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from: Presidency

on : 28 February 1994

to : Working Group on Asylum

Subject: Questionnaire on the precise meaning of the term "persecution" as used in the definition of "refugee" in Article 1A of the 1951 Geneva Convention

INTRODUCTION

- At the meeting of the Working Group on Asylum on 7 and 8 February 1994 and during examination of item 2 on the agenda (harmonized application of the definition of refugee status within the meaning of Article 1A of the 1951 Geneva Convention (WGI 1633)), the question of the precise meaning of the term "persecution" was raised (Section 3.1) and a number of delegations stressed the need for further clarification and analysis of the concept.

The Presidency took the view that this was a topic of interest and considerable importance, the clarification of which would undoubtedly assist in the attempt to secure a common approach for the interpretation of the definition of refugee and it announced that it would try to produce a questionnaire on the subject for discussion by the Working Group on Asylum.

DEFINITION OF THE PROBLEM

- There is currently no universally accepted definition of the term "persecution" and various attempts to formulate such a definition have not met with the success anticipated (see paragraph 51 of the UNHCR's Handbook on the procedure and criteria for determining the status of refugee and section 3.1 of WGI 1633).

- A careful study of the various texts drawn up by the Working Group on Asylum on the harmonized application of the definition of refugee status within the meaning of Article 1A of the 1951 Geneva Convention shows that none of them analyzes the term "persecution" as a concept. The existence of persecution is merely established in relation to certain specific circumstances, such as persecution by the State or by third parties, persecution by reason of criminal prosecution, persecution and military service, persecution on grounds of religion, and so forth.

- However, what is clear from all the above documents is that the meaning of "persecution" is indissociably linked with the maintenance or loss of something to which every human being is entitled. In other words we are in substance dealing with violation of human rights.

- Some human rights - in the context of the interpretation of the term "persecution" - have a more fundamental character than others: the right to life and the right to freedom, for example. Others are less fundamental, both as regards their nature and as regards the degree to which they are protected: freedom of expression, for example, and social and economic rights.

- In the light of the above considerations two basic questions arise which require answers from the delegations.

- The Presidency considers that if the answers to the questions are to prove of use to the Group in its work, they must be supported by a theoretical approach, so that the type of human right involved is clearly apparent, in other words reference must be made to the specific content or category of the human right (e.g. right to life, right to freedom, freedom of worship, etc.).

FIRST QUESTION

- Violation of which human rights would automatically justify recognition of refugee status according to the legislation and practice of your country, in combination, of course with the further condition of "reasons of race, religion, nationality, membership of a particular social group or political opinion" contained in Article 1A of the 1951 Geneva Convention?

Give specific examples for each case.

Example:

- A applies for asylum because, as a result of his political opinions, he is repeatedly taken into custody by the State authorities and tortured.

Reference:

- Right to freedom and security and right not to be subjected to inhuman treatment.

SECOND QUESTION

- On the other hand, violation of which human rights would in your view require further investigation before a decision was taken as to whether the violation justified recognition of refugee status?

Give specific examples for each case.

Example:

- A applies for asylum because, as a result of his ethnic origin, the State authorities carry out repeated searches of his house without sufficient reason.

Reference:

- Right to respect for the private and family life of the individual.

- In conclusion, it should be noted that this questionnaire constitutes a first attempt to approach the difficult and complex subject of the substantive interpretation of the term "persecution" as contained in the definition of refugee within the meaning of Article 1A of the 1951 Convention.
