

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

(THE SECRETARIAT HAS RECEIVED THE FOLLOWING STATEMENT FROM THE EXECUTIVE SECRETARIAT OF THE PREPARATORY COMMISSION FOR THE INTERNATIONAL REFUGEE ORGANIZATION).

The Executive Secretariat of the Preparatory Commission for the International Refugee Organization is following with great interest the deliberations of the Commission on Human Rights, and earnestly hopes that its endeavours may be crowned with success.

No group of human individuals can be more interested in an International Bill of Human Rights than the large number of persons who are the concern of the International Refugee Organization - the refugees and displaced persons. The position of these persons is due, to a considerable extent, to the flagrant violation of human rights by National-Socialist Germany, Japan and their Fascist Allies.

The Executive Secretariat of the Preparatory Commission considers the achievement of the aims of the Commission on Human Rights - a universal guarantee of human rights and fundamental freedoms - as a most important factor for the regularization of the situation of these persons.

It is for this reason that the Executive Secretariat of the Preparatory Commission for the International Refugee Organization feels justified in submitting to the Commission on Human Rights certain points for consideration. The Executive Secretariat of the Preparatory Commission has confined its observations to those points which, in its opinion, are of particular importance to the persons within the mandate of the Preparatory Commission.

1. Equality before the Law; Prevention of Discrimination; Protection of Minorities.

The Executive Secretariat of the Preparatory Commission does not wish to anticipate the conclusions of the Sub-Committee on Prevention of Discrimination and Protection of Minorities. It merely wishes to submit the following points for consideration:-

- (a) Discrimination is frequently based, not only on the grounds of sex, religion, race, or political opinion, but also on the grounds of nationality, or lack of nationality.

Such discrimination may be made either between nationals and aliens, or between different classes of aliens.

It would, therefore, in the opinion of the Executive Secretariat of the Preparatory Commission for the

International Refugee Organization, be desirable that the following principles be embodied in the Declaration or in the Convention on Human Rights:-

There shall, in principle, be no discrimination between persons on the grounds of nationality, or lack of nationality.

Nationals and aliens shall enjoy equal rights, with the exception of political rights and rights which, under national law and within the limits prescribed by the International Bill on Human Rights, are confined to nationals.

The principle of reciprocity shall be no bar to the equal granting and enjoyment of human rights and fundamental freedoms.

- (b) Without prejudice to the decisions of the appropriate organs of the United Nations, on the question of implementation of the International Bill on Human Rights, it is submitted that equality before the law should, in national law, be safeguarded not only by the embodiment of positive rights to this effect, but also by the incorporation in civil and criminal law of adequate safeguards against discrimination, incitement to, and advocacy of, discrimination. Incitement to discrimination is frequently directed against national, religious and racial groups. Civil proceedings and criminal prosecutions against instigators of discrimination, or even violence, against such groups have sometimes failed in the past because the law provided only for the protection of individuals, but not of groups.

It would, therefore, in the opinion of the Executive Secretariat of the Preparatory Commission for the International Refugee Organization, be desirable that municipal laws should contain adequate safeguards against discrimination, incitement to, and advocacy of, discrimination against individuals or groups of individuals.

2. Nationality.

The Executive Secretariat of the Preparatory Commission for the International Refugee Organization welcomes the provision that "everyone has a right to a nationality" (Article 18, Doc. E/CN.4/21 Annex F).

The Executive Secretariat of the Preparatory Commission feels, however, that this provision requires implementation. Reference is made in this connection to Article 32, para. 2 of the Draft prepared by the Division of Human Rights of the United Nations Secretariat (Doc. E/CN.4/ACL/11), which provides for an effective implementation of the right to nationality.

The embodiment of this principle in the national laws of all States would lead to the gradual elimination of statelessness only if at the same time loss of nationality by unilateral act of the State, or of the individual, without simultaneous acquisition of a new nationality, were to be prohibited.

It is submitted that the incorporation of these rules, desirable as they may be, must depend on the conclusion of an International Convention on Human Rights and its effective enforcement.

In the interim period, there will still exist a class of persons who are stateless in law or in fact, and who, in consequence, do not enjoy the protection of any Government. The protection by the Government of nationality, both within national territory, and abroad through diplomatic and consular representatives, is, however, the most effective safeguard of human rights and fundamental freedoms.

The Executive Secretariat of the Preparatory Commission for the International Refugee Organization therefore considers it essential that any International Bill of Human Rights (Declaration or Convention) be supplemented by a clause which would establish the right of unprotected persons to the benefits of protection by an International Authority. Such protection should be similar to that exercised by national governments.

In consequence, the Executive Secretariat of the Preparatory Commission for the International Refugee Organization wishes to submit, for the consideration of the Commission on Human Rights, the following principles concerning nationality:-

Every person has a right to a nationality.

Every person shall be entitled to the nationality of the State where he is born, unless and until, on attaining majority, he declares for the nationality open to him under the law of another State.

Every person has the right to renounce his nationality, if he acquires another nationality, or if his human rights and fundamental freedoms have been denied him by his State of nationality.

All persons who do not enjoy the protection of any State shall be placed under the protection of an International Organization established by the United Nations.

3. Migration; Expulsion; Right of Asylum.

Persons coming within the mandate of the Preparatory Commission for the International Refugee Organization have suffered most severely from migration restrictions. Their position is furthermore frequently endangered by the exercise against them of the right of expulsion, and by the threat of expulsion.

For persons who had to flee from their country of origin or residence, owing to persecution or discrimination, or to fear of such persecution or discrimination, the right of asylum is of paramount importance.

The Executive Secretariat of the Preparatory Commission for the International Refugee Organization notes with satisfaction that the right of free movement within the State, the right of migration, problems relating to expulsion and to the right of asylum have been dealt with in the Draft Declaration on Human Rights (Articles 13, 14, 19, Annex F. Doc. E/CN.4/21) and the Draft Convention on Human Rights (Article 5 Doc. E/CN.4/21 Annex G) by the Drafting Committee.

Provision for a fair hearing in cases of expulsion (Article 19 Annex F) would, however, in the opinion of the Executive Secretariat of the Preparatory Commission for the International Refugee Organization, not be an adequate safeguard against arbitrary expulsion. The Executive Secretariat of the Preparatory Commission for the International Refugee Organization is, on the other hand, aware that too stringent restriction of the right of expulsion might make States more reluctant to admit aliens to their territories. In view of these considerations, a compromise formula is suggested below.

While Article 14 Annex F lays down the right to escape persecution, the corresponding right of asylum is provided for only as a right of the State and not as a right of the individual. The Executive Secretariat of the Preparatory Commission for the International Refugee Organization is aware of the considerations of national policy and of security which may render difficult the granting to the individual of an unconditional right of asylum. It is hoped, however, that the Commission on Human Rights will deem it possible to consider the embodiment of the principle of the right of asylum of certain classes of individuals.

The Executive Secretariat of the Preparatory Commission for the International Refugee Organization wishes to submit the following suggestions with regard to emigration, expulsion and asylum for the consideration of the Commission on Human Rights:

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.

Aliens shall be expelled only under conditions laid down by law, and provided that another State is willing to receive them in its territory.

No alien who has been born or educated in the State where he resides, or has been admitted to its territory for an indefinite period, may be expelled therefrom, except in pursuance of a judicial decision, or recommendation, as a punishment for offences laid down by law as warranting expulsion.

Religious, racial, or political refugees shall be granted asylum; provided, however, that the right of asylum shall not be granted to political refugees whose opinions are inconsistent with the aims and objects of the United Nations.