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MEETING**

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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 42

Office of the United Nations High Commissioner for Refugees (concluded):

- (a) Report of the High Commissioner (A/5211/Rev.1 and Add.1, A/C.3/L.1031/Rev.1);
- (b) Question of the continuation of the Office of the High Commissioner (A/5186)

CONSIDERATION OF DRAFT RESOLUTIONS (concluded)

The problem of Chinese refugees in Hong Kong (concluded)

1. Mr. REDONDO (Costa Rica), explaining his delegation's vote (1191st meeting), stated that in voting for the draft resolution on the problem of Chinese refugees in Hong Kong he had considered only the humanitarian aspects of the question, disregarding the secondary considerations advanced by the USSR delegation. The pressing needs of the refugees in Hong Kong were abundantly clear, and attempts to minimize them could not be accepted by his delegation, which was prepared to support any action to alleviate the refugee problem in any part of the world. It was lamentable that the question of refugees in Hong Kong should have given rise to acrimonious debate in the Committee and that the motives of some delegations should have been impugned. His own delegation had followed solely the dictates of its conscience.

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5)

STATEMENT BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

2. Mr. SCHNYDER (United Nations High Commissioner for Refugees) said that his Office attached great importance to the draft Declaration on the Right of Asylum (E/3335, para. 147). The adoption of a declaration would be a reaffirmation by the peoples of the United Nations of their faith in fundamental human rights, but the document would be of value only to the extent that it expressed, for the guidance of States, positive principles reflecting such practice as would protect and promote the right to seek asylum, enshrined in the Universal Declaration of Human Rights. Ideally, therefore, the principles embodied in it should be stated without qualification, since the listing of every situation in which States might be unable or unwilling to act in accordance with those principles would reduce the Declaration to an expression of the lowest common denominator of State practice and would tend to weaken, rather than strengthen, respect for the right to seek asylum. The fact that the Declaration, being exhortative rather than legally binding, could not infringe on the right of States also made it unnecessary to list all exceptions.

3. That point was particularly important with respect to the principle of non-return of persons seeking asylum set forth in article 3 of the draft Declaration, where it must be stated clearly and unambiguously that persons whose right to seek and enjoy asylum had been recognized by the Universal Declaration of Human Rights should not be subject to measures which might result in their persecution. The Commission on Human Rights had agreed that any qualification of that principle must be in the nature of an exception to the general rule, and the draft Declaration would be much more impressive if such exceptions were not specifically mentioned; it should be remembered, if any such mention was considered essential, that each exception would weaken the draft Declaration and, by appearing more important than the principles themselves, might destroy its value. For the persons affected, the granting of asylum was a condition for the enjoyment of all other human rights, and he hoped that the Declaration as adopted would be a worthy corollary to the Universal Declaration of Human Rights.

GENERAL DEBATE

4. Mr. BOUQUIN (France) remarked that the concept of asylum was very old and widely recognized. It had existed in ancient times, when the temples and

sanctuaries had served as places of refuge for fugitives, and in the Middle Ages it had been inherited by the Church and the sovereign. It had first been given formal recognition in 1833 in an international instrument between France and Switzerland on the extradition of criminals, which had expressly excepted political offenders from extradition. That the principle was widely recognized was evident from the "Comments of the United Nations High Commissioner for Refugees on the draft Declaration on the Right of Asylum proposed by France" (E/CN.4/785), which contained a long list of countries of differing governmental systems whose constitutions or laws included provisions relating to the granting of asylum or which had stated officially that they granted asylum as a matter of custom and tradition.

5. The upheavals in Europe in the present century had, however, profoundly changed the problem substantively and quantitatively. Today, first, the human person had to be protected from unjustifiable violence and, second, because of the mass exodus of hundreds of thousands of persons, what had been an exceptional occurrence had become a situation calling for international assistance.

6. The problem had come before the Commission on Human Rights as long ago as 1947, and an article on the right of asylum had been included in the Universal Declaration of Human Rights adopted in 1948 (General Assembly resolution 217 (III), article 14).

7. Subsequent attempts by the French delegation to give compulsory force to the principle contained in that article had proved fruitless. However, since there was room for other measures between temporary expedients and a legally binding instrument, Mr. René Cassin, the French representative, had originally submitted the proposal for a draft Declaration on the Right of Asylum at the thirteenth session of the Commission on Human Rights.^{1/} That text, with amendments submitted to it, had been referred to Governments, the specialized agencies and the United Nations High Commissioner for Refugees for comments, in the light of which the representative of France had presented a revised draft Declaration at the Commission's fifteenth session.^{2/} The latter, after it too had been communicated to Governments, the specialized agencies and the High Commissioner, had been discussed at length at the sixteenth session of the Commission on Human Rights, when the draft Declaration now before the Committee had been adopted by 12 votes to none, with 3 abstentions (E/3335, paras. 143-147).

8. In presenting the original draft Declaration the French delegation had been guided by several principles. It had felt that what was required was a document in which the emphasis would be on humanitarian considerations, which would entail no legal commitments for States and which could be applied in all countries and continents. For that reason the draft Declaration dealt only with the general right of asylum for persons who were persecuted or threatened with persecution. It was a humanitarian and universal text but also one which reflected present conditions. In that connexion it was necessary to distinguish between the question of the right of asylum and that of refugees, since not all refugees were entitled to

claim the right of asylum. However, since the people who sought asylum might subsequently become refugees, the United Nations High Commissioner for Refugees was also rightly concerned with the problem.

9. The French delegation felt that the text of the draft Declaration before the Committee was not altogether ideal, since, as that delegation had stressed in a previous statement (1179th meeting), it represented a compromise and was much weaker than the original French draft. Two ideas which had been strongly expressed in the latter—the role of the United Nations and a definition of persons entitled to seek asylum—were not to be found as such in the present draft. However, the main French ideas had been retained.

10. Analysing the text, he pointed out that article 1 reconciled respect for the sovereignty of States with the need to provide protection for persons seeking asylum. Article 2 recalled the duties of States and of the international community and solemnly recognized that the problem was one of international solidarity. Article 3, to which the United Nations High Commissioner for Refugees attached great importance, and rightly so, since it stated the principle that a person seeking asylum could not be returned or expelled, was perhaps not ideal, but there had been many divergent views and the present text was therefore necessarily a compromise. Article 4, which stated that persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations, might, it was true, be supplemented by a reference to the duties of such persons towards the country of asylum. However, it was not strictly necessary, for the counterpart of a simple moral duty of States should only be a duty of the same kind; besides, that question was generally settled by the terms of national legislation. Finally, in the case of article 5, it was difficult to see how the right of everyone to return to his country could be prejudiced by any article of the draft Declaration.

11. The French delegation was thus prepared to accept the draft Declaration, which was already a compromise text, as it stood, and would oppose any amendments that might tend to weaken it further.

12. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) observed that the right of asylum was widely recognized in international law and embodied in the legislation of many countries, including her own. Article 129 of the USSR constitution stated that the country afforded the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for scientific activities, or for struggling for national liberation. The institution of asylum was clearly a progressive one, and the idea of reaffirming it in international instruments deserved full support.

13. Her delegation accordingly had no objection to the elaboration of a declaration on the right of asylum. It felt, however, that the question was highly complex and required thorough consideration. The draft Declaration now before the Committee had its merits and offered a suitable basis for discussion, but it was not without serious shortcomings.

14. Her delegation believed that it would be useful to insert as a first preambular paragraph a text on the following lines: "Noting that the principal objectives stated in the United Nations Charter are the maintenance of international peace and security and

^{1/} See Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 4 (E/2970/Rev.1), para. 208.

^{2/} *Ibid.*, Twenty-eighth Session, Supplement No. 8 (E/3229), para. 67.

the development of friendly relations between all States". Such a passage would make it clear from the outset that the right of asylum was being viewed from the standpoint of the Charter's basic provisions and that the practice of States in the matter of granting asylum should be oriented accordingly.

15. A serious defect of the draft Declaration was its failure to establish a legal foundation for the institution of asylum. The draft did not say whether the right of asylum was an unconditional right of the individual or whether it was the prerogative of a State to accord or refuse it. In the discussion of the question of asylum which had taken place during the consideration of agenda item 45 (1179th and 1180th meetings), there had been some confusion and some difference of opinion on that matter. She believed that the view most in keeping with existing practices and the tenets of international law was that a person suffering persecution had a right to seek and enjoy asylum, but that the granting of asylum came within the competence of the State. If the majority of the Committee shared that view it would be well to state it explicitly in the draft Declaration, in order to avoid wide divergencies in application.

16. The draft failed also to say who had the right to enjoy asylum or, conversely, what activities merited the granting of asylum. While her delegation would gladly support a document defending persons who were persecuted for activities based on progressive ideas, it would emphatically object to a document that would protect undesirable elements, including the war criminals of the Second World War who had committed such heinous crimes against mankind. Thus her delegation believed it essential to define the categories of persons who might enjoy the right of asylum under the draft Declaration, and also to insert special provisions to avert the granting of that right to criminals.

17. The view stated earlier in the session that insufficient attention was being paid to the practices of African States was particularly relevant to the item under discussion. In that connexion, the draft Declaration should have a separate article stating that States should consider favourably the granting of asylum and the provision of related aid and support to persons persecuted because of their participation in the anti-colonial struggle and to victims of colonial repression. Such an article should cause no difficulty as it stemmed from the Charter of the United Nations, the Universal Declaration of Human Rights and other United Nations documents and decisions.

18. In the discussion of the draft Covenants on Human Rights her delegation had proposed a new article stating that persons granted asylum should not be employed for purposes of espionage, subversion or sabotage against other States (A/C.3/L.1013). She believed such a provision to be essential to the draft Declaration also, for the world was at present witnessing wide-spread attempts to misuse the right of asylum to the detriment of world peace and friendly relations among States. In addition, it was generally recognized in international law that the right of asylum was designed to defend persons who suffered persecution and was not to be used to foster hostility against other countries. That position was maintained by such eminent authorities on international law as Bluntschli, Fauchille, Sibert, Lapradelle and Niboyet. By filling that gap in the draft Declaration, the Com-

mittee would clearly evince its desire to aid persons in need of refuge while discouraging the use of the institution of asylum to exacerbate relations between States.

19. Mr. ZULOAGA (Venezuela) remarked that the United Nations High Commissioner for Refugees had the greatest practical experience of the matter under discussion, and the Committee should endeavour to adopt a declaration which would meet his wishes. The High Commissioner had stated that the Declaration would not be a legally binding instrument; if that was indeed so, the Committee's work would be in vain. In his own view, the point was highly debatable; the International Law Commission, in the draft articles on the law of treaties adopted at its fourteenth session, had defined the word "treaty" as including a declaration and had stated in its commentary on the draft articles that "the juridical differences, in so far as they really exist at all, between formal treaties and treaties in simplified form lie almost exclusively in the field of form, and in the method of conclusion and entry into force".^{3/} He therefore took the view that countries signing a declaration were not merely giving a moral pledge and agreeing to use their powers of persuasion, but were assuming obligations which existed even if there was no international court to enforce them.

20. His delegation considered it very important to give wide publicity to texts relating to human rights, as has been done in the case of the Universal Declaration. With proper publicity, a declaration could have a much greater effect than a formal treaty, and he wondered whether the High Commissioner should not be authorized to publicize the Declaration on the Right of Asylum, once it had been adopted.

21. The preceding speakers had referred to certain weaknesses in the text submitted by the Commission on Human Rights. One of its greatest weaknesses was the fact that part of the preamble and some of the articles were based on article 14 of the Universal Declaration of Human Rights, which had been an unsatisfactory compromise owing to the failure to reach agreement on the thorny question of national sovereignty. His country recognized in its constitution the right of asylum for persons persecuted for political reasons; but if the right of such persons to be granted asylum was not universally recognized, it was difficult to see how they could exercise their right to enjoy asylum. The Committee should regard as a minimal text the draft Declaration submitted to it, and any amendments should be designed to strengthen it, so that the High Commissioner could perform his functions in that connexion with the success which had attended his other activities.

22. Mr. BARODY (Saudi Arabia) said that certain words in the text of the draft Declaration appeared vague or inappropriate; he hoped that delegations which were members of the Commission on Human Rights could provide some clarification. In article 2, the word "impelled" would be more felicitous than "forced", since political refugees usually fled the country secretly. The word "well-founded" in the same article was undefined and should be omitted, unless another adjective could be found to replace it, bearing in mind that the Declaration might one day serve as the basis for a convention. The phrase

^{3/} See Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209), p. 5.

"safeguarding of the population" in article 3 was somewhat ambiguous, even in a declaration that would not be legally binding; it was not clear whether it referred to matters of health, employment or overpopulation or to some other factor, and it might be used by any country as an excuse to refuse asylum. With respect to article 4, while a reference should be made in the Declaration to the purposes and principles of the United Nations, it seemed wrong to link them to the activities of persons enjoying asylum, since under the Charter everyone—individuals as well as States—was expected to act in accordance with the

purposes and principles. The USSR representative had made some relevant comments in that connexion, for the practice of using refugees to achieve certain ends in the States from which they had come constituted a greater threat than in earlier times, when such refugees had been much fewer in numbers.

23. The right of asylum was a deep-rooted tradition in the Arab world, and he hoped that the draft Declaration would be carefully studied and improved before it was adopted.

The meeting rose at 12.15 p.m.

United Nations
**GENERAL
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SEVENTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1193rd
MEETING**

Monday, 26 November 1962,
at 3.15 p.m.

NEW YORK

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*Chairman: Mr. Nemi Chandra KASLIWAL
(India).*

In the absence of the Chairman, Mr. Albuquerque Mello (Brazil), Vice-Chairman, took the Chair.

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5) (continued)

GENERAL DEBATE (continued)

1. Mr. LEIRO (Norway) shared the view expressed by the United Nations' High Commissioner for Refugees (1192nd meeting), namely, that the right of asylum was a prerequisite for the enjoyment of all other rights for persons fleeing from persecution. That right had always occupied the attention of the United Nations, and the General Assembly had proclaimed it in 1948 in the Universal Declaration of Human Rights (resolution 217 (III)).
2. Since, at the present time, it did not seem possible to embody the right of asylum in a legally binding instrument such as a convention, it had been considered advisable to prepare a draft declaration recognizing the need for protection of persons fleeing from persecution. The authors of that draft had succeeded in reconciling the legitimate concern of States with the safeguarding of their authority and the interests of persons seeking asylum. In its present form, the text of the draft Declaration on the Right of Asylum (E/3335, para. 147) did not impose any legal obligations on States, whose sovereignty it respected, while at the same time encouraging them to adopt a liberal attitude.
3. His delegation thought that some changes, chiefly with respect to form, might be made in the draft. For that reason, it had submitted, together with the Togolese delegation, a number of amendments (A/C.3/L.1035). Those which it proposed for article 2, paragraph 1, and article 3, paragraph 1, were aimed at bringing those paragraphs into conformity with article 1. The change in article 2, paragraph 2, was designed to remedy the omission in that article of any reference to the original granting of asylum. With respect to article 3 of the draft Declaration, the amendment calling for the replacement of the word "should" in the English text by the word "shall" was based on the practice followed in the Universal Declaration. Moreover, both his delegation and the Togolese delegation

felt that the phrase "except for overriding reasons of national security or safeguarding of the population" might be used by States as a pretext for justifying the adoption of restrictive practices. The co-sponsors therefore proposed its deletion. It might also be questioned whether it was advisable for a mere declaration to include references to possible exceptions to a general principle; in any case, exceptions should be confined to considerations of national security or the threat presented by a mass influx of refugees. Accordingly, the sponsors had proposed the insertion of a new paragraph 2 in article 3. They had also changed former paragraph 2, which became paragraph 3, by omitting the idea of provisional asylum, which had no recognized meaning in international practice, so that the persons in question might always be given the opportunity to seek asylum in another country.

4. The sponsors of the amendments had no objection to the insertion of the word "territorial" before the word "asylum" in the title of the draft, in accordance with the wish expressed by some delegations that diplomatic asylum should be excluded from the scope of the Declaration.
5. The CHAIRMAN said that if the Committee had no objections, he would like to invite the Rapporteur to take the Chair so that he himself could speak as representative of Brazil.

Mrs. Sivomey (Togo) Rapporteur, took the Chair.

6. Mr. ALBUQUERQUE MELLO (Brazil) thought that the draft Declaration should be considered carefully and above all without reference to any considerations of national policy; otherwise it would be preferable that asylum should continue to be governed by the customary law which most States observed.
7. Since the problem of asylum was connected, on the moral and philosophical level, with the protection of the life and liberty of the individual, that might justify the preparation of a legal document codifying the various forms of asylum; but such a work would encounter a number of obstacles, due, first, to various *de facto* situations, and, second, to the increasing difficulty of drawing a sharp distinction between the beneficiary of asylum—which was originally purely political—and the refugee, who was the victim of vast social movements, resulting from struggles in which he often had no part. In addition, there were two opposite schools of thought with respect to State sovereignty: some considered the granting of asylum to be an act of sovereignty of which the State should be the sole judge, whereas others, viewing the matter from the standpoint of the protection of the individual in the international community, regarded asylum as a duty of the State.
8. For that reason, although the right of asylum was enunciated in article 14 of the Universal Declaration of Human Rights, it was premature to attempt to codify

it on the international level by means of a convention or special articles in the draft International Covenants on Human Rights. All that could be done was to state humanitarian principles, generally recognized in practice by States, in a declaration which would represent a step towards the establishment of binding international rules.

9. Because of the revolutionary political movements which had arisen in their continent, the countries of Latin America possessed broad experience of the right of asylum, and the Conventions on Territorial Asylum and on Diplomatic Asylum, which had been adopted in 1954 by the Tenth Inter-American Conference,^{1/} were the only two texts which codified that text on the international level, and only on the regional level at that. The Convention on Territorial Asylum was based, first, on the fact that the Latin American States made no legislative or administrative distinction between foreigners in general and refugees, and, second, on the right, recognized by them, of a refugee's State of origin to require restrictions, which might amount to administrative internment, to be placed on his freedom of movement. In its first article, the Convention also affirmed the sovereignty of the State, and he thought that by proclaiming the right of everyone to "seek" asylum, article 14 of the Universal Declaration of Human Rights represented a compromise between the concept of asylum as a right of the State and that of asylum as a right of the individual and a duty of the State. Moreover, it should not be forgotten that in codifying the right of asylum, the States of Latin America had had in mind the traditional political asylum granted to certain individuals and not the asylum which in some parts of the world had to be granted to large groups following ideological, racial or religious conflicts.

10. His delegation thought that the draft Declaration should refer solely to territorial asylum and not to diplomatic asylum or that granted in aircraft, aboard naval vessels and in military camps. It would not be advisable to apply some of the articles of the draft Declaration to diplomatic asylum; moreover, that form of asylum was primarily a Latin American practice and was not recognized by many countries, notably the European countries. A declaration on territorial asylum would relieve the High Commissioner's immediate concern, for it would lay down principles concerning the situation of the person benefiting by asylum vis-à-vis the host State and it would also be in full conformity with article 14 of the Universal Declaration, which obviously referred only to territorial asylum. It should not be forgotten, moreover, that the International Law Commission had included the right of asylum in the list of topics chosen for codification and that the Assembly, by its resolution 1400 (XIV), adopted at its fourteenth session, had requested it to undertake, as soon as the Commission considered it advisable, the codification of the principles and rules relating to the right of asylum. The draft Declaration, therefore, represented only a temporary stage and would be subsequently absorbed in a more general document. His delegation accordingly recommended the addition of the word "territorial" in the title of the draft Declaration.

11. He also wished to explain his position with respect to article 3 of the draft. He thought that if extradition

of an individual was sought for ordinary law crimes unconnected with the political acts which had caused him to flee a country, the host State was justified in handing him over, since acts coming within the category of violations of ordinary law ought not to remain unpunished. That principle was also brought out in article 14, paragraph 2, of the Universal Declaration of Human Rights. Although it was doubtless impossible for the draft Declaration to be sufficiently detailed to define acts which were both political crimes and crimes under ordinary law, it should nevertheless allow the host State a certain amount of discretion in granting asylum.

12. With respect to article 4, he did not consider it appropriate, technically speaking, that an article of a declaration intended for States should be addressed to the individual. Moreover, he did not think it was sufficient to mention only those acts which were contrary to the Purposes and Principles of the United Nations, while disregarding activities involving violence directed against the State of origin, which were particularly dangerous if the latter was a neighbour of the State of refuge. He proposed, therefore, that article 4 should be replaced by the following text:

"On the request of the interested State, the State granting asylum should, by means established in its legislation and in accord with agreements in force, prevent the person enjoying asylum from engaging in activities involving the use of force or violence against the State of origin, as well as from engaging in activities in violation of the Purposes and Principles of the United Nations."

That amendment, which did not introduce any new idea, corresponded to regular practice as well as to the provisions of the inter-American convention then in force.

13. It was his delegation's hope, in making those few comments, to help the Committee to find some common denominator among the various existing views with respect to the right of asylum, recognition of which would serve to promote respect for human rights.

14. Mr. EL FASSI (Morocco) welcomed a draft declaration on the right of asylum, for the concept of asylum was very dear to his people and Government. Morocco had always been a land of asylum, and Moroccans themselves had been able to enjoy the right of asylum when they had sought their national liberation, and thus had been permitted some political activity without any restraint and oppression.

15. He was also pleased to note that the draft Declaration took account of the right of every State not to grant asylum if such asylum was likely to endanger its national security or the safeguarding of its population and its relations with other States. He recalled that his delegation had made reservations on that point (1180th meeting) when the USSR delegation had proposed that an article on the right of asylum should be added to the draft Covenants.

16. For the foregoing reasons, Morocco was prepared to vote for the draft Declaration, which was in accord with the provisions of its new constitution, its legislation, and its age-old practice.

17. He also approved of the text of the new paragraph 2, proposed for insertion in article 3 by the delegations of Norway and Togo, which would strengthen the reservations previously made by the Moroccan delegation.

^{1/} Organization of American States: Law and Treaty Series; Convention on Territorial Asylum, and Convention on Diplomatic Asylum, both signed at the Tenth Inter-American Conference, Caracas, March 1-28, 1954 (Pan American Union, Washington, D.C., 1954).

Mr. Albuquerque Mello (Brazil) resumed the Chair.

18. Mr. PICO (Argentina) wished first to commend the French delegation and Mr. Cassin, one of its most eminent members, for having proposed the draft under consideration, which developed and completed the provisions of article 14 of the Universal Declaration of Human Rights. The warm welcome accorded to that proposal both by the Governments which had been consulted by the Commission on Human Rights and by the Commission itself—which had introduced some amendments but had not changed the spirit of the preliminary draft before it—showed that, despite differences of opinion, the community of nations was deeply concerned with the definition of the principles governing at the international level the institution of asylum, which was so important today. The experience of the Latin American countries in the matter deserved to be taken into consideration: the Governments of those countries had always been ready to grant asylum, and the legal rules which they had formulated on that subject at various times should be regarded as useful precedents when an international definition of asylum was undertaken. The brilliant statement made by the Brazilian delegate had been sufficiently eloquent on that point, and therefore he would simply recall that his country had, from the beginning of its existence as a nation, maintained a liberal and generous policy with respect to territorial asylum.

19. The text under review, the scope of which should undoubtedly be limited to territorial asylum, struck a happy balance among the various principles on which its provisions were based. Article 1 established the right of every person to seek and enjoy asylum in accordance with article 14 of the Universal Declaration of Human Rights, in instances of persecution, excluding cases of prosecutions arising from non-political crimes or from acts contrary to the Purposes and Principles of the United Nations; in the first paragraph of article 2, the concept of persecution was clarified and expanded so that it also included well-founded fear of persecution. Second, article 1 clearly imposed on States the duty to respect asylum granted—a duty corresponding to the right of everyone to seek and enjoy asylum. Lastly, it stated the well-established principle of international law that asylum was granted by the State in the exercise of its sovereignty, a principle which was reaffirmed by the words "without prejudice to the sovereignty of States" in article 2.

20. Article 2 proclaimed the concern of the international community for persons who had to seek asylum, without prejudice—as he had stressed—to the sovereignty of States, and invited States individually or jointly or through the United Nations to consider appropriate measures to alleviate the situation of the persons concerned.

21. Article 3 provided a slight restriction of the absolute discretionary authority of the State in the matter of asylum. In that connexion, he believed it might be helpful to analyse the legal characteristics of asylum. Any State could, in the exercise of its sovereignty, grant asylum to a given person: a relationship was then established between that person and the State, under the domestic law governing the status of the recipient of asylum in the host country. At the international level, it seemed more difficult to define the legal relationship arising from asylum: where actually were the specific rights and obligations between States which constituted the characteristic feature of all international law? They could be dis-

covered only by looking at the question from a negative viewpoint and imagining a case in which a State intervened against the granting of asylum by another State. It was then that the principles of the draft Declaration would come into play. Asylum granted on the conditions laid down in article 14 of the Universal Declaration of Human Rights must be respected by other countries, and any State which intervened against the granting of asylum would infringe the provisions of the draft Declaration. Hence a moral obligation not to act was imposed on the other States, and the correlative of that duty was a right *erga omnes* possessed by the State of asylum. That legal relationship among States led to the recognition of a principle of protection of the individual and, with the force which attached to a declaration, ensured the defence at the international level of an individual interest, which the community of nations wished to surround with the greatest possible number of safeguards. In fact, it was the individual who benefited from the negative obligations imposed on States, in the sense that no State, not even the State of origin of the person concerned, could intervene at any time in the decision of the State that granted asylum.

22. His delegation believed that, if the principles in the draft Declaration were made obligatory, the State granting asylum would become an agent of the international community, in that it would be responsible for assuring to the individual safeguards which met the wishes of the international community. Article 3 laid down a highly humanitarian principle which, however, had not yet acquired any obligatory force in public international law. It was nevertheless desirable to proclaim it in a declaration and to impose on States the moral obligation not to return or expel a person when such action would result in compelling him to return to, or remain in, a territory, if there was well-founded fear of persecution endangering his life, physical integrity or liberty in that territory. In such circumstances, no one should refuse to grant asylum—if only provisionally—to enable a person to secure final admission to another country ready to accept him, on the understanding that the humanitarian principle would not have to be respected if the person seeking asylum endangered the national security or the population of the country in question, for the first duty of the State was to watch over the security and well-being of its nationals. Article 3 was certainly the most important article in the draft and the one which the Commission on Human Rights had had the most difficulty in preparing. It represented a carefully weighed compromise between different views and it was to be feared that, if amendments to that text were submitted now, the Committee would be faced with the same problems which the Commission on Human Rights had had such difficulty in resolving.

23. He agreed with the French representative that article 4 dealt with a question which in practice came within the domestic legislation of States. At the same time, his delegation understood the reasons why the authors of the draft had considered it wise to include such a provision in their text. Nevertheless, the objections raised by the Brazilian representative had much force, and the Argentine delegation fully supported the new version he proposed.

24. As regards article 5, he did not see how the draft Declaration could be interpreted as limiting the right of everyone to return to his country.

25. He found the draft Declaration acceptable on the whole. Without modifying existing international law, the text enunciated humanitarian principles worthy of the greatest respect, to which his delegation fully subscribed. If the draft had affected principles of international law, he would have deemed it his duty to remind the Committee that the International Law Commission was responsible for codifying the international law governing the subject of asylum and that interference in the careful and serious work of that body should be avoided.

26. Mrs. MANTZOULINOS (Greece) welcomed the statement by the United Nations High Commissioner for Refugees concerning the great importance attached by the latter to the draft Declaration on the Right of Asylum; she also thanked the French representative for the information he had provided on the background of the draft (1192nd meeting), which had been initiated by the French delegation at the thirteenth session of the Commission on Human Rights.

27. She approved in principle of the text of the draft. However, she wished to submit a few amendments.^{2/}

^{2/} Subsequently circulated as document A/C.3/L.1037.

Feeling that the concept of "well-founded fear of persecution" was not clearly defined in article 2, paragraph 1, she proposed that those words should be followed by: "as provided for by article 14 of the Universal Declaration of Human Rights".

28. Her second amendment related to article 4. Her delegation questioned the need for that article and would prefer to have it deleted; however, if a majority of the Committee favoured its retention, her delegation would amend it, for the expression "activities contrary to the Purposes and Principles of the United Nations" was too broad and did not meet its conception of the duties and responsibilities of persons vis-à-vis the State which gave them asylum. It therefore proposed that the following words should be inserted between the words "activities contrary to" and "the Purposes": "the national security or public order ("ordre public") of the State granting asylum and".

29. She hoped that the Committee would find it possible to accept those amendments, which were consistent with the right of a person to seek asylum and the right of a State to grant asylum while safeguarding its sovereignty.

The meeting rose at 4.15 p.m.

United Nations
**GENERAL
ASSEMBLY**

SEVENTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1194th
MEETING**

Tuesday, 27 November 1962,
at 3.25 p.m.

NEW YORK

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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1035-1039) (continued)

GENERAL DEBATE (concluded)

1. Mr. MISHRA (India) recalled that his delegation had followed very closely the work of the Commission on Human Rights which had culminated in the draft Declaration on the Right of Asylum (E/3335, para. 147) and had contributed to it as much as possible. It was a generally accepted principle of international law that an individual had no right of asylum and the State had no duty to grant asylum. At the present stage of development of positive international law, all that could be said was that a State was competent to grant asylum if it so pleased. There was a clear difference between a duty and a competence, and he quoted on that point article 2 of the Convention on Diplomatic Asylum,^{1/} according to which every State had the right to grant asylum but was under no obligation to grant it or to state the grounds for refusing it.

2. Although many constitutions granted it, it could not be said that the right of asylum had become a general principle of law recognized by States and as such forming part of international law. Certainly, article 14 of the Universal Declaration of Human Rights dealt with the right of asylum, but the Universal Declaration was not legally binding, and it did not confer on individuals the right to receive asylum. Therefore, despite its undeniable humanitarian aspects, the institution of asylum had not yet been raised to the level of a human right. For the present, it could be defined as a competence of the State, which was free to authorize an individual to enter and reside in its territory under its protection.

3. The Commission on Human Rights had taken into account the diverging opinions on that subject and had produced a text which, as the French representative had stressed, dealt with the humanitarian and general aspects of the question rather than with its legal

^{1/} Organization of American States: Law and Treaty Series; Convention on Diplomatic Asylum, signed at the Tenth Inter-American Conference, Caracas, March 1-28, 1954 (Pan American Union, Washington, D.C., 1954).

aspects and attempted to bring about a compromise between the two opposing views. For its part, the Indian delegation could, on the whole, support the text before the Committee, as long as the balance achieved by the Commission on Human Rights between the concept of State sovereignty and humanitarian considerations was maintained.

4. The preamble and articles 1, 2 and 5 of the draft Declaration were satisfactory and his delegation could vote for them. Articles 3 and 4 might be better drafted and so worded as to avoid all risk of controversial interpretation. Article 3, for example, to which his delegation had no objection in substance, was not entirely clear. The idea to be expressed could be put in a new paragraph worded as follows:

"A State may, if it deems necessary in the interest of its national security or public order, subject persons seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights to the measures referred to in clause 1 of this article."

5. Article 4 raised the question whether the rights and obligations created by the United Nations Charter applied to individuals. The practice of States differed in that regard; in his delegation's view, a treaty affecting private rights became an integral part of the law of the land only if it was implemented through appropriate national legislation. As the United Nations Charter was not part of Indian domestic law, he could not support the present wording of article 4 and suggested replacing it with the following text: "Persons enjoying asylum should not engage in activities contrary to internal laws and to the international obligations of the State which has granted asylum".

6. In conclusion, he emphasized that the Committee would be well advised to try to improve upon the compromise text before it rather than to seek to introduce new and controversial ideas.

7. Sir Douglas GLOVER (United Kingdom) said that he had already indicated, in his statement on the new article which the USSR proposed for inclusion in the draft Covenant on Civil and Political Rights (1179th meeting), that his delegation supported the notion of the right of asylum defined in article 14 of the Universal Declaration of Human Rights, according to which the individual had the right to ask for and, if it was granted, to enjoy asylum, the State being free to grant or to refuse asylum. It also considered that a declaration on the subject was desirable and that the work of the Third Committee on the point was quite distinct from that of the International Law Commission, which pursued long-term objectives. He understood that the High Commissioner should consider it important to reduce cases of "refoulement" to a minimum but, given the danger to any State inherent in its acceptance of persons who seemed at first sight to be bona fide refugees, it was clear that only the receiving State could

decide whom it would admit. It would not be reasonable to invite it to give up its right of decision.

8. The draft Declaration had demanded much hard work and a great spirit of compromise, for it was never easy to reconcile conflicting views born of different traditions of law and practice, all of equal validity. As it stood, it was not perfect—it was less satisfactory even than the revised preliminary draft submitted by the French delegation at the fifteenth session of the Commission on Human Rights^{2/}—but his delegation could support most of it, and also most of the amendments submitted. He would be happy to agree to an amendment, as proposed by the representatives of Brazil and Argentina (1193rd meeting), making it clear that the subject of the draft Declaration was territorial asylum. He had no criticism of the preamble.

9. Article 1 satisfied him because it achieved a fair balance between the differing opinions as to the nature of the right of asylum and expressed clearly and concisely a notion which, from both the legal and the pragmatic points of view, he believed to be correct. Article 2 was acceptable but could be improved. As regards paragraph 1, he supported the amendments proposed by Norway and Togo (A/C.3/L.1035) which improved the uniformity of the text; the reference to article 14 of the Universal Declaration of Human Rights in article 2 and in article 3 was logical. As regards article 2, paragraph 2, his delegation considered that the first amendment of Norway and Togo was neither necessary nor desirable: it was the sovereign right of a State to decide whether to grant asylum; if it decided to grant asylum, the original paragraph met the point adequately, and if it did not, it was not a State granting asylum, so that the suggested new text would be inappropriate.

10. As regards article 3, his delegation thought it immaterial whether the verb was "should" or "shall". The last part of sub-paragraph (a) and sub-paragraph (b) of paragraph 2 of the amendments of Norway and Togo went together and his delegation welcomed and supported them. The phrase "safeguarding of the population" was indeed capable of a very wide interpretation and seemed to rob article 3 of much of its force; the new formulation met the requirements of the situation very well. Every State reserved to itself the right to refuse entry to anyone who in its judgement was a common criminal, a political agitator, a moral danger or a carrier of disease. Similarly, a State must have some defence against a mass influx which might have a very serious effect on the economic and social well-being of its population. As the Chinese delegation well knew, that was the sole reason why, when the normally large stream of immigrants into Hong Kong had become a torrent, many had had to be turned back. The text in sub-paragraph (c) of paragraph 2 of the amendments submitted by Norway and Togo was more satisfactory than the original. Perhaps the sponsors might add after the word "consider" the words "the possibility of".

11. Article 4 of the original text seemed to be both redundant—because it stated an obvious principle, and dangerous—because what it omitted might be taken as a licence to repress a whole range of liberties which no one should be denied because he was a fugitive. His delegation would consequently like that article to be suppressed; if it was not, he would support the sug-

gestion of the representative of Greece. He had listened with great interest, but could not give his support, to the suggestions of the representative of Brazil about the restraint to be exercised by the host State upon action by those enjoying asylum in relation to their former country: it must not be forgotten that many revolutionary movements which history had considered to be great liberating, democratizing movements had been inspired by exiles.

12. As regards the USSR suggestions (1192nd meeting), he agreed with the idea behind them but considered that the categories of persons to whom asylum could be granted should not be defined, as that would weaken the universal nature of the draft Declaration, which ought to cover all those fleeing from persecution. Who should decide, for instance, whether a given person was a fascist and should on that account be refused asylum?

13. He would not indulge in a discussion with the representative of Venezuela about the binding force of various types of instruments, but wished to state the United Kingdom view that a declaration set out ideals to be aimed at. A declaration of principles set out guide lines while a convention, covenant or treaty set out precise obligations to be fulfilled to the letter and in spirit, except in so far as minor reservations might be permitted. He agreed with the Venezuelan representative that whenever a State signed an international instrument it gained certain rights but signed away a small part of its sovereign freedom of action. When it voted for a declaration, however, it was only a very small part of its freedom of action that it renounced. His Government and delegation sincerely hoped that the draft Declaration under consideration, on which Governments should base their practice in the matter of asylum, would be an instrument of real value. The text should be both firm and realistic in order that it might exert a strong influence on public opinion although it did not have the force of a covenant.

14. Mr. REDONDO (Costa Rica) said that his delegation considered the draft Declaration an important advance in a sphere that was of prime importance to mankind. It could not, however, vote for the text as it stood, in view of certain principles on which the constitution of Costa Rica was founded. That constitution made the granting of asylum to victims of political persecution a legal obligation. His Government consequently drew no distinction between territorial and diplomatic asylum, any more than between the victims of individual or collective persecution. Furthermore, Costa Rica had always considered that the inter-American treaties on asylum imposed on States Parties the legal obligation to grant asylum, while leaving them a certain latitude in deciding, according to their own legislation, whether the act for which a person seeking asylum was being prosecuted was indeed a political act.

15. In the circumstances, his delegation could not support a text which established the right of a State to reject for reasons of national security or the protection of its population—reasons which might well be invoked very frequently—a person or group of persons whose lives depended on that decision, and especially to send them back to the country they were fleeing. His Government would certainly have failed in its duty to humanity had it returned to their various dictatorships the many Venezuelans, Cubans, Dominicans and Colombians who had found refuge in its territory, or if it had handed over José Martí and the Maceo brothers to the Spanish Government of Cuba. His

^{2/} See Official Records of the Economic and Social Council, Twenty-eighth Session, Supplement No. 8 (E/3229), para. 67.

delegation would therefore support any amendment that would modify paragraph 1 of article 3 of the draft Declaration in that sense.

16. It was understandable that some countries with limited resources should hesitate to accept the obligation to grant asylum to very large groups. But article 2 of the draft Declaration specifically provided that the international community should endeavour to assist the country granting asylum in such a case. In the circumstances, there was surely no reason why the granting of political asylum should not be made obligatory, in order to protect man effectively and surely against the political persecution to which he had fallen victim throughout the centuries.

17. He agreed with the Saudi Arabian representative's suggestion that consideration of the draft Declaration on the Right of Asylum should be suspended while a working group prepared a text reflecting the different points of view. Were such a group to be set up, he hoped that it would take into account Costa Rica's conception of asylum, which could be summed up as follows: the granting of asylum constituted a legal obligation from which persons prosecuted for political offences should benefit; in no case should victims of political persecution be returned to their countries of origin for reasons of national security or safeguarding of the population; and the measures which the United Nations and States Members should adopt to lighten the burden of countries obliged to grant asylum to large numbers of persons should be clearly defined.

18. Mrs. LEFLEROVA (Czechoslovakia) said that she attached great importance to the draft Declaration on the Right of Asylum. Her country, under its constitution, granted asylum to aliens persecuted on account of their activities in the interests of the population or of peace, or because of their participation in a struggle for national liberation, or because of their artistic or scientific activities.

19. The draft Declaration prepared by the Commission on Human Rights was inadequate on a number of counts. It should recall, in the preamble, the Purposes and Principles enunciated in the Charter of the United Nations, which were essentially the maintenance of international peace and security, the development of friendly relations among nations, and respect for human rights without distinction as to race, sex, language or religion. If it was to be a truly progressive instrument, the Declaration should protect persons whose actions were compatible with the spirit of the Charter and who were persecuted for that reason.

20. The text would be divested of all meaning and would lend itself to abuses if it did not specify the categories of persons entitled to enjoy asylum. It was important that it should contain provisions prohibiting the granting of asylum to criminals under ordinary law and war criminals. It should also leave States the possibility of limiting the right of asylum—a point on which the existing text was unsatisfactory. The problem was acute at the moment for, since the Second World War, many refugees were being used for espionage, sabotage and subversion against the countries they had fled.

21. Her delegation would consider favourably any amendment that would improve the text of the draft Declaration, and she stressed the necessity of providing for special protection of persons who were persecuted because of participation in national liberation movements. A provision to that end would be in con-

formity with the principles of General Assembly resolution 1514 (XV) on the granting of independence to colonial countries and peoples.

22. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said that asylum was an ancient institution sanctioned by the constitutions of many countries, including his own: according to the Ukrainian constitution, asylum might be granted to any person prosecuted or persecuted for action in favour of democracy or national liberation. Basing itself on those principles and on the Universal Declaration of Human Rights, his delegation had always supported proposals which aimed at guaranteeing the right of asylum to anyone who engaged in progressive activities, and which thereby tended to clarify and strengthen the concept of asylum. It was to be hoped that the institution of asylum would be the subject of a convention, and that an article defining the criteria for granting asylum would be incorporated in the draft Covenant on Civil and Political Rights. His delegation also believed it to be possible to draw up a declaration on the right of asylum, but the drafting of such an instrument raised many difficulties, which lay in the choice of criteria. The United Kingdom representative apparently thought that if a fascist requested asylum it should be forgotten that he was a fascist. The Ukrainian SSR, for its part, could not forget the great wrongs committed by the fascists against its people and could not therefore agree that any individual, whatever his beliefs and whatever his past, should be granted exile if he was being prosecuted.

23. The first problem was that of defining the right of asylum, which was both a fundamental human right and a sovereign right of the State. The Venezuelan representative had already pointed out the difficulty of reconciling those two aspects: on the one hand, everyone had the right to seek and to enjoy asylum, the obligation corresponding to that right being the obligation of the persons concerned not to harm the State in which he settled or the State from which he came; and on the other hand, every State had the right to grant or to refuse asylum, to which corresponded the obligation not to reject at the frontier or expel the person concerned and not to prevent him from returning to his country of origin. The present text of article 1 of the draft Declaration was more satisfactory than the version originally submitted to the Commission on Human Rights, since it included the words "in the exercise of its sovereignty". However, if even greater emphasis on the sovereign nature of the right of the State to grant or to refuse asylum was desired, article 1 could be worded to read: "Every State, in the exercise of its sovereignty, has the right to grant asylum to persons entitled to invoke article 14." Other speakers, more particularly the representatives of Argentina and Venezuela, had also stressed the State's absolute power of decision in the matter and the fact that no State could intervene against the grant of asylum by another State.

24. The second problem to be dealt with was that of defining the criteria for the grant of asylum. Article 14 of the Universal Declaration of Human Rights provided a first, very general, criterion which, in a text of that nature, was acceptable and adequate. But in the draft under study the phraseology used in article 14 should be clarified. In that connexion he drew the Committee's attention to the new article (A/C.3/L.1013) which the Soviet delegation had proposed for insertion in the draft Covenant on Civil and Political

Rights; the idea that only persons persecuted for their progressive activities had the right of asylum was a very old one, since it even appeared in the French constitution of 1793. The criteria defined in the Soviet Union text also made it possible to determine which persons should be refused asylum: first, persons who had committed war crimes and, second, non-political offenders. With regard to war crimes, he drew the Committee's attention to resolution 3 (I) on the extradition and punishment of war criminals adopted by the General Assembly at the first part of its first session; the appeal in that text had been addressed not only to States Members of the United Nations but also to the Governments of States which were not Members: "war crimes" was thus a well-established concept.

25. So far as non-political offences were concerned, the domestic law of the various States specified what that term was to cover, so that there was no major difficulty on that point either. Moreover, article 1 of the Convention on Political Asylum, signed at Montevideo on December 26, 1933^{3/} stated that States must not grant asylum to persons convicted of non-political crimes. That being so, the idea that asylum should be refused to war criminals and to non-political offenders could be enunciated in the draft Declaration and, more specifically, in article 4, based as it was on article 14 of the Universal Declaration, which referred not only to acts contrary to the purposes and principles of the United Nations but also to non-political crimes. As it stood at present, article 4 referred only to the activities in which persons already enjoying asylum might not engage.

26. He could not give a final decision on the Brazilian amendment (A/C.3/L.1036) but he thought the idea it contained interesting: a State granting asylum should, indeed, prevent the persons it admitted from committing acts of violence, especially if those were directed against their State of origin. There was a certain relation between the Brazilian proposal and the second part of the text of the new article which the Soviet delegation had proposed for insertion in the draft Covenant on Civil and Political Rights and the proposal deserved consideration. Since article 4 seemed to have given rise to a large number of amendments, the sponsors of the various proposals should perhaps attempt to reach agreement on a joint text.

27. With regard to the amendments submitted by Norway and Togo, the proposed amendment to article 2, paragraph 1, seemed hardly appropriate. A number of representatives, and the Saudi Arabian representative in particular, had requested clarification of the words "who are forced to leave their own . . . country" and of the exact scope of the word "well-founded". There had been no doubts in the minds of the members of the Commission on Human Rights when they had had to decide on the phrase and the word in question: their meaning was perfectly clear and his delegation failed to understand why they should cause the Saudi Arabian representative difficulty. The amendments affecting article 2, paragraph 2, were purely stylistic and he was not opposed to them. In the case of article 3, it had been claimed that the criteria defined in that article were so broad as to nullify the right of asylum completely. Those criteria, however, accorded with the principle of State sovereignty, which was very dear to

many delegations; it had been stressed, moreover, at the sixteenth session of the Commission on Human Rights, that no State should prejudice the interests of its population in favour of refugees and the idea of protecting the population had been pressed. As the Argentine representative had said, the text prepared by the Commission on Human Rights was the result of a carefully weighed compromise and the new paragraph which Norway and Togo proposed for insertion in article 3 was inferior to the original text, which was clearer; he would especially like some clarification of the expression "a mass influx".

28. Lastly, it would be desirable, in the preamble, to call on all States, and not only States Members of the United Nations, in order to make the declaration truly universal in character. There were many precedents for that proposal, specifically the resolution concerning the extradition and punishment of war criminals and General Assembly resolution 833 (IX).

29. Sir Douglas GLOVER (United Kingdom) said he feared that the representative of the Ukrainian SSR was taking too narrow a view of the purposes of the draft Declaration. What was at issue was the right of asylum of a human being who wished to leave a country because he was opposed to the ideas or the form of government prevailing there. History showed that no one could say who at a given moment was in the right—the person seeking asylum or the country he was leaving. Great revolutionaries like Marx and Lenin had had at one time to seek asylum in London because of the very ideas which today held sway in a very great part of the world. People had been persecuted in the Middle Ages in the name of various religions, all claiming to be the true one. All nations had committed crimes in the course of their history and war atrocities had not been perpetrated on one side only. The Ukrainian representative had spoken of fascism, which he, Sir Douglas, agreed should be condemned; nevertheless, in 1939 the Soviet Government had concluded a pact with Nazi Germany because at that precise moment it probably considered that to be in the Soviet Union's interests.

30. It was essential, therefore, to give the draft Declaration a very broad and purely humanitarian scope and not to insert detailed restrictions in it, through the operation of which the Declaration might perpetuate the *status quo* instead of marking a step forward. Care must also be taken to ensure that the person enjoying asylum should be free in the host country to express the opinions which had driven him into exile.

31. Mr. TROCLET (Belgium) thanked the French delegation for submitting a draft Declaration on the Right of Asylum; in so doing it had continued the great work of human liberation it had begun by giving the world the Declaration of the Rights of Man.

32. Belgium, the turn-table of Europe, had always been a land of asylum throughout the centuries and it would therefore gladly support the draft Declaration, even if the Committee did not succeed by a collective effort in improving its text. His delegation regretted, however, that that text was in fact a step backwards from the original French proposal and it would support any amendments which, like those of Norway and Togo and of Greece (A/C.3/L.1037) were designed to remedy matters.

33. He agreed with the Brazilian representative that the United Nations should proceed by progressive

^{3/} See Seventh International Conference of American States, Montevideo, Uruguay, December 3-26, 1933: Final Act, Conventions and additional Protocol adopted by the Conference.

stages in a matter which had not yet matured sufficiently to permit the drafting of a convention involving legal obligations: it had passed from the Charter of the United Nations to the Universal Declaration of Human Rights and had now arrived at a draft Declaration which would represent a step forward and would help to clarify the problem. He disagreed with what the Venezuelan representative had said when referring (1192nd meeting) to the report of the fourteenth session of the International Law Commission:^{4/} he did not think that that text implied that a declaration like the one before the Committee could have binding force. The International Law Commission said merely that a text having binding force could be called a "declaration", for "agreements in simplified form" had a great variety of names, but it did not say that any text styled a "declaration" was binding.

34. Moreover, to his delegation's regret, the draft declaration before the Committee represented a step backward, not only by comparison with the preliminary draft, but also by comparison with the 1951 Convention relating to the Status of Refugees^{5/} and the 1954 Convention relating to the Status of Stateless Persons.^{6/} Naturally the Declaration could not go as far as those Conventions, for it was designed to win the support of the 110 States Members of the United Nations, yet the 1951 Convention, which imposed a legal obligation, had nevertheless been ratified by thirty-two countries by the end of 1951: in other words nearly a third of the Member States had by now given a legal undertaking to respect provisions stricter than those of the draft Declaration. It should in any case be fully understood that, in subscribing to the Declaration, States signatories of the 1951 Convention were in no way limiting the formal undertakings which they had given. From that point of view it would be preferable that the phrase "without prejudice to existing instruments dealing with asylum" should appear in the text of the articles. That formula should at all events be supplemented by a reference to the Conventions of 1951 and 1954, particularly since the term "refugee" had a much broader connotation than the idea of an individual enjoying asylum, and Belgium was presenting an amendment with that in view (A/C.3/L.1039).

35. His delegation also regretted that article 3 had not been framed in the language of articles 32 and 33 of the 1951 Convention, particularly with regard to the grounds for return; therefore it would unreservedly support the Greek amendment reinstating the expression "public order" which, incidentally was more limited in scope than the phrase "safeguarding of the population". Likewise in article 3, his delegation proposed the deletion of the words "consider the possibility of the grant of", which it regarded as completely nullifying, even on the purely moral plane, the obligation stated in the paragraph in question.

36. Article 4 used the expression "contrary to the Purposes and Principles of the United Nations" which, albeit somewhat vague, appeared in article 1 of the 1951 Convention relating to the Status of Refugees. It should be noted, however, that Articles 1 and 2 of the Charter of the United Nations, in which its Purposes and Principles were set forth, related only to States and not to individuals.

^{4/} See Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209), p. 5.

^{5/} United Nations publication, Sales No.: 51.IV.4.

^{6/} *Ibid.*, Sales No.: 56.XIV.1.

37. The USSR representative had rightly stressed one of the difficulties raised by the right of asylum taken in its broad sense: namely, that it must not be allowed to jeopardize the maintenance of good relations between States. That was a delicate problem, but it must be examined. His delegation would be prepared, in that connexion, to support the suggestion, put forward by the Venezuelan Government in 1960 that article 4 should end with the words "should respect the laws of the host country and should not endanger good relations between States"; perhaps the words "host country" should be replaced by the words "country of asylum".

38. He wondered whether article 2, paragraph 2, might not be improved by making use of a text proposed in 1950 by the Institute of International Law on the following lines:

"Where a State finds difficulty in continuing to grant asylum, whether because the large number of persons involved exceeds its capacity to absorb them or for other reasons, other States shall consult together, at its request, on the most effective means of giving aid and assistance to the fugitives, on the most equitable way of sharing them between their respective territories and, in general, on measures to be taken to discharge the duties of humanity."

39. Lastly there remained a difficulty connected with the distinction to be drawn, under article 14 of the Universal Declaration of Human Rights, between a non-political crime and a crime which could be described as political. It would be useful to make a study of the subject in order to establish criteria that were both valid and as objective as possible.

40. In conclusion he wished to refer to another observation by the USSR representative, who had said that the draft Declaration should aim to protect activities of a progressive nature; that was an attractive suggestion, but it met with two crushing objections. First of all it seemed an impossibility ever to define a progressive activity, for the notion of progress was essentially relative and based on a value judgement which depended on economic, sociological and political circumstances. Second, the right of asylum was designed primarily to safeguard the freedom or the life of someone persecuted in the name of a truth in which he did not believe; however, since there would probably never be any objective criteria available on which to determine what "truth" was, it would be better to stay on the human plane so as not to prejudge the future. Socrates's judges had been convinced that they were right, but history had proved them wrong. Unfortunately, therefore it appeared impossible to introduce into the draft Declaration a provision based on the progressive nature of activities. On the other hand, his delegation agreed with the Soviet delegation that the Declaration should not operate to protect war criminals. That problem was dealt with in explicit terms in article 1, paragraph F (a), of the 1951 Convention relating to the Status of Refugees and his delegation would strongly favour the inclusion of a similar reservation in the draft Declaration.

41. Mr. ZULOAGA (Venezuela) said that he wished to reply to the representatives of the United Kingdom and Belgium, both of whom had referred to the opinion he had expressed concerning the binding nature of a declaration. The United Kingdom representative apparently considered that a treaty or declaration could not impair national sovereignty. Yet a great English jurist had expressed the view that in subscribing to

the Charter of the United Nations the signatory countries had renounced a part of their sovereignty. The Belgian representative had said that a declaration had no binding force; that was a negative contention which, if accepted *in toto*, would make detailed consideration of the provisions of the draft Declaration an exercise in futility. In his own opinion, the question was rather the degree of obligation involved, which was less in the case of a declaration than in the case of a multilateral convention.

42. Moreover, the Committee should not lose sight of the interests of refugees, for whom, as the High Commissioner had pointed out, the adoption of the Declaration was very important. The Committee had constructive amendments before it, especially that submitted by Brazil, and should try to adopt a text rather than, yet again, postpone dealing with a difficult problem until the next session or refer it to the Commission on Human Rights.

43. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) found it surprising that the United Kingdom representative should reproach him with taking too narrow a view of the draft Declaration. His delegation was anxious to ensure the widest possible protection for human rights, and particularly the right of asylum, by contributing to the formulation of principles which, while acceptable to all delegations, were strictly in accordance with the Purposes and Principles of the Charter. He could not believe that, in speaking of the right of asylum in the broad sense, the United Kingdom representative could have meant that asylum should be extended to those who, like the fascists, had committed war crimes or genocide or to those who had acted in violation of the Purposes and Principles of the United Nations.

44. Mr. BOUQUIN (France) recalled that, in reviewing the work which had culminated in the draft Declaration he had mentioned that the text had been redrafted several times in the light of the comments made by Governments, specialized agencies and the United Nations High Commissioner for Refugees, and also that the end result was a compromise text arrived at through constructive and cogent exchanges of views (1192nd meeting). Consequently its adoption might have been expected to present no particular difficulties; however, a number of amendments had already been submitted, and more were in prospect.

45. In the circumstances he hoped that the Committee would adopt a clear-cut procedure for examining the draft. Three meetings had already been devoted to a general discussion which, however, interesting in itself, was liable to obscure the essential aim of the debate: namely, the study of a text enunciating the principles which should guide States in dealing with cases involving the right of asylum. As he saw it, the wisest course would be to set about examining the draft Declaration straight away, article by article, starting with article 1 and leaving the preamble to the last.

46. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said he could not understand why the French representative should propose that the preamble to the draft Declaration should be examined after the substantive articles. The preamble defined the purpose of the document and should therefore be given priority.

47. In the second place, he considered that the general discussion which had taken place so far had been an extremely productive and useful exchange of views and could well be continued. There was no call to oblige delegations to confine their remarks to a single article. Moreover the discussion on the draft Covenants on Human Rights had shown how difficult it was to comment on an article out of context. In the circumstances, the only result of the procedure proposed by the French delegation might be to complicate matters and delay the preparation of a text acceptable to all.

48. Mr. BOUQUIN (France) said that the USSR representative might rest assured that he had no intention of asking for the closure of the general discussion or for a time-limit on the submission of amendments. He had suggested that the Committee should study the text of the draft Declaration in detail only because he was afraid that the general discussion might go on so long that the consideration of the articles would have to be postponed until the next session. That had already happened twice. His delegation could not accept any manoeuvre designed to prevent the Committee from studying the text. As it was, the Soviet delegation had systematically opposed the inclusion of that item in the agenda in 1960, and at the sixteenth session of the Commission on Human Rights the USSR representative had stated that, since the question was of no interest to him, he would not participate in the substantive discussion. The Soviet delegation now seemed to have taken a more constructive attitude, and there seemed to be no reason to delay consideration of the draft articles.

49. Mr. OSTROVSKY (Union of Soviet Socialist Republics) denied that he was executing any manoeuvre. He failed to see why the French representative should take exception to a discussion which was proceeding in a spirit of co-operation and understanding. The French delegation's attitude did not seem conducive to constructive work.

50. The CHAIRMAN said he was afraid that, if the general discussion was prolonged, the detailed consideration of the draft Declaration would have to be deferred until the eighteenth session. A new general discussion would then take place, and the discussions held in recent meetings would have been virtually wasted. It would be desirable for the Committee to adopt at least one article at the current session, so that it would not have to re-open general discussion at the eighteenth session.

51. Mr. OSTROVSKY (Union of Soviet Socialist) said he had no objection to a detailed discussion of the draft. He thought it illogical, however, not to consider the preamble first.

52. Mr. ZULOAGA (Venezuela) thought the Committee should do everything in its power to complete the examination of the draft Declaration at the current session.

53. The CHAIRMAN suggested that the Committee should begin without further delay to study the preamble and article 1 of the draft Declaration on the Right of Asylum and the amendments thereto, on the understanding that delegations could also comment on the draft as a whole.

It was so decided.

The meeting rose at 6.5 p.m.

United Nations
**GENERAL
ASSEMBLY**

SEVENTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1195th
MEETING**

Wednesday, 28 November 1962,
at 10.50 a.m.

NEW YORK

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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1035-1039) (continued)

PREAMBLE AND ARTICLE 1

1. The CHAIRMAN reminded the Committee of the agreement reached (1194th meeting) to proceed to a detailed consideration of the preamble and article 1 of the draft Declaration on the Right of Asylum.
2. Miss KRACHT (Chile) said that her delegation could not but be guided by the institution of asylum as it existed in Latin America; that institution had a long and honourable history. The discussion in the Committee had shown how difficult it was to reconcile the exercise of State sovereignty and the enjoyment of the right of asylum by individuals. She believed, nevertheless, that measures to strengthen the right of asylum could be taken even if the contradiction continued to exist.
3. The right of a State to grant asylum without thereby opening itself to attacks from other States also required protection, and in that connexion she drew attention to article 1 of the Convention on Territorial Asylum signed at the Tenth Inter-American Conference at Caracas in 1954,^{1/} which proclaimed the right of States to accept in their territory, in the exercise of their sovereignty, such persons as they deemed fit without thereby laying themselves open to impositions from other States.
4. The nature of the asylum dealt with in the draft Declaration should be made clear. The two basic kinds of asylum—diplomatic and territorial—were similar in their humanitarian aspects but differed in form and application. She believed that the draft Declaration as it stood related essentially to territorial asylum. Since she also considered that the reference in the last preambular paragraph to existing instruments dealing with asylum should be repeated in the articles themselves, she supported the Polish

^{1/} Organization of American States; Law and Treaty Series; Convention on Territorial Asylum, signed at the Tenth Inter-American Conference, Caracas, March 1-28, 1954 (Pan American Union, Washington, D.C., 1954).

amendments (A/C.3/L.1038); however, as an alternative wording for the third of those amendments she would suggest the following: "This Declaration shall not affect the provisions of international conventions on asylum to which States are parties."

5. While fully agreeing with the first part of article 1 as it now stood, she believed that the demand for respect by States, mentioned in the latter part, should be strengthened. It should be clearly indicated that the State granting territorial asylum was alone competent to define the grounds on which asylum was granted. The Chilean Government's views on that and other aspects of the draft Declaration had been submitted to the Secretary-General in 1960 (E/3403/Add.3).

6. Mr. GHAUS (Afghanistan) thought it highly desirable that the right of asylum, proclaimed in article 14 of the Universal Declaration of Human Rights, should be stated in greater detail in a separate declaration. The Commission on Human Rights had achieved that end admirably in elaborating a draft (E/3335, para. 147) which he hoped would, when adopted, serve as a practical guide for States. The right of asylum had both humanitarian and political implications. Individuals had a right to seek and enjoy asylum, while States were entitled to grant or refuse it. A balance between those factors must be achieved, and he believed the present text to be largely successful in that respect. His delegation would also welcome the insertion of an article on the right of asylum in the draft Covenant on Civil and Political Rights, in order to affirm the right more strongly.

7. He found the preamble of the draft Declaration acceptable and saw no need for the amendment to it proposed by the Belgian delegation (A/C.3/L.1039). He would agree with the Polish proposal to add the word "territorial" before "asylum" in article 1, if it was acceptable to the majority, but preferred that the article should be adopted as it stood.

8. Mr. BAHNEV (Bulgaria) said that an important fact to be considered was that all States in the world regarded the granting of asylum as coming within their sovereign power. Some members of the Committee, in seeking to safeguard the right of persons to enjoy asylum, had argued in favour of a balance between States rights and individual rights. Such a balance seemed to him unattainable, for there was no rule of international law which obliged States to grant asylum to persons suffering persecution: that position was confirmed by many outstanding authorities. He knew of only one case in which a country had formally undertaken to grant asylum, and then only on clearly specified conditions. Even the Convention on Territorial Asylum, mentioned by the Chilean representative, did not impose an obligation on States parties to grant asylum, but simply affirmed their prerogative in the matter.

9. The grounds on which States might grant asylum on the other hand, were stated in the constitutions of many countries. The Bulgarian constitution, for one, provided that foreigners enjoyed the right of asylum in Bulgaria when they were persecuted for defending democratic principles, and for struggling for national liberation, the rights of working people or the freedom of scientific and cultural activity. Similar provisions of a declarative nature were to be found in the constitution or legislation of almost every State. Oppenheim, in his famous treatise "International Law", corroborated that fact, while recognizing that the right of asylum was not yet a general principle of international law.

10. In those circumstances, the drafters of article 14 of the Universal Declaration of Human Rights had acted wisely in stating no obligations and in indicating that the right of asylum could not be enjoyed in all cases. In his view the Committee should follow their example. If an obligation was imposed, it should not, and indeed could not, be a legal obligation. In that connexion he disagreed with the Venezuelan representative's view that the draft Declaration might be considered to have binding force (1192nd meeting). It would, in fact, have the force of a General Assembly resolution and would come under the provision, in Article 10 of the Charter of the United Nations, that the General Assembly "may make recommendations to the Members of the United Nations...". It was inconceivable that a declaration of any kind could guarantee a right. At the same time, since the Committee did not seem prepared to adopt an article on asylum for inclusion in the draft International Covenants on Human Rights, it was hardly ready to prepare a full convention on the subject, as had been suggested.

11. The draft Declaration could, however, build on the provisions of national constitutions and incorporate new matters not covered by previous United Nations documents. The preamble should make it clear that asylum was in principle to be granted to persons seeking the maintenance of peace and refused to persons whose activities were opposed to that end. The expression in article 1 "entitled to invoke article 14 of the Universal Declaration of Human Rights" seemed insufficient; since the Universal Declaration was a separate document, it would be better to quote article 14 in full. More desirable still, however, would be the replacement of that expression by one which represented a step forward in relation to article 14 while conforming to its basic notion. He would accordingly propose, in line with his previous remarks, the insertion of some such form of words as: "prosecuted for struggling for national liberation, for international peace and for the maintenance of friendly relations between States"; the Committee might also wish to mention persons seeking to promote respect for human rights and fundamental freedoms. He believed furthermore that the reservation stated in article 14, paragraph 2, of the Universal Declaration of Human Rights should be introduced into article 1 of the draft Declaration.

12. Mr. BELAUNDE MOREYRA (Peru) did not agree that the draft Declaration would have no value beyond that of a recommendation or declaration of intention. Article 1, by stating that the asylum granted by a State must be respected by all other States, gave explicit expression and form to a universally recognized and applied principle of law; it could certainly not be

regarded as a mere statement of intention and, in his view, would have definite legal status.

13. Mr. PRZETACZNIK (Poland) said that his delegation attached the greatest importance to the right of asylum, a right which was guaranteed in the Polish constitution. It believed that the best method of dealing with the question would be to include in the draft International Covenants on Human Rights an article that would be legally binding on all parties. However, he did not contest the value of a declaration that set forth universally accepted principles and would have moral authority.

14. The draft Declaration now before the Committee, while an improvement on the preliminary draft (E/3335, para. 63), was not acceptable in its present form, since it offered no guarantee that generally accepted principles would be put into practice. For one thing, it did not define the right of asylum; and a definition was important, since the word asylum had different meanings. Asylum was not only the place where a refugee found safety but also the protection which that place gave to him. Similarly, the expression "right of asylum" could be used to designate both the right to grant asylum—a subjective meaning—and the body of rules governing that right—an objective meaning.

15. Moreover, the draft Declaration failed to specify the type of asylum to which it referred. Such a clarification was necessary, however, since there were different forms of asylum; territorial asylum, diplomatic asylum and the asylum accorded on warships and military aircraft. There was a basic difference between the asylum granted by a State in its own territory and the asylum which it granted outside its territory. Territorial asylum was a logical consequence of the State's territorial sovereignty, whereas diplomatic asylum represented a derogation from the territorial competence of the State on whose soil it was exercised and could thus give rise to disputes unless the latter State was under a legal obligation to recognize that the State granting diplomatic asylum had the right to do so.

16. As the representatives of Brazil, Argentina, Venezuela and Chile had pointed out, diplomatic asylum was in fact an institution characteristic of Latin America. Although it was recognized in international law, only in that one region was there a body of law on the subject. Elsewhere it had fallen into disuse, because it was no longer in keeping with current political practice and because, in the absence of any contractual commitments, it represented a derogation from territorial sovereignty.

17. Diplomatic asylum and territorial asylum called for entirely different sets of rules and it was therefore essential to define as clearly as possible the form of asylum covered by the draft Declaration. It was evident from the preparatory work that the principles set forth in the draft Declaration applied solely to territorial asylum, but for the sake of clarity that should be expressly stated in the Declaration itself. Indeed, proposals to that effect had already been put forward by the Governments of the Netherlands and Chile, in their observations on the draft Declaration (E/3403/Add.2 and Add.3), and the first two of the three amendments submitted by Poland (A/C.3/L.1038) merely gave formal effect to those proposals. At the same time the Polish delegation believed that no statement of principles on territorial asylum in the draft Decla-

ration should in any way affect or change the special agreements and practices of the American continent with regard to asylum. For that reason it had submitted its third amendment. The drafting change to that amendment suggested by the representative of Chile was, in principle, acceptable to his delegation.

18. One very important point of which the draft Declaration made no mention was the question of who was competent to decide whether or not a person seeking asylum was entitled to it. The matter was regarded in legal doctrine as belonging to the State which granted asylum, and that principle had been formulated in most treaties concluded since 1830. The principle was embodied, *inter alia*, in the convention of 14 August 1876 between France and Great Britain; in the Franco-Spanish convention of 14 December 1877; and in the treaty of 11 March 1890 between Great Britain and the United States. It had also found expression in the treaty on private international law, signed at Lima in 1879, the Bolivarian agreement on extradition of 1911, the Convention on Political Asylum of 1933 and the Treaty on Political Asylum and Refuge of 1939. That right belonged to the State which granted asylum; and rightly so, since, if it was vested in the State of origin the institution of asylum would become meaningless, as the latter State could always claim that the individual in question had committed a non-political crime. The Polish delegation therefore proposed the addition to article 1 of the draft Declaration of a new paragraph reading: "It shall be incumbent on the State granting territorial asylum to indicate its reasons for doing so."

19. Another fault of the draft Declaration was that it did not clearly specify the grounds on which asylum must be refused. The exercise of the right of asylum was, however, limited by international law, which obligated States to surrender to one another, on re-

quest, persons charged with or convicted of non-political crimes or offences, war criminals, and persons guilty of genocide or other crimes against humanity who had taken refuge in their territory. States were thus required by law not to grant asylum to the persons mentioned. The international instruments relating to the right of asylum and extradition, as well as the Moscow Declaration of 1 November 1943, the London Agreement of 8 August 1945 and the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 (III)), denied asylum to persons guilty of non-political crimes, to war criminals, and to persons guilty of crimes against peace and against humanity. Article 14 of the Universal Declaration of Human Rights, on which article 1 of the draft Declaration was based, merely stated that the right to seek and enjoy asylum could 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. It was also important, however, to state clearly that asylum could not be granted to war criminals and persons guilty of crimes against peace and humanity—crimes which, in fact, had been recognized as extraditable offences in a number of international instruments, including General Assembly resolution 3 (I) of 13 February 1946 on the extradition and punishment of war criminals and the Convention on the Prevention and Punishment of the Crime of Genocide. The Polish delegation therefore proposed the addition of a further paragraph to article 1 specifically stating that asylum could not be granted to non-political criminals, war criminals or persons guilty of crimes against peace and against humanity. It was also included to support the changes to article 1 suggested by the representative of Bulgaria.

The meeting rose at 12 noon.

United Nations
GENERAL
ASSEMBLY

SEVENTEENTH SESSION

Official Records



THIRD COMMITTEE, 1196th
MEETING

Thursday, 29 November 1962,
at 10.55 a.m.

NEW YORK

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Draft Declaration on the Right of Asylum (*con-
tinued*)
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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1
and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/
3403 and Add.1-5, A/C.3/L.1035-1038, A/C.3/L.1039/
Rev.2, A/C.3/L.1040-1045) (*continued*)

PREAMBLE AND ARTICLE 1 (*continued*)

1. Mr. IDRIS (Indonesia) said that while his Govern-
ment recognized the right of persons to seek and enjoy
asylum from persecution in a country other than their
own, it wished to emphasize that asylum was granted
by a State in the exercise of its sovereignty. There
was as yet no agreed definition of the persons who had
the right to seek and enjoy asylum, since the reference
in article 14 of the Universal Declaration of Human
Rights (General Assembly resolution 217 (III)) was too
general for practical application. Consequently, his
delegation believed that it was for the recipient coun-
tries themselves to evaluate each individual case, with
the understanding, however, that no one should be
refused asylum except for overriding reasons of
national interest. He would therefore prefer the use of
the term "national interest" in article 3 of the draft
Declaration on the Right of Asylum, instead of the
phrase "national security or safeguarding of the popu-
lation" in the draft text under study (E/3335, para. 147)
and the additional words proposed in the Greek amend-
ment (A/C.3/L.1037).

2. His delegation believed that the binding character
of a declaration should not be over-emphasized, and it
also felt that an attempt should be made to achieve
uniformity in the various amendments. Its understand-
ing was that the draft Declaration related to territorial
asylum, and it took the view that persons enjoying
asylum should refrain, not only from activities con-
trary to the purposes and principles of the United
Nations, but also from activities contrary to the
interest of the State granting asylum.

3. Mr. BEN MEBAREK (Algeria) remarked that the
draft Declaration was an extremely important docu-
ment for the defence of fundamental human rights.
The existing text, together with the amendments of
Norway and Togo (A/C.3/L.1035), was satisfactory as
a whole, but a question of the greatest importance to
his delegation was that of the right of asylum for

persons struggling against colonial oppression. While
former colonies, like Algeria, had received from a
number of friendly countries not only the grant of
asylum but also assistance in continuing their fight for
liberation, the fact remained that the principle of the
right of asylum had by no means been universally
applied in that connexion. Peoples still fighting against
colonialism needed the help and understanding of all
Member States, and anything which might hasten the
solution of their problem should be attempted, even in
such a matter as the drafting of an instrument on the
right of asylum. It was for that reason, and with a view
to universality, that his delegation, together with five
others, had submitted an amendment to article 1 (A/
C.3/L.1044) as well as sub-amendments to the amend-
ments of Norway and Togo (A/C.3/L.1045).

4. Mr. OSTROVSKY (Union of Soviet Socialist Repub-
lics) explained that the purpose of the first of his dele-
gation's amendments (A/C.3/L.1043) was to define, at
the very beginning of the draft Declaration, the stand-
point from which that document and the activities of
the United Nations and of all States in the matter of the
right of asylum should be viewed. The granting of pro-
tection to persons subjected to persecution was very
important, and it should be in keeping with the pur-
poses, proclaimed in the Charter of the United Nations,
of maintaining international peace and security and
developing friendly relations among nations. The
second USSR amendment was a logical development of
that idea; if, unfortunately, cases occurred where
asylum was granted in a manner contrary to the pur-
poses he had mentioned, such action would be recog-
nized in the proposed new paragraph of article 4 as an
abuse of the right of asylum. Many delegations had
expressed similar views, and the USSR amendment was
based on the well-established principle of international
law that the right of asylum should be respected but
should not be used to harm relations between States or
to jeopardize international peace and security.

5. Mr. MELOVSKI (Yugoslavia) pointed out that the
right of asylum was not a new institution of inter-
national law, but had emerged in the course of man's
age-old struggle for social progress and democratic
freedoms. As such, it had become an integral part of
fundamental human rights and had found its place in the
Universal Declaration of Human Rights. Yugoslavia's
position on the question was expressed in article 31
of its constitution, which guaranteed the right of asylum
to foreign nationals persecuted for their struggle for
democratic principles, national liberation, the rights
of the workers or the freedom of creative scientific
and cultural work. His country nevertheless recog-
nized that the right of asylum had been abused, par-
ticularly since the Second World War, when unde-
served protection had been given to persons who had
perpetrated major crimes against humanity and against
the Purposes and Principles of the United Nations.

6. His delegation considered the draft Declaration a sound basis for discussion, in that it indicated how far the international community was prepared to go in formulating such a document. Article 1 was correctly based on the principle that persons were entitled to invoke and enjoy the right of asylum, but that the granting thereof was within the exclusive jurisdiction of States, according to the criteria laid down in their respective legislations. That reflected the existing state of affairs, since most Member States granted asylum on humanitarian grounds but were reluctant to accept an obligation to grant it unconditionally, even in strictly specified cases, lest their sovereign rights and national legislation should be affected. Article 1, as drafted, was acceptable in principle to his delegation; through its reference to article 14 of the Universal Declaration of Human Rights it clearly specified the category of persons who could invoke and enjoy the right of asylum, and he would support any amendment to include a similar reference to article 14 in articles 2 and 3 of the draft Declaration.

7. Article 3—on which he reserved the right to speak more fully in due course—derogated to some extent from the principle of sovereignty, in that it placed an explicit obligation upon States not to reject, return or expel persons seeking or enjoying asylum except under specified conditions; the derogation from that principle was accentuated by the introduction of the institution of provisional asylum in the second paragraph of the article. It was true, of course, that special caution was needed with regard to possible measures of expulsion or the refusal to grant asylum, and his delegation was prepared to join in seeking a new wording for article 3 reconciling that need with the principle of sovereignty.

8. His position on the amendments submitted to the preamble and to article 1 would be determined by the extent to which they served to improve the wording.

9. Sir Douglas GLOVER (United Kingdom) observed that, although he had not had the opportunity to study in detail the many amendments submitted, they appeared generally to increase the power of the State and, perhaps, to lessen the individual right of asylum. While his delegation had always maintained that a person must have the right to apply for asylum but that the State had the right to refuse it, care must be taken to preserve the balance between the two. After all, many persons seeking asylum were not the kind that States would prefer to admit; yet there was little virtue in admitting only those who would be first-class citizens or, say, scientists who would be of value to the country of asylum.

10. In its first amendment, regarding the insertion of a new preambular paragraph, the Soviet Union, in his view, had chosen to refer to the wrong provisions of the Charter of the United Nations. The purposes mentioned were set forth in Article 1, paragraphs 1 and 2, and he had no objection to them, but for the fact that the draft Declaration dealt with individual rights; if the intention was to strengthen the preamble, therefore, Article 1, paragraph 3 of the Charter, concerning the promotion and encouragement of respect for human rights and for fundamental freedoms for all without distinction, would be more appropriate in the context.

11. Mr. OSTROVSKY (Union of Soviet Socialist Republics) pointed out that the first preambular paragraph of the existing text already reproduced the wording of

Article 1, paragraph 3 of the Charter. The USSR amendment added two ideas not now to be found in the text of the draft Declaration.

12. Mr. TROCKET (Belgium), introducing the further revised version of his amendments (A/C.3/L.1039/Rev.2), said that he had endeavoured to find a text of the preamble which would take account of many of the views expressed. He no longer proposed that the reference to existing instruments should be transferred from the preamble to article 1, but he had expanded the text to cover all existing instruments, including those dealing with diplomatic asylum. Where article 1 was concerned, he had endeavoured to meet the views expressed by the representatives of the Soviet Union and Poland (1195th meeting) concerning crimes against peace by proposing the addition of a second paragraph to article 1, and he had thought it best to reproduce an existing text of positive law, namely, article 1, paragraph F of the 1951 Convention relating to the Status of Refugees.^{1/} He hoped that his latest amendment would receive general approval.

13. Mr. CAPOTORTI (Italy) observed that the main question on which attention had been focused in the discussion was the nature of the right of asylum. He stressed that the right in question was a human right; its inclusion in the Universal Declaration of Human Rights, its proposed inclusion in the draft International Covenants on Human Rights and its elaboration in the present draft Declaration made that point quite clear. The counterpart to that right was the obligation of the State to ensure the enjoyment of the right. The sovereignty of a State was necessarily restricted in the process of ensuring each human right, including the right of asylum; and it was restricted in accordance with the precise nature of the right concerned.

14. The right of asylum could be viewed either as an unlimited right of the individual to seek and obtain asylum, in which case the State's obligation would be to grant it automatically upon request, or as a right of the individual to seek asylum, the obligation of the State then being to protect the individual once it had admitted him. The latter point of view was the one adopted in the Universal Declaration and in the draft Declaration under consideration. Where those two documents were concerned, the actual right of the individual was to enjoy asylum peacefully once it had been granted to him, and the essential duty of the State was to protect the individual to whom it had granted asylum.

15. The draft Declaration went beyond the Universal Declaration of Human Rights in article 3, which recommended "provisional asylum" in cases where a State could not grant full asylum. For the rest, however, the draft Declaration left unimpaired the prerogative of States in deciding the issue. He had been somewhat surprised, therefore, at attempts made in the Committee to ensure even greater protection for the State, as that unavoidably meant less protection of the individual. The direction in which the Committee must strive was obviously that of strengthening the individual's rights; anything else would run counter to the letter and spirit of the Universal Declaration and the draft now being discussed.

16. In those circumstances, he could not support the first USSR amendment. While the factors mentioned there were obviously of the highest importance, they

^{1/} United Nations publication, Sales No. 51.IV.4.

were not directly pertinent to the aims of the draft Declaration, which related to human rights and not to the rights of States. On the other hand, he endorsed the Peruvian amendment (A/C.3/L.1042), which stressed the humanitarian aspect of asylum and hence its contribution to peace and friendship. In his view, that amendment expressed more appropriately some of the ideas raised by the USSR delegation.

17. One of the purposes of the Polish amendments (A/C.3/L.1038) was to make it explicit that the draft Declaration related only to territorial asylum. In general, when an instrument referred simply to asylum, territorial asylum was meant; when diplomatic asylum was the subject, it was specifically mentioned. Moreover, article 1 of the draft Declaration referred to article 14 of the Universal Declaration of Human Rights, which spoke of asylum "in other countries", clearly implying territorial asylum. He therefore saw no need to insert the word "territorial" before "asylum" in the draft Declaration.

18. Article 14 of the Universal Declaration covered adequately another question widely discussed in the Committee, namely, the grounds on which persons deserved to enjoy asylum. It spoke very simply of "asylum from persecution". That succinct phrase emphasized the traditional humanitarian quality of asylum and avoided the pitfalls of enumeration. He questioned the need to give listings such as the one proposed by the Bulgarian delegation (A/C.3/L.1041), which could not possibly be exhaustive.

19. On the question of preventing criminals of various kinds from enjoying the benefits of asylum, he recalled the pertinent provisions of article 14 of the Universal Declaration of Human Rights, the Charter of the Nürnberg Tribunal^{2/} and the Convention relating to the Status of Refugees, all of which were covered, implicitly or explicitly, by articles 1 and 4 of the draft Declaration. No more specific reference to the question seemed necessary.

20. It was a source of satisfaction to his delegation that the draft Declaration was a continuation of the Universal Declaration of Human Rights and went beyond it only to specify what States could do to extend the right of asylum and to promote international co-operation in that sphere. The legal value of the draft Declaration had given rise to some discussion, and it had been said that a declaration could be regarded as a treaty in simplified form and might thus have binding force. There was a distinction to be drawn, however, between a declaration which was signed by States and one which was simply adopted by a body of representatives. The present Declaration would fall in the latter category. He also drew attention to the memorandum by the Office of Legal Affairs on the use of the terms "declaration" and "recommendation" (E/CN.4/L.610). That document expressed the view that, although there was no basic legal difference between a declaration and a recommendation in United Nations practice, a declaration might be considered to impart, on behalf of the organ adopting it, a strong expectation that members of the international community would abide by it. Thus a declaration would seem to stand half way between a recommendation and a convention. In any case, he did not think that the Committee's endeavours were rendered less important by the fact that it was not imposing strict obligations on States.

On the contrary, at the moral level, and by virtue of the force which United Nations recommendations had acquired over the years, the draft Declaration, once adopted, would have major significance.

21. Mr. BELAÜNDE MOREYRA (Peru) noted the laudable economy of means with which the draft Declaration had been prepared, for the entire text revolved about article 14 of the Universal Declaration of Human Rights. The formula employed in article 14 and referred to in the draft Declaration stated the basic principle, and the remainder of the draft Declaration simply added the necessary detail. In his view, the amendments relating to the maintenance of peace and friendship among nations, to the specific grounds for the granting of asylum and to the prevention of the grant of asylum to criminals of various kinds, were already covered by the text of article 14. It was important not to disturb the balance of the draft by adding excessive detail, which might furthermore open the way to misinterpretation or abuse.

22. Believing, however, that there was some merit in emphasizing the connexion between asylum and the interests of peace and of mankind and the consequent friendliness of the act of granting asylum, his delegation had prepared an amendment which expressed that thought while avoiding the addition of any restrictive element.

23. His delegation would support the amendments of Norway and Togo, except the last one relating to article 4, where he would support the Brazilian proposal (A/C.3/L.1036). He could endorse either the Polish or the Belgian proposal regarding a separate clause on the validity of other international instruments relating to asylum. Lastly, he would support the first paragraph proposed in point 2 of the second set of Polish amendments (A/C.3/L.1040), which corresponded to a provision in the Convention on Territorial Asylum signed in 1954.^{3/}

24. Mr. ZULOAGA (Venezuela) considered that, if territorial asylum was implicit as the subject of the draft Declaration, as some had said, there seemed no reason not to make it explicit. He agreed with the first part of point 2 of the second set of Polish amendments (A/C.3/L.1040) and also endorsed the six-Power amendment to article 1 (A/C.3/L.1044).

25. Since many of the amendments before the Committee dealt with the same issues, he believed that the sponsors should consult together in an effort to consolidate some of their proposals. Agreement might be reached on the basis of the latest Belgian amendment, which was the most comprehensive and in his view the most felicitous.

26. Mr. BOUQUIN (France) said he would restrict his comments to the three amendments to the preamble. He welcomed the latest text of the Belgian amendment, which was a great improvement on the original draft and appeared to meet all the points raised in the Committee. As the Italian representative had said, the word asylum was generally taken to mean territorial asylum; when it was desired to specify diplomatic asylum then the expression "diplomatic asylum" was used. It was true that the expression "external asylum" was sometimes used but, although he had not read them all, he

^{3/} Organization of American States: Law and Treaties: Convention on Territorial Asylum, signed at the Tenth Inter-American Conference, Caracas, March 1-28, 1954 (Pan American Union, Washington, D.C., 1954).

^{2/} Ibid., Sales No. 49.V.7.

was convinced that all constitutions containing provisions relating to the right of asylum spoke only of asylum, not of territorial asylum; nor was there any such qualification in article 14 of the Universal Declaration of Human Rights. Since there was, in fact, no ambiguity about the term, it would be better to retain the original text of the fourth preambular paragraph, as strengthened by the Belgian amendment—which, incidentally, took account of the interest of Latin American countries in the field of diplomatic asylum.

27. With regard to the USSR amendments, the French delegation shared the views expressed by the United Kingdom representative. The draft Declaration was not concerned with the maintenance of international peace and security or the development of friendly relations among States, but with the right of asylum. Moreover, to accept that amendment would, in fact, be equivalent to saying that the Purposes proclaimed in Article 1, paragraph 3 of the Charter of the United Nations were no longer among the chief purposes of the United Nations. If it was desired to cite a passage of the Charter, then only the one relevant to human rights should be mentioned.

28. The Peruvian amendment somewhat restored the balance by stressing again that the problem involved was a humanitarian problem. The French delegation, although it found the present text of the preamble perfectly satisfactory, would have no difficulty in supporting that amendment, which was in line with the idea contained in the original French draft of the Declaration (E/3335, para. 63) that, in granting asylum, States would incur no international responsibility. However, he also felt that it would be better to omit the words "in keeping with the interests of peace and of mankind", which had been inserted in order to meet the USSR view to some extent, and simply to say that the grant of asylum "is an act that cannot be regarded as unfriendly by any other State". The granting of asylum was indeed a humanitarian act and it was from the humanitarian viewpoint that the whole draft Declaration should be regarded.

29. Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic) agreed with those speakers who had stressed that the draft Declaration was concerned with human rights. But the very basis for the growth of all human rights was the maintenance of international peace and

security and the development of friendly relations among States: human rights could not be protected in case of war. It was thus only appropriate that that concept should be mentioned at the beginning of the preamble, as proposed in the amendments of the USSR.

30. Mr. BAROODY (Saudi Arabia) felt that the draft Declaration was generally satisfactory in its present form. While there was room for some slight changes, the text should be left as simple as possible. The language of international conventions, with their many qualifications and points of detail, was unsuitable for a document like the draft Declaration on the Right of Asylum, which was meant to be read by the man in the street as well as by lawyers. Long enumerations were particularly out of place, not only because they were for a cumbersome document but also because they could never be exhaustive.

31. He was therefore somewhat alarmed at the many amendments before the Committee. It was for similar reasons that, while agreeing that asylum should not be granted to persons engaged in espionage, he could not support the proposed USSR amendment to article 4. It was true that some safeguards were necessary, but too many would only obscure the fact that the right of asylum applied to the individual, and not to groups. Moreover, in the matter of asylum the goodwill of the host country was all-important. Without it no provision of an international declaration would stop the host country from using a person to whom it granted asylum for purposes of sabotage or subversion—clandestinely, if necessary, by granting him naturalization. The need for such goodwill was made sufficiently clear in the draft Declaration through its references to the United Nations Charter and article 14 of the Universal Declaration of Human Rights. The second new paragraph proposed by Poland for article 1 (A/C.3/L.1040), with its reference to war criminals, seemed equally out of place, since once an enumeration of types of criminals was begun it could be continued indefinitely.

32. He therefore urged the sponsors of the various amendments before the Committee to withdraw as many of them as possible and to co-ordinate the others with a view to obtaining a final text of the utmost simplicity and clarity. The fewer details there were in the draft Declaration, the better it would be.

The meeting rose at 1.5 p.m.



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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1035-1038, A/C.3/L.1039/Rev.2, A/C.3/L.1040-1045) (continued)

PREAMBLE AND ARTICLE 1 (continued)

1. Mr. PANTOJA (Colombia) said he did not believe that anyone denied protection to persons prosecuted for their opinions or for their scientific, technical or artistic work; consequently, the difficulties involved in drafting an international instrument recognizing the right of asylum were due not so much to fundamental divergencies of views as to the fact that representatives from various regions of the world had different ideas concerning the procedures for giving effect to that right.
2. The Colombian delegation regarded territorial and diplomatic asylum as being, in practice, indistinguishable aspects of the right of asylum. Diplomatic asylum was a humanitarian and liberal institution widely practised in Latin America; it would be wrong to ignore its value, and it should be recognized by the United Nations in the draft Declaration under discussion (E/3335, para. 147).
3. Mrs. TREE (United States of America) pointed out that, between 1945 and 1962, the United States Government had admitted to its territory 1 million refugees, some of whom had asked to be granted asylum. In supporting a bill concerning immigrants and refugees adopted by the United States Congress in 1962, President Kennedy had emphasized that the United States had always been a land of asylum for the oppressed and that Americans, as the descendants of refugees and immigrants, had a duty to give continued assistance to victims of persecution.
4. The fact that article 14, paragraph 1 of the Universal Declaration of Human Rights (General Assembly resolution 217 (III)) was quoted in the preamble of the draft Declaration on the Right of Asylum clearly indicated that the latter could refer only to territorial asylum. The United States delegation could therefore not endorse the Polish amendments (A/C.3/L.1038).

5. It would, however, support the amendment to the preamble submitted by Belgium (A/C.3/L.1039/Rev.2), and would vote for the Peruvian amendment (A/C.3/L.1042) if the sponsor agreed to delete the words "of peace and", as some representatives had suggested.

6. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said he believed that the objections advanced by some delegations concerning the Soviet amendment to the preamble (A/C.3/L.1043) were the result, not of real differences of substance, but rather of superficial misunderstandings.

7. The representative of France had expressed the fear that to apply the word "chief" to the Purposes proclaimed in Article 1, paragraphs 1 and 2, of the Charter of the United Nations would minimize the importance of the Purposes proclaimed in paragraph 3 of the same article (1196th meeting). That had never been the intention of the Soviet delegation, which was prepared to resolve any ambiguity by, for instance, deleting the word "chief".

8. Some representatives had said that the Peruvian amendment expressed the same idea as the Soviet amendment. He did not agree with that view. The text which Peru proposed for insertion in the preamble was useful and it provided a good supplement to article 1 of the draft Declaration, but the idea it expressed was different from that of the USSR amendment, which was linked to article 4, providing that persons enjoying asylum should not "engage in activities contrary to the Purposes and Principles of the United Nations". Thus it was logical for the preamble to mention, not only the Purposes and Principles proclaimed in Article 1, paragraph 3, of the Charter but also those proclaimed in paragraphs 1 and 2, and that was the omission which the Soviet delegation had wished to remedy. It might be legitimate to emphasize more particularly the Purposes proclaimed in paragraph 3, because they related to human rights, but the rights of States, which had been frequently mentioned during the debate, could not on that account be ignored in the draft Declaration under discussion. Nor must it be overlooked that respect for human rights was ensured as much by paragraphs 1 and 2, as by paragraph 3 of Article 1 of the Charter, since international peace and security were necessary for the enjoyment of those rights.

9. Mr. BRILLANTES (Philippines) regarded the right of asylum as an individual right, the realization of which might at times conflict with the sovereignty of the State. One of the Committee's tasks, therefore, when preparing a draft Declaration on the Right of Asylum, was to promote respect for that right without, however, prejudicing State sovereignty.

10. The legal consequences of the proposed Declaration could no more be questioned than could those of the Universal Declaration of Human Rights or of the Declaration of the Rights of the Child (General Assem-

bly resolution 1386 (XIV)). He believed, however, that diplomatic asylum would be out of place in a draft Declaration based on article 14 of the Universal Declaration, which obviously did not embrace that concept.

11. Turning to the amendments relating to the preamble, he said that he would agree only to those that were compatible with the substance of article 14 of the Universal Declaration, on which the provisions of the whole draft Declaration should be based.

12. The Belgian amendment had the defect that it subordinated the right of asylum—the very object of the document under preparation—to existing instruments dealing with the status of refugees and stateless persons. The Philippines delegation would be prepared, however, to accept it if the Belgian delegation would make a slight amendment restoring the right of asylum to first place.

13. In the Peruvian amendment, he would like the term "with the interests of peace and of mankind", which did not appear in article 14 of the Universal Declaration, to be replaced by the words "with faith in fundamental human rights, in the dignity and worth of the human person", which were taken from the Preamble of the United Nations Charter.

14. Lastly, the Soviet amendments mentioned two of the chief Purposes of the United Nations proclaimed in the Charter, while the preamble to the draft Declaration mentioned the third. It should not be impossible to arrive at a compromise text.

15. Mr. BELAUNDE MOREYRA (Peru) modified the text of his amendment, replacing the words "an act in keeping with the interests of peace and of mankind" by "a peaceful and humanitarian act".

16. Mr. PRZETACZNIK (Poland) said that he wished to reply to certain delegations, including those of France, the United States of America and Italy, which had said that diplomatic asylum was implicitly excluded from the draft Declaration, since article 14 of the Universal Declaration of Human Rights was reproduced in the preamble and that text clearly referred only to

political or territorial asylum. However, there was a doctrine in international law—the merits of which he did not propose to discuss, but which should be borne in mind—that a diplomatic mission or a ship was part of the State to which it belonged; in the light of that doctrine, article 14 of the Universal Declaration did not exclude diplomatic asylum. As Poland, along with a number of other States, believed that that type of asylum should be excluded and that the draft Declaration should leave no doubt on the point, it had submitted its proposed amendments (A/C.3/L.1038).

17. The representative of France had said (1196th meeting) that the provisions relating to the right of asylum contained in the constitutions of various States did not specify the type of asylum to which they referred; but it must be borne in mind that the Declaration should be more precise, since it would concern all States, not just one. The French representative had also said that the term "territorial asylum" was unknown in French law; however, he himself had found it in a number of works, including the first volume of Sibert's *Traité de droit international public* which mentioned the right of domestic or territorial asylum ("asile interne ou territorial").^{1/} If there was any objection to the word "territorial", some such term as "political asylum" might be used. In any event, it was essential to give a precise definition of the type of asylum covered by the Declaration.

18. Some delegations had expressed doubts concerning the exact meaning of the Polish amendment proposing two additional paragraphs to article 1 (A/C.3/L.1040). The purpose of that amendment was to make it clear that the host State was competent to determine all the conditions that must be met in order for a person to be entitled to seek asylum; it did not mean that that State was required to state its reasons.

The meeting rose at 4 p.m.

^{1/} M. Sibert, *Traité de droit international public* (Paris, Librairie Delloz, 1951), vol. 1, part 1, p. 573.



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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1035 and Add.1, A/C.3/L.1036-1038, A/C.3/L.1039/Rev.2, A/C.3/L.1040-1041, A/C.3/L.1042/Rev.1, A/C.3/L.1043/Rev.1, A/C.3/L.1044 and Add.1, A/C.3/L.1045) (continued)

PREAMBLE AND ARTICLE 1 (continued)

1. Miss KUBOTA (Japan) said that none of the proposed amendments substantially improved the text of the draft Declaration, which was itself the result of compromise (E/3335, para. 147). The amendments submitted by Poland (A/C.3/L.1040), Belgium (A/C.3/L.1039/Rev.2) and Bulgaria (A/C.3/L.1041) were unsatisfactory attempts to define the categories of persons to whom asylum should or should not be granted. The eight-Power amendment (A/C.3/L.1044 and Add.1) had the defect that it implied, somewhat paradoxically, that persons struggling against colonialism were not entitled to invoke article 14 of the Universal Declaration of Human Rights. The Soviet amendments (A/C.3/L.1043) would refer in the preamble of the draft Declaration to the maintenance of international peace and security and the development of friendly relations among all States—two ideas not involved in the granting of asylum, which should be based on purely humanitarian reasons. There was no great need for the Peruvian amendment (A/C.3/L.1042/Rev.1) in view of the wording of article 1 of the draft. Part 1 of the Belgian amendments which referred to instruments dealing with the status of refugees and stateless persons, was an unnecessary precaution, since the draft Declaration naturally did not prejudice those instruments in any way. Lastly, it was clear from the text of the draft Declaration that it did not refer to diplomatic asylum, and it was in accordance with that interpretation that the Japanese Government was prepared to support it. It seemed unnecessary, therefore, to insert the word "territorial" in the title as requested by Poland in its first set of amendments (A/C.3/L.1038).

2. Consequently, the Japanese delegation would not agree to any of the proposed amendments, in the belief that a majority of the members of the Committee would be prepared to vote for the original text.

3. Mr. OSTROVSKY (Union of Soviet Socialist Republics) introduced the revised USSR amendments (A/C.3/L.1043/Rev.1)—a compromise text which took account, *inter alia*, of the comments made by the Peruvian delegation at the meeting of the working group.

4. The Soviet delegation considered it logical to group in one paragraph all the purposes and principles proclaimed in the Charter of the United Nations, because they were inseparable. It would point out to the representative of Japan, who had apparently not taken note of the revised amendment, that the wording of article 4 made it necessary to mention those purposes and principles in the preamble of the draft Declaration. The development of friendly relations among nations and, in particular, the maintenance of peace and security were directly related to the right of asylum because, if the host State used for political ends persons it had admitted, that could only be to the detriment of its relations with the State from which they came and, consequently, to the detriment of peace.

5. Another purpose of the revised amendment was to protect the dignity of the person to whom asylum was granted and to ensure that he could not be used as a tool by the host State. It should therefore be acceptable to all delegations.

6. Miss KUBOTA (Japan) confirmed that her comments had referred solely to the original version of the Soviet amendment (A/C.3/L.1043).

7. Mr. PRZETACZNIK (Poland) reported on the results of the exchange of views that had taken place between the Algerian, Belgian and Polish delegations concerning the amendments submitted to the preamble and to article 1 of the draft Declaration. The three delegations proposed that the Committee should take no decision on the title of the draft Declaration until after it had adopted all the articles. They believed that the revised Peruvian amendment was generally acceptable, provided that it was brought into line with article 1. With respect to article 1, the three delegations proposed the addition of a second paragraph, worded as in point 2 of the Belgian amendments.

8. The Polish delegation did not believe it necessary to insert in the fourth preambular paragraph the phrase "dealing with the status of refugees and stateless persons", as proposed by Belgium in point 1 of its amendments. However, it supported the eight-Power amendment which it hoped would be put to the vote before the Bulgarian amendment.

9. With regard to the second set of amendments submitted by his own delegation (A/C.3/L.1040), he ex-

plained that he was withdrawing the second of the paragraphs to be added to article 1 but was maintaining the first, since the absence of such a clause would make it particularly difficult to resolve conflicts which might arise between the State granting asylum and the State of origin concerning persons who considered themselves entitled to invoke the right of asylum. It was clear from the international instruments relating to the right of asylum that it was for the State granting asylum to evaluate the nature of the offence committed by the person requesting it. Thus, it was logical and desirable to acknowledge that the evaluation of the grounds for the grant of asylum was within the competence of the host State, which, of course, must respect the spirit of the Declaration.

10. Mrs. TREE (United States of America) considered that the first preambular paragraph of the text under discussion, which was based in large measure on a proposal made by the United States of America in the Commission on Human Rights (E/3335, para. 79), enunciated the only purpose of the United Nations genuinely and directly related to the right of asylum. To mention other purposes would be simply to shift the emphasis from the proper object of the draft Declaration—the promotion of respect for the right of asylum as a humanitarian measure. Her delegation hoped that the USSR would not press its objections and that the Committee would be able rapidly to complete its work on that important instrument.

11. Sir Douglas GLOVER (United Kingdom) noted with regret that all the amendments submitted placed the emphasis on protecting State sovereignty, whereas the purpose of the Declaration was to safeguard the rights of persons belonging to persecuted minorities.

12. The United Kingdom delegation would abstain on both the revised Soviet amendments because, if the text relating to the preamble were accepted, it would be difficult not to accept also the new paragraph proposed for article 4, which his delegation could not endorse. It would vote against the second set of Polish amendments (A/C.3/L.1040) but would support the revised Peruvian amendment.

13. In connexion with the eight-Power amendment, he remarked that it would be unwise to mention a passing phase of history in an international instrument. When the implementation clauses of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages had been discussed, a number of delegations had opposed the inclusion of a territorial application clause, on the ground that that would be tantamount in a way to legalizing colonialism. Those delegations had maintained that any mention of the colonialist system was an anachronism. The same reasoning might be applied to the draft Declaration on the Right of Asylum.

14. The United Kingdom delegation could not endorse point 2 of the Belgian amendments, which would bolster the right of States to refuse asylum.

15. Mr. DIAZ CASANUEVA (Chile) said he was glad that the representative of Poland had maintained the first part of point 2 of his second set of amendments (A/C.3/L.1040), which embodied an idea of the greatest importance, not only to the countries of Latin America, but to the whole world. He did not agree with the United Kingdom representative that all the amendments, including that of Poland, tended to deprive the Declaration of its *raison d'être*, which was the protection of the human person; they merely took into account the

sovereign rights of the State. His delegation's view was that the State of which a person requested asylum must make the decision after, of course, carefully studying the case and investigating the basis of the charges laid against him by the State of origin. The new paragraph proposed by the Polish delegation was a praiseworthy contribution to the maintenance of peace, since it would facilitate the settlement of controversies that might arise between two States and it might at times prevent the breaking-off of relations, which constituted a threat to international peace and security.

16. Mrs. AFNAN (Iraq) observed, as a co-sponsor of the eight-Power amendment, that no comparison could be made between the draft Declaration on the Right of Asylum and the Convention on marriage. Her delegation had joined with others in opposing the inclusion of a colonial clause in the Convention because that would have been tantamount to recognizing the existence of colonial Powers. The purpose of the eight-Power amendment, on the other hand, was to put on record that the struggle against colonialism still continued. Although some delegations declared optimistically that colonialism would have disappeared within the next ten years or so, she greatly feared that it would survive for a longer period in more or less disguised forms. It was essential therefore, to specify that, so long as that struggle continued, persons engaged in it must be able to enjoy the right of asylum.

17. Mr. QUIAMBAO (Philippines), supported by Mr. BAROODY (Saudi Arabia), proposed that the Committee should discontinue its discussion of article 1 and should simply vote on the preamble, so that the present debate might produce positive results on at least one point.

18. Mr. OSTROVSKY (Union of Soviet Socialist Republics) observed that the Philippine proposal was not in line with the general view, which seemed to favour a vote not only on the preamble but also on article 1; the article had been very thoroughly studied and, thanks to the efforts made by the sponsors of amendments, a prompt decision on it should be possible. There were difficulties involved in the drafting of any international instrument, but it would be rather discouraging to have to spread the drafting of a text such as that under discussion over a great many sessions.

19. Mr. DIAZ CASANUEVA (Chile) said that he could not support the Philippine proposal. The various problems raised by the preamble and by article 1 had been studied in great detail, and it would be regrettable if such painstaking work were to result only in the adoption of the preamble. His delegation would be in favour of closing the debate on the preamble and article 1, as a decision on those could certainly be taken at the current session.

20. Mr. GHORBAL (United Arab Republic) said that he was prepared to support the Chilean representative's suggestion.

21. Mr. QUIAMBAO (Philippines) said that he would be delighted if the Committee found time to adopt the preamble and article 1 at the current session, but if there was no certainty that it could do so, it should attempt to obtain a decision at least on the preamble; the discussion of article 1 could be resumed after that.

22. The CHAIRMAN suggested that the Committee should proceed immediately to a vote on the preamble.

It was so decided.

23. Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic), speaking in explanation of his vote, said that it had been claimed that the Soviet amendments would divert the draft Declaration from its original objective—the safeguarding of a fundamental human right—to strengthening the sovereign rights of States. His delegation believed that the amendment quite rightly placed the emphasis on the role of the State in protecting human rights; he would recall in that connexion the fourth preambular paragraph of the Universal Declaration of Human Rights, which, though expressly concerned with human rights, nevertheless stressed—as did the Soviet proposal—the importance of friendly relations among States. In those circumstances his delegation would vote for the USSR amendment.

24. Mr. LEIRO (Norway) considered that it would be undesirable, in the draft Declaration under discussion, which should be worded as simply and as directly as possible, to define the notion of asylum or to specify the persons to whom asylum might be granted. Regarding the amendments to the preamble, his delegation would support the revised Peruvian text but would vote against the revised Soviet proposals and would abstain on all the other amendments.

25. Mrs. AFNAN (Iraq) said that the preamble to the draft Declaration rightly referred to one of the purposes enunciated in the Charter of the United Nations, namely, the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character, because it had a direct relation to human rights and fundamental freedoms and, consequently, to the right of asylum. In the same spirit, her delegation supported the revised Soviet amendments since any attack on peace ultimately meant a negation of human rights, inasmuch as peace and friendly relations were essential to the observance and development of fundamental rights. She also endorsed the revised Peruvian amendment, which was complementary to the Soviet amendments.

26. Mr. SHARP (New Zealand) said that the revised Soviet amendments taken by themselves were unexceptionable and, in fact, constituted an excellent statement of principle. Nevertheless, there could be no question that the granting of asylum by one State to a national of another State was capable of giving rise to some irritation between the two States, and that to stress in general terms, as did the Soviet amendment, the need for maintaining international peace and security and the importance of developing friendly relations among States, was in a sense to invite States never to grant asylum.

27. The idea of maintaining peace was much better expressed in the revised Peruvian amendment, which stressed that the granting of asylum was a peaceful and humanitarian act and that as such it could not be regarded as unfriendly by any other State. In those circumstances, he would vote against the USSR amendment, less because he was opposed to it than because he considered it less satisfactory than the Peruvian proposal.

28. Mr. MALECELA (Tanganyika) said that the original text of the preamble seemed to him sufficiently well drafted to need no amendment. Admittedly, it could be improved, but little was to be gained by adding further abstract principles to it. While the text

of point 1 of the revised Soviet amendments was, of course, taken from the Charter, he wondered whether it was really necessary to amend the preamble simply in order to quote the Charter. His delegation appealed to the Soviet Union representative to withdraw his amendment; if its appeal went unheeded it would have to abstain in the vote on that text.

29. Mr. BAROODY (Saudi Arabia) requested the Soviet Union representative to delete from his amendment the words "to develop friendly relations among all States". The granting of asylum could very easily be regarded by the State of origin of the beneficiary as a hostile act on the part of the host State, so that prospective host States might refuse asylum for fear of damaging friendly relations among States. The right of asylum would thus be seriously threatened and possibly even nullified. If the Soviet Union representative agreed to that deletion, his amendment would have the Saudi Arabian delegation's support.

30. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that in a spirit of co-operation his delegation was prepared to accede to the Saudi Arabian representative's request for it acknowledged that the phrase in question was not absolutely essential. In addition, in consideration of the difficulties drawn to its attention by several representatives, his delegation would withdraw point 2 of its revised amendments.

31. Sir Douglas GLOVER (United Kingdom) considered that although the revised version of the Soviet amendment was more satisfactory than the original version, the best course would be to abide by the text submitted by the Commission on Human Rights. He was strengthened in that view by the new change which the USSR delegation had just made in its text at the request of the Saudi Arabian representative. He would accordingly vote against the Soviet amendment.

32. Mr. CAPOTORTI (Italy) said that the reasons why he had opposed the original version of the Soviet amendments were valid for the revised version also, and that the change just made by the USSR representative in that amendment further increased the perplexity of the Italian delegation. He wondered why the Soviet text did not mention Article 1, paragraph 4, of the Charter of the United Nations, which would seem to have a place in the preamble to the draft Declaration. The problem of asylum was one in which international co-operation had a fundamental part to play, and it was surprising not to see that passage of the Charter included in the enumeration of the purposes of the United Nations which made up the Soviet amendment. It was true that the original text of the preamble referred only to Article 1, paragraph 3, but that was only logical since it was precisely to the sphere of international co-operation in the field of human rights that the draft Declaration belonged. To include in the preamble references to other paragraphs of Article 1 was very dangerous, for any partial quotation distorted the spirit of the text from which it was taken. Moreover, the revised Peruvian text also mentioned the idea of peace, so that the Soviet amendment was entirely unnecessary. In view of what he had said, his delegation would be unable to vote for the USSR proposal.

33. Mr. DIAZ CASANUEVA (Chile) expressed surprise that the Soviet delegation should have decided to delete from its amendment the words "to develop friendly relations among all States". Chile had been in favour of the revised Soviet text because in the

present-day world it was appropriate to relate all problems to that of the maintenance of peace and the development of friendly relations. By deleting the passage in question, the Soviet delegation vitiated its proposal, which thus lost all justification. He would therefore prefer to vote for the original text.

34. Mrs. AFNAN (Iraq) said that she, too, disapproved of the deletion of the words "to develop friendly relations among all States". If the Saudi Arabian delegation saw fit, it might request a separate vote on those words.

35. Mr. RIOS (Panama) acknowledged the highly conciliatory spirit displayed by the Soviet delegation, but considered that the words it had agreed to delete were of cardinal importance. Accordingly, his delegation, which had intended simply to abstain on the revised Soviet amendment—because it found the original text more satisfactory—would now be obliged to vote against it.

36. Mr. GHORBAL (United Arab Republic) said that the Italian representative had brought out a very important point. If reference was to be made to the purposes of the United Nations as stated in the Charter, it was necessary to enumerate all of them, and not cite some and not others. It would therefore be better not to delete anything from the revised Soviet amendment. In any case, the excellent Peruvian amendment offered a solution to all the difficulties as it answered the point raised by the representative of Saudi Arabia. His delegation accordingly urged the representatives of Saudi Arabia and the Soviet Union not to delete anything from the text of the amendment submitted by the latter. In any event the Peruvian text should receive unanimous support.

37. Mr. ZULOAGA (Venezuela) said that he shared the views of the representative of the United Arab Republic. He considered, moreover, that the position of many delegations with regard to the Soviet amendment would depend upon the fate accorded the Peruvian amendment. He therefore suggested that the latter amendment should be put to the vote first.

38. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that it was in a spirit of compromise that he had agreed to delete from his delegation's amendment the words "to develop friendly relations among all States". However, wishing to take into account the remarks just made by several delegations, he was restoring the phrase and suggested that it should be voted upon separately, so that those who did not like it could vote against its retention. The Soviet delegation would vote for the Peruvian amendment.

39. U KHIN MAUNG PYU (Burma) considered that the Soviet amendment was very closely linked to the Peruvian amendment, and said that he would be able to vote for the former only if the latter was adopted.

40. Mr. MENDOZA (Bolivia) endorsed the idea contained in the Soviet amendment. He was also in favour of the Peruvian amendment, which dealt with a point of great importance to all States. Moreover, he believed that the two amendments expressed the same concept, though in different form.

41. Mr. IDRIS (Indonesia) also felt that the Soviet and Peruvian amendments were complementary.

42. Mrs. MANTZOULINOS (Greece) believed that the preamble to an international instrument should refer only to the principles on which the provisions

of that instrument were based. In its present form the preamble to the draft Declaration was in accord with that rule, since its first paragraph concerned human rights and fundamental freedoms. The Soviet amendment would introduce into the preamble principles which, although essential, had no connexion with either the right of the individual to seek asylum or the right of the State to grant asylum. For that reason the Greek delegation would be unable to vote for it. On the other hand it would vote for the Peruvian amendment.

43. Mr. CHAMMAS (Lebanon) feared that the Soviet amendment had been misinterpreted by a number of delegations. He personally considered that the principles which it set forth were perfectly relevant in the context of the draft Declaration, and he would vote for it. He would also vote for the Peruvian amendment, which rounded off the Soviet proposal.

44. Mr. BAROODY (Saudi Arabia) said that his doubts regarding the phrase "to develop friendly relations among all States" in the Soviet text had arisen solely from the uncertainty regarding the fate of the Peruvian amendment. If the latter was adopted, he would have no difficulty in voting for the Soviet amendment, and there would be no need, so far as he was concerned, for a separate vote.

45. He formally moved that the Committee should vote first on the Peruvian amendment.

46. Mr. OSTROVSKY (Union of Soviet Socialist Republics) supported the Saudi Arabian motion.

Adoption of the preamble

47. The CHAIRMAN said that if there were no objections, the Committee would vote first on the Peruvian amendment.

It was so decided.

48. Mr. DAS (Secretary of the Committee) pointed out that the following two minor corrections to the revised Peruvian amendment should be made: in the first line the words "the fourth and fifth" should be replaced by the words "the third and fourth"; and, in the Spanish text, the word "conforme" before the words "pacífico y humanitario" should be deleted.^{1/}

The Peruvian amendment (A/C.3/L.1042/Rev.1) was adopted by 82 votes to none with 2 abstentions.

49. The CHAIRMAN put to the vote point 1 of the Soviet amendments (A/C.3/L.1043/Rev.1).

Point 1 of the Soviet amendments was adopted by 45 votes to 21, with 19 abstentions.

50. Mr. TROCLET (Belgium) said that, to meet the wish of the Philippine delegation, he had rearranged sub-paragraph (a) of point 1 of his amendments (A/C.3/L.1039/Rev.2), so that the instruments dealing with asylum should come first. As a result, his proposal now was to add after the words "dealing with asylum" the words "and the status of refugees and stateless persons".

51. He withdrew sub-paragraph (b) of point 1 of his amendments. It had been proposed mainly in order to meet the wishes of the Latin American delegations, but in the end it did not appear to meet with their approval.

^{1/} Subsequently circulated as A/C.3/L.1042/Rev.1/Corr.1.

52. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that he saw no need for the status of refugees and stateless persons to be given special mention since in his view the notion of asylum was a general one which embraced refugees and stateless persons and could include other categories.

53. Mr. TROCLET (Belgium) stressed the value of his amendment. Contrary to the argument of the Soviet delegation, he believed that the idea of asylum was too limited to cover refugees and stateless persons.

54. Mr. DE SANTIAGO LOPEZ (Mexico) said that he shared the Soviet representative's views, to the effect that international agreements which were not in harmony with the Latin American concept of asylum, should not be mentioned. The Convention on Territorial Asylum, signed at Caracas in 1954,^{2/} did not distinguish between the person enjoying asylum and a refugee, and granted identical treatment to both.

55. The CHAIRMAN put to the vote point 1 of the Belgian amendments (A/C.3/L.1039/Rev.2), as further amended by its sponsor.

Point 1 of the Belgian amendments, as modified, was adopted by 40 votes to 16, with 27 abstentions.

56. The CHAIRMAN invited the Committee to vote on the former fourth preambular paragraph, which would now become the fifth preambular paragraph, as thus amended.

57. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) requested a separate vote on the words "States Members of the United Nations and members of the specialized agencies", since deletion of those words would give the Declaration a more universal character.

The Committee decided to retain the words "States Members of the United Nations and members of the specialized agencies" by 59 votes to 8, with 15 abstentions.

The new fifth preambular paragraph, as amended, was adopted by 66 votes to none, with 18 abstentions.

The preamble as a whole, as amended, was adopted by 82 votes to none, with 2 abstentions.

ORGANIZATION OF WORK

58. Mr. BAROODY (Saudi Arabia) felt that the Committee, in view of the short time available, would be unable to vote on article 1 of the draft Declaration and the relevant amendments. He therefore proposed that the Committee should adopt a resolution stating, in effect, that the General Assembly, having already approved the preamble of the draft Declaration on the Right of Asylum but having been unable to vote on the whole of the draft Declaration, decided to examine the latter as early as possible at its eighteenth session and, during that session, to devote whatever number of meetings might be necessary to complete consideration of the item.

59. Mr. PICO (Argentina), supported by Mr. DIAZ CASANUEVA (Chile), Mr. BEN MEBAREK (Algeria) and Mr. NEDBAILO (Ukrainian Soviet Socialist Republic), considered that the Committee could devote one more meeting to its consideration of the draft Declaration in order to approve article 1. In view of

the spirit of conciliation which members had shown regarding the preamble and since the sponsors of the various amendments to article 1 seemed to have reached agreement, it would be only right for the Committee to vote at the next meeting on Monday morning on article 1, which was, after all, the keystone of the draft Declaration.

60. Mr. BAROODY (Saudi Arabia) by no means shared the optimism of the previous speakers. He doubted very much that the Committee would be able to complete its examination of article 1 and of the numerous amendments at one meeting. There was nothing surprising in the draft resolution he had just submitted. The Committee would have to adopt similar resolutions on other items on its agenda and he could not see how the draft Declaration on the Right of Asylum was more important than some of the other questions that the Committee would have to hold over to the eighteenth session.

61. The CHAIRMAN pointed out that the Committee had decided some time previously to resume on Monday, 3 December, its examination of the draft International Covenants on Human Rights which it had interrupted on 16 November (1185th meeting) in order to hear the High Commissioner for Refugees. That decision could only be reversed by a two-thirds majority. He also shared the doubts expressed by the representative of Saudi Arabia: it was unlikely that the Committee would be able to dispose of article 1 of the draft Declaration at one meeting.

62. Mr. OSTROVSKY (Union of Soviet Socialist Republics) recalled that his delegation had proposed the insertion in the draft international Covenant on Civil and Political Rights of a new article concerning the right of asylum. His delegation was prepared, in the same spirit of conciliation as it had shown in the matter of the preamble to the draft Declaration, to agree that the time that would normally have been set aside for the examination of that new article should be devoted to article 1 of the draft Declaration on the Right of Asylum. There had already been long discussions on that article and some agreement had been reached. It would be a pity if all the efforts made were to remain fruitless.

63. Mr. BAROODY (Saudi Arabia), joined by Mrs. MANTZOULINOS (Greece), said that the Committee had only fourteen working days left. Since the start of the present session it had frequently deviated from the programme it had set itself. If that tendency were to prevail once more, the Committee would be unable, through lack of time, to continue its examination of the draft international Covenants constructively.

64. Mr. DIAZ CASANUEVA (Chile), invoking rule 126 of the rules of procedure of the General Assembly requested that a vote be taken immediately on the proposal to continue discussions of article 1 of the draft Declaration at the next meeting. The decision could be adopted by a simple majority of the members present and voting.

65. Mr. GHORBAL (United Arab Republic), joined by Mr. MALECELA (Tanganyika), Mr. BEN MEBAREK (Algeria) and Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said he feared that, if the Committee did not take a decision on article 1 of the draft Declaration at the present session, the good work done would be wasted and the article in question would again be the subject of lengthy discussion at the eighteenth ses-

^{2/} Organization of American States: Law and Treaty Series; Convention on Territorial Asylum, signed at the Tenth Inter-American Conference, Caracas, March 1-28, 1954 (Pan American Union, Washington, D.C., 1954).

sion. He accordingly proposed the closure of the debate on article 1 so that the article itself and the relevant amendments might be put to the vote at the start of the next meeting.

66. Mr. BAROODY (Saudi Arabia) said that, under rule 124 of the rules of procedure, if the Committee wished to reconsider a previous decision it would have to take a new decision by a two-thirds majority. Permission to speak on a motion to reconsider was accorded only to two speakers opposing the motion. Pointing out that he and the representative of Greece had already spoken against such a motion, he accordingly requested that the motion be put to the vote immediately, on the clear understanding that a two-thirds majority was required.

67. Regarding the closure of the debate he noted that several representatives, including himself, had not had an opportunity to express their views either on article 1 of the draft Declaration or on the amendments proposed. The Committee would, therefore, be quite unable to reach a decision on that article at one

meeting. With regard to the proposal of the USSR representative, he wished to point out that, in any case, the Committee would not be able to examine the new article of the draft international Covenant on civil and political rights until it had adopted the draft Declaration on the Right of Asylum.

68. Sir Douglas GLOVER (United Kingdom) and Mr. BOUQUIN (France) supported the proposal made by the representative of Saudi Arabia.

69. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) moved the adjournment of the meeting under rule 119 of the rules of procedure.

70. The CHAIRMAN put to the vote the motion for adjournment submitted by the delegation of the Ukrainian SSR.

The motion for adjournment was adopted by 34 votes to 20, with 14 abstentions.

The meeting rose at 6.40 p.m.

United Nations
**GENERAL
ASSEMBLY**

SEVENTEENTH SESSION

Official Records

**THIRD COMMITTEE, 1199th
MEETING**

Monday, 3 December 1962,
at 10.45 a.m.



NEW YORK

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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1035 and Add.1, A/C.3/L.1036-1038, A/C.3/L.1039/Rev.2, A/C.3/L.1040-1041, A/C.3/L.1044 and Add.1, A/C.3/L.1045, A/C.3/L.1047)
(continued)

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN observed that, to judge by the discussion leading up to the adjournment of the 1198th meeting, the Committee appeared to be divided into those who considered that article 1 of the draft Declaration on the Right of Asylum (E/3335, para. 147) could be adopted easily and quickly at the present session and those who, like the Saudi Arabian representative, thought that the importance of the article and the number of amendments proposed for it indicated a need for thorough study.

2. The Committee now had before it a draft resolution submitted by the Saudi Arabian representative, proposing that the examination of the articles of the draft Declaration, the preamble to which had already been adopted, should be postponed until the eighteenth session (A/C.3/L.1047). It also had before it a motion by the Chilean representative for the closure of the debate (1198th meeting). He regarded the first of those two proposals as equivalent to a motion for the adjournment of the debate, and therefore considered that it should take precedence over the second proposal.

3. Mr. DIAZ CASANUEVA (Chile) explained that he had not moved the closure of the debate because, to the best of his understanding, it was already over. The Committee had examined the preamble and article 1 together and, having adopted the preamble, had now only to take a decision on article 1 and the amendments thereto. He accordingly proposed that the Committee should now decide whether or not to vote on article 1 and related amendments.

4. Mr. ZULOAGA (Venezuela) felt that the Committee's decisions on the organization of its work should be fairly flexible in application and were not of the type whose reconsideration required a two-thirds

majority. However, it hardly seemed sensible to postpone consideration of the draft Declaration, without adopting article 1, in order to resume consideration of the draft Covenant on Economic, Social and Cultural Rights, under item 43 of the agenda of the General Assembly, which the Committee would also be unable to complete at the present session.

5. The CHAIRMAN pointed out that, in taking a decision on the motion to adjourn the debate, the Committee would automatically have taken a decision on the Chilean proposal as it now stood.

6. Mr. BAROODY (Saudi Arabia) recalled that, after holding a general discussion on the draft Declaration as a whole, the Committee had decided to take a vote at the present session on the preamble and, if there was time, on article 1. That decision should not, however, prevent the Committee from giving the article all the attention it deserved. It was a very important provision, to which a great many amendments had been submitted, and those delegations which were not represented on the Commission on Human Rights should be given an opportunity to express their views. There was thus every reason to believe that one or two meetings would not be sufficient for the adoption of article 1. The Committee could probably afford some flexibility in organizing its work, but it should not prolong discussion on the draft Declaration to the point of interfering with the examination of the remaining agenda items, especially the draft International Covenants on Human Rights, which had priority and to which it had decided to devote twenty-five meetings. The Committee could determine its own procedure in cases not covered by a specific rule of procedure of the General Assembly, but in the present case rule 124 applied and failure to abide by it would set a dangerous precedent.

7. He therefore proposed that the Committee should decide, in accordance with rule 124 of the rules of procedure, whether or not to consider article 1 of the draft Declaration.

8. The CHAIRMAN pointed out that, in reality, the Committee had before it only a motion for the adjournment of the debate on the draft Declaration, and that that motion was not subject to the provisions of rule 124.

9. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) recalled that the Committee had decided to examine the preamble and article 1 together (1194th meeting). The fact that the preamble had been voted on first should not prevent the Committee from voting on article 1, for the general discussion on the two texts was over. It was of the utmost importance that the Committee should take a decision, at the present session, at least on the first substantive provision of the draft Declaration.

10. Furthermore he agreed with the Chairman that rule 124 did not apply to the present case, which was merely a matter of altering a decision that had not even been formally adopted.

11. Mr. PICO (Argentina) agreed that the decision the Committee had taken on its programme of work was not subject to rule 124 of the rules of procedure, which applied only to proposals formally introduced in accordance with rule 121. Moreover the Committee's work on the draft Declaration would be virtually wasted unless it managed to adopt article 1, which was of paramount importance since it enunciated the principle of international respect for the right of asylum. In any case, two meetings should be time enough to bring the article to the vote, provided that the time allowed to each speaker was limited in accordance with rule 115.

12. Mr. BAROODY (Saudi Arabia) withdrew his draft resolution that the examination of the articles of the draft Declaration should be postponed until the eighteenth session.

13. The CHAIRMAN ruled that the Committee should take up consideration of article 1 of the draft Declaration and proceed to the vote.

14. Mr. DIAZ CASANUEVA (Chile) considered that the discussion on article 1 of the draft Declaration had already taken place and that it remained only for the Committee to vote on the article.

15. The CHAIRMAN explained that, when the Philippine representative had proposed that the Committee should vote on the preamble to the draft Declaration, several representatives had signified their desire to comment on article 1 (1198th meeting). Consequently the discussion on the article was not yet completed.

16. Mr. BOUQUIN (France) disagreed with the Chilean representative. Delegations had not had an opportunity to give thorough consideration to the amendments to article 1. The working group had not yet reported to the Committee and the amendments were not yet available in final form. The article was important. The French delegation had proposed that it should be considered before the preamble so that the Committee would have enough time to discuss it thoroughly. That suggestion had unfortunately not been followed and he was opposed to a decision being taken without previous discussion. It should also be borne in mind that General Assembly resolution 1682 (XVI) required the Committee to devote the necessary number of meetings to the consideration of the draft Declaration.

17. Mr. ZULOAGA (Venezuela) associated himself with the French representative's remarks.

18. Mr. BEN MEBAREK (Algeria) said that the Chairman's decision to ask the sponsors of amendments to meet as a working group in order to arrive at a compromise had meant that the discussion on the article in question was over. In any case, most of the amendments to article 1 had already been discussed. Furthermore the Polish representative had given a brief report at the 1198th meeting on the compromise arrived at by the working group.

19. If the Committee insisted on taking up article 1, he hoped the time allowed to each speaker would be limited in accordance with rule 115 of the rules of procedure of the General Assembly.

20. Mr. DIAZ CASANUEVA (Chile) supported the Algerian representative. The Latin American countries had no vested interest in the draft Declaration on the Right of Asylum, for they already had very advanced and comprehensive legal instruments on the subject. Consequently their position was dictated solely by a sense of special solidarity with those Africans who were now obliged to leave their countries and seek political asylum. They considered that the adoption of article 1 would provide moral encouragement for the victims of persecution in Africa.

21. Mr. BOUQUIN (France) said that France, for its part, had not yet stated its views on the article and that other delegations had also confined their remarks to the preamble. Furthermore the changes made by the working group raised serious problems which would require careful consideration.

22. Mr. BEN MEBAREK (Algeria) agreed with the French representative that all delegations should be given an opportunity to state their views on article 1 and the amendments thereto.

23. In reply to questions from Mr. BAROODY (Saudi Arabia), the CHAIRMAN said that, apart from the draft Declaration on the Right of Asylum, to which eight meetings had been devoted so far, the Committee still had five items to deal with and thirteen meetings in which to do so before the end of the seventeenth session. He suggested that article 1 of the draft Declaration should be put to the vote at the end of the 1201st meeting. He did not propose to limit the time allowed to speakers, but would be grateful if delegations would exercise some self-discipline.

24. Mr. BAROODY (Saudi Arabia) asked what would happen if the Committee did not reach a vote on article 1 by the end of the 1201st meeting.

25. Mr. ZULOAGA (Venezuela) thought it was impossible to answer that question. All the Committee could do was express the hope that it would reach a vote on article 1 before the end of the 1201st meeting.

26. Mr. BAROODY (Saudi Arabia) said that the Committee had always avoided excessive haste in working on the texts referred to it and should not depart from its normal practice in dealing with article 1 of the draft Declaration, which was of vital importance. It might prove difficult to reach a decision on that provision and the related amendments, but the Committee would do better to take what time was needed than to vote in haste. Everyone should have complete freedom to state his views on the subject under consideration. In another connexion he wondered how the Chairman proposed to apportion, among the five agenda items still outstanding, the meetings which would be left after the 1201st, and whether all eleven of those meetings would be devoted to the highly important draft International Covenants on Human Rights.

27. The CHAIRMAN said that, after the draft Declaration on the Right of Asylum, the Committee would take up the general clauses of the draft Covenant on Economic, Social and Cultural Rights. It should be possible to dispose of those clauses in three or four meetings. The Committee would then be able, if it saw fit, to resume its work on the draft Covenant on Civil and Political Rights; after that, it would turn to agenda item 81 (Implementation of the Supplementary Convention of 1956 on the Abolition of Slavery, the

Slave Trade and Institutions and Practices similar to Slavery).

28. Mrs. ROUSSEAU (Mali) supported by Mr. BEN MEBAREK (Algeria), suggested that a date should be fixed for the closure of the list of speakers on article 1.

29. Mrs. MANTZOULINOS (Greece) said that, unlike the Latin American countries, most States had not the privilege of being parties to international instruments on the right of asylum. It was therefore natural that the delegations of those States should attach the greatest importance to the draft Declaration and should want to avoid haste in drafting article 1, for fear it should prove unsatisfactory.

30. Mr. BEN MEBAREK (Algeria) felt that, if it took more than two meetings to bring article 1 to the vote, it would be better to continue the discussion until a decision was reached than to leave unfinished a task on which so much effort had already been spent.

31. The CHAIRMAN said that, if the voting could not be completed at the 1201st meeting, the discussion would continue as long as necessary.

32. Sir Douglas GLOVER (United Kingdom) formally proposed that the Committee should decide to defer the whole question to the eighteenth session if it

proved impossible to vote on article 1 by the end of the 1201st meeting.

33. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) thought it would be preferable to close the list of speakers that very day and carry the discussion through to a vote. It would be completely unreasonable to devote two additional meetings to article 1 only to decide, if the Committee was not ready to vote by the end of the 1201st meeting, that the whole question should be re-examined at the eighteenth session.

34. Sir Douglas GLOVER (United Kingdom) pointed out that, in view of the number of items still to be considered, it was important to decide now how many more meetings to devote to article 1.

35. Mr. ZULOAGA (Venezuela) said that he would vote against the United Kingdom proposal.

The United Kingdom proposal was rejected by 36 votes to 29, with 16 abstentions.

36. The CHAIRMAN said that the Committee would resume consideration of article 1 at the 1200th meeting. He suggested that the list of speakers should be closed at 3 p.m. the same day.

It was so decided.

The meeting rose at 1.5 p.m.

United Nations
**GENERAL
ASSEMBLY**

SEVENTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1200th
MEETING**

Tuesday, 4 December 1962,
at 10.50 a.m.

NEW YORK

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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

In the absence of the Chairman, Mr. Albuquerque Mello (Brazil), Vice-Chairman, took the Chair.

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1035 and Add.1, A/C.3/L.1036-1038, A/C.3/L.1039/Rev.3, A/C.3/L.1040/Rev.1, A/C.3/L.1041 and Rev.1, A/C.3/L.1044 and Add.1, A/C.3/L.1045, A/C.3/L.1049) (continued)

PREAMBLE AND ARTICLE 1 (continued)

1. Mrs. REFSLUND THOMSEN (Denmark) said that the existing text of article 1 of the draft Declaration on the Right of Asylum (E/3335, para. 147) was entirely satisfactory to her delegation, which would be in a position to support it. The provision was the result of a compromise which should be acceptable to a large majority of States; it was to be hoped that not too many changes would be made in the text.
2. Her delegation would vote against points 1 and 2 of the first set of Polish amendments (A/C.3/L.1038); those were unnecessary because article 14 of the Universal Declaration of Human Rights (General Assembly resolution 217 (III)), which was mentioned in article 1, referred to asylum "in other countries".
3. The idea embodied in point 1 of the revised Belgian amendments (A/C.3/L.1039/Rev.3) was covered by article 14, paragraph 2, of the Universal Declaration, which—as she had just pointed out—was mentioned in the existing text of article 1 and quoted in the preamble. If the Committee was in favour of inserting such a paragraph in the draft Declaration, however, her delegation would have no serious objection to raise.
4. The purpose of the other Polish amendment, as revised (A/C.3/L.1040/Rev.1), was apparently to make it quite clear that the decision whether asylum should be granted or refused to a particular person would rest with the State. However, that idea was already expressed in the words "in the exercise of its sovereignty", and to state it again might give rise to uncertainty or even to error; her delegation, therefore, could not support that proposal.

5. Similarly, it would be unable to vote in favour of the Bulgarian amendment (A/C.3/L.1041), which attempted—unsuccessfully—to define the cases in which a person was entitled to invoke article 14 of the Universal Declaration. It suffered from a serious omission in failing to mention fear of persecution; many persons were quite properly granted asylum because they feared persecution. The enumeration of grounds for the grant of asylum was also open to criticism. In the first place it was incomplete: in particular, it failed to mention political convictions, which very often gave rise to persecution. Again, some of the criteria mentioned were of a subjective nature. Lastly, if the Bulgarian amendment was adopted, only persons who had engaged in certain activities would be eligible for asylum. Yet the example of the Jews who had been persecuted by the nazis and who had been admitted to Denmark in great numbers, sufficed to show that persons were sometimes compelled to seek asylum, not because of their activities, but because of their race or political views.

6. The eight-Power amendment (A/C.3/L.1044 and Add.1) was not entirely clear in scope. If its purpose was to allow persons struggling against colonialism to claim asylum even when they were neither victims of persecution nor afraid of being persecuted, it would seem to go beyond the right of asylum. That, however, was probably not the sponsors' intention, and if their sole aim was to extend the benefits of the right of asylum to persons persecuted for struggling against colonialism, the amendment was superfluous because such persons, as the victims of persecution, were ipso facto entitled to claim asylum. Moreover, colonialism would soon be a thing of the past and it would be preferable not to mention it in a document framed with the future in mind. Unless the amendment in question was revised, her delegation would vote against it.

7. The adoption of the amendments which had been submitted might have the regrettable result that the draft Declaration would receive less general support than it might if the original text of article 1 remained unchanged.

8. Mr. TROCKET (Belgium) said that, in the first place, the new version of his amendment did not differ in substance from the previous one; the only difference was a slight drafting change at the beginning of the proposed paragraph.

9. As to the substance of his proposal, it should be noted that since the founding of the United Nations a new concept had appeared which was gradually gaining international recognition: the three-fold concept of crime against peace, war crime and crime against humanity. Neither the 1951 Convention relating to the Status of Refugees^{1/} nor the 1954 Convention relating to the Status of Stateless Persons,^{2/} both

^{1/} United Nations publication, Sales No.: 51.IV.4.

^{2/} *Ibid.*, Sales No.: 56.XIV.1.

of which had been drawn up under the auspices of the United Nations and both of which had been widely ratified, stipulated that their provisions did not apply to persons against whom there were serious reasons for considering that they had committed such crimes. His delegation felt that it was necessary to include that idea in the text under consideration, not through an express reference to the two Conventions, but by quoting the relevant clause verbatim, so that the texts prepared under the auspices of the United Nations might be as consistent as possible and present no difficulties of interpretation. The proposed new paragraph should be satisfactory to everyone, since it was taken from texts of positive international law sanctioned by the United Nations.

10. The international instruments referred to at the end of the paragraph should be understood to include not only existing instruments, such as the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 (III), annex), but also those which the United Nations might draw up in the future.

11. Moreover, the proposed new paragraph, by stressing the right of individuals, did something to counter-balance the existing text, which emphasized the right of States. His delegation hoped, therefore, that its amendment would receive the support of a large majority of members of the Committee.

12. Mr. PANTOJA (Colombia) regretted that he would have to vote against point 1 of the Belgian amendments. The inter-American conventions on the right of asylum drew a distinction between political offences and offences under ordinary law; the Belgian amendment clashed with that distinction, specifying a third type of offence which, moreover, was not clearly defined in international law. In contrast, the original text was perfectly in keeping with Colombian ideas on the subject. His delegation would support the revised Polish amendment (A/C.3/L.1040/Rev.1), which rightly emphasized an important idea. However, it would vote against the Bulgarian amendment because, in its view, the idea expressed in that amendment was clearly implicit in article 14 of the Universal Declaration, which was mentioned in the draft article before the Committee.

13. Mr. MELOVSKI (Yugoslavia) said he had already stated his delegation's views on the draft Declaration as a whole and on article 1. He had said then that his position on such amendments as might be submitted would be determined by the extent to which they improved upon the original text. As to point 1 of the Belgian amendments, he regretted that the previous version had not been retained, for its wording had corresponded in all respects with Yugoslavia's general position on crimes against peace, war crimes and crimes against humanity, and because it considerably improved the original draft article. He would nevertheless support the revised text which, although weakened, completed the original text. He had no wish to touch off an argument about the definition of the crimes in question; he would merely point out that history and mankind had judged the perpetrators of such crimes, and that in Yugoslavia's view there was no need to reopen the subject after the tragic experience of the Second World War, during which 1,700,000 Yugoslav men, women and children had been killed. It seemed hardly necessary to mention that hundreds of persons who were responsible for the deaths of hundreds of thousands of human beings

were even now enjoying the right of asylum and the benefits of absolute impunity.

14. He also supported the eight-Power amendment, which was likewise perfectly in keeping with his Government's views and which was rightly designed to extend the benefits of the draft Declaration to persons compelled to seek asylum because of their struggle against colonialism. It was a known fact that the colonial Powers had never agreed that other States should grant asylum to persons compelled to seek refuge abroad because of their efforts to liberate their countries. It was also a known fact that the peoples of the territories still under colonial rule were struggling for their independence, and that persons were compelled to flee from the persecution inflicted on them by the colonial authorities.

15. Mr. SHARP (New Zealand) said he thought it necessary to define what he meant by "declaration" and "right of asylum" since difficulties had been raised by one delegation regarding the interpretation of those two terms. A Declaration of the type the Committee was drafting was not legally binding and was in the nature of a recommendation only, a fact which did not prevent it from being of great value. The right of asylum meant only the right of every individual to seek asylum and to enjoy it if granted.

16. His delegation would have been prepared to support the original text of article 1 without any change. It considered that the proposed amendments were not calculated to promote the concept of asylum and in some instances even had a restrictive effect. Every request for asylum involved three parties: the individual concerned, his State of origin and the State in which he found a temporary home. Of those three parties, only the State to which application for asylum was made was capable of taking an objective view of the situation. If, therefore, there was to be any element of discretion as to the circumstances in which asylum should be granted, that discretion must rest with the State granting asylum. He very much regretted that some of the amendments revealed a tendency to overlook the rights of the individual and to raise issues which could only have the effect of providing the State of origin with arguments that could be invoked to obtain the return of the person concerned.

17. With regard to points 1 and 2 of the first set of Polish amendments (A/C.3/L.1038), he had no very firm views on the insertion of the word "territorial". In view of the wording of article 14 of the Universal Declaration, the draft Declaration quite obviously related to territorial asylum, so that the amendment was not of great moment.

18. His delegation was not much in favour of the additional paragraph proposed by the Belgian delegation; opinions could, in fact, differ very widely as to whether or not the offence committed by the applicant for asylum constituted a crime against peace, and care must be taken not to help those who challenged an individual's right to enjoy asylum. However, the amendment contained the words "international instruments", which made it less vague.

19. It was entirely opposed to the revised Polish amendment (A/C.3/L.1040/Rev.1). If the suggested new paragraph simply meant that the State to which application for asylum was made was the sole arbiter of whether or not the applicant was entitled to asylum, it was unexceptionable but completely unnecessary. If it meant that the State granting asylum must explain

the reasons for its decision to the State of origin, it was quite simply unacceptable.

20. For the reasons which he had already explained, he preferred the general and comparatively brief text of article 1 to that contained in the Bulgarian amendment, which was restrictive in that it entitled only persons who had engaged in some "activity" to the right of asylum and which would also make it possible to challenge a request for asylum on the ground that the applicant did not meet the qualifications.

21. He thought that the eight-Power amendment was quite unnecessary, for any persecuted person was automatically entitled to benefit from the provisions of the declaration; moreover, to grant the persons referred to in the amendment the right of asylum if they were not victims of persecution would be to discriminate in their favour. It was generally conceded that colonialism was coming to an end and it was hardly appropriate to refer to it in a document drawn up for the future. Nevertheless, the issue aroused strong feelings and his delegation would not be opposed to mentioning it in the draft, provided that the wording of the text was amended to show that the struggle against colonialism was only one of the many grounds on which individuals might be persecuted.

22. In conclusion, he emphasized that a person had to seek asylum because the interpretation which the authorities of his country placed on his activities was very different from his own assessment of them; care must therefore be taken to ensure that his home country could not victimize him by claiming that he did not come within one of the categories provided for in the declaration. The Committee was not dealing with a new institution but was trying to give formal sanction to long-standing humanitarian practices; it should therefore guard against producing a text setting lower standards than those prevailing at the present time.

23. Mr. KIRWAN (Ireland) said he would have preferred to see article 1 adopted in its original form, which adequately, if not admirably, rendered the idea to be expressed. He had nevertheless studied the various amendments in a positive light, keeping in mind the need to achieve a balance between the humanitarian aspects of the question and the right of States to grant or refuse asylum in the exercise of their sovereignty. Points 1 and 2 of the first set of Polish amendments (A/C.3/L.1038) did not seem very useful because, as the representative of Denmark had pointed out, the words "in other countries" which appeared in article 14 of the Universal Declaration—an article which was mentioned in article 1 and cited in the preamble—made it clear that that draft Declaration was concerned with territorial asylum. With regard to point 1 of the Belgian amendments, the idea it stated was already implicit in the original text in view of the reference to article 14; however, his delegation would not vote against that proposal. The revised Polish amendment (A/C.3/L.1040/Rev.1) was much superior to the original version but all the ambiguities had not been eliminated, and for that reason his delegation would give the matter further consideration.

24. The first sentence of article 14 of the Universal Declaration rightly stressed the idea of persecution, for it was to persons fleeing from persecution that asylum had traditionally been granted. His delegation, however, was not opposed to expanding article 1 to refer specifically to persons struggling against colo-

onialism, but any extension should be general in its application and should not be limited to certain regions of the world. Consequently, the text of the eight-Power amendment should be modified to make it universal in scope, while still giving due weight to the question of persons struggling against colonialism. It also required to be modified to bring it clearly within the ambit of article 14 of the Universal Declaration of Human Rights—both paragraph 1 of the article, dealing with persons seeking asylum from persecution, and paragraph 2, which imposed a limitation in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the Purposes and Principles of the United Nations.

25. Mr. CAPOTORTI (Italy) thought that article 1 contained three very important ideas, which corresponded to three aspects of asylum. First of all, by the use of the expression "in the exercise of its sovereignty", it indicated very clearly that each State was free to decide whether or not to grant asylum and itself determined the grounds for its decision. Second, by referring to article 14 of the Universal Declaration it defined the persons who were justified in seeking asylum—and his delegation had already stressed the importance it attached to that reference. Finally, and most important, it laid down the principle that all States were bound to respect asylum granted by a State. In other words, States could neither protest against the granting of asylum, nor request the extradition of an individual enjoying it under the terms of the declaration; that was a provision which was fully in keeping with the humanitarian character of asylum which was stressed in the preamble, particularly after the adoption of the Peruvian amendment. A perfect balance was therefore established in the text between the rights of the State and those of the individual, and care must be taken not to upset that balance by putting the accent on the right of States. It was in the light of those considerations that his delegation had examined the proposed amendments.

26. The Bulgarian amendment, by attempting to define persons entitled to seek asylum otherwise than in terms of article 14 of the Universal Declaration, in fact restricted the scope of application of that right, because the word "persecution" in article 14, as traditionally used in the context of the right of asylum, had a very broad meaning and included persecution on ideological, political, racial or religious grounds. His delegation would, therefore, vote against the Bulgarian amendment.

27. The eight-Power amendment also related to the definition of persons entitled to asylum, and from a logical point of view added nothing to the text of the article, since persons who were, or feared they would become, victims of persecution because of their struggle against colonialism already had a right to asylum under the declaration for the very reason of that persecution. However, and despite the fact that colonialism was in the process of disappearing, his delegation recognized the psychological and historical significance of that amendment, which was an expression of moral solidarity with those struggling against colonialism. It would probably have more chance of obtaining the support of a majority in the Committee if it established a more logical link between the idea of persecution and that of the struggle against colonialism. In that connexion, his delegation suggested replacing the word "and" by the word "including".

28. He interpreted the revised Polish amendment (A/C.3/L.1040/Rev.1) to mean that each State had the right to decide itself whether or not an individual deserved to be granted asylum. However, that idea was implicit in the expression "in the exercise of its sovereignty" and he wondered whether it was not rather a question of requiring the State to justify the grounds on which it granted asylum; if so, it would be necessary to specify to whom it must justify them. What was more, that interpretation would have the effect of restricting the right of the individual, which was contrary to the objectives of the draft Declaration. Because of that doubt, his delegation could not support the proposal.

29. It would, on the other hand, support point 1 of the Belgian amendments, which restated one of the provisions of the Convention relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons, both of which Italy had ratified.

30. Points 1 and 2 of the first set of Polish amendments (A/C.3/L.1038), which proposed that the word "territorial" should be added to the word "asylum" seemed to his delegation to be unnecessary because that idea was implicit in article 14 of the Universal Declaration, which mentioned "asylum in other countries".

31. Mrs. TREE (United States of America) said her delegation preferred article 1 as it stood, but was nevertheless able to accept the revised Polish amendment (A/C.3/L.1040/Rev.1), the English text of which stated clearly that it was for the State granting asylum, and for that State alone, to "evaluate" the grounds for the grant of asylum. The revised amendment confirmed that the host State did not have to explain its reasons to any other State, and she was therefore able to accept it.

32. The eight-Power amendment contained a very valuable idea, but it would be improved by being brought closer to the relevant provision of article 14 of the Universal Declaration, to show that the draft Declaration was meant to protect victims of all forms of oppression, everywhere in the world. She therefore formally proposed that the word "and" should be replaced by "including" (A/C.3/L.1049).

33. Mr. BOUQUIN (France) recalled that the primary purpose the authors of the draft Declaration had sought to achieve in article 1 had been to recall that asylum granted by one State must be respected by all other States. The present wording struck a balance between respect for State sovereignty and the need to grant asylum to persons entitled to claim that right under article 14 of the Universal Declaration. He therefore felt that the article was self-sufficient and he was ready to vote for it as it stood.

34. The French text to the revised Polish amendment (A/C.3/L.1040/Rev.1) had been changed only in that the second paragraph was omitted. He would not repeat his terminological comments on the phrase "territorial asylum", but he suggested that the word "territorial" should be replaced by "in its territory". In general, he thought the amendment superfluous, for the principle it expressed was implicit in the phrase "in the exercise of its sovereignty" and he feared that, because of the ambiguity pointed out by other delegations, a State of origin might take advantage of the amendment to institute action or make claims against the host State. State sovereignty was adequately guaranteed by the original text and there

was no need to jeopardize the balance of the draft Declaration by stressing the right of the State at the expense of the protection to be granted to persecuted persons.

35. The Bulgarian amendment was discriminatory in that it specified certain categories of persons who would be entitled to claim the right of asylum solely on the basis of their activities, whereas they might be persecuted for their political or religious views. Furthermore, the political tinge of the amendment lost sight of reality and of concrete situations. Moreover, asylum was in fact granted to persons who asked for it not because of their activities or even their views but because they were victims of a violation of human rights. He would therefore vote against the amendment.

36. He also thought that the eight-Power amendment, by singling out one category of persons who would be entitled to claim the right of asylum, would impair the balance of a text which should be as general and universal as possible. Worse still, in its present form, that amendment might change the very essence of the right of asylum which, as could be seen from all the constitutional and legislative texts dealing with that right, had always been linked to the idea of persecution. The French delegation would therefore vote against the amendment. Nevertheless, he might review his position if the sponsors of the amendment accepted the sub-amendment proposed by the delegations of Italy and the United States, although he would make strict reservations regarding the establishment of conditions for asylum.

37. The French delegation found no difficulty in endorsing the substance of point 1 of the Belgian amendments; it had included a similar provision in one of the drafts it had submitted to the Commission on Human Rights. Nevertheless, it believed that the paragraph would be better placed in article 3 of the draft Declaration, which dealt with rejection and expulsion, whereas article 1 was intended primarily to ensure respect for asylum on the part of other States and article 2 to ensure international solidarity. If, however, the Committee agreed with the Belgian delegation that the paragraph should be included in article 1, France would not oppose it.

38. Mr. BAROODY (Saudi Arabia) felt strongly that the text prepared by the Commission on Human Rights was more general, simpler and clearer than the various amendments proposed.

39. He was accordingly unable to support point 1 of the Belgian amendments in particular. His first objection was to the expression "serious reasons"; it was inept, since one State could obviously regard as "serious" reasons which another state would find absurd. In that regard, article 14, paragraph 2, of the Universal Declaration was more appropriately drafted.

40. His second objection was to the substance of the proposal. The Third Committee, because of its humanitarian function, must above all seek to protect all human beings from physical and mental ill treatment. Hence it should certainly be concerned with the lot of ordinary law criminals, who were also human beings, and, *a fortiori*, of so-called "political criminals"; but the Belgian amendment would discriminate between the two categories. Immediately after the Second World War the victorious nations, remembering the suffering they had undergone, had set up

legal machinery and instruments enabling them to try and to condemn a new category of criminals, those guilty of "crimes against peace". But not only had the conquered nations known equal suffering; they had not been the only ones to harbour persons guilty of crimes against peace and war criminals. There had been such persons in the conquering countries as well; yet, seventeen years after the war, those criminals had not been brought to trial. If the international instruments mentioned in the Belgian amendment were those drawn up by the victorious countries, they were out of place in a draft Declaration which was intended to be universal, since they discriminated against criminals in the conquered nations. If future international instruments were meant, the Belgian text was imprecise, for instruments concluded by a small group of nations and not recognized by other States, or instruments drawn up by the United Nations and ratified by only one part of the world, could hardly be described as international. Again, the meaning of the word "peace" as used in the Belgian amendment was not clear. Was it peace among nations or peace in a city or village? Lastly, what were the criteria for stating that a person was guilty of a crime against humanity?

41. Nor did he approve of the Bulgarian amendment, the substance of which was contained in the eight-Power amendment. He would support the latter amendment and he had no objections to the revised Polish amendment (A/C.3/L.1040/Rev.1).

42. Mr. PRZETACZNIK (Poland) stated that the purpose of his revised amendment (A/C.3/L.1040/Rev.1) was basically the same as that of point 1 of the Belgian amendments; to establish clearly that some persons would be unable either to claim or to enjoy the right of asylum. The Belgian representative would perhaps agree to amend the beginning of his new paragraph as follows: "It shall not be permissible to grant territorial asylum to any person...".

43. Mr. PICO (Argentina) stressed the vital importance of article 1 of the draft Declaration, which enunciated the fundamental principle that asylum granted by one State must be respected by other States. The wording of that article would determine the Committee's attitude towards the other articles.

44. He would support amendments broadening the concept of asylum and facilitating the grant of asylum, in particular the eight-Power amendment. The courage and sacrifices of those struggling for national liberation deserved recognition by the Committee, particularly in view of General Assembly resolution 1514 (XV) which had made such activity one of the express purposes of the United Nations. With reference to that amendment, he remarked, for the benefit of the United Kingdom representative, that the attitude of some delegations towards the insertion of a territorial clause in the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages was not in the least contradictory with their present positions. It was quite logical to reject a clause explicitly recognizing the legal existence of the colonial régime and to propose a provision which would protect persons struggling to do away with that same régime.

45. Argentina, with its long experience in the matter of asylum, fully endorsed the revised Polish amendment (A/C.3/L.1040/Rev.1). Conflicts which had

arisen between a State granting asylum and the State of origin had shown that one of the parties must evaluate the grounds for the grant of asylum. Neither in international theory nor in international practice was a clear distinction drawn between ordinary law crimes and political crimes, and international laws and instruments shed no additional light on the matter. In particular, difficulties might arise in the case of ordinary law crimes linked with political crimes, which were traditionally assimilated to the latter, so that the culprits were not liable to extraditions; robbery of an arsenal for the purpose of obtaining weapons to be used in a revolt might serve as an example.

46. Some delegations had asserted that the Polish proposal was unnecessary because the draft Declaration did not have binding force. Nevertheless, as now worded, the draft Declaration might lead to disputes which the Polish amendment would avert while protecting persons claiming asylum. It would therefore promote the maintenance of friendly relations among nations in accordance with the preamble.

47. The Polish amendment had also been criticized as superfluous because, according to the original text of article 1, a State granted asylum "in the exercise of its sovereignty". That phrase, however, related only to the decision of States to grant or refuse asylum, and did not imply that they were competent to pass judgement on the reasons prompting persons to seek asylum.

48. Where the Bulgarian amendment was concerned, the cases specified in that proposal were covered by other articles of the draft Declaration and the eight-Power amendment. In addition, the Bulgarian amendment would delete the reference to article 14 of the Universal Declaration from the text of article 1. Yet paragraph 2 of that article contained a very important concept, that of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. That was an objective factor which could provide a basis for the settlement of disputes between a State demanding the return of a person and the State granting him asylum. For all those reasons, his delegation could not support the Bulgarian amendment.

49. In conclusion, he said that his delegation would vote against point 1 of the Belgian amendments, because the idea which it contained was more satisfactorily conveyed by the reference to the Universal Declaration in article 1.

50. Mr. BEN MEBAREK (Algeria), speaking on behalf of the sponsors of the eight-Power amendment, accepted the sub-amendment of the United States of America (A/C.3/L.1049).

51. Mr. BAHNEV (Bulgaria) introduced his delegation's revised amendment (A/C.3/L.1041/Rev.1). The Bulgarian delegation had tried to restate in positive terms an idea expressed in negative terms in article 14, paragraph 2 of the Universal Declaration of Human Rights, and the language used was based on the Charter of the United Nations and the Universal Declaration. The Bulgarian text defined the moral obligation of States towards certain persons claiming asylum more clearly than did article 14 of the

Universal Declaration, and was therefore more humanitarian.

52. He pointed out that the expression "or for any other reason" had replaced the more restrictive

expression "or for any other activity", which had appeared in the earlier version.

The meeting rose at 1.5 p.m.

United Nations
**GENERAL
ASSEMBLY**

SEVENTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1201st
MEETING**

Tuesday, 4 December 1962,
at 3.15 p.m.

NEW YORK

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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1038, A/C.3/L.1039/Rev.3, A/C.3/L.1040/Rev.1, A/C.3/L.1041/Rev.1, A/C.3/L.1044/Rev.1, A/C.3/L.1050) (continued)

PREAMBLE AND ARTICLE 1 (concluded)

1. Mr. HERNDL (Austria) stated that the draft Declaration on the Right of Asylum, being a legal instrument designed to have universal scope and validity, should be worded with the greatest possible precision. The definition of persons enjoying the right of asylum should be given in a single formula sufficiently general to cover all cases, but not so loose as to be equivocal. He believed that the formula presented by the Commission on Human Rights (E/3335, para. 147) met those requirements. The reference to article 14 of the Universal Declaration of Human Rights (General Assembly resolution 217 (III))—in his view the best way of solving the problem of definition—had been suggested by the High Commissioner for Refugees himself, a most experienced and impartial source. A reference to article 14 had been inserted in the preamble and in article 1 and was proposed for insertion in articles 2 and 3. He hoped that the sponsors of amendments would not seek to remove that reference in article 1 or to depart radically from the terms of article 14.

2. He supported the revised Polish amendment (A/C.3/L.1040/Rev.1), which he believed had been submitted not to stress the prerogatives of States as against the rights of the individual, but for purposes of precision. He would suggest, however, in agreement with the French representative, that the term "territorial asylum" should be replaced by "asylum in its territory"; that expression would be more precise and was in keeping with the proposal of the Institute of International Law, referred to earlier by the Belgian representative.

3. Mr. BEAUFORT (Netherlands) said he had been satisfied with the original drafting of article 1; his attitude to the amendments would predominantly depend on whether or not they were likely to strengthen

the rights of the individual. In that regard he had some misgivings about point 1 of the third revision of the Belgian amendments (A/C.3/L.1039/Rev.3), for while that text admittedly drew on the terms of article 1, paragraph F of the 1951 Convention relating to the Status of Refugees,^{1/} it could be argued that there was a considerable difference between the status of many refugees and that of persons seeking asylum—the latter presumably being in danger of losing their life or freedom—and that consequently a more liberal policy was justified in respect of the latter. Since, however, the Belgian text did not go beyond the limitations already laid down in the 1951 Convention, his delegation was prepared to vote for it.

4. He was still not certain of the exact meaning of the revised Polish amendment (A/C.3/L.1040/Rev.1). If it meant that each State had the right to decide entirely by itself whether or not to grant asylum in a particular case, a special provision was unnecessary, at least for those who adhered to the doctrine of State sovereignty. However, a more restricted concept of sovereignty was gaining ground, and fortunately so, because the old absolute concept of sovereignty had proved to be the main obstacle to the further development of international law.

5. He would be unable to vote for the eight-Power amendment as revised (A/C.3/L.1044/Rev.1), as he thought it inappropriate to mention specific cases in a general text. He could not see why emphasis should be placed on persons struggling against colonialism and no mention made of those struggling against neo-colonialism, imperialism or oppression of other kinds.

6. He by far preferred the original article to the Bulgarian amendment (A/C.3/L.1041/Rev.1), which, he feared, would open the way to infringement of the right of asylum in countries with unscrupulous Governments.

7. It was his sincere hope that when the Committee resumed the discussion of the draft Declaration at the eighteenth session, the significance of the text would have greatly diminished, not intrinsically, but because more and more States would have resolved to carry out the Purposes and Principles of the Charter of the United Nations and to respect human rights and fundamental freedoms.

8. Mr. PREZETACZNIK (Poland) recalled that his delegation had withdrawn point 2 of its second set of amendments (A/C.3/L.1040) in favour of point 2 of the second revision of the Belgian amendments (A/C.3/L.1039/Rev.2). With the third revision of that amendment, however, it had become necessary for his delegation to submit a sub-amendment (A/C.3/

^{1/} United Nations publication, Sales No.: 51.IV.4.

L.1050) making it clear that the grant of asylum to criminals of various kinds was not permissible.

9. Regarding his delegation's revised amendment (A/C.3/L.1040/Rev.1), several speakers had thought the proposed new paragraph unnecessary, and while he himself would have preferred having the State's role in the grant of asylum clearly specified, he would withdraw the amendment in an endeavour to facilitate the Committee's work.

10. With reference to points 1 and 2 of the first set of Polish amendments (A/C.3/L.1038), he had some misgivings about the French representative's suggestion to replace the expression "territorial asylum" by "asylum granted by a State in its territory", for the embassies, ships and aircraft of a State were usually regarded as part of its territory; thus the very purpose of the expression "territorial asylum" would be defeated. He would be prepared, however, to consider any alternative wording which would make it clear that diplomatic asylum was beyond the scope of the draft Declaration.

11. Mrs. CATTAROSSI (Uruguay) remarked that in matters of both territorial and diplomatic asylum her country was traditionally a supporter of broad solutions. It had signed the treaty on penal law of 1889, the treaty on asylum and political refuge of 1940 as well as the Caracas conventions on territorial asylum and diplomatic asylum of 1954. It has done so in the belief that, at the root of asylum, was the need to guarantee life and liberty for those who, precisely because they were political offenders, could not expect impartial treatment under the law.

12. Although she well understood the ideas set forth in the Bulgarian amendment, she could not support it as it was at variance with the principle her country had always followed of extending assistance without restriction or reservation. Nor could she support point 1 of the Belgian amendments, for the crimes listed, with the exception of genocide, were not yet covered by rules of positive law. Reference to such crimes could only weaken the draft Declaration and the right it sought to protect, for it would enable persons to be rejected or returned on purely subjective grounds.

13. She would have supported the Polish revised amendment (A/C.3/L.1040/Rev.1), for the principle stated in it was one which her country had always supported and which it regarded as inherent in the institution of asylum; that principle was furthermore embodied in a number of inter-American conventions. She would vote for the eight-Power amendment because the struggle against colonialism was clearly a political struggle and one of particular current importance. For the rest, her delegation would support article 1 as it now stood.

14. Mr. DIAZ CASANUEVA (Chile) said that he had been greatly surprised at the Polish delegation's decision to withdraw its revised amendment (A/C.3/L.1040/Rev.1). The matter dealt with in that amendment was of the highest interest to the Latin American delegations, which had repeatedly explained the historical and legal reasons making it essential not only for their countries but for the rest of the world as well to have it clearly stated that the evaluation of the grounds for asylum should rest with the State granting it. In those circumstances, his delegation, together with the delegations of Argentina, Colombia, Costa Rica, Panama and Venezuela, formally re-

introduced the amendment on their own behalf, with one change, namely, the deletion of the word "territorial".

15. Mr. DE SANTIAGO LOPEZ (Mexico), Miss MARTINEZ BONILLA (Dominican Republic) and Mr. JATIVA (Ecuador) endorsed the Chilean representative's statement.

16. Begum Anwara KHATOON (Pakistan) observed that her delegation had approved of the text of article 1 as submitted to the Committee. She believed the word "territorial" to be implied in the original text, but would support its insertion for the sake of clarity. She would also support the amendment just reintroduced by the Chilean representative. Regarding point 1 of the Belgian amendments, she thought it unnecessary to include details of a restrictive nature and would therefore abstain in the vote. For similar reasons she would oppose the Bulgarian amendment. Lastly, she would vote for the eight-Power amendment.

17. Sir Douglas GLOVER (United Kingdom) welcomed the reintroduction, in the Chilean representative's statement, of the amendment in document A/C.3/L.1040/Rev.1 and stated that he would vote for it on the understanding that it gave the State granting asylum the right to decide freely and independently, without reference to any other State, the grounds on which it would grant asylum.

18. Mr. BOUQUIN (France) regretted that the Polish representative had been unable to accept the words "asylum granted by a State in its territory" or "within its borders," which he had suggested earlier. He supported the idea behind "territorial asylum", but could not vote for the words themselves, as in French the idea was inherent in the word "asylum". The text was however clear enough, although he would have liked to have been able to submit a sub-amendment.

Adoption of article 1

19. Mr. BAHNEV (Bulgaria) withdrew his amendment (A/C.3/L.1041/Rev.1).

20. The CHAIRMAN put to the vote point 2 of the first set of Polish amendments (A/C.3/L.1038).

Point 2 of the first set of Polish amendments was adopted by 33 votes to 11, with 32 abstentions.

At the request of the Algerian representative, a vote was taken by roll call on the eight-Power amendment (A/C.3/L.1044/Rev.1).

Syria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Syria, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Upper Volta, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania, Algeria, Argentina, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Chile, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dominican Republic, Ecuador, Ethiopia, Federation of Malaya, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, India, Indonesia, Iran, Iraq, Israel, Italy, Ivory Coast, Jordan, Lebanon, Liberia, Madagascar, Mali, Mauritania, Mexico, Mongolia, Nepal, Niger, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Sudan.

Against: None.

Abstaining: United Kingdom of Great Britain and Northern Ireland, Australia, Canada, China, Denmark, Finland, France, Ireland, Japan, Netherlands, New Zealand, Norway, Spain, Sweden.

The eight-Power amendment was adopted by 70 votes to none, with 14 abstentions.

The first paragraph of article 1, as amended, was adopted by 85 votes to none, with 1 abstention.

The Polish sub-amendment (A/C.3/L.1050) to point 1 of the Belgian amendments (A/C.3/L.1039/Rev.3) was rejected by 28 votes to 15, with 44 abstentions.

21. Mr. ARY (Niger) requested a separate vote on the words "with respect to whom there are serious reasons for considering that" in point 1 of the Belgian amendments.

22. Mrs. AFNAN (Iraq) pointed out that, if those words were deleted, the amendment would be meaningless.

23. The CHAIRMAN said that, in that event, the word "he" immediately following the phrase in question would have to be changed to "who", and called for a vote.

20 votes were cast in favour and 20 against, with 45 abstentions.

24. The CHAIRMAN declared that, in accordance with rule 134 of the rules of procedure of the General Assembly, the words in question were retained.

Point 1 of the Belgian amendments (A/C.3/L.1039/Rev.3), adding a second paragraph to article 1, was adopted by 38 votes to 7, with 40 abstentions.

25. The CHAIRMAN invited the Committee to vote on amendment A/C.3/L.1040/Rev.1, with the deletion of the word "territorial", as reintroduced verbally by the Latin American delegations.

At the request of the Chilean representative, a vote was taken by roll call.

Iran, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Iran, Iraq, Israel, Ivory Coast, Jordan, Lebanon, Liberia, Madagascar, Mali, Mauritania, Mexico, Mongolia, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Peru, Poland, Rwanda, Saudi Arabia, Sudan, Syria, Tanganyika, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Yugoslavia, Afghanistan, Algeria, Argentina, Austria, Belgium, Brazil, Bulgaria, Burma, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Costa Rica, Cyprus, Dominican Republic, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Gabon, Guatemala, Guinea, Haiti, India, Indonesia.

Against: Netherlands, New Zealand, Denmark, Finland.

Abstaining: Ireland, Italy, Japan, Norway, Philippines, Romania, Spain, Sweden, Togo, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Australia, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Canada, Cuba, Czechoslovakia, France, Ghana, Greece, Hungary.

Amendment A/C.3/L.1040/Rev.1, with the deletion of the word "territorial", adding a third paragraph to

article 1, was adopted by 59 votes to 4, with 24 abstentions.

26. Mr. OSTROVSKY (Union of Soviet Socialist Republics), speaking on a point of order, said that he could not accept the Chairman's interpretation of the result of the separate vote taken on a part of the Belgian amendment (A/C.3/L.1039/Rev.3). Under rule 134 of the rules of procedure, the Committee, since the vote had been a tie, had rejected the passage in question.

27. The CHAIRMAN said that the vote had not been taken on a part of the Belgian proposal but on the request for a separate vote by the representative of Niger. By its vote the Committee had decided not to accept that request.

28. Mr. ZADOR (Hungary), supported by Mr. BAHNEV (Bulgaria), Mr. BAROODY (Saudi Arabia), Mrs. ROUSSEAU (Mali) and Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic) expressed disagreement with the Chairman. The Committee had not objected to the request, and the vote had therefore been taken on a part of the Belgian amendment. Consequently, under rule 134 of the rules of procedure, that part of the amendment had been rejected.

29. Mr. WHITE (Australia) remarked that a request for a separate vote on part of a proposal was normally taken as implying a proposal to reject that part. The Chairman's ruling was therefore quite correct. Furthermore, if the Committee decided to overthrow that ruling, the vote on the amendment as a whole would have to be declared invalid.

30. Mr. ARY (Niger) said that he had made no proposal to modify the Belgian amendment, although he had hoped that the effect of his request for a separate vote would have been the deletion of the words in question. He had been surprised at the Chairman's ruling and agreed with those delegations which believed that the result of the vote meant that those words had been rejected. Had there been any objection to his request, then the voting would have been on that request, not on the words themselves; but that had not been the case.

31. Sir Douglas GLOVER (United Kingdom), supported by Mr. CAPOTORTI (Italy) and Mr. JEAN-LOUIS (Haiti), pointed out that the request of the representative of Niger had implied not only the deletion of certain words but also the replacement of those words by the word "who", as the Chairman had pointed out when putting the request to the vote. It thus represented a substantive amendment and hence basically a proposal, and it was that proposal which the Committee had rejected.

32. Mrs. MANTZOULINOS (Greece) remarked that the Committee had in fact already accepted the Chairman's ruling by subsequently adopting the Belgian amendment as a whole. When the Chairman had put that amendment to the vote he had made it quite clear that the words in question had been retained. In her view, therefore, the matter was no longer before the Committee.

33. Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic) observed that the Chairman, during the relevant vote, had called upon those in favour of retaining the words in question to vote first. The proposal had thus been to retain the words, and it was that proposal which had been rejected.

34. Mr. OUEDRAOGO (Upper Volta) considered that the request of the representative of Niger had been

the equivalent of a motion as defined in rule 131 of the rules of procedure, and as such had been rejected by the Committee.

35. Mr. BELAUNDE MOREYRA (Peru) endorsed that view.

36. Mr. BARODY (Saudi Arabia) requested the Chairman to obtain the opinion of the Legal Counsel on his ruling.

37. The CHAIRMAN replied that it was not a question of a ruling by the Chair but of a decision by the Committee. A request for a separate vote was very clearly in the nature of an amendment or proposal and, in the case at issue, it represented a proposal to delete certain words. It was that proposal which, under rule 134 of the rules of procedure, had been rejected. Moreover, as the representative of Greece had rightly pointed out, there had been no objection at the time and the Committee had subsequently gone on to adopt the Belgian amendment in its original form. There had thus been a clear decision by the Committee and it was not for the Chairman to upset it. If the Committee wished to reverse its decision it would have to do so by a two-thirds majority.

38. It was clearly not for the Chair to obtain the Legal Counsel's opinion on a decision of the Committee. However, if the representative of Saudi Arabia wished to obtain that opinion, he could formally propose that the question be reopened.

39. Mr. VOLIO (Costa Rica) endorsed the Chairman's views.

40. Mr. OSTROVSKY (Union of Soviet Socialist Republics) considered that there had been a serious departure from the rules of procedure. He was convinced that the Committee, by its vote on the request of the representative of Niger, had voted to delete part of the Belgian amendment (A/C.3/L.1039/Rev.3). He did not feel strongly about the words in question, but he considered such a departure from the rules of procedure intolerable. He then made a statement in which he pointed out that it was not a matter of ruling but a violation by the Chairman of rule 134 of the rules of procedure. He said, *inter alia*, that it was not the first case of a tendentious approach by the Chairman and a violation of the rules of procedure; there had recently been an increase in such cases. He requested that this statement be included in the summary record and in the report of the Committee.

41. Sir Douglas GLOVER (United Kingdom) felt sure that a majority of the Committee endorsed the Chairman's views. He formally proposed that the discussion on the matter should be closed.

It was so decided.

42. The CHAIRMAN put to the vote article 1, as a whole, as amended.

Article 1, as a whole, as amended, was adopted by 85 votes to none, with 4 abstentions.

43. Mr. YANCY (Liberia) explained that his delegation had voted for the preamble and article 1 of the draft Declaration on the Right of Asylum because it could not be indifferent to a subject so vitally and intimately associated with the very purpose for which Liberia had been founded. He was happy to note that, as a result of world acceptance of the concept of the dignity of the individual, re-

gardless of his race, religion and political views, the right of asylum had acquired an international character, if not a universal status.

44. Mr. GHORBAL (United Arab Republic) regretted that his delegation had been absent during the voting on the eight-Power amendment, of which it was a sponsor. He would have supported amendment A/C.3/L.1040/Rev.1, and he had voted in favour of article 1, as a whole, as amended.

45. Mr. QUIAMBAO (Philippines) remarked that the original text of article 1 had been precise and well drafted, and the principles it embodied had adequately met the views of his delegation. Nevertheless, he had voted for the eight-Power amendment as an expression of his country's traditional stand against colonialism in any form. He had voted against point 2 of the first set of Polish amendments (A/C.3/L.1038), in the firm belief that the word "territorial" would be superfluous and that the existing text could not be interpreted as excluding territorial asylum. He had abstained on point 1 of the Belgian amendments; while the definitions contained in the international instruments referred to had been appropriate immediately after the Second World War, they were outmoded and unsuited to present circumstances; moreover, the principle enunciated in the amendment was still not widely accepted as a principle of international law. He had also abstained on amendment A/C.3/L.1040/Rev.1, because he believed that the point it made was already covered by the words "in the exercise of its sovereignty" in the existing text.

46. Mr. OSTROVSKY (Union of the Soviet Socialist Republics) said that his delegation had voted for all the amendments and for the resulting text of article 1 as a whole, as it was a considerable improvement on the text submitted by the Commission on Human Rights. The adoption of point 1 of the Belgian amendments had been particularly important, although the wording would have been further improved by the incorporation of the Polish sub-amendment (A/C.3/L.1050). The eight-Power amendment would ensure that the provisions of the draft Declaration applied to peoples still subjected to colonial oppression.

47. Miss RENJU (Tanganyika) stated that her delegation had been absent during the vote on the eight-Power amendment, which it would have supported. It had voted for amendment A/C.3/L.1040/Rev.1, on the understanding that it implied that the State granting asylum would evaluate the grounds in its own way and it had abstained on the other amendments because, in its view, they did not strengthen the original text.

48. Mr. BOUQUIN (France) regretted that he had been obliged to vote against point 2 of the first set of Polish amendments (A/C.3/L.1038); he did not disagree with the substance but had been unable to submit a sub-amendment, because his suggestion had been rejected immediately before the voting. He had also voted against the Polish sub-amendment (A/C.3/L.1050) because it appeared to reverse the idea underlying point 1 of the Belgian amendments the text of which was based on article 14, paragraph 2 of the Universal Declaration of Human Rights. He had supported the Belgian amendment, despite some doubts concerning its position in the text; he believed that it would be better placed as article 3 of the draft Declaration. He had abstained on amendment A/C.3/L.1040/Rev.1 because the wording, while perhaps

appropriate in a convention, was out of place in a declaration. The revised eight-Power amendment was a great improvement on the original amendment—against which he would have been obliged to vote—since it linked persons struggling against colonialism to those referred to in article 14 of the Universal Declaration of Human Rights; nevertheless, he had felt obliged to abstain because in his view any political specification of the criteria for asylum changed

the very nature of the declaration, which should remain a humanitarian instrument for use in cases of emergency. It was for that reason also that he had abstained on article 1, as a whole, as amended, for he considered the original text submitted by the Commission on Human Rights to be much better.

The meeting rose at 6 p.m.

United Nations
**GENERAL
 ASSEMBLY**

SEVENTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1202nd
 MEETING**

Wednesday, 5 December 1962,
 at 10.55 a.m.

NEW YORK

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Chairman: Mr. Nemi Chandra KASLIWAL
 (India).

AGENDA ITEM 46

Draft Declaration on the Right of Asylum (A/4452 and Add.1 and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/3403 and Add.1-5, A/C.3/L.1047) (continued)

DRAFT RESOLUTION CONCERNING CONSIDERATION OF THE DRAFT DECLARATION

1. Mr. BARODY (Saudi Arabia) again presented the draft resolution (A/C.3/L.1047), which he had earlier (1199th meeting) submitted to the Third Committee and under which consideration of the articles of the draft Declaration which it had not been possible to adopt at the current session of the General Assembly would be postponed to the eighteenth session. He also proposed the insertion of the words "and article 1" after the word "preamble" in the first preambular paragraph.

2. The CHAIRMAN put the Saudi Arabian draft resolution, as amended, to the vote.

The Saudi Arabian draft resolution (A/C.3/L.1047) was adopted unanimously.

AGENDA ITEM 43

Draft International Covenants on Human Rights (A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/5144, E/2573 annexes I-III, A/C.3/L.978, A/C.3/L.1013, A/C.3/L.1017, A/C.3/L.1024/Rev.1, A/C.3/L.1025, A/C.3/L.1026/Rev.1, A/C.3/L.1027/Rev.1, A/C.3/L.1028/Rev.1, A/C.3/L.1030, A/C.3/L.1032, A/C.3/L.1046) (continued)*

PROPOSALS FOR ADDITIONAL SUBSTANTIVE ARTICLES TO THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (concluded)

3. Mr. BARODY (Saudi Arabia) called upon the representative of the Union of Soviet Socialist Republics

*Resumed from the 1185th meeting.

to agree that consideration of the Soviet proposal for the insertion of a new article on the right of asylum in the draft Covenant on Civil and Political Rights (A/C.3/L.1013) should be postponed to the eighteenth session of the General Assembly.

4. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that, in view of the brief time remaining to the Third Committee before the close of the seventeenth session and in order to comply with the Saudi Arabian request, his delegation would, in a spirit of compromise, refrain from calling for a resumption of the Committee's consideration of the Soviet proposal as had been decided (1180th meeting).

5. He nevertheless wished to point out that his delegation was more convinced than ever of the need to include an article on the right of asylum in the draft Covenant. The discussion on the draft Declaration on the Right of Asylum had shown that certain countries, far from being guided by the interests of the persons seeking asylum, were attempting to abuse that right in order to use those persons for subversion and sabotage, that was to say, for purposes inconsistent with the security of States and friendly relations among nations.

6. Mr. ZULOAGA (Venezuela) thanked the Soviet representative for having acted in a spirit of compromise. He hoped that the Soviet representative would also agree that at the eighteenth session the Committee should take up the Soviet proposal only after it had completed its consideration of the draft Declaration on the Right of Asylum.

7. Mr. OSTROVSKY (Union of Soviet Socialist Republics) felt that it was not for the Committee to decide at the present session on the order which it would observe at the eighteenth session in its consideration of the items on its agenda. As, moreover, most of the delegations had had an opportunity to state their views on the question of asylum when the draft Declaration had been considered, they would have no difficulty in coming to a decision on the Soviet proposal.

8. The CHAIRMAN agreed that the Committee should not be deprived of its freedom of action. He then read out to the Committee the following draft resolution which would appear in the Committee's report to the General Assembly:

"The Third Committee

"Decides to postpone consideration of the proposed new article on the right of asylum for inclusion in the draft Covenant on Civil and Political Rights, submitted by the Union of Soviet Socialist Republics, to the eighteenth session of the General Assembly."

9. Mr. BOUQUIN (France) said that, while he was not opposed to such a text, he considered it unnecessary because the USSR could always resubmit a proposal on the right of asylum when the Committee took up the