

UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/785
9 February 1959

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifteenth session
Item 9 of the provisional agenda

RIGHT OF ASYLUM

Comments of the United Nations High Commissioner
for Refugees on the draft Declaration on the
Right of Asylum proposed by France

1. The Office of the United Nations High Commissioner for Refugees has the honour to submit its observations on the draft Declaration on the Right of Asylum, in accordance with the Resolution of the Commission on Human Rights, adopted at its 13th Session. The Office of UNHCR and previously the International Refugee Organization have on repeated occasions requested the Commission on Human Rights to take action on the question of the right of asylum. Reference is made to documents E/CN.4/141, E/CN.4/256, E/CN.4/392, E/CN.4/659, E/CN.4/2085/Add.1 and E/1880, Annex F.

2. It is unnecessary to review here the action of the various organs of the United Nations in connexion with the right of asylum as this has been done exhaustively by the Secretary-General in documents E/CN.4/713 and 738. It will suffice to mention that while the draft Universal Declaration on Human Rights as adopted by the Commission at its second session in 1947 referred to "the right to seek and to be granted asylum", this wording was changed into "the right to seek and to enjoy asylum" in the text of Article 14 of the Universal Declaration, as it now stands; and that, further the Commission resolved at its second session in 1947 "to examine at an early opportunity the question of the inclusion of the right of asylum of refugees from persecution in the International Bill of Human Rights or in a special convention for that purpose". In spite of various proposals made to this effect, the right of asylum does not appear in the draft International Covenants on Human Rights. The IRO and the UNHCR repeatedly

expressed the view that the action of the Commission in the field of human rights would be incomplete unless action were taken on the question of the right of asylum. It was stressed that for those seeking asylum, the right of asylum is a corollary to the right to life; that all other human rights and fundamental freedoms depend for them on the possibility of obtaining asylum; that human rights for all could not, therefore, be achieved unless action were taken on the right of asylum. The UNHCR was gratified, therefore, that the Commission on Human Rights, at its 13th session, opened the discussion on the right of asylum. The UNHCR is aware of the difficulties which stand in the way of incorporating this right in a special convention. It, therefore, welcomes the French proposal to adopt a Declaration on the right of asylum.

3. Asylum is granted today as a matter of law or practice by practically all States. In a number of States an obligation to grant asylum has been embodied in the Constitution or in the national legislation. A list of such States is given below:

Albania, Constitution of 4 July 1950, Article 40
Bulgaria, Constitution of 4 December 1947, Article 84
Costa Rica, Constitution of 7 November 1949, Article 31
Denmark, Act. No. 224 of 7 June 1952, regarding the Admission of Foreigners to the country, para. 2
France, Constitution of 5 October 1958 (Preamble which proclaims attachment of the French People to the Rights of Man as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946)
German Federal Republic, Basic Law of 23 May 1949, Article 16, para. 2
Guatemala, Constitution of 1 March 1956, Article 48
Guinea, Constitution of 10 November 1958, Article 46
Haiti, Constitution of 19 December 1957, Article 36
Honduras, Constitution of 19 December 1957, Article 86
Hungary, Constitution of 20 August 1949, Article 58
Italy, Constitution of 27 December 1947, Article 10, para. 3
Nicaragua, Constitution of 1 November 1950, Article 54
Norway, Aliens Act of 27 June 1956, Section 2
Poland, Constitution of 22 July 1952, Article 75
Romania, Constitution of 24 September 1952, Article 89
El Salvador, Constitution of 7 September 1950, Article 153
USSR, Constitution of 5 December 1936
United Arab Republic, Constitution of 5 March 1958, Article 9
Yugoslavia, Constitution of 31 January 1946, Article 31

4. Other countries grant asylum as a matter of practice and tradition. While authoritative declarations by the Governments of such countries are numerous, a few examples may be cited:

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Austria - Statement made by the Federal Chancellor to Parliament on 26 October 1955 1/: "... the right to asylum will remain in full effect in Austria as befits a free and democratic nation." (translation).

Switzerland - Principles to be observed in the practice of asylum in the case of increased international tension or of war, Report of the Federal Council (Government) of 1 February 1957; "I. The right of asylum is not only a simple tradition in Switzerland. It is a political principle and a manifestation of the Swiss concept of freedom and independence." (translation). Cf. also the regulations implementing the Federal Law concerning the Sojourn and Establishment of Foreigners dated 1 March 1949, Article 21.

United Kingdom - Statement of the Home Secretary in the House of Commons on 1 July 1954 - " ... I would point out with regard to political asylum that what I stated to be the principle has not only been the principle acted upon in this country throughout the past years, but it is enshrined in the latest Convention that deals with the subject namely that political asylum is given where the national of a country is in danger in regard to his life and liberty from political persecution among other forms of persecution in that country ..." 2/

United States of America 3/ - "It is the traditional policy of the Government of the United States to grant asylum in its territory to persons whose lives are believed to be in jeopardy as a result of their political activities in a foreign country. Such persons applying for admission to the United States as so-called political refugees are customarily admitted for a reasonable period under a liberal interpretation of the immigration laws, provided they can establish to the satisfaction of the competent authorities that their personal safety is actually threatened and that the offences in which they may have been involved are not such as would render them inadmissible under the law."

5. It is clear from the previous discussions of this matter in the various organs of the United Nations that the major difficulty in the way of the establishment of asylum in an international legal instrument has been to reconcile an individual right to asylum with the sovereign right of States to accord asylum. The draft declaration does not prejudice this issue.

1/ "Stenographisches Protokoll" 80. Sitzung des Nationalrates der Republik Österreich VII. G.P. p. 3693

2/ Hansard, House of Commons, Vol. 529, col. 1508.

3/ Declaration by the Under-Secretary of State, Mr. Willis, 1936; Digest of International Law by Hackworth, Volume 3, 1942, page 132.

6. It can be regarded as accepted that the granting of asylum is a humanitarian duty. The term "humanitarian duty" may, for instance, be found in the Resolution on Asylum in international Public Law adopted by the Institute of International Law at its Bath session in September 1950.^{1/} Whether an individual State is called upon to grant asylum is, in fact, often a matter of geographical accident. The humanitarian duty is incumbent on the international community. By granting asylum to refugees on their territory, individual States act in implementation of this humanitarian duty.
7. Article 1 of the draft Declaration gives expression to the principle that the granting of asylum as an international humanitarian duty is the concern of the international community.
8. Article 2 of the draft Declaration bases the definition of persons entitled to seek asylum on the danger to which they are exposed in consequence of the violation of the universally accepted standard of treatment of individuals, the Universal Declaration of Human Rights.
9. Article 3 reproduces a generally recognized principle of international law. By granting asylum in its territory a State acts within its sovereign jurisdiction. Asylum so granted must be respected by other States and the action of States in granting asylum cannot be contested by other States as not being in accordance with international law; nor is it normally to be regarded as an unfriendly act.
10. The principles enunciated in Article 4 of the draft declaration that other States shall, in a spirit of international solidarity, consult on measures of assistance to persons entitled to seek asylum and to States burdened by the granting of asylum are a logical consequence of the character of asylum as an international humanitarian duty which implies collective responsibility as defined in Article 1. The principle stated in Article 4 is by no means new. It was proposed in the French draft Convention relating to the Status of Refugees (document E/AC.32/L.2, Article 2) and the draft Convention submitted by the Secretary-General (document A/AC.32/3, Article 3) and appears in the Final Act of the Conference of Plenipotentiaries on the Status of Refugees

^{1/} Annuaire 1950, Vol.II, p. 376.

(document A/CONF.2/108, Recommendation D) and in the Statute of the UNHCR (General Assembly Resolution 428 (V) of 14 December 1950, para. 8, d.)

11. Article 5 of the draft declaration is based on Article 33 of the Convention relating to the Status of Refugees of 28 July 1951, which was considered by the Conference of Plenipotentiaries on the Status of Stateless Persons to be "an expression of a generally accepted principle". (document E/CONF.17/5/Rev.1, Resolution IV). The interpretation of the terms "expulsion" and "return" in Article 33 gave rise to some discussion at the Conference of Plenipotentiaries on the Status of Refugees (document E/CONF.2/SR.16, pp. 6 et seq.) and it would seem desirable therefore to give clear expression to what is considered to be the basic principle. This is that no one shall be subjected to any measure (such as expulsion, refoulement, or no-admission at the frontier), as a result of which he would be returned or compelled to 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; alternatively, the sub-division of Article 5, as suggested in the comments of the United Kingdom, could be envisaged.

12. It will be seen from the foregoing comments that UNHCR is basically in agreement with the principles laid down in the proposed draft Declaration, although certain changes in formulation might be desirable. UNHCR hopes therefore that a Declaration on the right of asylum along the lines of the proposed draft will be adopted.
