



GENERAL

E/3403/Add.3
11 July 1960

Original: ENGLISH/SPANISH

Thirtieth session

Dual distribution

Agenda Item 10

REPORT OF THE COMMISSION ON HUMAN RIGHTS

Chapter VI : Draft Declaration on the Right of Asylum

Observations of Governments

Note by the Secretary-General

The Secretary-General has received comments concerning the draft declaration on the right of asylum from the Government of Chile. This brings to eight the number of replies received from governments on this topic.

Chile (30 June 1960)

(Original: Spanish)

1. The Chilean Government considers that the type of asylum to which the draft in question relates should be clearly stated because, although diplomatic asylum and political refuge are alike so far as their humanitarian basis is concerned, the relevant procedures are different, and special rules are required in each case. It is obvious that both the creditable history of this draft and the spirit by which it is informed justify the assertion that the aim is confined to the enunciation of principles of doctrine applicable only to what is called political refuge or territorial asylum, and that the protection granted by the heads of diplomatic missions at embassies or legations, and by the commanders of warships and of military camps or aircraft, to persons persecuted on political grounds or for political offences lies outside the scope of its provisions.

The Chilean Government accordingly proposes that, for the sake of greater clarity, the words "right of asylum" should be replaced by "territorial asylum" both in the title of the draft and in its articles.

2. The Chilean Government supports the principle expressed in article 1, that asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, should be respected by all other States. In order to strengthen this principle, it would

be appropriate and advisable to include an explicit provision to the effect that "the State granting territorial asylum shall alone be competent to define the grounds on which asylum is granted".

3. The Chilean Government appreciates and shares the humanitarian motives by which the United Nations is actuated in its endeavour to promote international collaboration in the rendering of aid to countries which find difficulty in continuing to grant asylum owing to the fact that there are more applicants for asylum than they can take in. It considers, however, that the rule given in article 2, paragraph 2, with regard to this aspect of territorial asylum might imply that, in certain circumstances, States are under an obligation to admit persons seeking asylum. Such a rule is at variance with the fundamental principle whereby persons seeking asylum on political grounds are allowed to enter and reside in the territory of a State only if that State engages in this humanitarian practice freely and spontaneously, and in accordance with the requirements of its domestic legislation and the provisions of the treaties or conventions to which it is a contracting party. The Chilean Government would be able to approve paragraph 2 of article 2 of the draft if the following sentence were added: "This obligation cannot be invoked for the purpose of requiring States to admit to their territories persons seeking asylum on political grounds".

4. Article 3 of the draft provides as follows:

"No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should, except for overriding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

"In cases where a State decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the persons thus endangered to seek asylum in another country."

It should be noted that the mandatory provision laid down in the first paragraph of article 3, as reproduced above, is contradicted by the terms of the second paragraph, which begins by saying: "In cases where a State decides to apply any of the above-mentioned measures, it should consider the possibility of grant of provisional asylum ...". That is to say, the second paragraph allows the possibility of a State's violating the mandatory provisions laid down in the first

paragraph of the same article 3. Moreover, by placing the receiving State under the obligation to consider the possibility of granting provisional asylum, the second paragraph institutes, even against the will of the receiving State, a temporary asylum which might be prolonged indefinitely if the efforts to seek asylum in another country prove unavailing.

It should also be noted that the principle expressed in article 3 of the draft establishes a right on behalf of persons who are in fear of persecution endangering their life, physical integrity or liberty. The Chilean Government believes that the wording of this article is contrary to the principle laid down, with full justification, in article 1 - the principle that asylum is granted by a State in the exercise of its sovereignty.

Consequently, even though Chile is proud to be one of those which have consistently maintained a favourable attitude towards this humanitarian institution of territorial asylum, it cannot accept the text of article 3 of the draft. It would, on the other hand, accept a wording which placed States receiving requests for asylum under the obligation to consider the possibility of granting provisional asylum, under such conditions as they may deem appropriate, in order to avoid returning or expelling persons requesting asylum who would otherwise be compelled to return to a territory in which there was a well-founded fear of persecution endangering their life, physical integrity or liberty.

By way of information, it is considered appropriate to point out that article 11, paragraph 3, of the Treaty on Political Asylum and Refuge signed at Montevideo in 1939 provides that the granting of asylum does not place the granting State under any obligation to admit refugees to its territory for an indefinite period. The same instrument safeguards the persons of refugees by laying down that the cessation of refugee status shall not imply any authorization to place the refugee in the territory of the persecuting State (article 12, paragraph 2).

5. (Article 4). So far as concerns the obligation placed on persons enjoying asylum not to engage in activities contrary to the purposes and principles of the United Nations", the Chilean Government considers that this criterion is in conformity with the rules of international law; and it therefore expresses its approval of this provision.

6. The Chilean Government considers that the provision of article 5 to the effect that nothing in the declaration "shall be interpreted to prejudice the right

of everyone to return to his country" would appear to be out of place in a declamatory instrument on territorial asylum. Even if most Member States of the United Nations were in favour of retaining article 5 of the draft, the Chilean Government considers that, in view of the importance of the matter, it would be necessary to make a very clear distinction between those refugees who have the status of "political internees" and those in respect of whom this exceptional measure of vigilance has not been taken. So far as the former are concerned, it would be appropriate to bring the rule laid down in article 5 of the draft into harmony with the rules expressly recognized in two multilateral Inter-American Conventions, which make the departure of internees from the country of asylum conditional upon the fulfilment of certain special requirements. Thus, article 15 of the Montevideo Treaty on Political Asylum and Refuge provides that political internees shall inform the government of the State in which they are living when they decide to leave the territory, and it adds that they shall be permitted to leave on condition that they do not go to the country from which they came and that the government concerned is notified. The Convention on Territorial Asylum signed at the Tenth Inter-American Conference (Caracas, 1954) lays down a similar rule in article X.

7. As is known, the rules relating to territorial asylum or refuge have been developed and codified within the Inter-American legal system as the result of a gradual and progressive effort which finds its expression in a number of multilateral conventions. These conventions are models of their kind, for they give due recognition to this humanitarian institution while at the same time defining, so far as possible, the rights and duties both of those enjoying asylum and of the States granting it. A declaration such as that sponsored by the Commission on Human Rights of the United Nations should preserve all the patient work done in the American continent in the sphere of legal doctrine and intergovernmental agreement. The Chilean Government therefore considers that no formulation of principles regarding territorial refuge or asylum should affect or modify the bilateral or multilateral treaties which already exist or which may in future be entered into by the States forming the American regional system. For this reason, the recommendation in the preamble to the draft declaration, which seeks to safeguard existing instruments dealing with asylum, should be expressed in the articles themselves.

The Chilean Government reserves the right to present in due course such other observations as it may deem appropriate.
