in the territory of that State. This rule shall apply both where the State is prepared to expel a person to whom asylum has been granted and also where expulsion cannot be carried out on account of the fact that other States refuse to receive the person to whom asylum has been granted.

"5. (a) The United Nations, acting in a spirit of international solidarity, shall examine and decide on the most effective means of providing help and assistance for the persons referred to in article 2.

"(b) Other States shall examine, in a like spirit of solidarity, appropriate measures to lighten the burden of countries of first asylum, including admission to their territory of a certain number of persons first granted asylum in another State."

13. SWEDEN

(Note of 11 November 1958)

"The basic principle of everyone's right to seek and enjoy in other countries asylum from persecution is since long recognized in international law and has been inscribed in article 14 of the Universal Declaration of Human Rights. International conventions have also been concluded with a view to safeguarding the interests of refugees, and a UN organ is charged with the task of promoting international protection to refugees.

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"The Swedish Government, which over the years has taken various steps by way of internal legislation, economic and social measures and adhesion to conventions in order to afford protection and help to refugees, would welcome such decisions as would be likely to complete the present system of international co-operation in the field of providing asylum to refugees.

"As the proposed declaration does not, however, secure the implementation of the principles already recognized, doubts may be entertained as to the practical value of adopting a new declaration, which would not be binding upon States. The Swedish Government would therefore not recommend the presentation of a declaratory document as proposed, which would not mean an adequate improvement upon the present situation."

14. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

(Note of 18 November 1958)

"1. The right of asylum is traditionally the right of a State to grant asylum to an individual. This right is recognized in international law, and international law also recognizes that the exercise of this right by a State cannot be contested by any other State, nor is any other State entitled to interfere with the protection given by the State which grants asylum.

"2. While Article 14 of the Universal Declaration of Human Rights recognizes the right of an individual to seek asylum from persecution and to enjoy asylum if it is granted, it does not recognize any right in the individual to be granted asylum.

"3. In the view of Her Majesty's Government in the United Kingdom, there is nothing to be gained by seeking to formulate the circumstances in which, or the classes of persons to whom, asylum may be granted, not only because there is no recognized right in the individual to be granted asylum, but because there is no likelihood of international agreement as to the conditions or categories in question.

4. Accordingly, if it is the consensus of opinion among Governments consulted by the Secretary-General that a Declaration on the subject of the right of asylum would serve a useful purpose it should, in the view of Her Majesty's Government, be confined to recommendations which, while leaving to States the ultimate decision whether or not to grant asylum, will help to secure, in those States which accept the recommendations, the most generous treatment possible of persons who are genuinely fleeing from persecution.

"5. While it would, in Her Majesty's Government's view, be fruitless to attempt to elaborate and obtain international agreement upon a whole code of practice in this matter, certain principles have already been embodied in the Convention relating to the Status of Refugees, 1951, and the Convention on the Status of Stateless Persons, 1954, which, if given wider application, would do much to secure the aim of generous treatment of persons seeking asylum from persecution.

"*. In Her Majesty's Government's view the principles which should be embodied in such a Declaration are the following:

1. Recognition of the fact that the grant of asylum is solely within the discretion of the State, and that where asylum is granted the grant cannot be contested in any way by other States or authorities.
2. The principle, based on that embodied in Article 33 of the Refugees Convention, 1951, that an individual to whom a State has granted asylum shall not be expelled to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This principle would, as in Article 33 of the above-mentioned Convention, be subject to an exception for cases where the State has reasonable grounds for regarding the individual as a danger to security, or where he constitutes a danger to the community by reason of a conviction of a particularly serious crime.
3. The principle, also based on Article 33 of the Refugees Convention, 1951, and subject to the same exception as is mentioned in 2 above, that a person seeking asylum shall not be returned to a country where his life or freedom would be threatened on any of the above-mentioned grounds; this, however, should not prevent his going to, or being removed to, some other country if he is not granted asylum.
4. Recognition of the fact that principle 3 can only be applied by any country within what it considers the limits of its absorptive capacity, both economic and social, and that the plight of individuals who cannot on this ground be admitted to, or allowed to remain in, an individual State is a matter for action by the international community.

"7. If the consensus of opinion among the Governments consulted by the Secretary-General is in favour of drawing up a Declaration on the subject of asylum, Her Majesty's Government would be prepared to collaborate in the drafting of a Declaration on the above lines.

"8. As regards the draft Declaration forwarded with the Secretary-General's letter, it will be clear from what has been said above that this would not, as at present drafted, be acceptable to Her Majesty's Government. In particular,

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Article 1 is unacceptable; it represents, in the view of Her Majesty's Government, an undesirable departure from the principle that it is for a State to determine for itself whether or not it will exercise the right of asylum. Article 2 is more limitative than Article 14 of the Universal Declaration of Human Rights, and it is unnecessary in a new Declaration to make further provision as to who may seek asylum. It is not clear what is meant by the first part of Article 3, although the second sentence is a useful statement. As regards Article 4, while the conception that international action may be necessary in cases where an excessive burden would otherwise fall upon a country of first asylum is important and should find a place in any new Declaration, the provisions proposed are far too detailed; a Declaration should merely affirm in this matter the principle of the collective responsibility, in such circumstances, of the international community to find appropriate solutions, and should not seek, at this stage, to prescribe the particular means by which this responsibility will be carried out. The substance of Article 5 has been discussed in the comments above.

"9. Her Majesty's Government would be opposed to any attempt to draft a convention on this subject in view of the obvious difficulties in the way of obtaining agreement upon the terms of, and the obligations to be imposed by, any such instrument. For the same reasons they would hope that a Declaration, if one is to be prepared, would be confined within limits, such as have been suggested in paragraph 6 above, which might render such an instrument both generally acceptable and of assistance towards the aim of securing, for those seeking asylum from persecution, as generous treatment as possible."
