



Sixteenth session

DRAFT DECLARATION ON THE RIGHT OF ASYLUM

Memorandum by the Secretary-General

1. At its fifteenth session the General Assembly was not able to consider the draft Declaration on the Right of Asylum submitted by the Economic and Social Council. It decided, by resolution 1571 (XV), "to take up this item as soon as possible at its sixteenth session and at that session to devote as many meetings as possible to the consideration of the draft Declaration". The text of the draft Declaration is annexed hereto.

2. The question of the right of asylum was placed on the agenda of the thirteenth session of the Commission on Human Rights in 1957.^{1/} At that session the representative of France submitted a draft declaration on the right of asylum (E/CN.4/L.454 and Rev.1), which, after some discussion (E/CN.4/SR.564, 572-575), the Commission decided to transmit, together with amendments submitted by the representative of Israel (E/CN.4/L.459) and other relevant documents, to Governments of States Members of the United Nations and members of the specialized agencies and to the United Nations High Commissioner for Refugees for comments. The comments were to be submitted by 31 December 1957, but the Economic and Social Council, in resolution 651 F (XXIV), extended the time-limit by one year.

3. At its fifteenth session in 1959,^{2/} the Commission on Human Rights had before it the comments of twenty-three Governments (E/CN.4/781 and Add.1-2) and of the United Nations High Commissioner for Refugees (E/CN.4/785). In the light

^{1/} See Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 4 (E/2970/Rev.1), paras. 206-214.

^{2/} Ibid., Twenty-eighth Session, Supplement No. 8 (E/3229), paras. 57-66.

of the comments and of the discussions in the Commission, the representative of France presented a revised draft declaration (E/CN.4/L.517), to which an amendment (E/CN.4/L.518) was submitted by the representative of Iraq. The Commission then decided, in resolution 3 (XV), to undertake at its sixteenth session the drafting of a declaration on the right of asylum and requested the Secretary-General to communicate the revised draft declaration submitted by France and the amendment by Iraq, as well as the summary records (E/CN.4/SR.618-622) of the Commission's discussions to Governments of States Members of the United Nations and members of the specialized agencies, the United Nations High Commissioner for Refugees and interested non-governmental organizations in consultative status with the Economic and Social Council, with the request that they send him their comments thereon by 31 December 1959.

4. At its sixteenth session in 1960, the Commission on Human Rights had before it the comments of twenty-eight Governments (E/CN.4/793 and Add.1-6), those of the United Nations High Commissioner for Refugees (E/CN.4/796) and of non-governmental organizations (E/CN.4/794 and Add.1-3), as well as a note by the Secretary-General (E/CN.4/795) concerning resolution 1400 (XIV) adopted by the General Assembly at its fourteenth session regarding codification of the principles and rules of international law relating to the right of asylum. The Commission discussed the draft Declaration, article by article (E/CN.4/SR.650, 659-662), and adopted the draft as a whole by 12 votes to none, with 3 abstentions. By resolution 3 (XVI), the Commission decided to transmit to the Economic and Social Council the draft Declaration for its consideration and, at the same time, requested States Members of the United Nations and members of the specialized agencies to submit any further comments on the draft Declaration, and in particular on article 3 thereof.

5. Special attention is drawn to chapter VI of the report of the sixteenth session of the Commission,^{1/} which contains an analytical account of the Commission's debates on the draft Declaration.

6. At its thirtieth session the Council considered the draft Declaration (E/AC.7/SR.420-424) and adopted resolution 772 E (XXX), by which it transmitted "to the General Assembly for its consideration the draft Declaration prepared by the Commission, together with the records of the discussions of the subject

^{1/} Official Records of the Economic and Social Council, Thirtieth Session, Supplement No. 8 (E/3335).

in the Council and also the records of earlier discussions in the Commission, as well as the comments of Governments on the draft Declaration at its various stages;" and requested "the Secretary-General to transmit to the General Assembly any further comments of Governments which may be received". The comments of Governments submitted to the Council were issued in documents E/3403 and Add.1-5. Further comments, forwarded to the General Assembly at the fifteenth and sixteenth sessions, appear in documents A/4452/Add.1 and Add.1/Corr.1 and A/4793, respectively.

ANNEX

Text of the draft Declaration on the Right of Asylum

The General Assembly,

Recalling that among the purposes of the United Nations is the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Mindful of the Universal Declaration of Human Rights which declares in article 14 that "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

Recalling also paragraph 2 of article 13 of the Universal Declaration of Human Rights which states that "everyone has the right to leave any country, including his own, and to return to his country",

Recommends that, without prejudice to existing instruments dealing with asylum, States Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles:

Article 1

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 shall be respected by all other States.

Article 2

The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

Where a country finds difficulty in continuing to grant asylum, States individually or jointly or through the United Nations should consider, in a spirit of international solidarity, appropriate measures to lighten the burden on the country granting asylum.

/...

Article 3

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 person thus endangered to seek asylum in another country.

Article 4

Persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

Article 5

Nothing in this Declaration shall be interpreted to prejudice the right of everyone to return to his country as stated in article 13, paragraph 2, of the Universal Declaration of Human Rights.
