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RIGHT OF ASYLUM

Comments of Governments

The Secretary-General has the honour to circulate the following comments received from the Governments of France, India, Israel, the Netherlands, Portugal and Yugoslavia.

1. FRANCE

(Note of 16 January 1959)

The draft declaration on the right of asylum was submitted by France to the Commission on Human Rights at its twelfth session. The French Government has no further suggestions in this respect and would refer, in so far as the principle and the contents of this declaration are concerned, to the observations submitted to the Commission on Human Rights by the representative of France.

The amendments proposed by the Israel delegation call for the following comments:

(1) With regard to article 2 of the declaration, the addition (paragraph 2 (b)) requested by Israel does not conflict with the original text, since persons, for example, who were wanted for non-political crimes could not allege that they were being threatened, in violation of the Universal Declaration of Human Rights. The sole effect of the new paragraph would be to make more explicit one of the conditions that are essential to the exercise of the right of asylum as set forth in article 14 (2) of the Universal Declaration.

Its adoption therefore seems desirable. In the French text, however, the word "persécutions" should be replaced by the word "poursuites", which is closer to the idea the authors of the amendment had in mind.

(2) As regards article 4 of the draft declaration, it seems preferable, subject to whatever further information the representative of Israel may provide at the fifteenth session of the Commission on Human Rights, to adhere to the original text which seems more precise than the draft article submitted by the Israel delegation.

(3) In article 5, however, the replacement of the words "no one" by the words "no persons entitled to seek asylum" gives greater clarity to the text and should be accepted.

## 2. INDIA

(Note of 30 January 1959)

It is an accepted principle of international law that an individual has no right of asylum and that the State has no duty to grant asylum. All that can be said is that a State is competent to grant asylum if it pleases. It has no duty to grant asylum, and the individual has no enforceable right to seek asylum. The purposes of the draft declaration are inconsistent with the accepted notions of international responsibility of States and to the extent that an obligation is sought to be imposed on States, it cuts directly into the concept of State sovereignty and it is very doubtful if States would be prepared to go so far or whether the time is ripe for going to such an extent. Concurrence in the draft declaration will impose upon a State onerous obligations and the consequences of such obligations from the point of view of the security of the State and economic and social aspects of community life cannot be anticipated. The circumstances under which a person may seek asylum under clause (2) of the declaration are also too wide and liberal and do not seem to be acceptable; nor do they correspond to the existing conceptions, or basis on which asylum may be sought or granted.

### 3. ISRAEL

(Note of 25 December 1958)

The Minister for Foreign Affairs ... has the honour to reiterate the deep appreciation of the Government of Israel of the initiative taken by the representative of France at the thirteenth session of the Commission on Human Rights for a restatement of the principles governing the right of asylum with a view to furthering the practical implementation thereof and to express its hope that the Commission will, at its next session, draft a Declaration on the Right of Asylum for adoption by the competent organs of the United Nations.

As to the text of the Declaration proposed by France (E/CN.4/L.454/Rev.1), The Government of Israel desires to call attention to the amendment presented by the representative of Israel at the thirteenth session of the Commission on Human Rights (E/CN.4/L.459) and to his remarks in explanation thereof (E/CN.4/SR.560, 572-575). The purpose and effect of this amendment is to bring the proposed Declaration into line with article 14 of the Universal Declaration of Human Rights, and to place the burden of consultation with States as to the best means of implementing international solidarity, squarely upon the shoulders of the United Nations, instead of leaving any such consultations to the initiative of individual States. Apart from the matters covered by this amendment, the Government of Israel has no further comment to offer on the text of the Draft Declaration presented by France.

### 4. NETHERLANDS

(Note of 16 February 1959)

#### General

The Netherlands Government has noted with interest the Draft Declaration on the Right of Asylum (E/CN.4/L.454/Rev.1) submitted by the representative of France during the thirteenth session of the Commission on Human Rights and the amendments to this Declaration (E/CN.4/L.459). The Netherlands Government is of the opinion that these documents constitute a useful basis for establishing a number of principles which should govern the practice with regard to persons seeking asylum. The Netherlands Government proceeds on the assumption that it is not intended to arrive at a legally binding instrument but at a declaration

having a great moral importance which may serve as a guide for the activities of the United Nations and the practices of Member States in this respect.

#### Preamble

In the Netherlands Government's view the clarity and effectiveness of the instrument would be enhanced if its general purpose were set out in a preamble, in which reference could be made inter alia to article 14 of the Universal Declaration of Human Rights, to the Convention relating to the Status of Refugees of 28 July 1951, to the Convention relating to the Status of Stateless Persons of 28 September 1954 and to the resolutions of the Conference on the Status of Stateless Persons.

#### Comments on the individual articles

##### Article 1

In the Netherlands Government's view this generally worded article is too far removed from present practices and may, therefore, prevent the Declaration from obtaining general support. Further it is considered that it is not quite appropriate to state that responsibility for granting asylum shall lie with the United Nations, since only individual States can grant asylum. For these reasons the Netherlands Government would suggest the deletion of article 1 of the draft. The Netherlands Government, moreover, deems it desirable to take the right of the individual as the basis of the Declaration, and consequently to lay down this right in the first article (see comments on article 2 of the draft). As regards the wording of article 1 of the draft the Netherlands Government is of the opinion that this article, which refers to "persons requesting it", is inadequately adapted to the wording of article 2, which describes these persons differently and in less general terms.

##### Article 2

As does article 5 of the draft this article refers to "violation of the principles of the Universal Declaration of Human Rights". It may therefore have a somewhat wider scope than paragraph A (2) of article 1 and article 33 of the Convention relating to the Status of Refugees of 28 July 1951, which refer

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to persons who are threatened "on account of race, religion, nationality, membership of a particular social group or political opinion". The Netherlands Government prefers the latter wording because it has proved its usefulness in practice and defines more specifically the criteria applied by States in actual practice. In this connexion it may be recalled that in the unanimously adopted resolution II of the Conference on the Status of Stateless Persons it was stated that article 33 of the Convention relating to the Status of Refugees is "an expression of a generally accepted principle".

Moreover, in order to ensure that no persons holding opinions incompatible with due respect for fundamental human rights shall benefit from the Declaration, the Netherlands Government thinks it advisable that the words "provided such opinion is not contrary to the purposes and principles of the United Nations" be added to the formula employed in the Refugee Convention.

In order to employ the same terminology as used in article 3 of the Universal Declaration of Human Rights the Netherlands Government would further suggest that "security of person" be substituted for "physical integrity".

For the above-mentioned reasons the Netherlands Government suggests that article 2 be numbered article 1 and be worded as follows:

"Anyone whose life, liberty or security of person is threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, provided such opinion is not contrary to the purposes and principles of the United Nations, shall be regarded as entitled to seek asylum".

#### First paragraph of article 5

Since this paragraph is designed to give an important guarantee to the persons referred to in draft article 2 these two provisions, which supplement each other, are closely related; the Netherlands Government would prefer them to be placed together. As has been done in the draft, a similar terminology should be used in the two provisions.

In accordance with the suggestion made in respect of article 2 of the draft, the Netherlands Government therefore suggests that the first paragraph of article 5, to be numbered article 2, be worded as follows:

"No one entitled to seek asylum shall be subjected to measures, such as expulsion, return or rejection at the frontier, which would result in compelling him to return to or remain in a territory where

his life, liberty or security of person is threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

Second paragraph of article 5

In view of the close connexion between article 2 and the first paragraph of article 5 of the draft, the Netherlands Government deems it desirable to make the exception provided for in the second paragraph of article 5 also applicable to article 2 of the draft. The second paragraph of article 5 could be numbered article 3 and the words: "This principle" should then be replaced by "The principles of articles 1 and 2".

Amendment to article 2 (b) (L.459, para. 1)

In the Netherlands Government's view this amendment is superfluous if the articles 1 and 3 are adopted in the form suggested by the Netherlands Government.

Article 3

In the Netherlands Government's view article 3 of the draft is ambiguous. On the one hand this article might be deemed superfluous since it follows from article 2 of the draft that in principle no other State can question a grant of asylum to the persons referred to in article 2. On the other hand it is possible, however, that the freedom of a State to grant asylum is restricted by international law. This will, for instance, be the case if a State has undertaken certain obligations as regards extradition. As a rule no obligation will be undertaken to extradite persons coming under article 2 of the draft, but a conflict between on the one side obligations to extradite and on the other the moral obligation to grant asylum is not absolutely impossible. On these grounds it might be objected that article 3 of the draft is in its generality not quite correct. The Netherlands Government, therefore, would suggest the deletion of article 3 of the draft.

Article 4

The Netherlands Government supports the views underlying this article and the amendment to this article. It is of the opinion, however, that a few

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alterations are called for. The wording of paragraph (a) of article 4 of the draft has, in the Netherlands Government's view, the drawback that the responsibility of States in this respect is only indirectly referred to, whereas in the Netherlands Government's views the duty to provide help and assistance for the victims of persecution lies primarily with the States. This objection also applies to the amendment submitted (paragraph 2 of L.459).

In paragraph (b) of article 4 of the draft no reference is made to the United Nations whilst this paragraph should, as suggested in the amendment and in the opinion of the Netherlands Government, leave scope for the possibility and necessity of valuable activities by the United Nations with regard to measures to lighten the burden of States of first asylum. For these reasons the Netherlands Government would, in accordance with the suggestions already made, propose that article 4 be numbered article 4 and be worded as follows:

"The United Nations and Member States shall, in a spirit of international solidarity, co-operate and consult with each other:

- (a) as to the most effective means of providing help and assistance for the persons referred to in article 1;
- (b) as to the measures to be taken to lighten the burden assumed by States granting asylum; in particular, Member States shall give favourable consideration to the possibility of admission to their territory of a certain number of persons first granted asylum in another State".

Text of draft declaration as proposed by  
the Netherlands Government

1. Anyone whose life, liberty or security of person is threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, provided such opinion is not contrary to the purposes and principles of the United Nations, shall be regarded as entitled to seek asylum.

2. No one entitled to seek asylum shall be subjected to measures, such as expulsion, return or rejection at the frontier, which would result in compelling him to return to or remain in a territory where his life, liberty or security of person is threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

3. The principles of articles 1 and 2 shall not apply in the case of persons whom there are reasonable grounds for regarding as a danger to the security of the receiving country or who, having been convicted by a final judgement of a particularly serious crime, constitute a danger to the community of that country.

4. The United Nations and Member States shall, in a spirit of international solidarity, co-operate and consult with each other:

- (a) as to the most effective means of providing help and assistance for the persons referred to in article 1;
- (b) as to measures to be taken to lighten the burden assumed by States granting asylum; in particular, Member States shall give favourable consideration to the possibility of admission to their territory of a certain number of persons first granted asylum in another State.

#### 5. PORTUGAL

(Note of 5 January 1959)

Before considering the French draft declaration on the right of asylum, it should be pointed out that humanitarian reasons and respect for diplomatic immunities have always led Portugal to respect the right of asylum both in its legislation and in practice. The notion underlying the draft declaration is therefore considered to be in harmony with the spirit of Portuguese law.

The French draft declaration and the amendments proposed by Israel call for a few comments by the Portuguese Government, which are set forth below in the order of the articles.

#### Article 1

This article strikes the dominant note of the draft declaration and would seem to be based on article 14 of the Universal Declaration of Human Rights. If the French draft declaration does in fact represent an application, albeit vague, of the principle contained in article 14 of the Universal Declaration, there would seem to be firm grounds for linking it with future practice as regards political asylum.



Article 1 cannot, however, be interpreted as meaning a transfer of responsibility to the United Nations for settling each case that arises without consulting the States directly concerned. A comparison of article 1 with article 4 leads to such a conclusion. The basic aim would seem to be to avoid separate agreements between various States or groups of States and to concentrate the settlement of such questions within a single international instrument elaborated by the United Nations. An objection, and a reasonable one, to a broad interpretation of this principle is that in the present state of affairs it would be preferable not to impose excessively heavy responsibilities on the international community or to insist on international action to which many States would have difficulty in agreeing.

The fact is that there are relations between neighbouring States and special factors of various kinds in each country which in many cases will prove to be hardly compatible with rigid regulations or with a form of international action which might well ignore or disregard realities. There can be no doubt that the exercise of sovereignty might be affected.

There seems, however, to be no objection to accepting the wording of article 1 provided that the principle set forth there is defined and clarified in the body of the succeeding articles in accordance with the Israel proposal.

## Article 2

As at present drafted, this article does in fact suggest the need for an amendment such as that proposed by Israel. Its broad wording can easily be taken as referring to any type of violation of the principles of the Universal Declaration of Human Rights which might give rise to a threat to life, physical integrity or liberty. Specific reference should accordingly be made to crimes of a political nature so as to exclude non-political crimes. Thus, by way of precaution, there must be a requirement that prosecution is actually based on a political offence, for only in this way will it be possible to prevent an offender from pleading political motives in order to evade liability for a non-political crime.

In this respect the amendment proposed by Israel does no more than bring the text of the French draft declaration into line with a well-established

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notion. The whole history of diplomatic asylum has moved in this direction and has been reflected in the restrictions on the right of asylum that have been embodied in treaties and conventions.

There is, however, a point here that is worthy of particular attention, owing both to its breadth of scope and to its novelty. This is the admissibility of the right of asylum where there has been "violation of the principles of the Universal Declaration of Human Rights". This broad expression not only includes prosecution for political crimes, but it goes even further - so far, in fact, that it lends itself quite easily to the contention that the omission of certain guarantees in the prosecution of a person for a non-political crime would justify invoking the right of asylum on the ground that the Universal Declaration had been violated.

In this respect the draft declaration seems to be too ambitious. The proposed text would not only go beyond the scope of diplomatic asylum as established by tradition and embodied in treaties but would also make broad acceptance of the declaration by a large number of States extremely unlikely as many have already raised serious objections to granting diplomatic asylum even for exclusively political crimes. It would be wiser to exclude crimes of a non-political nature as also acts contrary to the purposes and principles of the United Nations. It must not be forgotten that the right of asylum has both active and passive aspects, for the same State that in some cases grants asylum may find itself in a different position if its own nationals should seek asylum in another State. The scope of this right must therefore be defined with the greatest possible precision.

The restrictive tendency of the amendment proposed by Israel consequently seems to us to be reasonable since it is specifically designed to exclude all cases of violation of the Universal Declaration as regards either the actual prosecution or defects in penal procedure such as those which would result from failure to observe articles 5, 9, 10 and 11.

It may be objected that the proposed amendment is pointless in view of the fact that the reference to the principles of the Universal Declaration covers the whole of article 14, including its paragraph (2) which excludes non-political crimes and acts contrary to the purposes and principles of the United Nations.

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On the basis of a strict juridical interpretation this conclusion would be correct. In the first place, however, it should not be forgotten that as the subject of the draft is very much contested and will in practice run into serious difficulties and lend itself to interpretations by many States that may be excessively flexible, there is need for the greatest possible clarity. In the second place, although article 2 of the draft refers to the principles of the Universal Declaration in general, it does not make any specific reference to article 14.

Even if it were agreed that non-political crimes and acts contrary to the purposes and principles of the United Nations were to be excluded, the infringement of those provisions of the Universal Declaration relating to procedural matters having a bearing on human rights could easily be taken as included in the rule and thus not covered by the restriction imposed by article 14, paragraph (2), of the Universal Declaration. Specific mention of the said paragraph (2) as proposed by Israel has the merit of reproducing article 14 in its entirety and, consequently, of showing beyond doubt that the restriction of the right of asylum prescribed in the draft is governed by this article and by this article alone.

Although a broadening of the principle of granting asylum is compatible with humanitarian reasons that are at the basis of diplomatic and naval asylum and furthermore provides an opportunity for the international community as represented by the United Nations to become associated with the matter, such a broadening would none the less give cause for the most serious reservations as regards its practicability.

For these reasons the amendment proposed by Israel is acceptable because it gives a clearer definition of the right of asylum.

### Article 3

By exempting from international responsibility the States granting asylum in accordance with the provisions of the foregoing articles and by requiring all other States to respect the asylum so granted, this article sets forth two logical consequences of the principles contained in articles 1 and 2. It does not give rise to any objections and is not affected by the amendment proposed in respect of article 2.

Article 4

This entails a similar application of the principle set forth in article 1 whereby responsibility for asylum would be transferred to the international community. It would therefore seem that action by particular States could only be taken individually, since action outside the United Nations by a combination of States would apparently be contrary to this principle. The insertion of the adjective "individual", as is suggested in sub-paragraph (a) of the amendment, strengthens still more the increasing tendency towards co-operation within the framework of the United Nations while at the same time it provides a natural safeguard for each State to take individual measures which should none the less be subordinate to the principles previously defined.

Sub-paragraph (b) provides that other States should examine appropriate measures to lighten the burden of countries granting asylum. In this case, too, the proposed amendment confides this task to the United Nations in co-operation with such States. Of the two methods of procedure, the one provided for in the amendment seems more consistent with recent practice as regards political asylum. Furthermore, it should not be forgotten that this sub-paragraph is also subordinated, in the language of the amendment, to the main part of the article, so that allowance is made for measures taken individually by the various States. In this form, the article will have greater internal coherence and will conform more closely with the rest of the draft.

Article 5

This article is in the nature of a prohibition that seems intended to give permanency to asylum so that, once granted, no action can be taken by which it would in effect be nullified.

The proposed amendment to the first paragraph clarifies the scope of the article. This is nothing more than a drafting amendment as there is no reason to believe that the draft is concerned with persons other than those who are entitled to seek asylum. This interpretation of the amendment is confirmed by the previously-mentioned reference to violation of the principles of the Universal Declaration.

The second paragraph is justified as a basic measure for the protection of the country from which asylum is requested. It can easily be understood that if the humanitarian practice of granting asylum may result in danger for the security of the receiving country or constitute a threat to the community of that country, the welfare of that community must take first place over the interests of the persecuted person.

To sum up:

- (1) The granting of diplomatic asylum is in keeping with the spirit of Portuguese law and is backed by the tradition of Portugal;
- (2) The French draft declaration on the right of asylum is, in principle and in consideration of its limited objectives, worthy of acceptance;
- (3) The amendments proposed by Israel should, however, be given attention because of their appropriateness.

## 6. YUGOSLAVIA

(Notes of 15 January and 11 February 1959)

Under number 2 of this draft: To amend the paragraph as to make it more clearly evident that every person whose life, physical integrity or liberty is threatened by violation of the principles of human rights, is entitled to seek asylum and the State in which asylum is sought has a duty to investigate whether the conditions exist for granting asylum and, consequently, to inform the interested person of its decision.

Under number 3: In the opinion of the Yugoslav Government a clause should be added to the last sentence of this paragraph, stipulating that the right of asylum is not effective with respect to the State of origin of the person in question.

That means that by the act of granting the right of asylum the State which has granted it does not acquire the right of intervening in behalf of such persons with the State of origin. The State which has granted the right of asylum similarly does not acquire the right to ask the State of origin not to consider the person who was granted the right of asylum being its citizen. Generally speaking, granting by a State of the right of asylum to a person, does not give any right to that State of interfering in the relations between the State of

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origin and its citizen who was granted the right of asylum. The only exceptions tolerated in the practice by the Yugoslav Government are interventions with a humanitarian purpose - sick persons, bringing together of families and documents necessary to enable the person in case to make a living. In such cases, the Government of Yugoslavia deems mediation of the State of asylum permissible, but does not consider it being the exercise of a right, but only the exercise of a humanitarian duty.

Finally, in the opinion of the Yugoslav Government nobody who happens to be a citizen of a State on the territory of which he finds himself can invoke the protection based on the right of asylum given by another State against the State on the territory of which he finds himself and which is - in the same time - his State of origin.

Accordingly, the right of asylum is effective in the State which has granted it and in all other States, but not in the State of origin of the protected person.

Under numbers 4 and 5: The Yugoslav Government is in agreement with the Israeli amendment relating to the paragraphs under those two numbers.

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