

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/793
4 January 1960

ENGLISH

ORIGINAL: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Sixteenth session
Item 5 of the provisional agenda

DECLARATION ON THE RIGHT OF ASYLUM

COMMENTS OF GOVERNMENTS^{1/}

Note by the Secretary-General

1. At its fifteenth session the Commission decided "to undertake at its next session the drafting of a declaration on the right of asylum". It requested the Governments of States Members of the United Nations and of specialized agencies to comment on the revised preliminary draft declaration submitted by France (E/CN.4/L.517) and on the amendment thereto submitted by Iraq (E/CN.4/L.518).^{2/}
2. As of 31 December 1959, replies have been received from eleven Governments.
3. The Governments of Cambodia (3 August 1959), Denmark (15 November 1959), France (9 November 1959) and Laos (13 July 1959) stated that they had no objection to the revised preliminary draft declaration and the accompanying amendment. The Government of Norway (25 November 1959) stated that it had no objection to the revised draft declaration submitted by France.
4. The comments of the six other Governments appear below.

^{1/} Attention is drawn to the comments of twenty-six Governments on the preliminary draft declaration submitted by France to the Commission's thirteenth session (E/CN.4/L.454/Rev.1) and on the amendments thereto (E/CN.4/L.459), which may be found in document E/CN.4/781 and Add.1-2. The comments of the United Nations High Commissioner for Refugees are to be found in document E/CN.4/785.

^{2/} The Commission also requested the comments of the High Commissioner and of non-governmental organizations in consultative status with the Economic and Social Council. These comments will be issued separately.

Federation of Malaya
(Original: English)

(27 June 1959)

The point that strikes the Federation Government most about the draft French declaration is the narrowness of the exception stated in the latter part of the second sentence of Article 3.

The principle that a person entitled to asylum should not be forced to return in the circumstances mentioned in the Article is subject to the qualifications that it does not apply -

- (a) in the case of persons whom there are reasonable grounds for regarding a danger to the security of the receiving country; or
- (b) in the case of persons who, having been convicted of a particularly serious crime, constitute a danger to the community of the receiving country.

Had it not been for the requirement of conviction of a serious crime, the Federation feels that a person who constituted a danger to the community of the receiving country would have been a person whom there were reasonable grounds for regarding as a danger to the security of the receiving country. "Security" in its widest sense would probably cover danger either to the state or the community of the receiving country. But the fact that danger to the community is separately mentioned will have the effect of taking it out of the scope of the word "security". The position therefore will be that a person who is a danger to the security of the receiving country may be returned, while a person who is a danger to the community of that country may only be returned, if he has been convicted of a particularly serious crime. The Federation of Malaya feels that a person may be a danger to the community of a country even though he has not been convicted of a particularly serious crime.

The Federation therefore feels that it might be more satisfactory to leave it to the receiving country to decide without qualification whether a person constitutes a danger to the community of that country, in the same way that Article 3 would permit the receiving country to decide whether there are reasonable grounds for regarding a person as a danger to the security of the receiving country.

Iran

(22 July 1959)

(Original: English)

The views of the Iranian Government on the right of asylum were expressed by the Iranian Representative during the discussion of the subject which took place at the fifteenth session of the Human Rights Commission and may be found in document E/CN.4/SR.619. The Iranian Government further believes that the revised preliminary draft declaration (document E/CN.4/L.517) is inspired by humanitarian considerations and that it constitutes a constructive step towards the promotion of human rights in general, as well as a positive step towards the definition of principles of the right of asylum. The Iranian Government supports the principles embodied in this draft declaration and expresses the hope that these principles may be entered in a universal declaration.

Panama

(2 December 1959)

(Original: Spanish)

Article 1 (suggested text)

"Every State has the right, in the exercise of its sovereignty, to grant asylum to persons who may validly invoke article 14 of the Universal Declaration of Human Rights, and to give such persons work or employment compatible with their refugee status or to allow them the means of obtaining work or employment from any person, undertaking or private entity. No international responsibility shall be incurred thereby by the State granting asylum. Asylum thus granted shall be respected by all other States, and therefore any violation of sovereignty that consists of acts committed by a Government or its agents in another State against the life or security of an individual, carried out on the territory of another State, may not be considered attenuated because the persecution began outside its boundaries or is due to political considerations or reasons of State."

Commentary. It is not sufficient to provide that the State shall be entitled to grant asylum without incurring international responsibility thereby. It is necessary to broaden the powers of the State granting asylum and to recognize the right of such State to provide the person seeking asylum with reasonable means of existence by furnishing him with some work or employment compatible with his refugee status or by establishing in his favour such exceptions as will enable him, in spite of his alien status, to obtain work from any private person or body corporate. The final sentence is similar to the second paragraph of

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article II of the Convention on Territorial Asylum, which was signed at Caracas on the occasion of the Tenth Inter-American Conference in 1954; it expands and clarifies the idea which is barely outlined in the original text.

Article 2 (suggested new text)

"No State is under the obligation to surrender to another State, or to expel from its own territory, persons persecuted for political reasons or offences. Consequently, extradition shall not apply in the case of persons who, as defined by solicited State, are sought for political offences, or for common offences committed for political ends, or when extradition is solicited for predominantly political motives.

"The fact that a person has entered into the territorial jurisdiction of a State surreptitiously or irregularly does not in any way affect the provisions of these articles."

Commentary. It is highly desirable to reaffirm the principle embodied in article 1 by providing that no State is under the obligation to expel from its own territory persons who have obtained asylum there, nor to allow extradition of persons who, in accordance with the qualifications of the solicited State, are sought for political offences, or for common offences committed for political ends or to allow extradition in cases where the ground for extradition is a common offence, but there are valid reasons to believe that the underlying motive is predominantly political. It is also useful to establish clearly that where a person has entered into the territory of a State surreptitiously that circumstance may not be invoked against the State which has decided to grant that person asylum.

Article 2 (original draft, unchanged)

Article 3 (original draft, unchanged)

Article 4 (suggested new text)

"No State has the right to request that another State restrict the freedom of expression of thought of persons granted asylum or of refugees on the basis of opinions expressed publicly against it or its Government by persons granted asylum or by refugees, except when such opinions constitute systematic propaganda through which they incite to the use of force or violence against the Government of the complaining State. Similarly, no State may request that another State restrict in respect of persons granted asylum or of refugees the freedom of assembly or association which the latter State's internal legislation grants to all aliens who are within its territory unless such assembly or association has as its purpose incitement to the use of force or violence against the Government of the State which makes such request."

Commentary. Persons having the status of persons granted asylum or of refugees may not on that account be deprived of the right freely to express their thoughts, although the host State has an obligation to prevent such persons from inciting, by means of continuous propaganda, to the use of force against the authorities of another State. The right of persons granted asylum and of refugees to freedom of assembly or association must also be recognized except where such assembly or association is designed to organize or promote violent subversive activities directed against the Government of another State.

Article 4 (original draft, unchanged, with the
addition of the following paragraph)

"Where, notwithstanding the provisions of the two preceding paragraphs, a person who has been granted asylum or a refugee must, for a reason as aforesaid, be transferred to the territory of another State, account shall be taken, as far as possible, of any preference of such person or refugee with regard to the country of destination based on grounds of health, language, possibility of finding gainful employment or other similar valid grounds. Special account shall be taken of any reasons for which such a person or refugee does not wish to be transferred to a given country."

Commentary. The provisions of the two paragraphs constituting article 4 of the original draft are fully justified. Since, mainly for geographical reasons, a State may find itself in the position of having to receive large numbers of persons seeking asylum or of refugees from an adjacent country, the international community has a duty and a responsibility to reduce the burden which thus falls upon such State. It should nevertheless be borne in mind that while several States may express their preparedness and willingness to receive a given number of refugees, the refugees may have a special interest in going to one of those countries in preference to the other or others, and such preference should be met as far as possible. In certain cases, moreover, the refugee may attach particular importance to not being sent to a given country, owing, in particular, to the possibility that the political conditions in that country may involve an obvious risk for him.

No comment appears to be called for on the amendment of Iraq.

Philippines

(29 December 1959)

(Original: English)

... the Philippines would favour the adoption of a Declaration on the Right of Asylum.

The Philippine Government has given due consideration to the revised text of the draft declaration submitted by France as well as the text of an amendment proposed by Iraq. While the motives behind these proposals are worthy of commendation, the Philippine Government believes that improvements thereon would tend to its wider acceptability. Accordingly, the Philippines, in the discussion of the draft declaration at the forthcoming session of the Commission on Human Rights will be pleased to submit corresponding amendments thereto.

Switzerland

(28 October 1959)

(Original: French)

The Swiss federal authorities have studied the revised draft declaration submitted by France and have no comment on it since it is in keeping with Switzerland's traditional policy in regard to the right of asylum, and article 3 of the declaration is in accordance with article 21, paragraph 1, of the Ordinance for the Execution of the Federal Act concerning the residence and settlement of foreigners.

With regard to the amendment to the revised draft declaration submitted by Iraq, the Federal authorities consider this to be superfluous, because they do not see why it should be expressly mentioned that everyone has the right to return to his own country, the revised draft declaration submitted by France containing no provision which would preclude such a return.

United Kingdom

(15 October 1959)

(Original: English)

The United Kingdom Government are in agreement with the French revised preliminary draft declaration (E/CN.4/L.517), and they would only wish at this stage to make the following suggestion as regards the drafting of the first sentence of Article 3. In this sentence the words "to seek and to enjoy" should be replaced by the words "to seek or to enjoy", since it is evident from the

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terms of Article 14 of the Universal Declaration of Human Rights that there may be persons who seek but are not granted asylum, and the provisions of Article 3 should clearly be applicable to such persons as well as to those who are granted and are consequently entitled to enjoy asylum.
