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RIGHT OF ASYLUM

Comments of Governments

The Secretary-General has the honour to circulate the following comments received from the Governments of Australia, Denmark and Greece.

1. AUSTRALIA

(Note of 27 February 1959)

"The Australian Government has carefully considered the draft Declaration proposed by the distinguished representative of France, Professor Rene Cassin, together with the amendments thereto, and also the submissions made in presenting the draft Declaration to the Human Rights Commission. In doing so, the Australian Government has been impressed by the constancy of Professor Cassin's endeavours to secure for refugees from persecution asylum and protection through the United Nations.

The Australian Government respects the opinion expressed by Professor Cassin that in the present state of affairs there seems no hope of an international convention on the subject of asylum. It concurs in that opinion.

The Australian Government notes, however, that the draft Declaration is designed so as to lay down principles that should govern the actual grant of asylum, and that, in keeping with that design, principles are proposed that would appear to involve the transfer to the United Nations, or a limitation in favour of the United Nations, of the traditional right of a State regarding the grant of asylum. It is obvious that the adoption of principles embodying such an

intention would constitute a substantial inroad on national sovereignty and would amount to a profound innovation in the existing rules of international law in relation to asylum. The Australian Government is convinced that the international community is not yet ready for such an innovation, and it cannot too strongly affirm that such principles would be unacceptable to it.

Furthermore, the Australian Government is not persuaded that a formal declaration on the subject is desirable. In its opinion a formal declaration, as such, would not advance the practical implementation of the right of asylum, and might even divert attention from the efforts that are in course through the United Nations and by means of ad hoc arrangements to deal with refugee problems. Moreover, a formal declaration in the field of civil and political rights cannot well be dissociated from the significance that history has impressed upon that kind of instrument, and some pretensions of legal value will, more or less inevitably, become attached to it. Professor Cassin has made it clear that the text he has submitted is intended to have no legal pretensions, and the Australian Government would, therefore, suggest that any agreement on principles that might be reached by further discussion in the Human Rights Commission should not be embodied in a formal declaration.

For the foregoing reasons, the Australian Government does not consider that a declaration on the lines proposed would be of value. It does not, therefore, at this stage offer any detailed comment on the draft Declaration. Should, however, there emerge from the discussions any agreement on principles in relation to asylum, the Australian Government will be prepared to give them the closest attention."

## 2. DENMARK

(Note of 24 February 1959)

"In principle the Danish Authorities are able to accept the proposal that the United Nations attempt to reach agreement on an international declaration regarding the right of asylum for refugees.

Regarding the various points in the proposed declaration suggested by the French representative in the Human Rights Commission and the amendment thereto

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proposed by the representative of Israel, the Danish Authorities wish to draw attention to the following points:

Point 1:

Denmark can accept the theory that the duties and tasks, resulting from an announcement granting a refugee the right of asylum, under certain circumstances can be so uncertain and burdensome that they should not exclusively be borne by the country of asylum. However, the Danish Authorities are most reluctant to accept a drafting of point 1, which could create the impression that a question of the right to asylum could be decided by the United Nations and not by the State or the territory in which the refugee has sought asylum. Such a procedure will most likely prove impossible to implement since in practice most probable it will be impossible to await a declaration from an international organ before a decision is taken with regard to the status of the refugee.

Furthermore, it is most unlikely that the various countries will waive their rights to decide whether or not an individual refugee ought to obtain the right to asylum in their country, see point 5, paragraph 2. In view of these considerations it would be preferable to delete point 1, however, the Danish Authorities will be able to accept that point 1 - as it was probably intended - should be drafted in such a way that the question of granting asylum is described as 'a matter of concern to the international community'.

Point 2:

The basic principles of the declaration of Human Rights which have been used as criteria in formulating this point of the French proposal does not only determine the actual rights of freedom and political rights, but also certain economic and social rights such as the right to a decent standard of living, the right to work etc. etc.. The present drafting of point 2 may therefore have effects which go beyond what would be reasonable and desirable. According to the opinion of the Danish Authorities a person who claims that there is no possibility in his homeland for employment with a sufficient salary to maintain a reasonable living can not on this basis alone claim the right to asylum abroad and it is therefore proposed that the group of persons who should have the right should be determined in a future declaration in the same way as is the case in the convention of 28 July 1951 regarding the legal status of refugees art. 1 A (2) (with the exception of the time limit mentioned in this convention).

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Point 4:

As already mentioned the Danish Authorities are able to accept the principle of international solidarity in connexion with treatment of refugees but prefer that point 4 is drafted according to the proposal put forward by Israel.

Point 5:

The above-mentioned remarks regarding point 2 should also apply to point 5, 1."

3. GREECE

(Note of 10 February 1959)

"1. Article 2 should be numbered 2(a) and the following paragraphs should be added to it:

'(b) This right may not be invoked in the case of prosecutions arising from acts contrary to the Purposes and Principles of the United Nations.

'(c) The granting of asylum in cases other than those referred to in paragraph (a) above shall be a matter within the discretionary power of each State.'

2. Article 4, paragraph (a) should be amended to read:

'4.(a) Irrespective of any action taken by particular States, the United Nations shall, in a spirit of international solidarity, consult with States as to the most effective means of providing help and assistance for the persons referred to in article 2(a) and 2(b).'

3. Article 5 should be worded as follows:

'No person entitled to seek asylum shall be subjected to measures, such as expulsion, return or rejection at the frontier, which would result in compelling him to return to or remain in a territory where his life, physical integrity or liberty would be threatened, in violation of the principles of the Universal Declaration of Human Rights.

'This principle shall not apply in the case of persons whom there are reasonable grounds for regarding as a danger to the security of the receiving country or who, having been convicted by a final judgement of a particularly

serious crime, constitute a danger to the community of that country.  
The evaluation of these grounds shall be within the sole competence of the receiving State.

'The receiving State may take such restrictive measures with respect to persons to whom it has granted asylum as may be required for reasons of security or of the general interest of the country.'

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