



Monday, 30 October 1967,
at 10.45 a.m.

NEW YORK

CONTENTS

	Page
Agenda item 89: Draft Declaration on Territorial Asylum (<i>con- tinued</i>)	145

Chairman: Mr. Edvard HAMBRO (Norway).

AGENDA ITEM 89

Draft Declaration on Territorial Asylum (*continued*)
(A/6570, A/6698)

1. Mr. NACHABE (Syria) said it was very much to the credit of the Sixth Committee that it had been able, in two consecutive sessions, to draw up on the question of territorial asylum, which had been under consideration by United Nations organs for approximately ten years,^{1/} the draft declaration appearing in its report to the General Assembly on the work of the twenty-first session (A/6570, annex, para. 1).
2. With respect to the preamble of the draft declaration, his delegation agreed with the change which the Working Group had made in the text adopted by the Third Committee at the seventeenth session,^{2/} replacing the word "States" in the first paragraph by the word "nations" (*ibid.*, para. 10), so as to conform, in particular, to the terms of Article 1 (2) of the Charter of the United Nations. It also supported the deletion of the words "Members of the United Nations and members of the specialized agencies" in the last preambular paragraph, as proposed by Uruguay and agreed to by the Working Group, because the declaration should be of a universal character and its scope must not be restricted (*ibid.*, para. 14).
3. The reference in article 1 to "persons struggling against colonialism" was necessary, in order both to highlight the special consideration and protection to be given to those who, in sacrificing themselves for the independence and freedom of their people, performed an international service and to take cognizance of the fact that the United Nations had on several occasions declared that the struggle of such persons against their oppressors was legitimate.

^{1/} For a more detailed account of the history of the item and a summary of the proceedings of the Commission on Human Rights, the Economic and Social Council and the Third Committee, see Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 63, document A/C.6/L.564.

^{2/} *Ibid.*, Seventeenth Session, Annexes, agenda item 46, document A/5359, annex.

4. His delegation would consider it unfortunate if article 2, paragraph 2, concerning assistance to any State which found difficulty in granting or continuing to grant asylum, were deleted from the draft, since such assistance would broaden the essentially humanitarian scope of the declaration (*ibid.*, para. 40 (d)).

5. The right of everyone to return to his country need not be the subject of an article of the declaration on territorial asylum, since it was proclaimed in article 13, paragraph 2, of the Universal Declaration of Human Rights (see General Assembly resolution 217 A (III)), which was reproduced verbatim in the third preambular paragraph of the draft declaration.

6. His delegation hoped that the proposed declaration, along with other humanitarian instruments, would serve to instill in mankind the deeper feelings which it needed so much if it was to relieve its growing sufferings.

7. Mr. VAN LARE (Ghana) said that his delegation was in basic agreement with the Working Group's recommendations for the draft declaration on territorial asylum (*ibid.*, para. 1). The declaration which it was proposed to adopt could not be a legally enforceable instrument; it would serve to underscore the humanitarian basis of the régime of asylum and set a goal to which all States must seek to advance.

8. However, his delegation was emphatic in its view that the individual did not at present possess a right of asylum under international law. The authors of the Universal Declaration of Human Rights had properly rejected a proposed wording for article 14 which would have stated that everyone had the right to seek and to be granted asylum in other countries; for it was obvious that the country of choice of the person concerned might not be prepared to receive him and that to confer such a right would be a flagrant violation of State sovereignty. The right of the State to exercise exclusive control over the individuals within its territory was indisputable under international law; that right in turn implied competence of the State to admit or refuse admission to those seeking asylum.

9. Thus, the right of asylum inhered in the State granting refuge, rather than in the individual seeking asylum. That right included the right of surveillance with regard to refugees whose activities were inimical to their State of origin. His delegation considered that aspect of the exercise of State power of particular importance in view of recent events involving its own country, and it believed that, where the State not only failed to exercise such surveillance but openly colluded with those to whom it had given asylum in subverting their State of origin, the State of refuge should be considered in violation of inter-

national law and must be held accountable for all actions taken by refugees in its territory in such circumstances. It was for that reason that, although article 4 of the draft declaration as formulated met with its approval, his delegation was somewhat disappointed that neither the Soviet Union amendment concerning the use of asylum "for purposes of espionage, subversion or sabotage against other States" (*ibid.*, para. 65 (e)) nor the formulation proposed by Brazil (*ibid.*, para. 65(a)) had been accepted by the Working Group.

10. With respect to the last preambular paragraph, his delegation felt that the words "without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons" were unnecessary, since the declaration could in no way affect contracted legal obligations; however, it was willing to agree to those words if that would help to achieve a consensus. His delegation was now in complete accord with the mention of "persons struggling against colonialism" in article 1, paragraph 1, instead of the French proposal^{3/} which it had previously preferred; for the United Nations must always remember the particular trust it exercised on behalf of those still struggling to obtain the fundamental rights which the Charter proclaimed. His delegation fully supported the formulation of article 1, paragraph 2, but its support for article 1, paragraph 3, was conditioned on the understanding that the right of the State granting asylum to evaluate the grounds for the grant of asylum was to be exercised in good faith and in a non-arbitrary manner.

11. Where article 2 was concerned, his delegation approved of the formulation of paragraph 1, on condition that the mention of persons struggling against colonialism was retained in article 1, paragraph 1. It did not believe that article 2, paragraph 2, could imply in any way the possible infringement of State sovereignty; rather, it believed that the provision improved the declaration, for there were practical examples of States which were overburdened by the influx of refugees.

12. Article 3, dealing with the principle of non-refoulement, had the full support of his delegation, which was happy to note the fair balance that had been struck. It approved of the deletion of article 5 adopted by the Commission on Human Rights (*ibid.*, paras. 77 and 78), because the right of everyone to return to his country needed no restatement in the declaration on territorial asylum. It could not support the proposed new article, as submitted either by Poland (*ibid.*, para. 79(a)) or by Uruguay (*ibid.*, para. 79(b)), since the declaration could have no effect on existing legal obligations.

13. Finally, he was hopeful that the consensus reached in the 1966 Working Group would find easy acceptance and that there would be no attempt to restrict or extend the reach of the declaration. He reserved the right to speak again on the item, should it be necessary.

^{3/} See Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 4, para. 208.

14. Mr. CIASULLO (Uruguay) said that the draft declaration was both a compromise, in that it sought to reconcile a variety of views, and a transition, in that it represented a step towards a more complete formulation. The institution of asylum owed its existence to conditions which not only were contrary to the Purposes and Principles of the United Nations Charter but impeded the creation of a true international community. Those conditions, like so many others, were a sign that fundamental human freedoms were not yet universally recognized, either in law or in the minds of men. The Committee should take note of the existence of racial discrimination, religious intolerance and political persecution and should recommend to the Assembly a declaration on the subject which would lead in the future to the adoption of binding rules of law, set out in a convention. His delegation understood the cautious approach adopted by the Committee, which must concentrate on formulating rules of law, rather than regulating international relations, but it wished to emphasize that, in its desire for a free world, it hoped that the institution of asylum would soon become a historical anachronism.

15. His delegation supported the draft declaration prepared by the Working Group, and commended the Group on the outcome of its work. That did not mean, however, that it had abandoned its view that the concept of asylum, which was treated in the draft declaration as comprising only territorial asylum, should be broadened to encompass the concept traditionally accepted in Latin America and governed by the peremptory rules to be found in a whole series of inter-American conventions dating back to 1889 and culminating in the Conventions on Diplomatic Asylum and on Territorial Asylum concluded at Caracas in 1954. Those conventions, which gave the State granting asylum the right to evaluate the nature of the persecution and to determine the urgency of individual cases, had impelled Uruguay to enact rules of municipal law concerning both diplomatic and territorial asylum that went beyond the international norms to which it had subscribed. His delegation hoped that the concepts applicable to persons seeking asylum because of their political, philosophical or social convictions would in due course be developed in the context of a convention concluded by all the members of the international community.

16. In the view of his delegation, a paragraph providing that asylum should be terminated by reason of activities on the part of the person enjoying asylum which were directed towards the use of force or violence against his State of origin should be added to article 3 of the draft declaration. Similarly his delegation would like provision to be made for express or tacit renunciation of his status by the person enjoying asylum; express renunciation would occur if he requested the State of refuge to grant him the status of a permanent resident, and tacit renunciation would occur if he crossed the frontier of the country of asylum for the purpose of moving to another country. That was what the Commission on Human Rights had proposed in article 5 of its draft declaration, although in a form with which his delegation did not agree. In deciding to omit that article, the

Working Group had rightly pointed out that article 13 of the Universal Declaration of Human Rights, to which the article being deleted had related was reproduced in the preamble of the draft. Nevertheless, his delegation believed that a new wording could be found to cover renunciation of the status of a person enjoying asylum.

17. In conclusion, he emphasized that adoption of the draft declaration would not constitute implementation of General Assembly resolution 1400 (XIV); the

topic would still have to be included in the programme of work of the International Law Commission as a priority item, with a view to the preparation of a draft codification relating to article 14 of the Universal Declaration of Human Rights, taking into account all the rules which were operative in Latin America, the draft declaration currently under consideration, and the debates of the Sixth Committee.

The meeting rose at 11.25 a.m.