

COMMISSION ON HUMAN RIGHTS

Fifth session

Item 14 of the provisional agenda

RIGHT OF ASYLUM

Memorandum by the Secretary-General

1. The Commission on Human Rights decided, at its second session, in December 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" (Paragraph 48 of E/600).

2. At the same time the Working Group on the Declaration of Human Rights prepared the first draft of the Declaration, Article 11 of which stated:

"Every one shall have the right to seek and be granted asylum from persecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations." (Annex A of E/600.)

3. At its third session, 24 May to 18 June 1948, the Commission examined and revised the draft Declaration and submitted the revised draft to the Economic and Social Council. Article 12 of that draft read as follows:

"1. Every one has the right to seek and be granted, in other countries, asylum from persecution.

"2. Prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution."

(Annex A of E/800.)

4. The Economic and Social Council, in its resolution 151 (VII), decided to transmit to the General Assembly the draft Declaration of Human Rights submitted by the Commission on Human Rights.

5. The General Assembly, at its third session (Part I), examined the draft Declaration article by article, and on 10 December 1948 adopted the Universal Declaration of Human Rights. The right of asylum constituted Article 14 of the Universal Declaration. The article reads as follows:

/"1. Every

"1. Every one has the right to seek and to enjoy in other countries asylum from persecution.

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crime or from acts contrary to the purposes and principles of the United Nations."

6. The most significant amendment to article 12 of the draft Declaration - which became article 14 of the Universal Declaration - was the replacement of the words "be granted" by the words "to enjoy". According to the Universal Declaration, every person has the right to seek and to enjoy asylum, but not the right to be granted asylum. It was thought that article 12 of the draft Declaration as it stood appeared to enable every persecuted person to claim the right of entry to any country he might choose. In actual practice the right of asylum was generally understood to be the right of a sovereign State to grant asylum - and to refuse extradition.

7. It may be appropriate to note at this point that the right of political asylum has been included in the list of topics which are to be codified by the International Law Commission. During the discussion of the subject on 20 April 1949 in the International Law Commission (A/CN.4/SR.6), it was pointed out that there are two aspects of the right of asylum: the right of a sovereign State to grant asylum - which has been traditionally recognized in international law and practice - and the right of an individual to seek and to enjoy asylum - which has been embodied in the Universal Declaration of Human Rights.

8. The right of asylum has been placed on the provisional agenda of the Commission by virtue of its decision at its second session to examine at an early opportunity "the question of 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". The right of asylum has now been included in the Universal Declaration of Human Rights, and has been chosen by the International Law Commission as a topic to be codified in due course. In the light of these developments, the Commission on Human Rights may wish to consider whether the right of asylum should be included as one of the rights to be regulated by the Covenant on Human Rights, and/or whether a separate international convention on this right should be drafted.