

necessary nor suitable that every possible exception to the principle should be enumerated in a Declaration not of a legally binding character. The Office of the UNHCR would, therefore, welcome the omission of any phrase or sentence qualifying the main principle.

If, however, it is considered essential to make some reference to the exceptions already foreseen they should be expressed explicitly in a separate paragraph and drafted so as to derogate as little as possible from the basic principle as follows, omitting the words in parentheses if possible :

“This provision may not be invoked in the case of any individual who constitutes a danger to national security (nor in the case of a mass influx which endangers the safety of the nation).”

Articles 4 & 5

The conduct of persons granted asylum and the right of repatriation

While the Office of the UNHCR is in full agreement with the matters expressed in Articles 4 and 5 of the draft Declaration now before the General Assembly, various States have questioned their necessity in the Declaration and have recommended their omission. The Office of the UNHCR does not oppose their inclusion.

ANNEXURE II

DRAFT DECLARATION ON THE RIGHT OF ASYLUM

(Note prepared by the Office of the U.N.H.C.R.
on action taken on this item during the Seventeenth
Session of the U. N. General Assembly)

INTRODUCTION

1. The draft Declaration on the Right of Asylum, prepared by the Commission on Human Rights, which consisted of a preamble and five Articles (see Annex 1) was transmitted to the General Assembly by Economic and Social Council resolution 772 E (XXX) of 25 July, 1960. The item was placed on the agenda of the fifteenth and sixteenth sessions of the General Assembly and allocated each time to the Third Committee. The Third Committee each time was able to hold only a procedural discussion concerning the action to be taken on the draft Declaration and to recommend to the General Assembly that the item be taken up at the following session. The General Assembly, accepting these recommendations, adopted resolutions 1571 (XV) of 18 December, 1960 and 1682 (XVI) of 18 December, 1961; by the latter it decided to take up the item as soon as possible at its seventeenth session and at that session to devote the necessary number of meetings to the consideration of the item.

2. The Committee considered the draft Declaration at its 1192nd to 1202nd meetings, held between 26 November and 5 December, 1962. At its 1192nd meeting it heard a statement by the United Nations High Commissioner for Refugees who said that adoption of a Declaration on the Right of Asylum would be a reaffirmation by the peoples of the United Nations of their faith in fundamental human rights. The High

Commissioner urged that the Declaration should express positive principle which would protect and promote the right to seek asylum enshrined in the Universal Declaration of Human Rights and not be encumbered by qualifications or exceptions which might divest the Declaration of its force.

3. During 1962 UNHCR approached a number of Governments, seeking their support for the Declaration and suggesting various amendments to the draft transmitted to the General Assembly. The most important amendment was that Article 3 should spell out the principle of *non-refoulement* without qualification and that if such qualifications were insisted upon they should be in a separate paragraph. Amendments on the lines of the suggestions of UNHCR were submitted by Norway and Togo (A/C. 3/L. 1035) who were later joined by Costa Rica (A/C. 3/L. 1035/add. 1). The text will be found in Annex II.

4. After a general debate on the draft Declaration, the Committee concentrated primarily on the preamble and Article 1 of the draft Declaration. It adopted the texts of the preamble and Article 1 (see Annex III), as well as a procedural resolution relating to the further consideration of the draft Declaration. The views expressed by the members of the Committee are set out in the summary records of the corresponding meetings (A/C. 3/SR. 1192 to A/C. 3/SR. 1202), which may be obtained on request from New York.

PREAMBLE

5. *The Union of Soviet Socialist Republics* submitted an amendment (A/C. 3/L. 1043) to insert the following as the first paragraph of the preamble :

“*Noting* that the chief purposes proclaimed in the Charter of the United Nations are to maintain international peace and security and to develop friendly relations among all States,”.

This was subsequently revised as follows (A/C. 3/L. 1043/Rev. 1) :

“Replace the first paragraph of the preamble by the following text :

“*Noting* that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all States, and to achieve 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 for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

Peru submitted an amendment which in its revised form (A/C. 3/L. 1042/Rev. 1 and Rev. 1/Corr. 1) was to insert between the third and fourth paragraphs of the preamble a new paragraph reading :

“*Recognizing* that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State”.

7. *Belgium* submitted an amendment (A/C. 3/L. 1039 and Rev. 1) which was to delete from the fourth paragraph of the preamble the words “without prejudice to existing instruments dealing with asylum”; and to insert in article 1 (see below para.) a saving clause concerning existing instruments dealing with asylum, in particular, the 1951 and 1954 Conventions relating to the status of refugees and of stateless persons. This amendment was subsequently revised (A/C. 3/L. 1039/Rev 2) to add instead, in the fourth paragraph of the preamble as drafted by the Commission on Human Rights, after the words “dealing with”, the words “the status of refugees and stateless

persons and with"; and after "with asylum", the words "in particular, with diplomatic asylum". At the 1198th meeting, the representative of Belgium orally withdrew the reference to diplomatic asylum and inverted the order of enumeration so as to list "asylum" before "status of refugees and stateless persons"; thus making his revised amendment read :

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

Voting on the preamble

8. (a) *New fourth paragraph :*

Upon a motion of the representative of Saudi Arabia, seconded by the Union of Soviet Socialist Republics, the Committee decided to vote first on the amendment of *Peru* (A/C. 3/L. 1042/Rev. 1 and Rev. 1/Corr. 1) to insert a new paragraph between the third and fourth paragraphs of the preamble. The Peruvian amendment was adopted by 82 votes to none with 2 abstentions.

(b) *First paragraph :*

The amendment of the USSR to the first paragraph (A/C. 3/L. 1043/Rev. 1) was adopted by 45 votes to 21, with 19 abstentions.

(c) *Fifth (formerly fourth) paragraph :*

The *Belgian* amendment to this paragraph (A/C. 3/L. 1039/Rev. 2, as orally revised) was adopted by 40 votes to 16, with 27 abstentions. The representative of the Ukrainian Soviet Socialist Republic requested a separate vote on the following words of the paragraph as amended : "States Members of the United Nations and members of the specialized agencies". The words were retained by 59 votes to 8, with 15 abstentions. The paragraph, amended, was adopted by 66 votes to none, with 18 abstentions.

(d) *Preamble as a whole, as amended :*

The preamble as a whole, as amended, was adopted by 82 votes to none, with 2 abstentions (see Annex III).

Article 1

9. *Poland* submitted an amendment (A/C. 3/L. 1038, point 2) to insert the word "territorial" before "asylum".

10. *Algeria, Cameroon, Guinea, Iraq, Mali, Morocco, Tunisia* and the *United Arab Republic* submitted an amendment (A/C. 3/L. 1044 and Add. 1) to insert after "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" the words "and persons struggling against colonialism". At the 1200th meeting the sponsors accepted a sub-amendment of the *United States of America* (A/B. 3/L. 1049) to replace the word "and" by "including", thus making the amendment read: "including persons struggling against colonialism" (A/C. 3/L. 1044/Rev. 1).

11. *Bulgaria* submitted an amendment (A/C. 3/L. 1041) to replace "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" by the following:

"persons persecuted for striving for national independence, for striving to maintain peace and to develop peaceful and friendly relations between peoples and States, for fostering and developing respect for human rights and fundamental freedoms, or for any other activity, except in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations".

The words "or for any other activity" in this amendment were subsequently changed to read "or for any other reason" (A/C. 3/L. 1041/Rev. 1).

12. *Belgium* submitted an amendment (A/C. 3/L. 1039/Rev. 1) to add to article 1 a second paragraph reading:

"This Declaration shall be without prejudice to existing instruments dealing with asylum, in particular, to the Convention of 1951 relating to refugees and the Convention of 1954 relating to stateless persons,"

Upon revising his amendment to the original fourth paragraph of the preamble (see above, para. 10), the representative of Belgium also revised his amendment (A/C. 3/L. 1039/Rev. 2) for a second paragraph to article 1. In its final form (A/C. 3/L. 1039/Rev. 3 point 1) this amendment reads:

"The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed 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."

13. *Poland* submitted an amendment (A/C. 3/L. 1050) to the Belgian revised amendment (A/C. 3/L. 1039/Rev. 3) to replace the word "The right to seek and to enjoy asylum may not be invoked by any person . . ." by the words "It shall not be permitted to give territorial asylum to a person . . .".

14. *Poland* also submitted an amendment to article 1 (A/C. 3/L. 1040) (1) to add after "article 14" the words "paragraph 1" and (2) to add the following paragraphs to article 1:

"It shall rest with the State granting territorial asylum to evaluate the grounds for the grant of asylum.

"It shall not be permissible to grant territorial asylum to ordinary-law criminals, war criminals or persons guilty of crimes against peace or against humanity.

Subsequently, *Poland* submitted a revised amendment (A/C. 3/L. 1040/Rev. 1) reading:

"Add the following paragraph to article 1:

"It shall rest with the State granting territorial asylum to evaluate the grounds for the grant of asylum".

The representative of *Poland* subsequently withdrew this amendment (A/C. 3/L. 1040/Rev. 1). It was re-introduced, omitting the word "territorial", by the representative of *Chile*, on behalf of *Argentina, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama* and *Venezuela*.

Voting on article 1

15. At the 1201st meeting, the Committee voted on the text of article 1 as submitted by the Commission on Human Rights and amendments thereto.

(a) Text proposed by the Commission on Human Rights

The amendment of *Poland* (A/C.3/L.1038) was adopted by 33 votes to 11, with 32 abstentions. The representative of *Bulgaria* withdrew his amendment (A/C.3/L.1041/Rev. 1) in favour of the eight-power amendment (A/C.3/L.1044/Rev. 1). At the request of the representative of *Algeria*, a roll-call vote was taken on the amendment of *Algeria, Cameroon, Guinea, Iraq, Mali, Morocco, Tunisia* and the *United Arab Republic* (A/C.3/L.1044/Rev. 1). The amendment was adopted by 70 votes to none, with 14 abstentions. The representatives of *Tanganyika* and the *United Arab Republic* stated that they wished to have it recorded that had they been present at the time of voting they would have voted in favour of the eight-Power amendment. The text of article 1 proposed by the Commission on Human Rights, as amended, was adopted by 85 votes to none, with 1 abstention.

(b) New paragraph 2:

The sub-amendment of *Poland* (A/C.3/L.1050) to the amendment of *Belgium* (A/C.3/L.1039 Rev. 3) was rejected by 28 votes to 15, with 44 abstentions. The representative of

Niger requested a separate vote on the following words in the Belgian amendment (A/C.3/L.1039/Rev. 3): "with respect to whom there are serious reasons for considering that". Twenty votes having been cast in favour and 20 votes against, with 45 abstentions, the Chairman declared that, in accordance with rule 134 of the rules of procedure, the words in question were retained. The *Belgium amendment as a whole* was adopted by 38 votes to 7, with 40 abstentions.

(c) **New paragraph 3:**

At the request of the representative of Chile, a roll-call vote was taken on the former amendment of *Poland* (A/C.3/L.1040/Rev. 1) as re-introduced by *Argentina, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama* and *Venezuela* (see above, para. 14.) The nine-Power amendment was adopted by 59 votes to 4, with 24 abstentions. The representative of the United Arab Republic stated that if he had been present during the voting he would have voted for the nine-Power amendment.

(d) **Article 1, as amended, as a whole:**

Article 1, as amended, as a whole, was adopted by 85 votes to none, with 4 abstentions (see Annex III).

PROCEDURAL PRESOLUTION

16. On 19 December, 1962 the General Assembly unanimously adopted resolution 1839 (XVII) as follows:

DRAFT DECLARATION ON THE RIGHT OF ASYLUM

"The General Assembly,

"Noting that the Third Committee has adopted the preamble and article 1 of the draft Declaration on the Right of Asylum"

"Not having been able to complete consideration of the draft Declaration"

"Decides to take up the item entitled "Draft Declaration on the Right of Asylum" as soon as possible at its eighteenth session to devote the necessary number of meetings to the completion of that item".

ANNEX

TEXT OF THE DRAFT DECLARATION DRAWN UP BY THE COMMISSION ON HUMAN RIGHTS

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 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 persons 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 rights of everyone to return to his country as stated in article 13, paragraph 2, of the Universal Declaration of Human Rights.

ANNEX II

TEXT OF AMENDMENTS TO THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM PROPOSED BY NORWAY AND TOGO AND LATER BY COSTA RICA (A/C.3/L.1035 and Add. 1)

1. Article 2

(a) *Paragraph 1:* Replace "The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution" by "The situation of persons entitled to invoke Article 14 of the Universal Declaration of Human Rights".

(b) *Paragraph 2*

- (i) Insert the words "granting or" between the words "in" and "continuing" so that the phrase reads: "Where a country finds difficulty in granting or continuing to grant asylum".
- (ii) Change "should consider in a spirit of international solidarity" to read "shall consider in a spirit of international solidarity".

2. Article 3

(a) *Paragraph 1*

- (i) Replace "no one seeking or enjoying asylum in accordance with" by "no one entitled to invoke Article 14 of...".
- (ii) In the English text, replace the word "should" by "shall".
- (iii) Delete the words "except for overriding reasons of national security or safe-guarding of the population".

- (b) Insert a new *Paragraph 2* to read as follows :

"This provision may not be invoked in the case of any individual who constitutes a danger to national security nor in the case of a mass influx which endangers the safety of the nation".

- (c) Paragraph 2 to become *Paragraph 3*, reading as follows :

"In cases where a State decides to base its action on the preceding paragraph of this Article, it shall consider, under such conditions as it may deem appropriate, allowing the persons concerned a reasonable period and all the necessary facilities to enable them to seek asylum in another country".

3. Article 4

Replace the word "should" by "shall".

ANNEX III

TEXT OF PREAMBLE AND ARTICLE I OF THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM AS ADOPTED BY THE THIRD COMMITTEE AT THE SEVENTEENTH SESSION OF THE GENERAL ASSEMBLY.

(Words omitted are enclosed in (square brackets,) new words are *underlined*).

The General Assembly

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all States, and to achieve (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 for 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".

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State.

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

Article I

1. Territorial 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, *including persons struggling against colonialism*, shall be respected by all other States.

2. *The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed 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.

3. *It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.*

ANNEXURE—III

THE RIGHT OF DOMICILE IN INTERNATIONAL LAW

(Text of Conclusions reached, at the Conference of International Lawyers held in BONN on the 28th and 29th October, 1961 in connection with the All-German Committee of the League of Expelled Persons)

I.

In recent times, and in various parts of the world, peoples and national groups have been expelled from their original domiciles. These acts of violence are clearly contrary to the leading principles of modern international and national law.

II.

The expulsion of peoples of ethnic, racial or religious communities represents a flagrant violation of the right of self-determination. The right of self-determination has been recognized in the Charter of the United Nations as a leading regulating principle; thereby, and also by virtue of national practice during the last, decade, it has become a generally binding principle of international law. It is the right of peoples and ethnic communities to determine freely their political, economic, social and cultural status. According to this, peoples are not conceived as fluctuating masses which can be moved from one territory to another on political, economic, police or similar grounds, but as domiciled communities which are firmly attached to their area of settlement. The right of self-determination, therefore, includes the prohibition of expulsion. Even a conquered nation cannot be denied the right of self-determination.

III.

The International Law of War contains a prohibition of deportation of the population of an occupied territory by the occupying power. Unanimous agreement was reached on this point as early as 1907 at the Hague Peace Conference. Article 49 of the Geneva Convention of the 12th August, 1949, relative to the Protection of Civilian Persons in Time of War did not, therefore, create new law, but codified existing law.

Attention may also be drawn to Article 49, paragraph 6 of that Convention, pursuant to which an occupying power must not transfer or deport parts of its own civilian population to a territory it occupies.

IV.

According to modern international law, no state may expel its own nationals from its territory or refuse them the right of entry to it.

This prohibition also applies in case of change of the territorial sovereignty. In this case the inhabitants of the territory concerned who, before the change of sovereignty, enjoyed citizens' rights, may not be refused the nationality of the State assuming sovereignty. In this way they are protected from expulsion across the newly-demarcated frontier to a foreign country.

V.

The question of whether expelling States and receiving States may carry out transfers of population in a manner permitted under international law by virtue of agreements, cannot be answered by reference to the Potsdam Agreement. For the Potsdam Agreement of the 2nd August, 1945, which in Article XIII ordered that the expulsion of Germans from Poland, Czechoslovakia and Hungary, which had begun in

full force several months earlier under the sovereign responsibility of the expelling States, should be carried out in a humane manner, was concluded by the occupying powers: Great Britain, the Soviet Union and the United States. The injunction also contained in it, viz., that the expelled Germans should be received, does not, therefore, imply recognition under international law of the expulsions by Germany, which was not a party to this Agreement.

VI.

International law demands of all States that they should respect a minimum standard of general human rights. Deportations within the territory of a State also infringe the principles of modern government which is characterized by a progressive recognition of general human rights.

Mass deportations of the State's own nationals within the State territory were, for example, declared unconstitutional in the U.S.S.R., in 1956-57, as being contrary to the principles of Marxist-Leninist policy on nationalities, and were revoked for part of the persons affected.

VII.

The term "Right of Domicile" has become customary for the legal status which results from the principles of national and international law described above in regard to peoples, ethnic communities and the persons belonging to them. This right, therefore, is founded upon definite provisions of present day national and international law and upon Universal Declaration of Human Rights. Its violation is an offence against international law.

Every prohibition—including the prohibition of compulsory resettlement and mass deportations—protects a state of affairs which human consciousness of justice considers valuable and worthy of being preserved. Those who benefit from the maintenance of such a state of affairs are, as a matter of

principle, entitled to claim action in restraint of illegal encroachment upon this state of affairs, or—should encroachment have taken place—to a claim to restitution. Such a claim to restitution consists in the matter under review in a claim to be permitted and enabled to return restoration to previous position, and in the second place in a claim to compensation. This corresponds to the practice of the Permanent International Court of Justice, as unmistakably expressed, in particular, in the *Chorzow case*.

ANNEXURE - IV

THE RIGHT OF DOMICILE AS AN INSTITUTION IN INTERNATIONAL LAW

(A Paper by A. W. R. Association for the study of World Refugee Problem).

Preliminary note

Among the great problems facing humanity in our days should be ranked those of the expulsion of individuals as well as of whole ethnic groups, their flight because of reasonable fear of persecution on racial, religious, political, social, or ethnic grounds, and the problems of enforced migration and resettlement. Millions of people were chased on to the roads of flight and expulsion, and it is to be feared that many more will have to follow. The questions involved have been the subject of a number of conventions, international agreements and declarations by legal subjects of international law. However, there has not yet, on the international level, been a scientific investigation into the question of whether, and to what extent, the protection from expulsion, enforced migration and resettlement constitute a relevant institution in international law and what may be regarded as internationally guaranteed.

For that reason, the International Expert Committee on "Legal Questions" within the *Association Europeenne pour l'Etude de Probleme des Refugies* (AER) and the Association for the study of the World Refugee Problem (AWR) have, for some time, made it their duty to deal with the task and to submit a comprehensive report at its meeting in Athens, between October 14 and 21, 1961, on the occasion of the Eleventh Congress of the AER/AWR. This report was dealt with at great length, and led to the establishment of those facts in international law which are common legal possession today. Besides, the Committee agreed on an additional declaration

which, though of a political character, nevertheless indicates the trend of development in international legal practice and doctrine.

This document may well create a new basis in the field of human rights and, from the standpoint of international law, help to remove the causes of flight and expulsion. Indeed, its fundamental importance lies in the fact that the concept and the content of the "right of domicile" have here been defined for the first time in the light of the present situation in international law. To be true, it has not been possible to avoid the juridical terminology which is known to be jejune at times, but it is hoped that the explanations given will be generally intelligible.

The work of the Legal Committee was shared, among others, by the following members : Professor Dr. Dimitri S. Constantopoulos, University of Salonica (now President of the Legal Committee); Professor Dr. Heinrich Rogge, Munich (discussant); Dr. et Dr. Kurt Rabl, Munich (discussant); Dr. Theodor Veiter, Feldkirch and Vienna (discussant and chairman); Dr. Henri-Bruno Coursier, head of the Law Department of the CICR, Geneva (co-discussant). The final resolution in the Committee was carried unanimously, and so was the ratification of the text by the General Assembly of the AER/AWR in Athens, on October 21, 1961.

A.

I.

The right to retain the lawfully acquired domicile without molestation, and as long as this is freely so desired, is recognized in principle as inviolable.

II.

Domicile is deemed to be lawfully acquired :

1. by a national, if acquisition is

- (a) by choice, in the free exercise of a right to freedom of movement within the framework of laws or conventions for the protection of locally established linguistic, religious, or ethnic communities (domicile of choice), or
 - (b) by derivation, in the free exercise of a right to continued residence at the domicile of the parents or legal guardian (domicile of origin), provided the aforesaid parents or guardian have lawfully acquired such domicile either by choice or derivation ; and
2. by an alien (foreigner or stateless person), if acquisition by choice or derivation is in connection with an explicit or implicit residence-permit and the absence of an internationally admissible cause for expulsion.

III.

Lawfully acquired domicile is deemed unmolested if the free exercise of the rights set forth in the United Nations Declaration of Human Rights of December 10, 1948, and in comparable international instruments is secured in law and in fact.

It is not unmolested if there is well-founded fear that these rights or the otherwise defined status of the individual groups of persons are inadmissibly curtailed by the national authorities or with their connivance (discrimination).

IV.

A person may be removed from his lawfully acquired domicile only,

1. in the case of a national : by virtue of a statute
- (a) confined to cases of detention ordered under the rule of law, and to cases of public emergency caused by floods, tempests or similar occurrences, or of imme-

diately threatening dangers to the public health, and provided that

- (b) such statute is subject to narrow interpretation and permits the person concerned to have recourse to a review of his case in accordance with due process of law in the same manner as in the case of violations of human rights and fundamental liberties;
- 2. in the case of an alien (foreigner or stateless person):
 - (a) to a different domestic location, if the removal is under the same conditions as applicable to nationals or
 - (b) to a foreign location (expulsion from the State's territory), if a temporary residence-permit is not renewed or if the removal is justifiable by internationally admissible causes for expulsion.

V.

In case of change of the supreme territorial authority, either by transfer of sovereignty, or legitimate military occupation, or by any other title, such inhabitants of the territory concerned as have, before the said change of authority, enjoyed nationals' rights must retain the same; specifically, their right to unmolested presence in the lawfully acquired domicile must continue to be secured without restriction.

The only exception to this principle is a contractual obligation of the inhabitant to leave his domicile after having freely exercised his right to opt in connection with a legitimate transfer of sovereignty.

VI.

The abandonment by an inhabitant of, and especially his escape from, the lawfully acquired domicile because of well-founded fear of discrimination (*supra*, ch. III para. 2),

such as fear of persecution for reasons of race, religion, membership of an ethnic or social group and for actual or presumed convictions, is deemed to constitute an illegal withdrawal of the right to unmolested presence at the lawfully acquired domicile.

VII

A person who has been illegally removed from, or has abandoned, his lawfully acquired domicile for the reason set forth in article VI (*supra*), may claim and has a right to restitution. Such restitution includes, but is not limited to the voluntary repatriation of the claimant to his former domicile, as well as the payment of his material damages, in which connection the principle is to be applied that the *mala fide* acquisition from a confiscator does not protect against such claims.

"Repatriation" is not limited to the mere presence in the place of former domicile; instead, unmolested presence at this place is required (*supra*, ch. III).

VIII.

The social and economic integration at the place of refuge of an illegally removed person or escape does not invalidate his claim to restitution as set forth in ch. VII (*supra*). However, a claimant must consent to a reduction of his claim by the value of any indemnification received from a third party in consequence of his removal or escape.

The aforesaid third party has a right of redress against the authorities who are responsible for, have contributed to, or have tolerated the removal or escape of the claimant.

Additional Declaration

The Committee are of the opinion that international measures inconsistent with the above rules are contradictory to the evolution of International Law, especially as it has

emerged since the Universal Declaration of Human Rights of December 10, 1948, which has to be considered to be of particular significance in International Law, as it may be said to contain an authentic interpretation of the concept of "human rights" in the sense of the UNO-Charter (articles 1 and 55) as well as since the conclusion of the four Geneva Conventions of August 12, 1949,

Accordingly, individuals as well as communities have to be protected against enforced migration or expulsion from the lawfully acquired domicile.

B.

1.

At present, a draft for the Second Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Liberties is under consideration before the Council of Europe. This draft contains, i.e., the following provisions :

Article 2 . Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Article 3 . No one shall be exiled from the State of which he is a national.

II.

Pursuant to the principles set forth above, the following amendments appear desirable :

1. ad article. 2 :

- (a) insert after the words "liberty of movement" the following : "Within the framework of laws and conventions protecting linguistic and ethnic communities" ;

- (b) insert after the word "residence" the following : "as well as to stay there unmolested in his rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Liberties and its Additional Protocols" ;

- 2. ad article 3 ; insert a new second sentence : "A person from whom the State's nationality has been withheld or who has been denationalized must not be exiled."