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DISCRIMINATION AND PROTECTION  
OF MINORITIES  
Eleventh session  
Item 8 of the provisional agenda -

PRELIMINARY STUDY OF DISCRIMINATION IN THE MATTER OF THE RIGHT OF  
EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN  
TO HIS COUNTRY, AS PROVIDED IN ARTICLE 13, PARAGRAPH 2, OF THE  
UNIVERSAL DECLARATION OF HUMAN RIGHTS

(Submitted by Mr. José D. Ingles)

The Secretary-General has received the attached preliminary study,  
prepared by Mr. José D. Ingles pursuant to resolution E adopted by the  
Sub-Commission at its tenth session (E/CN.4/764, para. 182), and has the  
honour to circulate it herewith to the Sub-Commission.

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PRELIMINARY STUDY OF DISCRIMINATION IN THE MATTER OF THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY, AS PROVIDED IN ARTICLE 13, PARAGRAPH 2, OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

INTRODUCTION

1. As requested in resolution E, adopted by the Sub-Commission at its tenth session, the undersigned has prepared, in consultation with the Secretary-General, this preliminary study of discrimination in the matter of the right of everyone to leave any country, including his own, and to return to his country, as provided in article 13, paragraph 2, of the Universal Declaration of Human Rights.
2. This study supplements the earlier "Preliminary Study of Discrimination in the Matter of Emigration, Immigration, and Travel," which I submitted to the Sub-Commission at its request in 1955, and which was considered at its seventh session. As stipulated in resolution E, this study includes a discussion and analysis of the history and meaning of the relevant articles of the Universal Declaration of Human Rights and the nature of the concepts involved, the scope and nature of the study, and the methods and procedure by which it may be carried out.

PART I

PRELIMINARY VIEWS ON THE STUDY

A. THE SCOPE OF THE STUDY

3. The Sub-Commission will recall that in the earlier preliminary study I pointed out that the Economic and Social Council, by resolution 545 D (XVIII) of 29 July 1954, had requested the Sub-Commission "to take as the object of its study ... paragraph 2 of article 13 of the Universal Declaration of Human Rights, namely, the right of everyone to leave any country, including his own, and to return to his country."
4. The Sub-Commission at its seventh session, considering that the study of discrimination in immigration is of fundamental importance, requested the Commission on Human Rights to invite the Economic and Social Council to decide that the Sub-Commission is not precluded from undertaking a study of that question. The Council, however, by resolution 586 (XX) of 29 July 1955,

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reaffirmed its earlier decision and specified that the terms of resolution ~~515~~ 545 D (XVIII) "implicitly exclude immigration from the scope of the study."

5. Thus the scope of the study, as determined by the Council, is "the right of everyone to leave any country, including his own, and to return to his country, as provided in article 13, paragraph 2, of the Universal Declaration of Human Rights."

6. In view of the limited scope of the study, it would seem that the amount of work involved would be somewhat lighter than the corresponding efforts made in connexion with earlier studies. However, this affords no indication of the importance, timeliness or urgency of the study.

#### B. THE NATURE OF THE CONCEPTS INVOLVED IN THE STUDY

7. The Secretary-General has pointed out, in a memorandum (A/C.4/333) submitted to the General Assembly at its eleventh session in connexion with the problem of enabling petitioners to appear before the Fourth Committee of the General Assembly that:

"It is generally accepted in present international practice that the authorities exercising governmental functions with respect to a territory determine the conditions applicable to the departure of persons resident in that territory and, in the case of non-nationals who have not acquired a permanent right of residence, fix the conditions of re-entry. Under the system of passports, exit and entry visas which has prevailed since the end of the First World War, competent governmental authorities have reserved to themselves, in this respect, wide discretionary powers seldom defined with precision in their legislation. It may also be recalled in this connexion that national authorities have often put forward as grounds for refusal of permission to travel abroad the fact that the prospective traveller is subject to judicial proceedings, or may be fleeing from his obligations to pay taxes or personal debts or to perform military service, or that while abroad he may endanger the internal security of a foreign State or of his own State.

"A great variety of rules and practices exist in this field. Some countries permit the departure from their territories of persons who do not hold a passport or a similar travel document. Others treat such a departure - at least by their own nationals - as a punishable offence. Various procedures are utilized by governmental authorities which grant documents necessary for travel to non-nationals, and in limited situations international agreements might apply as, for example, for certain groups of refugees ...".

8. The right proclaimed in paragraph 2 of article 13 of the Universal Declaration of Human Rights may be said normally to have three aspects:

- (a) the right of a national to leave his own country;
- (b) the right of a foreigner to leave the country of his sojourn; and
- (c) the right of a national to return to his country.

9. The right of a national or of a foreigner to leave a country, whether temporarily or permanently, may involve limitations which could not be considered discriminatory in the sense of article 2 of the Universal Declaration of Human Rights, such as those based on the fact that the individual is subject to military obligations, or has not paid his taxes, or is suspected of having committed a crime. Such limitations would not be of interest per se to the Sub-Commission.

10. The right of everyone to return to his country has been dealt with in other contexts by the United Nations. Article 28 of the Convention relating to the Status of Refugees of 28 July 1951 provides for the issue of travel documents to refugees and in paragraph 13 of the schedule to the Convention each Contracting State undertakes that the holder of a travel document issued by it, in accordance with article 28 of the Convention, shall be readmitted to its territory at any time during the period of its validity (A/CONF.2/108/Rev.1, pp. 27 and 55). Similarly, article 28 of the Convention relating to the Status of Stateless Persons of 28 September 1954 provides for the issuance of travel documents to stateless persons. Paragraph 13 of the schedule to the Convention is to the effect that a travel document issued in accordance with article 28, unless it contains a statement to the contrary, entitles the holder to re-enter the territory of the issuing State at any time during the period of its validity (E/CONF.17/5/Rev.1). The problem of persons in exile is being studied by the Committee on the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile appointed by the Commission on Human Rights. In the explanatory comments on its terms of reference, the Committee has stated that "exile means the exclusion of a person from the country of which he is a national" (E/CN.4/763, para. 15). It has described the material which it is collecting in connexion with the study of exile in paragraph 32 of its progress report, of which the Commission took note (Report of the fourteenth session of the Commission on Human Rights, E/3088, para. 165).

11. It will be seen, however, that action by other United Nations bodies has not exhausted the entire field of the right of everyone to return to his country. Even in those cases where other bodies have dealt with the right in question, it would still be within the competence of the Sub-Commission to inquire whether there is discrimination with regard to the exercise of that right.

12. The principal task of the Sub-Commission would naturally be to study whether there is discrimination based on any of the grounds set forth in article 2 of the Universal Declaration of Human Rights with regard to (a) the right of a national to leave his own country, (b) the right of a foreigner to leave the country of his sojourn, and (c) the right of a national to return to his country. Without duplicating the work of other United Nations bodies, a study of the content of these rights would be conducive to a clear understanding of the problem involved. Practical illustrations of discrimination might be observed from the denial, suspension, restriction or curtailment of the exercise of the rights in question.

#### C. METHODS AND PROCEDURE BY WHICH THE STUDY MAY BE CARRIED OUT

13. The Sub-Commission has developed, and the Commission on Human Rights has approved, a method and procedure for carrying out its studies, in connexion with the study of discrimination in education (resolutions B and G of the sixth session of the Sub-Commission and paragraphs 376-418 of the report of the tenth session of the Commission (E/2573)). The same method and procedure is being followed in the studies on discrimination in the matter of religious rights and practices and in the matter of political rights, now being undertaken by the Sub-Commission. This method and procedure has proved generally acceptable and successful, and there would appear to be no reason to adopt another method and procedure for the present study.

14. The study on discrimination in the field of employment and occupation was entrusted to the International Labour Organisation in view of the latter's competence in the matter. Naturally, the International Labour Organisation adopted a method and procedure consistent with its own constitution and practice. While the International Labour Organisation has dealt with the problem of migrant workers, there is no United Nations body or specialized agency presently dealing with the broader subject of the right of everyone to leave any country, including his own, and to return to his country.

PART II

ANALYSIS OF THE HISTORY AND MEANING OF THE RELEVANT ARTICLES  
OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1. Preliminary Remarks

15. The portion of the Universal Declaration of Human Rights which is directly relevant to the study is article 13, paragraph 2, which states that "Everyone has the right to leave any country, including his own, and to return to his country." The legislative history of this paragraph is summarized below. In preparing this legislative history, however, it proved impossible to exclude completely references to paragraph 1 of article 13, which states that "Everyone has the right to freedom of movement within the borders of each State," since the two paragraphs often were examined simultaneously.

16. Other portions of the Declaration may be considered to some extent relevant to the study. For example, article 13, paragraph 2 must be read in conjunction with articles 2 and 7, which set forth the principle of non-discrimination; and articles 29 and 30, which admit the enactment by law of certain limitations, for certain defined purposes, upon all human rights and freedoms. In a broader sense, several other articles may be said to have a certain relevance to the study. For example, article 9 states that "No one shall be subject to arbitrary exile;" article 14 provides that "Everyone has the right to seek and enjoy in other countries asylum from persecution"; and article 15 provides that "Everyone has the right to a nationality" and that "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." Still other articles may acquire relevance in special cases: for example, article 4, prohibiting slavery and servitude (where hereditary attachment of the slave or serf to the land is involved); article 18, on freedom of religion (where pilgrimages to holy places in foreign lands are required by religious practice); and article 26, providing that everyone has the right to education (where educational facilities are available only in a foreign country). However, for the purpose of this preliminary study, the legislative history of article 13, paragraph 2, would seem to be sufficient.

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2. Legislative History of Paragraph 2 of Article 13

17. When the Universal Declaration of Human Rights was being prepared, the right of everyone to leave any country, including his own, and to return to his country, was discussed, successively, in the Drafting Committee of the Commission on Human Rights (first and second sessions); in the Sub-Commission (first session) in the Commission on Human Rights (second and third sessions); and in the Third Committee of the General Assembly (third session).

(a) Drafting Committee of the Commission on Human Rights  
First Session (June 1947) (E/CN.4/21)

18. The Committee examined, among other things, a "Draft Outline of an International Bill of Human Rights," prepared by the Secretariat, and a draft submitted by the Government of the United Kingdom. The Draft Outline contained the following text relevant to the present study:

"The right of emigration and expatriation shall not be denied."

19. The United Kingdom draft contained the following text:

"Every person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country, including his own."

20. At the request of the Committee, the representative of France redrafted the relevant texts to read as follows:

"Subject to any general law adopted in the interest of national welfare and security, there shall be liberty of movement and free choice of residence within the borders of each State; individuals may also freely emigrate or expatriate themselves."

21. During the discussion of this text, the question arose whether the words "Subject to any general law adopted in the interest of national welfare and security" were necessary. The author of the text expressed the view that,

"Texts which proclaimed unconditional liberties might be dangerous to certain States ... He thought it would be wise to transfer the reservation to the end of the article ... to the effect that it was subject to any general law which might regulate the freedom of movement."

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22. The representative of Chile suggested that the words "emigrate or expatriate themselves" be changed to "leave the territory."

23. The representative of the United Kingdom referred to his Government's suggestion to use the wording, "leave any country, including his own." He observed, at the same time, that the right to freedom of movement was:

"...a matter which should be considered by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, since the main implication was the prevention of discrimination, on the ground of race or colour, where people might live, and how they might move from place to place."

24. The Drafting Committee adopted the following text:

"There shall be liberty of movement and free choice of residence within the borders of each State. This freedom may be regulated by an general law adopted in the interest of national welfare and security. Individuals may freely emigrate or renounce their nationality."

The Committee decided to consult the Sub-Commission on Prevention of Discrimination and Protection of Minorities on this article.

(b) Sub-Commission on Prevention of Discrimination and Protection of Minorities, First Session (November-December 1947) (E/CN.4/52)

25. The Sub-Commission, at its first session, considered first a proposal submitted jointly by Mr. Nisot (Belgium), Mr. McNamara (Australia) and Mr. Wu (China) to redraft the Committee's text as follows:

"Subject to any general law not contrary to the principles of the United Nations Charter and adopted for specific and explicit reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the territory of each State. Subject to the same reservation, each individual shall be free to emigrate and renounce nationality."

26. Miss Monroe (United Kingdom) expressed the view that the reservations formulated in the first sentence of this text should not apply to the right to emigrate.

27. Mr. Masani (India) expressed the view that the desire to emigrate should not be taken as evidence of disloyalty. Criminals and traitors would be subject to some law preventing their emigration, and it was only the rights of honest citizens which were under discussion. He felt that there should be no reservation to the right to emigrate.

28. Mr. Spanien (France) thought that no reservation should be applied either to the right to emigrate or to the right to renounce nationality. He proposed to redraft the second sentence as follows:

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"Each individual shall have liberty of movement outside the territory of each State and shall be free to emigrate and renounce his nationality."

29. Mr. Borisov (USSR) pointed out that the right to emigrate without any restrictions would encourage people to renounce their nationality.

30. The article, as amended and proposed by the Sub-Commission by 8 votes in favour and 2 against, with 1 abstention, read as follows:

"Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in general interest, there shall be liberty of movement and free choice of residence within the borders of each State.

"Individuals shall have the right to leave their own country and to change their nationality to that of any country willing to accept them."

31. Mr. Nisot inserted the following remarks in the report of the Sub-Commission to the Commission:

"I was unable to agree to the above text because of the absolute bearing of its second sentence, which is not subject to the reservation (concerning laws in conformity with the Charter) by which the first sentence is governed. In the absence of such a reservation, the possibility for individuals to leave their country or relinquish their nationality is made dependent, in principle, on their sole will, without the State being able, even for reasons of general interest or national security, to limit this possibility, in particular by making it contingent on authorization. Such a radical provision cannot, in my view, but diminish the probabilities of the Declaration being, on this point, accepted or observed by Governments."

(c) Commission on Human Rights, Second Session (December 1947)(E/600)

32. In the Commission, the representative of the Ukrainian SSR proposed that the second paragraph of the article adopted by the Sub-Commission should be deleted, as it would encourage emigration. The proposal was rejected by 4 votes in favour and 11 against, with 3 abstentions.

33. The Commission adopted by 12 votes in favour and 4 against, with 1 abstention, the text proposed by the Sub-Commission after having replaced, in its second paragraph, the words "to change their nationality to that of any country willing to accept them" by the words "to acquire the nationality of any country willing to grant it".

(d) Commission on Human Rights, Third Session (May-June 1948),  
(E/800), and Drafting Committee, Second Session (May 1948)  
(E/CN.4/95)

34. The Commission, at its third session, had before it comments on the draft article, and particularly on the text dealing with the right to leave a country, from the Governments of the Netherlands, the Union of South Africa and Mexico.

35. The Netherlands Government suggested to insert, in paragraph 2, after the word "individuals ", the words:

"...who are not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service, tax liabilities or voluntarily contracted obligations binding the individual to the government."

This suggestion was explained as follows:

"An unrestricted right to emigrate is inadvisable. The question may be raised whether a government, in view of urgent national necessity, may not retain within the borders of the country persons exercising a special profession. Anyhow the freedom to emigrate should not be given to persons who have undertaken special obligations to the government, which commitments have not yet been fulfilled. Finally, it goes without saying that people who are lawfully imprisoned should not be free to leave the country."

36. The Government of the Union of South Africa pointed out that the draft provisions, dealing inter alia with the right to leave one's own country, would seem to go much beyond the scope of what could legitimately be regarded as rights and freedoms so fundamental as to call for international protection by the society of nations.

37. The Government of Mexico suggested that the words "temporarily and permanently" should be inserted in paragraph 2 of the draft article, so that it would read:

"Individuals shall have the right to leave their own country temporarily and permanently, and if they so desire, to acquire the nationality of any country willing to grant it."

38. The Commission had also before it the Report of the second session of the Drafting Committee which, in conformity with suggestions made by the representatives of the United Kingdom and the United States, had decided to

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delete the limitation clause from the Sub-Commission's text. The French representative, who at the first session of the Drafting Committee had favoured such a clause, had at the second session accepted the view that the Declaration's general article on restrictions (article 29) would afford adequate safeguards for the general prerogatives of the community and of the State, even if the article on freedom of movement and residence contained no specific reservation to that effect.

39. The text proposed by the Drafting Committee read:

"1. Everyone is entitled to freedom of movement and residence within the borders of each State.

"2. Everyone has the right to leave any country including his own."

40. The Commission adopted this text by 12 votes in favour and none against, with 4 abstentions. The text of the draft Declaration was transmitted through the Economic and Social Council to the General Assembly.

(e) Third Committee of the General Assembly, Third Session  
(September-December 1948)(A/777)

41. The Third Committee, at the third session of the General Assembly, examined several amendments to the draft article, including texts submitted by the Government of the USSR relating to the right to leave a country, and by the Government of Lebanon relating to the right of everyone to return to his country.

42. The USSR amendment was to add, after "to leave any country, including his own." the words "in accordance with the procedure laid down in the laws of that country."

43. In explaining this amendment, the representative of the USSR stated that:

"All movement within a given country or across its frontiers had to take place in accordance with the laws of that country. His delegation considered that its proposal to add to paragraphs 1 and 2 of the article direct reference to national legislation should be generally acceptable, since that proposal corresponded to a reality and did not run counter to any principles which were universally established and applied. The USSR representative expressed the opinion that the other amendments submitted would be of no value if the USSR's amendments to the article were not accepted.

"...The USSR amendment in no way modified the basic text of the article; it did not suggest eliminating anything; it simply proposed to add a reference to the laws of the country concerned.

"...The USSR amendment took due account of existing realities; it was impossible for the time being to ask Member States to abolish measures regulating entries and exits from their respective territories and to cancel their emigration and immigration laws. The adoption of the text of the article would, however, have just that result and would therefore be in flagrant contradiction with the provision of Article 2, paragraph 7 of the Charter. In the Soviet Union ... no law prevented persons from leaving the country, but anyone desiring to do so had, of course, to go through the legally prescribed formalities."

44. These views were supported by the representative of the Ukrainian SSR, who pointed out that:

"They were based on reality, and only reflected conditions which existed in the majority of countries ... All that the USSR was proposing in connexion with a freedom, the principle of which was generally accepted, was to safeguard the sovereignty of States and prevent interference in affairs which were essentially an internal matter. A provision of that kind was in conformity with the Charter."

45. The representative of Poland remarked that:

"All the countries in the world had certain laws restricting freedom of movement and the right to leave the country. It was simply a matter of avoiding arbitrary restrictions."

46. The representative of Saudi Arabia also was in favour of the USSR amendment, which, he considered, "in no way undermined the principles set out in the Article."

47. Other representatives, however, held a different view.

48. The representative of the Philippines stated that:

"The amendments proposed by the USSR delegation, if adopted, would nullify the meaning of the article, because instead of establishing common standards to govern the movements of people in general, the Committee would be sanctioning the deplorable state of affairs which exists in the world."

49. The representative of Chile stated that:

"The Chilean delegation considered the question to be of vital importance. Freedom of movement was the sacred right of every human being. That principle should be defended and maintained as an element necessary to progress and to civilization.

"Admittedly a State was entitled to decide how the principle was to be applied; but to include such interpretations in a Declaration of Human Rights would imply the renunciation of the inherent rights of mankind. A declaration drawn up in that sense would be a declaration of the absolute rights of the State and not a Declaration of Human Rights."

50. The representative of Haiti recalled that:

"The principle of the individual's right to move freely about the world had been recognized before national States had reached their present stage of development. The various barriers erected by those States failed to take account of the importance of the human element, the ties of family and friendship, which were often stronger than the ties which attached the individual to the sometimes unstable Government of his country.

"The world belongs to all mankind. Government restrictions ran counter to the aspirations of the universal conscience; they might be tolerated as a temporary necessity, but there could be no question of including them in the Declaration, which was intended primarily to educate the masses..."

51. The representative of Belgium stated that:

"The Declaration comprises a set of principles; there was no question of a convention, or of a code of special laws, but the Declaration, which had to be concise and definite ... The article was of vital importance: the principles of freedom of movement and freedom of residence had to be stressed at that moment when the war and the resulting upheaval demonstrated to what point that principle could be trodden under-foot. The ideal would be a return to the time when man could travel round the world armed with nothing but a visiting card. The principle of freedom of movement did not prevent States from promulgating laws to cope with questions of public order and public health; but all such reservations were provided for in Article 29. The Belgian delegation could, in no case, subscribe to the reservations implied in the USSR amendments."

52. The United Kingdom representative said that his delegation:

"... would oppose any amendment tending to restrict the scope of the article in the same way as it was opposed, in general, to any measure likely to weaken the force of the Declaration of Human Rights. The Committee should not be content with the laws promulgated by the various States, but should endeavour to get the States to agree to make their laws conform to the spirit of the Declaration. That Declaration should express an ideal, and should not, therefore, be limited in any way."

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53. The representative of the United States of America reminded the Committee that:

"During the discussion on the other articles, it had been recognized that in certain circumstances individuals had to be guaranteed protection, even against their own government. The article under discussion seemed to impose such an obligation ... The amendment submitted by the USSR delegation would render the article valueless. To state that freedom of movement should be granted only in accordance with the laws of each country would be equivalent to limiting the fundamental rights of the individual and increasing the powers of the State."

54. The representative of Greece, speaking on the USSR amendment:

"...pointed out that it was natural for governments to take legal measures to regulate the principles of freedom enunciated in the article, since the application of any principle of freedom necessarily entails the appropriate legislation, but the legislation should not permit violation of the very spirit of freedom it was intended to safeguard. If the USSR amendment aimed at restricting freedom of movement and residence, the Greek delegation could not subscribe to them."

55. The representative of Lebanon felt that:

"The words 'in accordance with the laws of that State' should not be added. The principle enunciated in the article should not be weakened by any reservations. On the contrary, States should be prevented from passing the laws arbitrarily restricting freedom of movement and residence."

56. The USSR amendment was rejected by 7 votes in favour and 24 against, with 13 abstentions.

57. The representative of Uruguay explained that his delegation have voted against the USSR amendment because of the existence of article 29. If the limitations desired by the USSR delegation came within the framework of article 29, they were superfluous; if they did not, they were not desirable.

58. The Lebanese amendment was to add, at the end of paragraph 2, the words "and to return to his country".

59. In submitting his amendment, the representative of Lebanon pointed out that the text under discussion:

"...was intended to cover all movements inside and outside of a given State. According to that article, any person had the right to leave any country, including his own. The ideal would be that any person should be able to enter any country he might choose, but account had to be taken of actual facts. The minimum requirement was that any person should be able to return to his country. If that right were recognized, the right to leave a country, already sanctioned in the article, would be strengthened by the assurance of the right to return. Such was the object of his amendment."

60. There was no opposition to the amendment. The representative of the USSR expressed the view that it "would add a patriotic note to the article." The amendment was adopted by 33 votes in favour and none against, with 8 abstentions.

61. Article 13, as amended was adopted by 37 votes in favour and none against, with 3 abstentions.

62. The representative of the USSR said that:

"... on account of an interpretation mistake he had not understood that the last vote was on article 13 as a whole. His delegation would certainly have voted against the adoption of an article which violated the provisions of paragraph 7 of Article 2 of the United Nations Charter and which deliberately ignored the right of each State to regulate as it desired freedom of movement in and departures from its territory at its own frontiers."

63. The text prepared by the Third Committee was subsequently adopted by the General Assembly by 44 votes in favour and 6 against, with 2 abstentions, and appears as article 13 of the Universal Declaration of Human Rights.

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