

**ADDENDUM
TO THE
REPORT
OF THE
UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES**

GENERAL ASSEMBLY

OFFICIAL RECORDS: TWENTY-NINTH SESSION

SUPPLEMENT No. 12C (A/9612/Add.3)



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New York, 1974

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ADDENDUM TO THE REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR REFUGEES

Question of asylum

1. In the report of the United Nations High Commissioner for Refugees to the General Assembly at its twenty-eighth session 1/ mention was made of the discussion on the question of territorial asylum by the Third Committee at the twenty-seventh session of the General Assembly. At the close of this discussion, it was decided that the High Commissioner should consult with Governments and report on the matter to the General Assembly at its twenty-eighth session with a view to preparing the way for the convening by the Assembly of a conference of plenipotentiaries.
2. Pursuant to that decision, the High Commissioner addressed letters to the Governments of all States Members of the United Nations and also to seven non-member States 2/ requesting their comments on the desirability of concluding a convention on territorial asylum within the framework of the United Nations, and if possible their comments on the draft text set out in his report to the General Assembly at its twenty-seventh session. 3/
3. In paragraph 4 of the report of the Third Committee at the twenty-eighth session of the General Assembly, 4/ the Chairman requested the High Commissioner to continue his consultations with Governments and to report further to the Assembly at its twenty-ninth session.
4. To date, 91 States have made known their views - either in formal replies to the High Commissioner's letter or in oral statements, particularly those made during the twenty-fourth session of the Executive Committee of the High Commissioner's Programme. Of these, six are interim replies stating that the matter is still under consideration, while 76 Governments are in favour of strengthening the law relating to asylum by the adoption of a Convention within the framework of the United Nations.
5. Three Governments (Greece, Luxembourg and Spain) expressed doubts as to the need for a convention on territorial asylum as they considered the matter to be adequately covered by existing international instruments. A similar view was

1/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 12 (A/9012), paras. 23-25.

2/ Bangladesh, German Democratic Republic, Germany (Federal Republic of), Holy See, Liechtenstein, Monaco and Switzerland. Of these, Bangladesh, the German Democratic Republic and Germany (Federal Republic of), have in the meantime become members of the Organization.

3/ Ibid., Twenty-seventh Session, Supplement No. 12 (A/8712), appendix, annex I.

4/ Ibid., Twenty-eighth Session, Annexes, agenda item 67, document A/9378.

expressed by the United Kingdom which considers that much of the purpose of the proposed new instrument would be achieved if the 1951 Convention relating to the Status of Refugees 5/ were more widely and firmly implemented. The United Kingdom Government has, however, stated that it does not wish its attitude to be considered as wholly negative and would not oppose the convening of a conference of plenipotentiaries, should there prove to be substantial support for one. A somewhat similar position was taken by the Government of Japan.

6. Thirty-one Governments have submitted specific comments on the text of the draft convention. The addendum to the report of the United Nations High Commissioner for Refugees 6/ submitted to the General Assembly at its twenty-eighth session sets out the comments of those 21 States which had made their views known before the convening of the twenty-eighth session. The comments made since then by 10 States are contained in the annex to the present document.

7. The question of territorial asylum was considered during the discussion of the item entitled "International protection" at the twenty-fifth session of the Executive Committee of the High Commissioner's Programme, 7/ held at Geneva from 14 to 22 October 1974, and the Executive Committee expressed the hope that preparation for an international convention on territorial asylum would be actively pursued.

8. It is noteworthy that 91 Governments have replied to date to the High Commissioner's letters of request. This bears eloquent testimony to the need for a thorough examination and further development of this branch of international law, especially in view of the great humanitarian mission of the law of territorial asylum to the uprooted. The positive attitude of some 76 Governments out of the 91 is a factor of encouraging significance in favour of the elaboration of a convention on territorial asylum.

5/ United Nations, Treaty Series, vol. 189, No. 2545.

6/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 12E (A/9012/Add.2)

7/ Ibid., Twenty-ninth Session, Supplement No. 12A (A9612/Add.1), paras. 39-52.

ANNEX

Draft articles

Preamble:

The Contracting States,

1. Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedom,
2. Recalling that the General Assembly of the United Nations has solemnly declared that nations, irrespective of their political, economic, and social systems or the levels of their development, should base their co-operation, inter alia, on respect for fundamental human rights,
3. Mindful of articles 13 and 14 of the Universal Declaration of Human Rights,
4. Recalling the Declaration on Territorial Asylum adopted by the General Assembly of the United Nations on 14 December 1967, and recognizing the important advance made by this Declaration in formulating principles upon which States should base themselves in their practices relating to territorial asylum,
5. Noting the present practice of States in granting asylum and the general acceptance of the principles of non-refoulement and the voluntary nature of repatriation, expressed in various instruments adopted on the universal and regional levels,
6. Believing that the conclusion of a convention based on these principles will assist States to achieve those humanitarian objectives which are the common concern of the international community and will also thereby strengthen friendly relations between States,
7. Have agreed upon the following articles:

CHAPTER I

GRANT OF ASYLUM, NON-REFOULEMENT AND NON-EXTRADITION

Article 1. Grant of asylum

1. A Contracting State, acting in an international and humanitarian spirit, shall use its best endeavours to grant asylum in its territory, which for the purpose of the present article includes permission to remain in that territory, to any person who, owing to well-founded fear of

(a) persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, or for reasons of struggle against apartheid or colonialism; or

(b) prosecution or severe punishment for acts arising out of any of the circumstances listed under (a)

is unable or unwilling to return to the country of his nationality, or if he has no nationality, the country of his former habitual residence.

2. The provision of paragraph 1 of this article shall not apply to:

- (i) any person with respect to whom there are serious reasons for considering that he is still liable to punishment for
 - (a) a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) a serious common crime; or
 - (c) acts contrary to the purposes and principles of the United Nations;
- (ii) any person who seeks asylum for reasons of a purely economic character.

3. Asylum shall not be refused by a Contracting State solely on the ground that it could be sought from another State.

COMMENTS

Article 1.1

Canada

The term "best endeavours" is not defined in the draft Convention on Territorial Asylum and is ambiguous. This term does not provide prospective Contracting States with definite criteria with which to define their responsibilities.

The phrase "acting in an international and humanitarian spirit" is vague and imprecise for a legally binding document. While such phrase would certainly find its place in the Preamble, it is probably best dropped from the substantive part of the text.

The phrase "for reasons of struggle against apartheid or colonialism" might appear redundant in a legally binding instrument, in that the persons it covers would also fall under the "race", "social-group, or political opinion" phrases.

Uruguay

Uruguay proposes to delete the words "in an international and humanitarian spirit".

Article 1.1.(a)

Uruguay

Asylum should not be granted to a person who has committed an act of terrorism condemned by the conscience of mankind.

Article 1.1.(b)

Canada

There might be a conflict between 1.1.(b) and 1.2.(i)(b) when a person commits a serious crime which might at the same time be regarded as an act arising out of any of the circumstances listed in article 1.1.(a).

Uruguay

The terms "prosecution or severe punishment" seem to be too vague. More specific reasons should be stated.

Article 1.2.(i)(a)

Uruguay

It is suggested to introduce the concept of genocide in this article and to refer to the Tokyo, Montreal and The Hague Conventions.

Article 1.2.(i)(b)

Dahomey

It is suggested to amend this article as follows: "a serious common crime not related to a political crime or offence".

Uruguay

It is suggested to replace the concept of "a serious common crime" by that of a "crime punished by a minimum punishment of e.g. two years;".

Article 1.2.(i)(c)

Canada

Subparagraph (c) is very broad and might well be placed in the Preamble unless it can be given a more specific content.

Article 1.2.(ii)

Canada

This article seems redundant because any person seeking asylum for reason of a purely economic character cannot claim the benefit of the draft Convention in any case because he does not fall under article 1.1.

Ecuador

The Government is of the opinion that this article should be eliminated as it is very difficult to know whether a person seeks asylum for reasons of a purely economic character.

Japan

It would be advisable to substitute in this article the word "mainly" for "purely".

Article 1.3.

Canada

It is suggested that article 1.3. be amended by adding the following words to the present text: "if such refusal would compel the person concerned to remain in, or return directly or indirectly to a territory with respect to which he has well founded fear of persecution, prosecution or punishment for any of the reasons stated in paragraph 1 of article 1."

Denmark

In the opinion of the Danish Government this article seems to be worded in too general terms if, by "Contracting State" is meant a State other than the first State of refuge where the refugee may have stayed for some time and where he might have been able to seek asylum. In view of the growing number of instances in which the problem of first asylum occurs the Government of Denmark considers it of great importance that an international solution be found to the problem of the obligations of a first state of refuge vis-à-vis other Contracting States.

Liechtenstein

It should be clarified to what extent the application of paragraph 3 of this article would be affected by the circumstance that an asylum seeker has already established links with another country.

Article 2. Non-refoulement

No person shall be subjected by a Contracting State to measures such as rejection at the frontier, return, or expulsion, which would compel him to return directly or indirectly to, or remain in a territory with respect to which he has well-founded fear of persecution, prosecution or punishment for any of the reasons stated in paragraph 1 of article 1.

COMMENTS

Australia

It would be easier to achieve acceptance of the text of article 2 if the wording "a Contracting State shall use its best endeavours" were used.

Canada

It might be considered advisable to qualify article 2 with all the provisos contained in article 3 of the 1967 Declaration on Territorial Asylum. Article 2 might possibly be read to apply only to those persons coming under article 1.1 as amended by article 1.2. It would be desirable to clarify the categories of persons falling within the parameters of article 2.

Denmark

Denmark is of the opinion that provisions corresponding to those of articles 32 and 33 of the 1951 Convention should be incorporated permitting the State of asylum to expel refugees on grounds of national security.

Iran

Iran agrees with the comments made by Romania ^{8/} that it would be appropriate to introduce exceptions relating to compelling reasons of national security or in order to safeguard the population as provided for in article 3, paragraph 2, of the Declaration on Territorial Asylum.

Article 3. Non-extradition

No person shall be extradited to a State to the territory of which he may not be returned by virtue of article 2.

COMMENTS

Australia

It would be easier to achieve acceptance of the text of this article if the wording "A Contracting State shall use its best endeavours" were used.

Canada

Article 3 protects the same group of persons as article 2 does, and the commentaries made under article 2 can be applied, mutadis mutandis, to article 3.

Iran

This article needs further clarification with regard to its effect on existing bilateral and multilateral extradition treaties.

Japan

The obligation resulting from this article should be reconciled with the terms of existing bilateral extradition treaties to which the Government is a party.

Liechtenstein

This article might be in contradiction with existing bilateral treaties on extradition.

Uruguay

It should be stated in article 3 that extradition should not be granted for political reasons or for those specified in article 1.

^{8/} See Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 12B (A/9012/Add.2).

Article 4. Provisional stay pending consideration of request

A person requesting the benefit of this Convention at the frontier or in the territory of a Contracting State shall be admitted to or permitted to remain in the territory of that State pending a determination of his request, which shall be considered by a specially competent authority and shall, if necessary, be reviewed by higher authority.

COMMENTS

Canada

It might be considered desirable to insert the phrase "due process of law" in the present text of article 4. The phrase "a determination of his request" is understood to mean "an examination of his request with a view to determining his status". It might be useful to substitute some such wording in order to clear up any possible ambiguities.

Uruguay

It should be stipulated in article 4 that a request for territorial asylum should be considered by a specially competent authority entitled to move the courts in the State of refuge.

CHAPTER II

INTERNATIONAL CO-OPERATION

Article 5. International solidarity

Where, in the case of a sudden or mass influx, or for other compelling reasons, a State experiences difficulties in granting or continuing to grant the benefits of this Convention, other Contracting States, in a spirit of international solidarity, shall take appropriate measures individually, jointly, or through the United Nations or other international bodies, to share equitably the burden of that State.

COMMENTS

Canada

Article 5 corresponds to article 2.(2) of the 1967 Declaration. While article 2.(2) of the Declaration requires States to simply "consider (...) appropriate measures", article 5 of the draft Convention goes further and does require States to "take appropriate measures". Since the latter obligation might prove too broad to be easily accepted by States, it might be preferable to revert to the wording of the Declaration.

Article 5 should be amended to make it clear that international assistance can only be given to the State granting asylum at the request of the State granting asylum. At present, article 5 could be used to sanction external interference in the internal affairs of the State granting asylum against the wishes of that State.

Uruguay

A special protocol should be drawn up relating to the subject-matter of article 5 with a view to establishing provisions as clear and precise as possible.

Article 6. Voluntary repatriation

If an asylee should voluntarily and in full freedom express his desire to return to the territory of the State of his nationality or former habitual residence, the State granting asylum and the State of the asylee's nationality or former habitual residence, as well as all other States concerned, shall facilitate his repatriation.

COMMENTS

Canada

The draft Convention foresees no procedure to verify if the asylee's desire is actually expressed voluntarily and in full freedom.

The term "shall facilitate" is very wide and undefined. It might be desirable to replace that term with a negative such as "shall not put obstacles".

Uruguay

In the case of voluntary repatriation a free will statement should be made before a judicial authority, or a Court.

Article 7. Co-operation with the United Nations

The Contracting States shall co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may be created for the purpose, as regards the application of the provisions of this Convention. They shall in particular keep the Office, or agency, informed of all general implementing measures adopted by them and shall consult with the Office, or agency, regarding questions arising out of applications for asylum.

COMMENTS

Canada

This provision, which corresponds to article 35 of the Refugee Convention, is useful from the administrative point of view, in that the United Nations High Commissioner for Refugees is kept informed of and is consulted about the manner in which each State implements the Asylum Convention. It is, however, doubtful whether article 7 does any more than this administrative task, and whether it could be used very effectively to support article 5.

CHAPTER III

CHARACTERIZATION OF ASYLUM

Article 8. Peaceful character of asylum

The grant of asylum in accordance with article 1, or the application of other articles of this Convention, is a peaceful and humanitarian act. As such it does not constitute an act unfriendly to any other State and shall be respected by all States.

COMMENTS

Canada

In a legally binding instrument this article should be moved to the Preamble.

Uruguay

It should be stated in article 8 that the grant of asylum shall be respected by other States.

Article 9. Right of qualification

Qualification of the grounds for granting asylum or applying the provisions of articles 2 or 3, appertains to the Contracting State whose territory the person concerned has entered or seeks to enter.

COMMENTS

Australia

One possible improvement might be to omit article 9 entirely and to word articles 2 and 3 along the lines suggested by Australia.

Canada

The wording of article 9 should be changed in order to improve its clarity. It may mean that a Contracting State may ratify the Convention with reservations as to the terms on which it will grant asylum or apply article 2 or 3 to seekers of asylum coming to its territory. Such an interpretation creates a large loop-hole in the Convention. However, article 9 might in the alternative be read merely to say that it is up to the receiving State to evaluate whether or not the seeker of asylum may qualify under articles 1, 2 or 3. Article 1.(3) of the 1967 Declaration is to that same effect. This article protects the legality of the decisions taken by receiving States against any protests which might emanate from the States left by the asylees.

Article 10. Régime of asylees

1. States granting asylum shall not permit asylees to engage in activities contrary to the purposes and principles of the United Nations.

2. Without prejudice to the provisions of regional conventions, a State incurs international responsibility for the action of asylees to the same extent that it would be responsible for the actions of any other person living in its territory.

COMMENTS

Canada

Article 10.1, which is the equivalent of article 4 of the 1967 Declaration, might not be appropriate in a legally binding document.

Dahomey

It is suggested to add that asylees should not engage in activities contrary to the purposes and principles of the United Nations or in activities detrimental to the interests of the country of origin or any other country.

Iran

Iran supports the comments made by France ^{9/} that paragraph 2 should be replaced by a new paragraph providing that:

"Every person to whom asylum has been granted shall conform to the laws of the asylum-granting country and shall refrain from all activities which are detrimental to the institutions and security of that country."

Article 11. Good faith

All determinations and decisions called for in the application of this Convention shall be made in good faith and with due regard to all ascertainable facts.

COMMENTS

Canada

The phrase "due regard to all ascertainable facts" should be altered. It is suggested that the phrase in question be replaced by "due regard to all relevant and accessible facts of the case".

Uruguay

It should be deleted as it only repeats a generally recognized principle of law.

GENERAL COMMENTS

Bolivia

Bolivia is of the opinion that it should be ascertained whether the Convention is in agreement with the views on asylum existing within the American system.

Uruguay

Uruguay stresses the fact that a clear distinction should be made between territorial asylum and diplomatic asylum.

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