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REQUESTS FROM NON-GOVERNMENTAL ORGANIZATIONS INVITED TO
SEND OBSERVERS TO THE INTERNATIONAL CONFERENCE ON HUMAN
RIGHTS FOR CIRCULATION OF WRITTEN STATEMENTS TO THE CONFERENCE

Note by the Secretary-General

At its fifth meeting held on 7 May 1968, the General Committee decided, in accordance with rule 62 of the Rules of Procedure, to authorize the circulation to the Conference of the attached statement in all available languages.

INTERNATIONAL CONFERENCE ON THE RIGHTS OF MAN

(Teheran, April 22 - May 13, 1968)

MEMORANDUM

presented by the Association for the study of the Refugee
Problem (AWR, Vaduz, Liechtenstein)

with a view to establishing a DRAFT INTERNATIONAL CONVENTION
on the RIGHT OF ASYLUM

The expression "right of asylum" is an ambiguous one. Considered as the right of obtaining asylum, it is a right of the human person. Considered as the right of granting asylum, it is a prerogative of the State.

Undoubtedly this twofold aspect of the problem explains the dilemma in which the right of asylum finds itself at present.

The Universal Declaration of the Rights of Man lays down in article 14 that: "In the face of persecution, all persons are entitled to seek asylum and to take advantage of the asylum offered by other countries". However, the right of asylum has not even been mentioned in the two conventions of application of the Universal Declaration, conventions negotiated by the various powers, certain of which formally declared that the right of asylum could not be considered as a right of the State.

This situation marks a definite regression as compared to the juridical balance prior to the Second World War which, while admitting that "in principle, every sovereign state may regulate the admission of foreigners as it deems fit", at least recognized that "humanity and justice oblige States only to exercise their territorial sovereignty when at the same time respecting - insofar as is compatible with their security - the right and freedom of foreigners wishing to enter into their territory". (Declarations of the International Law Institute, 1888 and thereafter).

The question of "asylum in public international law" had been included in the programme of the International Law Institute and would have been considered at Neuchâtel in 1939, had the war not interrupted these studies. Resumed in 1948 and

in 1949, at Brussels and at Bath, these concluded with the adoption of the following formula: "All states which in the performance of their duty of humanity, grant asylum in their territory do not, by so doing, incur any international responsibility". Without establishing a "right" of the individual, this formula had the advantage of explicitly mentioning the "duty" of humanity of the State.

Would it be too ambitious today, twenty years after the proclamation of article 14, to attempt to restore this balance and - if possible, go further even?

To achieve this in all clarity, it would be necessary for the States to do what they did to establish the Law of Geneva, under the auspices of the Red Cross. That is to say, to conclude on the subject of the right of asylum, an international convention of universal scope open for signature or adhesion by all the Powers. This humanitarian convention should contribute fairly to the rights of the human person and to the rights of the State.

To this end, the AWR would be prepared to collaborate in drawing up a draft International Convention on the right of asylum, the main elements of which would be as follows:

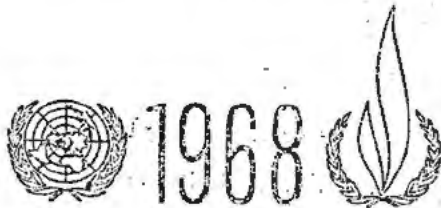
1. The right of asylum would be formulated as a right of the human person, as enunciated by article 14. This definition would be completed in the light of the work of the Commission on the Rights of Man, and, above all, of article 3 of the draft Declaration of the General Assembly of the United Nations prepared by this Commission, namely: "No persons seeking asylum or enjoying asylum, in accordance with the Universal Declaration of the Rights of Man, may - except for major reasons of national security or protection of the population - be subject to measures such as refusal of admission at the frontier, turning back or expulsion, which would have the effect of forcing them to remain in a territory where they feared with good reason to be the victims of persecutions threatening their life, physical integrity or freedom. If a State should decide to apply one of the above measures, it should envisage the possibility of granting provisional asylum under such conditions as it considers fit, thus enabling such endangered persons to seek asylum in another country"

2. The duties of the person seeking asylum will then be defined on the basis of article 10 of the European Convention on the Rights of Man.

3. The right of expulsion enjoyed by the State as sanction of these duties would be dealt with in clauses inspired by article 32 of the Refugee Statute of 1951. Expulsion may only take place for reasons of security and of public order, in enforcement

of a decision taken in accordance with the procedure foreseen by the law. The persons concerned would be given a reasonable period of time to make regular arrangements to be admitted into another country, and the contracting States would, in the meantime, apply such measures of internal order as they should consider fit. In the case of internment, this could be regulated in accordance with the articles of the IV Geneva Convention of August 12, 1949 dealing with this subject. It would be advisable to specify, as does the British "Aliens Act", that indigence should not be considered a reason of public order sufficient to warrant the expulsion of the person seeking asylum.

4. Lastly, it would be opportune to reserve the enforcement of extradition conventions for the repression of crime, pointing out, as suggested by Messrs. Alfaro, Scelle and Yepès, when presenting the study on the draft Declaration of the Rights and Duties of States, that "every State has the right to grant asylum to persons requesting it as a result of persecutions for crimes which the State granting asylum qualifies as being of a political nature". For obvious reasons, the qualification of crime cannot be left to the arbitrary judgment of the requesting State.

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INTERNATIONAL CONFERENCE ON HUMAN RIGHTS

(Teheran 22 April - 13 May 1968)

MEMORANDUM

Submitted by the Association for the Study of the World
Refugee Problem (AWR, Vaduz, Liechtenstein)

WITH A VIEW TO A DECLARATION BY THE
UNITED NATIONS GENERAL ASSEMBLY ON THE RIGHTS OF REFUGEES

The twentieth anniversary of the Universal Declaration of Human Rights and the International Conference at Teheran have prompted the Association for the Study of the World Refugee Problem (AWR, Vaduz, Liechtenstein) to propose the "Proclamation of a Principle of International Justice applicable without Discrimination to All Refugees", as was done by the International Committee of the Red Cross during the conclusion of the four Geneva Conventions of 12 August 1949.

In fact, the very term "refugee" has been the subject of restrictive definitions, and the appointment of a United Nations High Commissioner, who assumed his duties on 1 January 1951, brought only a partial solution to the problem. Although under his direction international protection covered more than a million and a half persons, experience was not slow in demonstrating the need for extending his competence in order to deal with new refugees and to meet the needs of humanitarian work in keeping with the requirements of civilization.

The same thing was experienced in the Middle East in the matter of the Palestine refugees, whom the international community entrusted to the care of a special organization which was to provide them with assistance and employment (UNRWA). Now, if it has been possible to discern one ray of hope in the United Nations debates on the Middle East, it has been this unanimous decision in favour of international assistance to the refugees.

Why not, therefore, make use of this important fact, in this matter where there is unanimous agreement to bring about a Declaration by the United Nations General Assembly in favour of refugees?

In the drafting of such a declaration, the general ideas set forth in 1951 by Mr. Ruegger, the then President of the International Committee of the Red Cross during the preparation of the International Convention relating to the Status of Refugees should presumably be followed.

Adapting the text in question to the present situation, the following draft could be formulated:

1. Any person who, as a result of serious events arising from armed conflicts, national or international, is compelled to seek refuge outside the country of his habitual residence, has the right to be received.
2. If the said person cannot lead a normal existence where he is, he has furthermore the right to assistance from the authorities of the territory.
3. If this right to assistance is not covered by the obligations which the state is ready to assume in respect of its nationals or assimilated persons, and where the burden resulting therefrom exceeds the means of the public authorities concerned, the international community has a common responsibility in the name of human solidarity. This responsibility shall be exercised through the competent national and international authorities.
4. The public or private humanitarian institutions concerned with refugees are entitled to assist, according to their means, in the action of the public authorities.