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COMMISSION ON HUMAN RIGHTS
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Item 5 of the provisional agenda

DECLARATION ON THE RIGHT OF ASYLUM

COMMENTS OF NON-GOVERNMENTAL ORGANIZATIONS

Note by the Secretary-General

1. At its fifteenth session the Commission requested interested non-governmental organizations in consultative status with the Economic and Social Council to submit comments on the revised preliminary draft declaration on the right of asylum submitted by France (E/CN.4/L.517) and the amendment thereto submitted by Iraq (E/CN.4/L.518).^{1/}
2. As of 31 December 1959, replies have been received from nine non-governmental organizations.

Commission of the Churches on International
Affairs (Category B)

(30 December 1959)

(Original: English)

As to the substance of a declaration, the following two principles were emphasized in the discussion: (1) The plight of the person or persons legitimately seeking asylum is a matter of international concern - the profound concern of the peoples and Governments of more than one country and normally of many countries; (2) The traditionally recognized right of a sovereign state in matters pertaining to asylum should be exercised with a sense of responsibility commensurate with the

^{1/} The comments of Governments appear in document E/CN.4/793. The comments of the United Nations High Commissioner for Refugees will be issued separately.

legitimate needs of the person or group seeking asylum in situations both (a) when the territory of a sovereign State becomes the country of first asylum, and (b) where the sovereign State is called upon to share the burden of another State whose territory has become the country of first asylum. A minute was formally recorded, as follows:

The Executive Committee of the C.C.I.A. noted that the Commission on Human Rights has decided to undertake at its sixteenth session the drafting of a declaration on the right of asylum. The Committee expressed the opinion that a declaration on the right of asylum would serve a useful purpose. It felt, however, that such a declaration would have its full significance only if it incorporates a standard which is not lower than current practice of Governments.

While no official stand has been taken on precise wording and certain modifications may in due course be informally proposed, the revised draft declaration submitted by France seems to be generally consonant with the objectives expressed by the C.C.I.A. Executive Committee.

Fédération internationale libre des déportés
et Internés de la résistance (Register)

(27 November 1959)

(Original: French)

... having discussed the matter, the member associations of F.I.L.D.I.R. have expressed themselves in favour of the preparation of a draft declaration on the right of asylum ...

International Committee of the Red Cross (Category B)

(11 December 1959)

(Original: French)

... In the light of its humanitarian calling, of the principles of the Red Cross and of the fact that the Geneva Conventions (especially articles 44 and 70 of Convention IV) explicitly refer to the situation of persons forced by circumstances to make use of the right of asylum, the Committee is pleased to note that article 1 of the draft in question proclaims the principle that the granting of asylum is a humanitarian duty of international significance and therefore concerns the international community as a whole.

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The definition, as formulated in article 2, of the persons entitled to asylum is based on a universally accepted principle of the Universal Declaration of Human Rights.

Articles 3, 4 and 5 (the latter arising out of the Iraqi amendment) also refer to practices which have obtained general acceptance and on which many instruments now in force have been based, e.g. the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention Relating to the Status of Refugees. In addition, legal thinking, as expressed in a statement made by the Institute of International Law at its session at Bath in 1950, has recognized a "humanitarian duty" with respect to the right of asylum.

For all the foregoing reasons, which confirm its own convictions, the International Committee of the Red Cross has the honour to declare that it supports the principles laid down in the draft declaration on which it has been asked to comment, and it sincerely hopes that a declaration on the right of asylum can be adopted by the General Assembly of the United Nations on the basis of this draft.

International Criminal Police Organization (Category B) (4 December 1959)

(Original: French)

... I have the honour to state that the draft declaration calls for only one comment from the standpoint of the International Criminal Police Organization:

French draft, article 3, last sentence:

Notwithstanding article 14, paragraph 2, of the Universal Declaration of Human Rights, it would seem desirable to insert the word "non-political" between the word "serious" and the word "crime" in the phrase "or who, having been convicted by a final judgement of a particularly serious crime or offence".

International Federation for the Rights of Man (Category B) (23 December 1959)

(Original: French)

1. Although proclaimed in the Universal Declaration of Human Rights (article 14), to which the draft declaration attached to the United Nations letter of 17 November 1959 very appropriately refers, the right of asylum has not - at least so far - been included in the draft International Covenants on Human Rights.

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To the extent that the draft declaration forwarded to the International Federation for the Rights of Man is intended partially to bridge that gap, it cannot but be supported by the Federation.

2. If fundamental human rights were fully accepted in every country, there would be no need for the right of asylum. Men would no longer have to flee from persecution.

So long, however, as international action and the laws and practices of nations do not provide all mankind with the effective enjoyment of essential freedoms, asylum will continue to be the last recourse of the oppressed.

One way of safeguarding the existence of a genuine right of asylum would be the adoption of conventions. If, however, the views of the various States on asylum at present rule out the possibility of having international instruments of a sufficiently universal character, there is all the more reason for the adoption of an international declaration.

3. The text of the draft declaration in question rightly lays emphasis on four principles:

(a) That asylum granted by any State must be respected by every other State and that the granting of asylum by a State does not cause it to incur any international responsibility;

(b) That the international community has an obligation with regard to persons who have had to flee from their countries either because they were, or because they had good reason to think that they might become, the victims of persecution;

(c) That the United Nations has a special responsibility for promoting international co-operation in this field, particularly where the capacity of a receiving country to absorb persons seeking asylum has reached its limit;

(d) That measures which might result in exposing to further persecution and reprisals those who are entitled to enjoy the right of asylum must be prohibited.

The International Federation for the Rights of Man would be favourably disposed towards any version that would give the ideals set forth in the draft declaration a more precise form. For example, the last sentence of article 3 might give rise to abuses if the "reasonable grounds for regarding (persons) as a danger to the security of the receiving country" were loosely interpreted. In any case,

if a person is genuinely entitled to enjoy asylum under article 14 of the Universal Declaration but may, on the other hand, under the terms of the last sentence of article 3, be regarded as a danger to the security of the receiving country, there is all the more reason for avoiding any step which would amount to returning him to a country in which his life and physical integrity would be threatened.

With respect to the amendment accompanying the text of the draft declaration, the Federation - although firmly attached to the principle that everyone has the right to return to his country - is in some doubt as to the advisability of embodying that principle in a declaration on the right of asylum. Since the declaration is apparently the result of a genuine desire to proclaim the duty - and the right - of States to grant asylum to those entitled to ask for it, the main attention should be focussed on that fundamental task. Such a procedure does not in any way preclude subsequent texts setting forth the obligations of States towards persons granted asylum and defining the main elements of the status of such persons and the character and form of their legal relationship to the State and to the nationals of the State. It seems quite clear to the International Federation for the Rights of Man that these aspects of the question belong to conventions relating to the status of refugees. In any event, it would be undesirable for the declaration to make any specific reference to the right which is the subject of the Iraqi amendment.

Since, moreover, the Universal Declaration applies to all mankind, the mere idea of an exception - which is what the amendment is clearly intended to eliminate - would appear to conflict with the universality of article 13 of the Universal Declaration.

The International League for the Rights of Man
and its affiliate, the Inter-American Association
for Democracy and Freedom (Category B)

(28 December 1959)

(Original: English)

1. Our organizations support the adoption of the draft declaration submitted by France which would give validity to article 14, paragraph 1, of the Universal Declaration of Human Rights. However, we also ask your consideration of several additional aspects of the Right of Political Asylum, which would give validity to

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article 13, paragraph 1, of the Universal Declaration of Human Rights, and which should be implicit in its contemplation of the protection of the human person.

2. In supporting the adoption of the draft declaration, we point to the urgency of this measure. Within the last decade in the American hemisphere alone, several hundred thousand persons have been forced to leave their countries to seek asylum in other American countries. Even today, there remain tens of thousands of such political exiles in asylum in countries other than their own. We ask that these political refugees should be accorded the moral protection provided by the right of asylum under the international community.

(a) In support of article 2 of the revised draft declaration, we would ask that consideration be given to the following points. Frequently the individual seeking asylum from political persecution has been deprived of his passport and other documents of identification by his native land, from which he flees. It would seem imperative for the international community, in consideration of the stateless status of these refugees, to provide an international passport, perhaps similar to the Nansen Passport of the League of Nations, which would enable the political exile to work or, if necessary, move on to some other country where his means of livelihood would be ensured.

(b) In further implementation of article 2 of the revised draft declaration, we would ask that the international community in its solicitude for the political refugee, should find means, through consultation of the States providing asylum, to protect and safeguard the political exiles. Our organizations have documented evidence that numerous political exiles of the American hemisphere have been harrassed, persecuted and assassinated by the diplomatic or secret agents of the countries from which they have fled. It is therefore imperative that the international community not abandon the political exile, but continue to provide him, through consultations, with protection and assurance of security in the country of his asylum. We ask that special consideration be given to this matter which has been the subject of deep concern to our organizations.

3. In asking this Commission to give validity to article 13, paragraph 1, of the Universal Declaration of Human Rights as inherent in the right of asylum, we would point out that political asylum has two aspects -

(a) Asylum granted by a country within its borders to political refugees from other lands who have fled their own countries for fear of persecution;

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(b) But equally necessary is the right of asylum of the individual, politically persecuted, who has sought asylum within a foreign embassy in his own country, because of danger to his person. In this regard, we particularly support the Honduran note of 2 September 1957,^{1/} which takes cognizance of this aspect of political asylum, which is at times even more acute, and which, as has happened in the last decade in the American hemisphere, has endangered the peace of the nations. We quote from the Honduran note:

"In order to spare both Embassies and the Governments themselves considerable inconvenience, the most effective regulations governing the Right of Asylum should be established, including a clause stipulating that, within fifteen days after notice has been given by a diplomatic representative that asylum has been granted to an individual who has claimed that right, the appropriate safe-conduct should be issued or refused, as the case may be."

4. In summation, and in consideration of the points hereabove presented, we urge the Commission on behalf of the International League for the Rights of Man to enforce the principles set forth in the articles and paragraphs referred to in the Declaration of Human Rights, as a measure of individual liberty and protection which, as expressed in the revised draft declaration, has become the "responsibility of the international community as represented by the United Nations".

Society of Comparative Legislation (Category B)

(3 November 1959)

(Original: French)

The Society of Comparative Legislation will give its approval to the text of the draft declaration (E/CN.4/L.517) as supplemented by amendment E/CN.4/L.518, subject to the following two reservations:

In article 1 of the text, the words "may grant asylum to persons" should be substituted for the words "has the right, in the exercise of its sovereignty, to grant asylum to persons".

Article 1 and article 3 should be transposed, and it should be made clear that the proposed declaration is to be considered as only a preliminary stage in the development of a satisfactory final text, which would be along the following lines:

^{1/} Note by the Secretariat: The text of this note may be found in document E/CN.4/781.

"Every person persecuted in one country shall be entitled to receive asylum in another country. It shall be the duty of the international community to ensure that such person receives asylum in conditions that are satisfactory as regards safety and well-being and to aid the country which has had to receive and maintain him. In the absence of an agreement between the person concerned and any particular State, the international community shall designate the receiving State and in so doing shall have regard for the resources of the various States and, so far as possible, their preferences."

The background of these proposals is as follows:

The basis of the doctrine of asylum, by which is meant the reception on the territory of one State of a person who has fled from another State where he was being persecuted or was in danger of being persecuted by the authorities, continues to be, as it has always been, essentially humanitarian. The legal application of the doctrine is, however, entering a new stage.

Until recent years, the tendency has been to view asylum as a right and an expression of the sovereignty of the receiving State, rather than as a genuine right of the persecuted person to secure asylum (see Sibert, Traité de droit international public, Vol. I, p. 19, note 2 and pp. 573-574, note 2; Alcindor, "Asile" in the Répertoire de droit international issued by Lapradelle and Niboyet, 1929; Tedeschi, report in Premier Congrès d'Etudes Internationales, 1937).

At the present time, however, thanks to the advance of international institutions, which though slow, partial and inadequate has not been insignificant, it would seem to be both desirable and possible, first, to take more effective measures for ensuring that the person seeking asylum will receive asylum so that the right of asylum may eventually be established as a genuine human right, and, secondly, to make it easier for the receiving State to grant hospitality by lightening its burden through international co-operation.

While the trend is towards recognition of the persecuted person's right to receive asylum and, accordingly, of a real duty to grant him asylum, there would seem to be no justification for imposing on any State an absolute obligation to receive a fugitive who applies to it for protection. The reason is that, in harbouring fugitives unjustly threatened, States have hitherto acted in the name of an obligation imposed upon them by "humanity" and have done so because humanity was not embodied in any institutions of its own and had to be represented by individual States. Today, however, when humanity has its own organs and is

institutionalized, it would be odd if the burden of discharging a responsibility which rests upon the community as a whole were placed upon any single State designated by an individual.

It is thus possible to realize not only the ideal of safeguarding the right of the individual more effectively but also the further ideal of strengthening the institutions of world humanity by making humanity the true passive subject of the right guaranteed to the individual. Yet in practice it will still be the States that will have the duty of receiving the unfortunate, for so long as there is no international land able to harbour them, persecuted people will have to live in one State or another, even if international agencies take part of the responsibility for them and provide subsidies on their behalf.

The first act in this phase of the development of the right of asylum was article 14 of the Universal Declaration of 1948. That article was carefully worded and refrained from proclaiming that a persecuted person has the right to demand asylum in a specific country.

The French draft of 1959 (E/CN.4/L.517), as supplemented by the Iraq amendment (E/CN.4/L.518), is based on the text proposed by France in 1957 and later revised in the light of the reactions to that proposal. The draft attempts to take some new steps in the direction indicated above, and at the same time to allow for the objections encountered and to maintain a cautious approach. Because of that caution, the draft does not yet represent a final and completely satisfactory statement of the right which must be accorded to the individual and of the duties which the international community and the States, on its behalf, must perform in this connexion. Certainly, the fugitive may not and must not ever be allowed to require a particular State to receive him. On the other hand, the ultimate objective must admittedly be that the State designated by the international community to perform this task has an obligation to do so if there has been no possibility of reaching an agreement on the choice of a receiving State. However, since it is still difficult today to impose such a restriction on a State's freedom of decision, the proposed text, as a temporary stage representing some measure of progress, is acceptable subject to the following two reservations:

(a) The text would be clearer and more logical if its articles were transposed in such a way that the present article 3 defining asylum in relation

to the individual became the first article. The other articles dealing with the national and international arrangements for granting asylum would follow, and the present article 1 would become article 3.

(b) The 1959 version contains a particularly inappropriate passage. Unlike the text proposed by France in 1957, the 1959 text to meet certain objections, includes the statement that a State which grants asylum thereby makes use of a "right, in the exercise of its sovereignty". That wording represents a step backward in relation not only to the 1957 text but also to the spirit of the 1948 Declaration and to contemporary opinion. What is at stake is a trust to be performed for humanitarian reasons; if the question was merely one of the discretionary exercise of sovereignty, there would be no reason for the international community to give its financial support. Therefore article 1 should begin: "Every State may grant asylum to persons ...", the rest of the sentence remaining as it is.

Women's International League for Peace
and Freedom (Category B)

(27 November 1959)

(Original: English)

... I have to repeat what I emphasized before and what has been the international policy of the WILPF ever since its experiences in 1915:

A refugee seeking asylum from political, religious, ethnical or racial persecution should have the right to be granted asylum. It will not save his life to know as stated in the first paragraph "Noting etc. ..." that he has the right to "enjoy" asylum (Oxford Dictionary: "Have the use of advantages") if the State in which he seeks asylum, is not bound to admit him, to grant asylum.

Article 1 states that the State has the right to grant it. We realize that it is maintained that no obligation can be imposed on a State.

But we continue to take the view that State responsibilities should include the obligation to grant asylum to a person persecuted for reasons in full accord with the purposes and principles today embodied in the United Nations.

Therefore, we should like to see article 1 altered to read: "Every State has the 'obligation' to grant asylum." The words: "to persons entitled to invoke article 1⁴ etc." should be eliminated.

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Re: Article 3

We are not in agreement with the reference to "the security of the receiving country", having in the course of four and a half decades seen a number of cases of refugees having to flee suddenly for their lives from countries ruled by militarist, fascist and nazi regimes, who were considered a danger to the security of a receiving country through the mere fact that they had fled from a country with which the receiving country maintained diplomatic relations and/or whose intentions, practices and purposes of persecution had not been fully revealed as yet.

We hope to have at the forthcoming session of the Commission on Human Rights the occasion for further expressing our opinions.

World Union for Progressive
Judaism (Category B)

(21 December 1959)

(Original: English)

The World Union for Progressive Judaism welcomes the declaration on the Right of Asylum in the form of the preliminary draft by France (E/CN.4/L.517), and we hope that this resolution will be passed at the time of its final reading.

However, our organization feels that it may not be too long before the introduction of a resolution which will recognize the rights of the individual to be granted asylum in the same way that the present resolution speaks of the right of the State to grant asylum to the individual. Nevertheless, we do welcome the resolution regarding the right of asylum with its amendment by Iraq as it stands in the hope that it may be a promising step towards the full implementation of the Universal Declaration of Human Rights.
