

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/SR.621
19 August 1959
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifteenth Session

SUMMARY RECORD OF THE SIX HUNDRED AND TWENTY-FIRST MEETING

Held at Headquarters, New York,
on Tuesday, 24 March 1959, at 3.10 p.m.

CONTENTS

Right of asylum (E/CN.4/L.454/Rev.1, E/CN.4/L.459;
E/CN.4/781 and Add.1 and 2, E/CN.4/785; E/CN.4/L.517, L.518)
(continued)

PRESENT:

<u>Chairman:</u>	Mr. GUNewardENE	(Ceylon)
<u>Rapporteur:</u>	Mr. KITTANI	Iraq
<u>Members:</u>	Mr. QUIJANO	Argentina
	Mr. BASYN	Belgium
	Mr. WIJEGONAWARDENA	Ceylon
	Mr. CHENG	China
	Mr. CASSIN	France
	Mr. JHA	India
	Mr. ADAMIYAT	Iran
	Mr. COHN	Israel
	Mr. DOMINEDO	Italy
	Mr. HAKIM	Lebanon
	Mr. CAMPOS-ORTIZ	Mexico
	Mr. BRILLANTES	Philippines
	Mrs. WASILKOWSKA	Poland
	Mr. NEDBAILLO	Ukrainian Soviet Socialist Republic
	Mr. SAPOZHNIKOV	Union of Soviet Socialist Republics
	Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland

Mr. HEWITT)	United States of America
Mr. FINGER)	

<u>Also present:</u>	Mr. HEIBLE	Austria
	Mr. KANG	Cambodia
	Mr. DIPP-GOMEZ	Dominican Republic
	Mr. NAGASHIMA	Japan
	Miss PELT	Netherlands
	Mr. VIANU	Romania

Representatives of specialized agencies:

Mr. BLAMONT	International Labour Organisation
Mr. GAGLIOTTI	United Nations Educational, Scientific and Cultural Organization
Mr. SACKS	World Health Organization

/...

PRESENT (continued):

Representatives of the United Nations High Commissioner for Refugees:

Mr. WEIS

Secretariat:

Mr. HUMPHREY

Director, Division of Human Rights

Mr. YAP

Secretary of the Commission

RIGHT OF ASYLUM (E/CN.4/L.454/Rev.1, E/CN.4/L.459; E/CN.4/781 and Add.1 and 2, E/CN.4/785; E/CN.4/L.517, L.518) (continued)

Miss GRANT (International League for the Rights of Man) speaking on behalf of the International League for the Rights of Man and its affiliate the Inter-American Association for Democracy and Freedom, said that the International League and the Inter-American Association supported the revised draft declaration submitted by France, which would give validity to article 14 (1) of the Universal Declaration. However, the two organizations which she represented hoped that the Commission would take into account several additional aspects of the right of political asylum, which would give validity to article 13 (1) of the Universal Declaration.

They approved the principle set forth in article 1 of the revised draft, which made the international community responsible for those who had fled their country because of persecution. However, they were concerned to protect the rights of refugees who lacked passports or other identity documents because the authorities of the countries from which they had fled had refused their issue. They therefore wished to see an international passport issued to such refugees, which might be similar to the League of Nations Nansen passport and would enable political exiles to work or, if necessary, travel from one country of asylum to another in which they would be assured a livelihood.

In further implementation of the principle set forth in article 2 of the revised draft it would be necessary for States granting asylum to consult one another, with a view to ensuring the protection and safety of political exiles who, in many countries, were persecuted and even assassinated by diplomatic or secret agents of the countries from which they had fled.

In seeking to give validity to article 13 (1) of the Universal Declaration, the International League and the Inter-American Association wished to emphasize that these were two aspects to political asylum. Political refugees who had fled their country for fear of persecution could find asylum in the territory of another country, but an individual who was being persecuted for political reasons could also seek asylum in a foreign Embassy in his own country, because of the risks involved in attempting to flee. In that connexion, the Commission could usefully bear in mind the Honduran note of 2 September 1957 (E/CN.4/781) which showed how a person who was the victim of political persecution and had sought asylum in an Embassy should be issued the appropriate safe-conduct, subject to certain conditions.

/...

Mr. QUIJANO (Argentina) paid a tribute to the French delegation and particularly to Mr. Cassin for their praiseworthy initiative in submitting a draft declaration. The events which had followed the World War demonstrated the need to revise the traditional conception of territorial asylum. The States of Latin America had appreciated the need and had concluded the Caracas Convention in 1954.

If a draft declaration was to be generally acceptable and obtain the adherence of a large number of States, it should take fully into account the views of all Governments. The preparation of a declaration should therefore be undertaken with caution and prudence.

With the exception of Israel, which came second after the United States, Argentina came immediately after the larger countries, if they were classified according to the number of refugees they had received. It took pride in that fact and would maintain that tradition.

Recognition of the right of asylum should be based on the principle of voluntary asylum, inasmuch as a State could not be compelled to grant asylum to refugees. That was why the original French draft had been unacceptable to his delegation, since it left doubts regarding the sovereign right of States to refuse asylum if they so deemed fit.

His delegation was nevertheless entirely in favour of the conception of the right of asylum which recognized the need to protect life, physical integrity and liberty whenever they were threatened by acts constituting a violation of human rights. It would vote in favour of any draft resolution recommending a careful study of the right of asylum and an examination in detail of the draft declaration by the Commission on Human Rights at its next session.

Mr. WEIS (Office of the United Nations High Commissioner for Refugees) thanked the Chairman and the Commission for the courtesy they had shown to the High Commissioner by taking up the right of asylum as the second item in view of the fact that he had to return to Geneva for the Conference on the Elimination or Reduction of Future Statelessness.

The Office of the High Commissioner had outlined its position to the draft declaration in its comments (E/CN.4/785). The High Commissioner's Office attached importance to a draft declaration in so far as it was of importance for persons

(Mr. Weis, Office of the United Nations
High Commissioner for Refugees)

within its mandate. The refugees coming within the mandate of the High Commissioner were defined in the Statute of his Office (General Assembly resolution 428 (V) of 14 December 1950). It was clear that the competence of the High Commissioner's Office was not affected by any such declaration as that competence was defined by the General Assembly.

The Universal Declaration of Human Rights proclaimed human rights for all without distinction. The enjoyment of human rights and fundamental freedoms for those entitled to seek asylum under article 14 of the Declaration depended on their having a possibility of finding asylum and in that connexion it was important that some principles of implementation of article 14 were laid down. The declaration would not be a legally binding instrument but the declaration of such principles laying down a standard of conduct or a code of ethics, as had already been said in the debate. In the view of the High Commissioner, the declaration should basically contain the following principles: (1) As there was, under article 14, a right to seek asylum, the fate of those entitled to seek asylum was of interest and concern to the international community. The General Assembly had, in a resolution of 12 February 1946, declared that the refugee problem was international in scope and nature. The same applied to the question of the right of asylum. (2) It followed from that principle that nobody should be subjected to measures such as expulsion, refoulement or non-admission at the frontier if as a result of such measures he would be forced to remain in or to return to a country where he had well-founded fear of persecution. (3) It often was a matter of geographical accident which country was called upon to grant asylum to those entitled to seek asylum. Where that imposed too heavy a burden on a country granting asylum, other States should either individually or collectively - and in the latter case it could be assumed within the framework of the United Nations - consider appropriate measures, including the admission of refugees, in order to lighten the burden imposed on such a country. Mr. Weis referred in that connexion to the draft declaration annexed to the comments of the Government of the Netherlands.

The Office of the High Commissioner was heartened by the fact that there seemed to be a large measure of agreement between the members of the Commission

(Mr. Weis, Office of the United Nations
High Commissioner for Refugees)

on those basic principles although there was no agreement on all details. The comments of Governments had on the whole also been positive: of twenty-three comments, seventeen had declared themselves in favour of a draft declaration. The Office of the High Commissioner considered it important that a text containing those principles be adopted and hoped that agreement would be reached on a text. The High Commissioner's Office with its experience of those problems was at the disposal of the Commission in order to assist it to arrive at an agreement about a declaration on the right of asylum. In the view of the Office of the High Commissioner, such a declaration was in conformity with what was already the practice of States and, in many countries, the right of asylum was enshrined in their constitutions or legislation, as had been pointed out in the comments of the High Commissioner's Office. Mr. Weis wished to pay tribute on behalf of the High Commissioner to the countries which already in the past had generously granted asylum or had assisted countries on whom the granting of asylum had imposed heavy burdens of an economic, financial and social nature.

The question was before the Commission as the result of a French proposal made to the Commission in 1957 and the Office of the High Commissioner wished to pay tribute to France for that initiative which was in accordance with its traditional policy of asylum. However, the question of the right of asylum had been on the agenda of the Commission since 1947 when the Commission had resolved "to examine at an early opportunity the question of the inclusion of the right of asylum of refugees from persecution in the International Bill of Human Rights or in a special convention for that purpose". Proposals to incorporate the right of asylum in the draft Covenant on Civil and Political Rights had not been adopted. It would not be realistic to assume that agreement on a legally binding convention on the subject could be reached in the near future. In those circumstances, it was highly desirable that a declaration on the right of asylum be adopted soon. The General Assembly had declared the year beginning 1 July 1959 as the World Refugee Year. There could hardly be a more fitting contribution by the Commission on Human Rights to the World Refugee Year than by adopting a declaration on the right of asylum during that year.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said that he would like to reply to those who doubted, in view of the failure of previous attempts, whether it was possible at that juncture to do as his delegation wished and include an article on the right of asylum in the draft covenants on human rights. Previous efforts to that end had failed not because States were reluctant to subscribe to an article on the right of asylum, to be included in the covenants, but rather because they could not agree on the contents of that article. His delegation felt that the article to be adopted should ensure the protection of persons who were persecuted for their activities in defence of democracy, their scientific activities, or their participation in a national liberation movement.

The French draft declaration confused two very different questions - the right of asylum and the eventual placement of refugees. Every year, the General Assembly discussed the question of the future fate of refugees and adopted resolutions on it in connexion with consideration of the problem of refugees, and particularly the Palestine refugees, by the Special Political Committee and the Third Committee. The French draft declaration dealt with only one aspect of the refugee problem.

There were two aspects to the refugee problem: repatriation or voluntary return to the country of origin and resettlement. The French draft declaration was concerned only with resettlement. Nevertheless, repatriation was undoubtedly of prime importance. The question before the Commission, however, was not the situation of refugees, but the right of asylum. The problem of the right of asylum could be solved by including an article on that right, in the terms he had suggested, in the draft covenants on human rights.

Mr. CHENG (China) explained that his delegation was in favour of a declaration, in the strict sense, on the right of asylum. The best procedure would be to elaborate on article 14 of the Universal Declaration of Human Rights without seeking to go any further. The detailed drafting of the articles of the French revised draft declaration (E/CN.4/L.517) would take considerable time, as several delegations would undoubtedly have comments and reservations to make about the draft. His own delegation, for example considered that the word "recommends" in the operative paragraph of the draft resolution should be

replaced by the word "declares" since the text was in fact a declaration; it would also wish to raise objections to the use of the words "invoke" in article 1, "entitled" in article 3 and "observance" in article 4, which seemed to imply the existence of a legal obligation for States - whereas a declaration had no binding force - and to the wording of the first part of article 2 and the second paragraph of article 4 which might imply, and wrongly so, that the United Nations was the only international body with responsibility for refugees.

The Commission should not be precipitate in its consideration of what was an important question but not a particularly urgent one, as the right of asylum was generally recognized in practice by individuals and States alike. He therefore suggested that, at the current session, the Commission should express itself in favour of the adoption of a declaration but that, with the French representative's agreement, it should defer until a later session the detailed drafting of the articles.

Mr. CASSIN (France) replied that his delegation had made every effort to take account in its revised draft (E/CN.4/L.517) of the criticisms made and it was ready to discuss the draft immediately; if the Commission preferred, however, to defer that discussion to a later session it would of course abide by the majority decision. The real problem was that States had a duty to adopt as soon as possible instruments designed to protect the individual.

The CHAIRMAN thought that nothing in the French draft declaration ran counter to the Charter. Accordingly the only question was whether or not the Commission was in favour of a declaration. The exact drafting of that declaration would obviously give rise to many difficulties, as the Chinese representative had pointed out, but the Commission was there precisely in order to solve those difficulties and it should not find some pretext for evading its responsibilities.

Mr. KEITANI (Iraq) presented an amendment (E/CN.4/L.518) to the revised draft resolution (E/CN.4/L.517) adding the following new article 5 after article 4: "Nothing in this declaration shall be interpreted to prejudice the right of everyone to return to his country as stated in article 13 (2) of the Universal Declaration of Human Rights."

Mr. COHN (Israel) thanked the French delegation for having incorporated the Israel amendment (E/CN.4/L.459) in its revised draft. The new text was entirely satisfactory to his delegation.

He did not share the Chinese representative's doubts with regard to the use of the word "entitled" which was equivalent to the words "having the right", since the Universal Declaration of Human Rights explicitly recognized the right of asylum. It was of little importance in that context whether or not the right was effective. Nor had he any objection to the word "recommends" in the operative paragraph. He would have preferred the preamble to be deleted but he recognized that it might be desirable to mention article 14 of the Universal Declaration in order to make it quite clear that the draft did not depart from it.

Sir Samuel HOARE (United Kingdom) also thanked the French representative for having taken his statement into account. The new draft was a considerable improvement on the original text (E/CN.4/L.454/Rev.1).

With regard to article 1, however, he would have preferred a firmer statement of the classical doctrine that the grant of asylum rests exclusively with the State. He did not share the Chinese representative's doubts concerning the word "recommends" - although it could be replaced by the word "proclaims" used in the Universal Declaration - or the phrase "entitled to invoke"; that phrase followed as closely as possible the wording of article 14 of the Universal Declaration, which stated that everyone "has the right" to seek asylum and that this right "may not be invoked" in certain specific cases. The same comment applied to the use of the word "entitled" in article 3.

He thought the term "the responsibility" in the English text of article 2 might suggest that the United Nations was the only body responsible for looking after the security and welfare of refugees; that, of course, was not the case.

In article 3 the words "to seek and enjoy asylum" should be replaced by the words "to seek or enjoy asylum", as two different categories of people might be involved.

Lastly, while the Iraqi delegation was certainly entitled to submit an amendment, he did not see how the revised draft declaration could be interpreted as in any way prejudicing the right embodied in article 13, paragraph 2, of the Universal Declaration.

Mr. BRILLANTES (Philippines) pointed out that article 4 of the revised draft declaration (E/CN.4/L.517) imposed a "duty" on States to grant asylum in certain circumstances, whereas paragraph 4 of the original text (E/CN.4/L.454/Rev.1) did not provide for any such obligation. The word "duty" in article 4 was not consistent with article 1 which said that "every State has the right, in the exercise of its sovereignty, to grant asylum ...". Such a duty would inevitably have financial and economic implications and might even oblige States to promulgate laws with a view to application of article 4. It was unlikely that they would be prepared to accept such a duty which they might be called upon to assume solely because some State had refused to take in refugees.

He was therefore unable as yet to take a definite position on the revised draft which went much further than the original draft and should be communicated to Governments for comment.

Mr. DOMINEDO (Italy) advanced three general arguments which he believed constituted a true defence of the draft declaration submitted by the French delegation. First, there was no conflict between the draft and article 14 of the Universal Declaration. Certain representatives appeared to consider that the draft was defective in any event, as it either repeated article 14 - in which case it was unnecessary - or else it modified the article - in which case it became unacceptable. Such reasoning was incorrect. The draft neither repeated nor modified article 14; it developed it and therefore constituted a step forward.

Second, as the French representative had pointed out, the right of asylum and the problem of refugees were two separate questions, although related. The Commission was concerned with the question of refugees only in so far as it affected the right of asylum of refugees; but there was no question of the Commission defining the status of those who would benefit from the right of asylum.

Third, the right to asylum was a natural right. The rights set forth in the declarations were potential rights. Unlike positive rights they were natural rights which had to be progressively recognized and guaranteed. The Commission could not neglect such natural rights. It had, in fact, a duty to press for their observance. The question arose as to whether the right of asylum pertained to the individual or to the State. However, the problem could not be stated in absolute terms. It was a human right, but not an absolute right. For the

/...

(Mr. Dominedo, Italy)

individual it was simply a natural right, but it had to be respected and observed. States therefore had to assume certain obligations with regard to it. They had the right to grant or refuse asylum but it was not an absolute right of each State. There would otherwise be no justification for the inclusion of the question on the Commission's agenda. The State should have the right to grant asylum in certain circumstances and, similarly, to refuse asylum in certain circumstances.

Mr. JHA (India) said that the revised draft now appeared in the form of a draft resolution of the General Assembly. In spite of the improvements which had been made, his delegation was still unable to support it and wished to repeat the reasons for its inability to do so.

The articles of the draft set forth principles. Principles, whether of a legal or moral nature, could only be absolute. The text should therefore only set forth principles that were universally recognized and applied.

Furthermore, the Governments which had replied were few in number, and among those which had replied some disputed the need for a declaration. However, it was not the inadequate number of replies but the wide differences between the views expressed, which justified his delegation's attitude on the draft declaration. Some Governments were, in fact, categorically opposed to the imposition of an obligation on States.

While he had no objection to article 1, the same was not true of article 2 which made the United Nations responsible for the safety and well-being of those who were seeking or enjoying asylum. Under the Charter, however, the United Nations was responsible for the safety and well-being of all individuals. Article 2 therefore established discrimination in favour of those seeking or enjoying asylum.

While he entirely approved the principle set forth in article 3, he believed that the inclusion of that humanitarian principle in an instrument limited both the sovereignty of States and the scope of article 14 of the Universal Declaration. He knew of no State which had actually turned away refugees. However, if there existed a written text which could be interpreted in a restrictive manner, States would be tempted to seek escape clauses, and, during what might prove to be prolonged negotiations, refugees would be placed in camps, and that would certainly not be desirable.

/...

(Mr. Jha, India)

Article 4 also set forth a principle of which his delegation approved but there again it was dangerous to codify something that was generally accepted.

The Commission should confine itself to the right of asylum. Article 3 and, incidentally, article 4 dealt with the question of refugees.

The revised text was an improvement on the original but, as it embodied principles which were not universally recognized, it should be submitted again to Governments. He feared, however, that the new replies would only reflect the same differences of viewpoint.

While his delegation was not opposed to the drafting of a brief general declaration on the right of asylum, it was unable to support the draft now before the Commission.

Mr. BASYN (Belgium) said that the French draft declaration (E/CN.4/L.517) was based on the postulate that the State had discretionary power to grant or refuse asylum and that the problem was essentially moral rather than juridical.

The State being thus free to act as it chose, he failed to understand why article 1 should restrict enjoyment of the right of asylum to persons entitled to invoke article 14 of the Universal Declaration. It seemed superfluous to speak in article 2 of the well-being of persons enjoying asylum; all that could be asked of receiving States was that they should have concern for their safety. The question of "well-being" might arise in the case of true refugees who had settled in the receiving country, but such persons were of a different category. The wording of article 3 was contradictory: one could not speak of the expulsion or return of a person who was simply entitled to "seek" asylum. Finally, as regards article 4, he did not see why a State would suddenly cease wanting to assume responsibilities which it had freely accepted.

It might prove dangerous to bind States by a legal instrument which they might invoke in order to try and limit their humanitarian duties.

Mr. CASSIN (France) said that the members of the Commission had been quite right in considering the draft with the closest attention.

As regards the form which the draft should take, he believed that since the Commission was unwilling to accept a covenant and wished neither to repeat nor to modify article 14 of the Universal Declaration, it had no alternative but to draw up "rules for implementation" of article 14, which would not, however, be binding.

/...

(Mr. Cassin, France)

His delegation had had no intention of dealing with the problem of refugees, as France was already bound by the 1951 Convention, and it had taken care to distinguish between the right of asylum and the question of receiving refugees.

With regard to the over-all concept of asylum, it was clear that the greater the importance members of the Commission attached to the obligations of the State, the more seriously must they consider the question before voting upon it. His delegation agreed that there should be the widest possible consultation on the revised draft.

The representative of the Philippines had rightly stated that the second paragraph of article 4 of the revised draft mentioned not the concert of States but the "international community". The United Nations was indeed the council chamber of States. The intent of his delegation's draft was to merge into a single whole the over-all mission of the United Nations, the moral duty of States and the moral right of individuals.

The Indian delegation wanted the principles set forth in the draft to be universally recognized principles. The French delegation did not despair of achieving such a world-wide "consensus".

The time seemed to have come to draw some conclusion from the debate. He had therefore drawn up a proposal for referring the matter, the text of which would be circulated to members of the Commission at the next meeting.

He thanked not only those delegations which had spoken in favour of the French delegation's draft but also those which were, in principle, in favour of a declaration. He hoped that the day would come when all delegation would agree on both the principle and the text of a declaration.

Mr. JHA (India) said that in view of the importance of the question of the right of asylum, a hasty vote should not be taken on a proposal to defer the matter and he hoped that some delegations would submit proposals.

The CHAIRMAN proposed that the next meetings should be devoted to consideration of agenda items 7 and 4, the Commission having decided not to take up the draft Declaration of the Rights of the Child until the following week.

It was so decided.

The meeting rose at 5.40 p.m.