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DECLARATION ON THE RIGHT OF ASYLUM

COMMENTS OF GOVERNMENTS

Note by the Secretary-General

The Secretary-General has received comments on the draft declaration on the right of asylum from the following four Governments: Burma, Italy, Pakistan and Spain. He has also received further comments from the Government of Morocco. Up to the present time, a total of twenty-four Governments have submitted comments.

Burma (21 January 1960)

/Original: English/

The Right of Asylum exists as a customary rule of international law operative only in a particular region of the world by virtue of treaties or conventions between the neighbouring States - e.g. Convention on Political Asylum adopted in December 1933 by the Pan-American Conference and the Treaty of Montevideo on Political Asylum of 4 August 1939. The right to grant asylum is within the sole discretion of the receiving State and no State is under a legal obligation to grant asylum from persecution. It is not a legal right which the person accused of a political offence is entitled to invoke in his or her own name. Only out of respect in the worth and dignity of man and in recognition of the humanitarian principle, asylum is granted to the victims of persecution and political offenders subject to public security and economic capacity of the receiving State.

In articles 1 and 3 of the revised draft declaration it is said that any person entitled to invoke article 14 of the Universal Declaration of Human Rights may be granted asylum by the State. It sounds, as if it imposes an obligation on the States to grant asylum to this class of persons. Article 14 of the Universal Declaration of Human Rights lays down that "everyone has the right to 'seek' and to 'enjoy' in other countries asylum from persecution". This declaration is not a legally binding instrument and as such does not confer a right to receive asylum in the State.

It is therefore for a State, subject to its security and economic interests to determine freely for itself whether or not it will grant asylum, in a particular case, taking into consideration not only the circumstances of the case but also humanitarian principles, and it should not be under an obligation to grant asylum merely on the invocation of article 14, as the present draft seeks to do.

Articles 2 and 4 need no comment as the objects set out therein are to implement the functions of the United Nations in the relief of fugitives, evacuees and displaced persons.

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Italy (27 January 1960)

[Original: French]

The Government of Italy considers that the new draft resolution submitted by the French delegation is more comprehensive than the previous one and that the Iraqi amendment to the draft resolution is a desirable addition.

At the same time the Italian Government is of the opinion that article 3 of the French draft might read as follows:

"This principle 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 and whose presence would be incompatible with public order and morality in the receiving country or who, having been convicted by a final judgement of a particularly serious crime or offence, constitute a danger to the community of that country."

Morocco: Further comments^{1/}
(26 January 1960)

[Original: French]

Article 1 of the draft provides that "every State has the right, in the exercise of its sovereignty, to grant asylum to persons entitled to invoke article 14 of the Universal Declaration of Human Rights. No international responsibility shall be incurred thereby."

Moreover, article 14 (2) of the Universal Declaration of Human Rights specifies that this right of asylum "may not be invoked in the case of prosecutions genuinely arising from non-political crimes...".

The question arises of determining the position of a State which grants the right of asylum to a person prosecuted for an act described as a "non-political crime" in his country of origin and regarded as a "political crime" by the State of refuge.

Is it to be understood under article 1 of the draft declaration that the State which grants the right of asylum in these circumstances incurs "international" responsibility? Or is it to be understood that the word

^{1/} See also document E/CN.4/793/Add.1.

"genuinely" in article 14 of the Universal Declaration implies that the crime must be recognized as "non-political" by both States?

Since the granting of the right of asylum is normally within the discretionary power of each State, it would be desirable and logical to state that the country granting the right of asylum will be competent to determine the nature of the crime, the said country being of course required to respect the spirit of article 14 of the Universal Declaration.

Pakistan (27 January 1960)

/Original: English/

... the revised draft declaration on the right of asylum, as amended by Iraq, is generally acceptable to the Government of Pakistan.

It is to be pointed out, however, that the right to return to one's country, as stated in article 5 of the revised draft declaration, should vest only in a person who is able to establish his nationality of the country to which he is returning.

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Spain (5 January 1960)

/Original: Spanish/

The right of asylum is one of great antiquity, which has continued to operate in international practice and custom and is materially reinforced by the principles proclaimed in the preamble to the Charter of the United Nations, since the humanitarian essence of those principles is imbued with the same spirit as that underlying the institution of asylum.

The position of Spain with regard to the right of asylum in general has been clearly and consistently stated in all the international meetings or organs which have discussed this question, our international lawyers having helped to develop the legal concept at the meetings of the Institute of International Law at Luxembourg, Brussels and Bath. The Spanish Government has in fact always conformed to these principles, by opening Spanish frontiers to political refugees and affording permanent shelter to a considerable number of them.

Accordingly, our Government is favourably disposed towards any step designed to uphold and strengthen the institution of asylum, the principle of asylum being deeply rooted in our national consciousness.

The French draft resolution on the right of asylum conforms to the classical concept, and is therefore, in its general lines, acceptable to Spain.

Our Government finds it interesting that for the first time the right to seek and to enjoy asylum is mentioned; this appears to be an advance on the generally accepted idea that the grant of asylum is solely within the discretion of States.

With regard to article 2, Spain cannot but recognize the dangers inherent in inspection by the United Nations, since it could lead to intervention in matters which are within the domestic jurisdiction of States. The exception in article 3, based on "reasonable grounds", is perhaps too general and might restrict considerably the purpose of the Declaration.

However, our Government believes that there is one important omission in the draft resolution, which should be made good. It should be ensured that the State which has been left - in other words, the State of origin - does not suffer through the individual or collective activities of exiles carried out in other countries. Everything directed towards humanitarian ends merits support; but anything serving to foster international subversion and disputes between States must be avoided.

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On the other hand, the provision in favour of neighbouring countries liable to experience serious difficulties as a result of the sudden invasion of their frontiers by exiles, which calls upon other countries to assist them in such cases, is most desirable.

To sum up, then, Spain supports the institution of asylum and holds the view that the French draft resolution is a very useful and practical contribution, although it can be improved not only along the lines mentioned but also from a number of other standpoints deserving of careful consideration.
