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MEETING**

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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 84

Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session (concluded) (A/6309 and Add.1, A/6348 and Corr.1, A/C.6/371, A/C.6/L.596/Rev.2, A/C.6/L.597 and Add.1, A/C.6/L.600 and Corr.1)

1. The CHAIRMAN invited delegations wishing to explain their vote on the texts voted on at the previous meeting (A/C.6/L.596/Rev.2, A/C.6/L.597 and Add.1, and A/C.6/L.598) to do so.

2. Mr. POTOČNY (Czechoslovakia) said that his delegation's vote in favour of the draft resolution (A/C.6/L.596/Rev.2) reflected the importance that Czechoslovakia attached to the conference on the law of treaties. However, the wording of paragraph 4 of the text remained unacceptable to the Czechoslovak delegation, because it contained a discriminatory clause implying the exclusion of an important group of States from the conference.

3. Mr. JEANNEL (France) pointed out that paragraphs 3 and 5 of the draft resolution (A/C.6/L.596/Rev.2) failed to take into account the views of many States belonging to different parts of the world; it was regrettable that the Sixth Committee had not maintained in the present case its tradition of seeking a consensus ensuring the adoption of provisions devoid of political implications. In addition, the French delegation, which felt keenly the need to maintain financial orthodoxy in the United Nations, considered that the Sixth Committee had not paid sufficient regard to the logical consequences of General Assembly resolution 2116 (XX). It hoped that the Under-Secretary for Conference Services would have an opportunity to give his opinion on that point.

4. Mr. BEN AISSA (Tunisia) said that his delegation had abstained from the separate vote on paragraph 3 of the draft resolution for three reasons. First, it felt that more consideration should have been given to General Assembly resolution 2116 (XX) and suggested in that connexion that it would be useful for the Secre-

tariat itself to remind delegations of the provisions of that resolution each time a conference was contemplated. It was true that the conference programme for 1968 had not yet been fixed, but the General Assembly should not be faced with a number of incompatible decisions taken by the various Committees. Second, the Tunisian delegation had hoped that it would be able to decide its position on the number of sessions to be held on the basis of the Secretariat's document on the estimated cost of the future conference (A/C.6/L.600 and Corr.1); and it had been surprised at the relatively slight difference between the estimated costs of a conference of one session and a conference of two sessions. It had therefore reserved its position, considering that two sessions were the equivalent of two conferences. Third, his delegation had given sympathetic consideration to the objections many delegations had raised concerning the two-session plan, in view of the difficulties certain Governments would have in sending a sufficient number of specialists to the conference and doing without their services during their long absence.

5. Tunisia had voted in favour of the amendment contained in document A/C.6/L.598, which provided for an invitation to the conference to be extended to "all States", because of its attachment to the principle of universality. Operative paragraph 4 of the draft resolution in document A/C.6/L.596/Rev.2, which that amendment had been intended to replace, left the decision on what States should participate in the conference to the General Assembly itself. His delegation considered that such issues should be dealt with first at the Committee level and, consequently, the present issue should have been disposed of by the Sixth Committee within the technical context that was its province before being decided on by the General Assembly from the political angle. Finally, his delegation had abstained from the vote on paragraph 4 to indicate that it would have preferred a different wording.

6. Mr. EL-ERIAN (United Arab Republic) welcomed the unanimous adoption of the draft resolution contained in document A/C.6/L.597 and Add.1 concerning the work of the International Law Commission. So far as concerned the draft resolution in document A/C.6/L.596/Rev.2 on the future conference on the law of treaties, his delegation had voted in favour of the amendment (A/C.6/L.598), because only the all-States formula would genuinely recognize the right of all nations to take part in a conference of interest to the whole international community. In the same spirit his delegation had not felt able to approve paragraph 4 of the draft resolution. Although it had voted for the draft resolution as a whole, his delegation had nevertheless felt that the solutions offered in the draft resolution to

various practical problems concerning the administration, organization and financing of the conference were not entirely satisfactory; but it had decided that the text, while not satisfying everyone, represented the widest possible basis of agreement.

7. Mr. MALITI (United Republic of Tanzania) said that his delegation had abstained from the vote on the draft resolution in document A/C.6/L.596/Rev.2 because in view of its absolute respect for the principle of universality it could not support the wording of paragraph 4. That paragraph was the expression of the political egoism of certain delegations and vitiated the whole text. Its authors had tried to defend their "practical" solution on the ground that the Sixth Committee was not a political one; but in point of fact they had used that argument as an excuse to justify a proposal, the intent of which was political and not juridical. His delegation had drawn its own conclusions.

8. Mr. KOROMA (Sierra Leone) said that the conference would offer the newly developing countries a unique opportunity to make their voices heard in proceedings relating to rules of international law that had been in existence when they were under the colonial régime. Although it had accepted operative paragraph 4 of the draft resolution, his delegation was fundamentally dedicated to the principle of universality. It hoped that those States that did not believe in the virtues of the all-States formula would try to solve all the practical difficulties that to them seemed to prevent the full realization of the principle of universality.

9. Mr. KHLESTOV (Union of Soviet Socialist Republics) stressed that paragraph 4 of the draft resolution (A/C.6/L.596/Rev.2) was discriminatory and contrary to the principle at the very root of the work on the law of treaties. His delegation had approved the draft resolution as a whole because it wished the work begun to be continued, but it would continue to oppose the unjustly restrictive formula for which it had suggested substituting the all-States formula, which alone reflected the principle of universality.

10. Mr. VEROSTA (Austria) said that his delegation had voted in favour of the draft resolution in document A/C.6/L.596/Rev.2. In view of the part the Austrian capital had played in the past as a meeting place for conferences in the field of international law, it had particularly appreciated the proposals of the Cameroon and Lebanese delegations, as a result of which a clause had been included in the draft resolution permitting the conference on the law of treaties to be held in any State from which an invitation was received. As a result of the flattering inquiries which had been made of the Austrian delegation concerning the possibility of holding the conference at Vienna, the competent authorities of the Austrian Government had studied the question, together with the cost estimates drawn up by the Secretariat (A/C.6/L.600 and Corr.1). He was happy to be able to announce that a positive decision from Austria would be communicated to the Secretary-General at the appropriate time. Meanwhile, he wished to convey to the Sixth Committee the satisfaction his country would experience in welcoming all the participants in the diplomatic conference.

11. The CHAIRMAN said that he was sure all members of the Committee would welcome the news announced by the Austrian representative.

12. Mr. YAKIMENKO (Ukrainian Soviet Socialist Republic) said that although his delegation had supported the draft resolution in document A/C.6/L.596/Rev.2 as a whole, it would nevertheless continue its opposition to the provision contained in paragraph 4, which was discriminatory towards States which were not members of United Nations agencies.

13. Mr. KOITA (Mali) said that his delegation had manifested its opposition to any discrimination between States and its desire for universality, which alone could serve the cause of peace and progress in a common effort, by its vote in favour of the amendment proposed in document A/C.6/L.598, under which the restrictive provisions of paragraph 4 of the draft resolution would have been replaced by the all-States formula.

14. Mr. OSIECKI (Poland) explained that despite its opposition to paragraph 4 for the reasons it had stated during the debate, his delegation had voted in favour of the draft resolution (A/C.6/L.596/Rev.2) as a whole because it wished to help to ensure the organization of the conference on the law of treaties, which would be of great value.

15. Mr. STANKEVICH (Byelorussian Soviet Socialist Republic) said that in voting for the draft resolution (A/C.6/L.596/Rev.2) as a whole his delegation had in no way modified its views on paragraph 4 of that text. It had voted in favour of the amendment proposed in document A/C.6/L.598, which was in keeping with the interests of peace and justice and the establishment of an international order founded on law.

16. Mr. KASHBAT (Mongolia) said that his delegation had supported the draft resolution (A/C.6/L.596/Rev.2) as a whole because it considered that a conference on the law of treaties would be a very useful step towards the codification and progressive development of international law. However, it did not intend to give up its opposition to the wording of paragraph 4, which, as many delegations had pointed out, discriminated against certain States capable of making a valuable contribution to the drafting of the convention on the law of treaties, which would be a general multilateral treaty. Such an instrument needed the participation of all States if it was to reflect current needs.

17. Mr. YANKOV (Bulgaria) said that his delegation's vote on paragraph 4 of the draft resolution (A/C.6/L.596/Rev.2) followed directly from the position it had stated in the course of the debate. In view of the number of delegations that had expressed dissatisfaction with that part of the text, it would have been logical to expect a heavier vote against the draft. Doubtless, concern for effectiveness had prevailed over concern for justice; but it should be borne in mind that those who sought universality were actually also acting in the interest of effectiveness. He therefore hoped that the vote on the draft resolution set forth in document A/C.6/L.596/Rev.2 would be the last instance of the approval of a discriminatory provision by an organ of the General Assembly.

18. Mr. MUSSA (Somalia) said that it was because of its dedication to the principle of universality that his country had voted in favour of the amendment in document A/C.6/L.598, embodying the all-States formula, which followed logically from the provisions of the third and seventh preambular paragraphs of the draft resolution contained in document A/C.6/L.596/Rev.2. It was stated in those paragraphs that the law of treaties should be placed upon "the widest and most secure foundations" and that its successful codification and progressive development "would contribute to the development of friendly relations and co-operation among States, irrespective of their differing constitutional and social systems". As the terms of operative paragraph 4 were incompatible with those preambular paragraphs, his delegation had abstained from the vote on the draft as a whole. However, it was in agreement with the provisions of the draft concerning the organization and procedure of the conference.

19. Inasmuch as the basis for the conference's work would be the draft articles prepared by the International Law Commission (see A/6309), his delegation wished to thank the members of the Commission, and particularly the Special Rapporteur, Sir Humphrey Waldock. It was especially gratified to note that the draft gave due recognition, in articles 50 and 61, to the effects on treaties of the peremptory norms of ius cogens, which included the rule of self-determination.

20. Mr. SECARIN (Romania) explained that he had voted for the draft resolution in document A/C.6/L.596/Rev.2 as a whole because he was convinced of the need to convene an international conference on the law of treaties. As he upheld the principle of universality, however, he had also voted for the amendment in document A/C.6/L.598. He remained convinced that if the sponsors of the draft resolution had adopted the all-States formula in paragraph 4 they would have helped to make the conference more effective by ensuring the co-operation of the entire international community. The argument that that formula would cause procedural difficulties because it was too broad was unconvincing. Experience had shown that when certain countries wished to limit participation in a conference they always pleaded such difficulties, but that when they considered it in their interest for all countries to accede to a treaty, as in the case of disarmament, those difficulties no longer existed.

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (A/6367 and Add.1 and 2, A/C.6/L.587, A/C.6/L.588 and Corr.1, A/C.6/L.589-L.591, A/C.6/L.593 and Add.1 and A/C.6/L.599)

21. The CHAIRMAN said that under the terms of General Assembly resolution 2100 (XX) it was the Sixth Committee's responsibility to prepare the draft Declaration on the Right of Asylum as a whole. It had before it the text of the draft Declaration adopted by the Commission on Human Rights in 1960 (see A/6367, annex II), the text of the preamble and first article adopted by the Third Committee at the seventeenth session of the General Assembly (see A/6367, annex III), comments submitted by Governments at the invitation of the Secretary-General (see A/6367

and Add.1 and 2) and amendments previously submitted to the Third Committee which the sponsors had decided to submit again to the Sixth Committee.

22. He invited delegations to consider, during the next four meetings, the desirability of setting up a sub-committee or working party and its membership and terms of reference and to submit their observations regarding the various texts before the Committee so that the working party, if established, would have a clear idea of the trends of opinion within the Committee on the different problems raised in the draft Declaration on the Right of Asylum.

23. Mr. CARRASQUERO (Venezuela) said that the countries of Latin America had had long experience in the application of the right of asylum, which was one of the established institutions of what might be called American international law.

24. The right of asylum, proclaimed in 1889 at the South American Congress in Montevideo, had gradually evolved from a customary rule to a peremptory norm. It had been reaffirmed, first at the Sixth International Conference of American States, held at Havana in 1928; then at the Seventh International Conference of American States, at Montevideo in 1933, at which diplomatic and territorial asylum had acquired the form of an institution designed to protect individual freedoms against the persecution of dictatorships; and then again in 1948, in the American Declaration of the Rights and Duties of Man, adopted at the Ninth International Conference of American States at Bogotá, article 27 of which read: "Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements". Lastly, in 1954, at the Tenth Inter-American Conference at Caracas, the conventions on the right of asylum had sanctioned diplomatic and territorial asylum as a universally recognized institution based on normative legal principles. Even those who did not view diplomatic asylum as a genuine principle of international law nevertheless acknowledged its existence as a practice of the community of American States, thereby recognizing the force of custom as a source of international law.

25. Diplomatic asylum could be granted in certain places that enjoyed immunity from the jurisdiction of the State from whose authority the person seeking asylum sought to remove himself. That privilege of immunity was the modern equivalent of the fictitious status of extraterritoriality formerly granted, for example, to diplomatic missions. Every State had the right to grant asylum, but it was not obligated to do so or to state reasons for refusing it. Only persons prosecuted for political offences could receive asylum, and then only in urgent cases. It rested with the State granting asylum to determine the nature of the offence and also to decide whether a case of urgency was involved. Once diplomatic asylum was granted, the State granting it could request that the refugee should be allowed to depart for foreign territory, and the territorial State was under obligation, except in certain cases, to grant a safe-conduct and the necessary guarantees. During the transfer the person concerned was under the protection of the State granting asylum. That State was not bound to settle him in its own

territory, but it could not return him to his country of origin unless that was his express wish.

26. The process of transfer abroad transformed diplomatic asylum into territorial asylum; but the latter could exist only if preceded by the former, since any State, in the exercise of its sovereignty, had the right to admit to its territory such persons as it saw fit to receive. Extradition could not be granted in the case of persons who, according to the judgement of the requested State, were sought for political offences or for common offences committed for political ends; and that rule was not affected by the fact that a person had entered surreptitiously or irregularly into the territorial jurisdiction of the State whose protection he sought. The refugee normally enjoyed the same freedom of assembly and association as any other alien, provided that he did not use it to attack the sovereignty of the Government of the State from whose jurisdiction he had fled. The State granting asylum, however, could take steps to keep watch over or to intern a refugee.

27. He believed that the time had come to use that institution—which had so far been almost exclusively American and was often not clearly understood outside the Americas, as could be seen from a decision of the International Court of Justice on which there had been much comment—as a model in the drafting of conclusions and rules for universal application.

28. The preparation of the draft Declaration on the Right of Asylum (see A/6367, annex III) had first been undertaken by the Third Committee, which had sought by that means to reaffirm the concept proclaimed in article 14 of the Universal Declaration of Human Rights. But it had also been intended from the outset to aim at the statement of that right in the form of a universal rule of law. That was the starting point for the work of the Sixth Committee. The Sixth Committee should feel perfectly free to study the question without being bound by any precedents that might seem to have been created by previous work of the Third Committee. It was entirely at liberty, for example, to decide whether diplomatic asylum and territorial asylum were or were not interrelated and should be dealt with together, or to adopt criteria based on the first version of the draft Declaration or independent of it. Once those procedural questions were settled, his delegation would speak again on the substance of the question.

29. Mr. OSIECKI (Poland) said that at the General Assembly's seventeenth session, when the draft Declaration on the Right of Asylum adopted by the Commission on Human Rights (see A/6367, annex II) had been under consideration in the Third Committee, his delegation had proposed that in the title and in articles 1, 2, 3 and 4 the word "asylum" should be replaced by the words "territorial asylum" in order to make the Declaration more precise and to emphasize, in particular, that it related only to territorial asylum. The Third Committee, which had adopted only the preamble and article 1 of the draft Declaration (see A/6367, annex III), had made that amendment to article 1. His delegation's proposed amendment (A/C.6/L.589) still stood, and it was only logical that the other articles and the title of the draft Declaration should be similarly amended.

30. The Polish amendment was based on substantive arguments also. As Judge Alvarez had shown in his dissenting opinion appended to the judgement handed down by the International Court of Justice in the Colombian-Peruvian Asylum Case, there were no precise rules governing asylum in international law.^{1/} Moreover, there were various forms of asylum, such as diplomatic asylum, asylum aboard warships in the territorial waters of a State or asylum aboard a military aircraft in foreign territory. Some of those forms of asylum were of universal application, but others, such as diplomatic asylum, applied to a region only. There were fundamental differences also; territorial asylum was only an application of the principle of the sovereignty of the State concerned, whereas diplomatic asylum was a limitation of that principle. In the case of territorial asylum, the refugee was outside the territory of the State in which he had committed the offence for which proceedings had been instituted against him, and the decision to grant him asylum was not a violation of that State's sovereignty. In the case of diplomatic asylum, however, the refugee was in the territory of the State in which he had committed an offence and, according to the judgement of the International Court of Justice, a decision to grant him asylum, by withdrawing him from the jurisdiction of the territorial State, constituted an intervention in matters that were exclusively within that State's competence, and such a derogation could not be recognized unless its legal basis was established in each particular case.^{2/}

31. For those reasons his delegation was of the opinion that inasmuch as the Declaration under consideration excluded diplomatic asylum, the use of the general term "asylum" was only too likely to lead to misunderstanding. The wording of the second preambular paragraph of the draft (see A/6367, annex II) clearly implied that its authors intended the Declaration to apply to territorial asylum. That was confirmed by articles 2 and 3, which plainly referred to persons who were forced to leave a country in order to seek refuge in another territory, as was clear from paragraph 2 of the note by the Secretariat.^{3/} The Declaration should specify that its implementation was without prejudice to the provisions of international conventions on the right of asylum.

32. His delegation attached great importance to all legal institutions that sought to safeguard human rights and to protect the individual. It was taking an active part in the Third Committee's work to create or develop institutions for that purpose and regretted that in the codification of international law the question of the right of asylum had been indefinitely postponed. In the circumstances, the Declaration on the Right of Asylum had become a matter of the utmost importance.

33. Mr. VAN LARE (Ghana) said that the law of asylum, which was only the obverse side of the law of extradition, could be regarded as the earliest

^{1/} See Colombian-Peruvian Asylum Case, Judgment of November 20th, 1950, I.C.J. Reports, 1950, p. 291.

^{2/} *Ibid.*, p. 275.

^{3/} See Official Records of the General Assembly, Twentieth Session, agenda item 63, document A/C.6/L.564.

attempt to implement human rights and recognize the international status of certain individuals. It had its foundations in both customary and conventional international law as evidenced by the existence of many bilateral and multilateral extradition treaties. The right of asylum raised several problems relating to State sovereignty and the question of whether or not the individual was a subject of international law, and they appeared not to have been overlooked by the authors of the draft Declaration on the Right of Asylum adopted by the Commission on Human Rights (see A/6367, annex II). Nevertheless, the right of asylum, within given conditions, was currently recognized by all States out of deference to humanitarian principles—the principles that had inspired article 14 of the Universal Declaration of Human Rights, which had obviously formed the basis for the draft Declaration on the Right of Asylum.

34. It could be seen from a study of the implications of article 14 that the words "to seek and to enjoy... asylum" raised the problem of the refugee's admittance to the territory of the receiving State and the question of his status once he was admitted. Admittance depended on the reasons for his flight, since the right of asylum could be invoked only on the grounds of racial, religious, political or social persecution, and not in the case of prosecution genuinely arising out of ordinary crimes or activities contrary to the purposes and principles of the United Nations. In his delegation's view, the growing emphasis on the political motives for flight had led to a tendency to minimize the illegality of any act with which the refugee might have been connected in his country of origin. The progressive widening of the scope of asylum and the blurring of the difference between political and non-political offences might have grave implications, particularly as persons accused of committing criminal acts while in political office might thus evade justice. That difficulty was due to the absence of universal agreements on the modalities of application of the right of asylum. Consequently, unless the draft Declaration clearly defined the class of refugees to which it applied, it would tend to protect non-political offenders and persons who committed acts contrary to the purposes and principles of the United Nations. It would therefore be wise to heed the opinion given by the International Court of Justice in the Colombian-Peruvian Asylum Case to the effect that "the principles of international law do not recognize any rule of unilateral and definitive qualification by the State granting diplomatic asylum".^{4/}

35. The provisions of article 14 of the Universal Declaration of Human Rights presupposed that the refugee was physically present in the territory of asylum from which, in accordance with the obligations imposed on States by international law, he could not be returned. Article 3 of the draft adopted by the Commission on Human Rights went further than the principle of non-refoulement, since it enjoined States not to reject the refugee at the frontier or to expel him, at least provisionally. Once the refugee was admitted, the question of his status

arose; but it might perhaps be necessary to make it clear that there could be no question of status without admittance and that the refugee's admittance could not take place without his physical presence.

36. The refugee's status in the country of asylum was determined by article 4 of the draft Declaration. It was more clearly defined by Oppenheim, who stated that, as a general rule, refugees should not engage in political activities prejudicial to the security of another State.^{5/} A State might therefore incur responsibility under international law if it assisted exiles in their activities directed against the Government of another State. His delegation had wished to emphasize that point because of the serious problems of refugees in Africa. As a result of complaints made to the Organization of African Unity, Ghana had been obliged, after obtaining all the necessary guarantees in their regard, to expel certain refugees who, under the previous régime in Ghana, had engaged in subversive activities against neighbouring States and whose presence in Ghana was a threat to its security and to the maintenance of friendly relations with its neighbours. The Ghanaian Government was aware of the gravity of the refugee problem in Africa and would work in co-operation with other member States of the Organization of African Unity and States Members of the United Nations to solve the problem.

37. On the other hand, an African country which was a member of the Organization of African Unity and of the United Nations had granted asylum to refugees from Ghana who had openly declared their intention of overthrowing the Ghanaian Government. His Government considered such activities as interference in the domestic affairs of a sovereign State contrary to the principles and purposes of the United Nations Charter, and, in that connexion, drew attention to General Assembly resolution 290 (IV) on the essentials of peace.

38. With reference to the texts of the draft Declaration on the Right of Asylum, he suggested that the Committee should work on the basis of the draft submitted by the Commission on Human Rights (see A/6367, annex II), and taking into consideration the Third Committee's text (*ibid.*, annex III). He proposed that article 1, paragraph 2, of the latter text should be incorporated in the Commission's text as article 1 (b). His delegation supported the Brazilian proposal to delete the second paragraph of article 2 and the French proposal to delete the phrase "persons struggling against colonialism" in article 1, paragraph 1, of the Third Committee's text (see A/6367), although it supported the latter for reasons entirely different from those of the French delegation. His delegation considered that the insertion in article 2 of the words "on the grounds of race, religion, political or social beliefs" after the word "persecution" would cover the case of persons struggling against colonialism. It also accepted the Brazilian amendment to article 4 (A/C.6/587) as well as the Polish proposal (A/C.6/L.589) to replace the word "asylum" by the words "territorial asylum" so as to distinguish it from "diplomatic asylum". Lastly, his delegation proposed that a sub-committee or working group of

^{4/} See Colombian-Peruvian Asylum Case, Judgment of November 20th, 1950, I.C.J. Reports, 1950, p. 274.

^{5/} L. Oppenheim, International Law, 8th ed. (London, Longmans, Green and Co., 1955), vol. I, p. 678.

the Sixth Committee should be established to consider the question of the right of asylum and to make recommendations at the current session concerning the future work on that agenda item.

39. Mr. TOURE (Guinea) said that the Ghanaian representative had implied that Guinea had granted asylum to Ghanaian nationals who were engaged in political activities in the territory of asylum. It was common

knowledge that after the Accra putsch, Guinea had given asylum to President Nkrumah and the members of his Government and party. He reserved his right to speak again in exercise of his right of reply.

40. Mr. VAN LARE (Ghana) reserved his right to reply to any allegation that might be made.

The meeting rose at 5.15 p.m.



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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

In the absence of the Chairman, Mr. Molina (Venezuela), Vice-Chairman, took the Chair.

AGENDA ITEM 85

Draft Declaration on the right of asylum (continued)
(A/6367 and Add.1 and 2, A/C.6/L.587, A/C.6/L.588
and Corr.1, A/C.6/L.589, -L.591, A/C.6/L.593 and
Add.1, A/C.6/L.599, A/C.6/L.604)

1. Mr. VARGAS (Chile) said that in Latin America the right of asylum had not been an artificial or haphazard creation but had evolved from historical circumstances peculiar to that continent. As early as 1889, the countries of Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay had signed the first convention on the right of asylum at Montevideo.^{1/} Multilateral conventions on the same subject had subsequently been signed at the inter-American Conferences of Havana in 1928, Montevideo in 1933 and Caracas in 1954. The right of asylum was currently universally recognized, at least in its territorial form, and had been specifically laid down in article 14 of the Universal Declaration of Human Rights of 1948. His delegation believed, however, that that Declaration, although marking a definite step forward in the international protection of human rights, was in need of further development. In its opinion, the right of asylum would be strengthened and given greater prestige if a declaration confirming it was adopted by the General Assembly. To be fully effective, such a declaration would have to be acceptable to the majority of States and take into account the existing norms of the various regional juridical systems.

2. His delegation felt that the Committee's first task should be to describe precisely the category of asylum to which the draft Declaration referred. Asylum could be either diplomatic or territorial, and, although similar in their humanitarian purpose, the two institutions differed in practice. The history of the present draft clearly showed that it dealt solely with the principles and rules of territorial asylum and did not take into account the protection granted by heads of diplomatic missions in embassies or legations, by

^{1/} See Ministerio de Relaciones Exteriores, *Coleccion de tratados vigentes de la República de Bolivia*, vol. I, *Convenios multilaterales (1856-1920)*, pp. 51-64.

captains of warships or by military commanders to persons persecuted because of political offences. For that reason, his delegation supported the proposal of Uruguay to replace the words "right of asylum" in the title and in the text by the words "territorial asylum" (see A/C.6/L.604).

3. His delegation approved the preamble and article 1 of the draft Declaration adopted by the Commission on Human Rights (see A/6367, annex II), but regretted that article 1, paragraph 2, of the new text proposed by the Third Committee (*ibid.*, annex III) had not expressly excluded common criminals from the protection of the right of asylum.

4. Although in sympathy with the humanitarian motives governing article 2 of the Commission's draft, his delegation felt that it could not be interpreted as an obligation devolving on States to admit persons seeking asylum, because such an interpretation would contravene the fundamental principle that the admission of political refugees to a country of asylum was a free and spontaneous act on the part of the Government of that country. For the sake of greater clarity, that principle should be expressly stated in the text.

5. As drafted, article 3, paragraph 1, of the Commission's draft was in contradiction with paragraph 2, which stated: "In cases where a State decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum". In other words, paragraph 2 contemplated the possibility that a State might violate the rules laid down in paragraph 1 of the same article. Moreover, by making it obligatory for a State to consider the possibility of granting provisional asylum, paragraph 2 created a temporary form of asylum which might be prolonged for an indefinite period if efforts to find refuge in another country proved fruitless. In short, his Government believed that the drafting of article 3 was contrary to the principle so correctly stated in article 1 that asylum was granted by a State in the exercise of its sovereignty.

6. His delegation was unable to accept the present text of article 3 but would agree to a wording which stated that the receiving State was obliged to consider the possibility of granting provisional asylum, under such conditions as it might deem appropriate, with a view to preventing the expulsion of persons in need of asylum who would otherwise be forced to return to a territory where they could justifiably fear persecution that would endanger their lives, their physical integrity or their liberty.

7. His delegation had no objection to article 4, although it felt that that article should also stipulate that persons enjoying asylum should not intervene in the internal affairs of the State granting them asylum or

engage in any activities directed against Governments with which that State maintained relations.

8. It could not support article 5 of the draft, inasmuch as it believed that such a rule was irrelevant in a declaration on territorial asylum and that it might contravene certain clear provisions that had already been adopted in Latin American treaty law. Accordingly, if the majority in the Committee should decide to retain that article, his Government felt, in view of the importance of the matter, that a very clear distinction should be made between those refugees who were classified as "political internees" and those who were not. With respect to the former, it would be desirable to harmonize the principle stated in article 5 with the rules expressly laid down in two inter-American conventions of a collective nature, i.e., the Treaty on Political Asylum and Refuge, signed at Montevideo in 1939, and the Convention on Territorial Asylum, signed at Caracas in 1954, which made the departure of internees from a country of asylum contingent on the fulfilment of certain special conditions.

9. In conclusion, his delegation recommended that the Committee should set up a working group, composed of members representing the various geographical areas of the world, to prepare a new declaration for submission to the Committee and, later, to the General Assembly on the basis of the drafts already prepared by the Commission on Human Rights and the Third Committee. The new text should be drawn up with a view to making the final declaration acceptable to the great majority of States, and, in particular, it should be so drafted as not to affect or modify any present or future treaties or conventions concluded within the Latin American community.

10. Mr. POTOČNY (Czechoslovakia) welcomed the fact that other delegations now shared his delegation's view that the Committee, after holding a general debate on the right of asylum, should set up a working group on the topic and resume its deliberations on the question at the beginning of December.

11. His delegation was convinced that the task of the General Assembly at the present stage was not to prepare a legal statement of the right of asylum in general but to elaborate a draft declaration on territorial asylum, independently of the work of codification to be undertaken in due course by the International Law Commission. The declaration on territorial asylum, once adopted by the General Assembly, would be available to the Commission when it codified the right of asylum. Every effort should be made to ensure that the final declaration approached the right of asylum in the most progressive and democratic spirit, so that it could make an effective contribution towards promoting peaceful coexistence and friendly relations among States with different social systems.

12. In the practice of the majority of States, the right of territorial asylum meant the granting of entry for purposes of settlement to aliens persecuted in their own countries for their political or scientific activities, for their organization and/or support of national liberation movements or for their struggle for peace and progress. The granting of territorial asylum was a legitimate act that could be performed by every

State in the exercise of its sovereignty and that must be respected by other States. The right of asylum, which had been proclaimed as early as the French Revolution in 1789, had in recent years acquired a genuinely progressive and democratic character in both the legislation and the international practice of the socialist countries and the newly emerged States. For example, article 33 of the Czechoslovak Constitution provided that the right of asylum should be granted to citizens of a foreign State who were persecuted for defending the interests of the working people, for participating in the national liberation movement, for scientific or artistic work, or for activity in defence of peace. The Declaration, in his delegation's opinion, should contain exactly those elements. In principle the preamble and article 1 of the draft Declaration adopted by the Third Committee met that requirement (see A/6367, annex III).

13. At the present stage of the deliberations he would not comment on the various amendments and proposals before the Committee, except to note that his delegation fully supported the Polish amendments in document A/C.6/L.589, which it considered to be of primary importance.

14. The new working group should examine article 2-5 of the draft Declaration (*ibid.*, annex II), together with the relevant amendments and proposals for additions, and should submit a new draft to the Committee. After considering that draft, the Committee could prepare for the General Assembly a recommendation to the Secretary-General to send the draft Declaration to Member States for comments and suggestions, on the understanding that it would be given final consideration and adopted at the twenty-second session of the General Assembly.

15. Inasmuch as its functions would differ from those of the Working Group appointed at the last session to examine various procedural questions related to the draft Declaration,^{2/} the new working group should be established on a wider basis. It should be composed of representatives of all main groups of States and should also equitably represent the principal legal systems of the world.

16. Mr. MOTZFELDT (Norway) said that the draft Declaration (see A/6367), was designed to give suitable expression to the recognition of the basic need for the protection of persons fleeing from persecution. In his delegation's view, the draft Declaration reconciled the conflicting issues involved, namely, the legitimate security considerations of the States in whose territory asylum was sought and the interests of persons seeking protection from persecution. It imposed no legal obligations and upheld the view that the granting of asylum was, in principle, the prerogative of sovereign States. On the other hand, it also set forth the principles generally accepted by States granting asylum to individuals and encouraged them to adopt a liberal practice in that respect. Furthermore, it recognized that the granting of asylum was an international humanitarian duty.

17. The amendment to the draft Declaration submitted by his delegation and that of Togo (A/C.6/L.588)

^{2/} See Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 63, document A/C.6/L.581.

was concerned with wording rather than substance. Amendments 1 (a) and 2 (a) (i) sought to bring the first paragraphs of articles 2 and 3, respectively, into harmony with article 1, paragraph 1 (see A/6367, annex III). Amendment 1 (b) (i) was designed to cover difficulties that might arise in the initial granting of asylum. Amendments 1 (b) (ii), 2 (a) (ii) and 3 were intended to make the wording of the draft Declaration consistent with that of the Universal Declaration of Human Rights by replacing the word "should" by "shall", as had been done in articles 1 and 5.

18. Article 3 of the Commission's draft, dealing with the principle that no person should be forced to return to or remain in a territory where he might be persecuted, was a compromise reached after lengthy discussion in the Commission on Human Rights. However, the sponsors of the amendment considered that that principle would be stated without qualification in the first paragraph of article 3; the phrase "except for overriding reasons of national security or safeguarding of the population" could be used by States to justify restrictive practices, and the sponsors proposed that it should be deleted (see A/C.6/L.588, amendment 2 (a) (iii)). It might be questioned whether it was necessary to refer to exceptions to a general principle in a declaration that was not legally binding; but in any case the exceptions should in all circumstances be limited to national security considerations and cases of mass influx, and the sponsors proposed to insert a new paragraph to that effect in article 3 (*ibid.*, amendment 2 (b)).

19. Amendment 2 (c) sought to ensure that persons who were not granted asylum by a State would, if possible, always be given the opportunity to seek asylum in another country; the amendment would also delete from article 3, paragraph 2, the term "provisional asylum", which had no recognized meaning in international practice.

20. A declaration such as that before the Committee must be simple and intelligible if it was to be effective. His delegation, therefore, would oppose any attempt to define the concept of asylum or the various categories of persons who should or should not be considered *bona fide* applicants. The formula "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" adequately covered all categories of persecuted persons, including those struggling against colonialism.

21. His delegation attached great importance to the right of asylum and hoped that the Committee would complete its work on the draft Declaration at the present session.

22. Mr. TAMMES (Netherlands) said that jurists did not possess sufficient information on State practice with regard to asylum; in order to remedy that deficiency, the International Law Association through a questionnaire, had collected material from a number of countries that had been considered at the Association's recent Helsinki Conference by its Committee on the Legal Aspects of the Problem of Asylum. Such information could undoubtedly facilitate the study and development of the right of asylum, and it would perhaps be helpful if he commented on the Netherlands Aliens Act of 13 January 1965, the provisions of which within the context of the Netherlands Constitution and

various international conventions, were directly related to that right. His observations concerning the Act would also serve as comments on the draft Declaration (see A/6367) and the proposed amendments thereto.

23. He wished to state at the outset that his delegation preferred the term "territorial asylum" and therefore supported the Polish amendments to the title and articles 2, 3 and 4 (A/C.6/L.589) and the Uruguayan amendment to the fourth preambular paragraph (A/C.6/L.604).

24. Under the Netherlands Aliens Act, persons having the right to seek and enjoy asylum were defined as aliens who, by their rejection, return or expulsion, would be compelled to go to a country where they would have a well-founded fear of persecution because of their religious or political opinions, nationality, race or membership in a particular social group. That definition was subjective and was broader in scope than that given in article 3 of the draft Declaration or in article 33 of the 1951 Convention relating to the Status of Refugees,^{3/} in that it did not refer only to persecution endangering life, physical integrity or freedom. Furthermore, the definition in the Netherlands Aliens Act was in keeping with article 14, paragraph 2, of the Universal Declaration of Human Rights and with article 1, paragraph 2, of the draft Declaration (see A/6367, annex III). The latter paragraph was based on article 1F of the 1951 Convention, which had been ratified by many States, including his own.

25. Aliens as defined in the Netherlands Aliens Act could not be refused admission to the Netherlands and could not be expelled except by special order of the Minister of Justice. Refugees who would be compelled to go to a country where they would have a well-founded fear of persecution could only be refused at the frontier for overriding reasons of public interest, a provision that was comparable to, but less restrictive, than article 3 of the draft Declaration, which referred to "overriding reasons of national security or safeguarding of the population". The Minister of Justice could refuse an alien admission to, or permission to reside in, the Netherlands in cases involving a serious crime or a serious threat to national security, but in cases involving public peace and order and national security an alien could not be expelled without being given reasonable time to seek admission to another country, a provision which resembled that contained in amendment 2 (c) submitted by Norway and Togo (A/C.6/L.588).

26. The Minister of Justice could be requested to review decisions relating to admission, residence and expulsion; and in such cases he usually obtained the opinion of the Advisory Committee on Alien Affairs. If the request was dismissed, further administrative remedy was available in the form of an appeal to the juridical section of the Council of State. Those provisions of the Aliens Act were in conformity with article 13 of the draft Covenant on Civil and Political Rights (see A/6342, annex I).

27. Under the Act, aliens in the Netherlands enjoyed the same fundamental freedoms as nationals, provided

^{3/} See United Nations, *Treaty Series*, vol. 189 (1954), No. 2545.

they did not represent a danger to public peace and order or to national security. By implication, those restrictions also extended to activities endangering peaceful international relations or contrary to the purposes and principles of the United Nations, as stated in article 4 of the draft Declaration. The wording of that provision of the Act closely resembled that of the Greek amendment to the draft Declaration (A/C.6/L.591), which his delegation preferred to the other proposed amendments to article 4. The fundamental freedoms concerned, which included freedom of expression, freedom of peaceful assembly and association and freedom of thought, conscience and religion, were set forth in the Netherlands Constitution and in articles 9-11 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms,^{4/} which corresponded to articles 18-21 of the draft Covenant on Civil and Political Rights. That Convention was part of the law of the land in the Netherlands and took precedence even over the Constitution. Article 60 of the Convention specified that the most favourable provisions—either those of the Convention itself or those of national law—should prevail to the benefit of the individual. Inasmuch as the Netherlands Constitution did not discriminate between nationals and aliens with regard to fundamental freedoms, no special restrictions could be imposed on aliens in that respect, as would otherwise have been possible under article 16 of the Convention. On the basis of general Netherlands regulations the freedom of movement of aliens could be restricted in exceptional cases in the interest of public peace and order and national security, but remedies were available through the courts of first instance and the courts of appeal.

28. In the Benelux countries, the effects of national legislation relating to aliens tended to extend beyond the frontiers of each member of the Union because it was currently common practice to grant aliens admission to the whole of the Benelux territory, subject to common agreements and interpretations.

29. Mr. MAKSIMENKO (Byelorussian Soviet Socialist Republic) said that the codification and progressive development of all chapters of international law, including the right of asylum, should strengthen friendly relations among all States, contribute to the peaceful solution of international problems, and encourage and develop respect for human rights and fundamental freedoms for all persons without distinction as to political opinion. The domestic law of his country dealt with the important problem of asylum in just that way. Article 104 of the Constitution of the Byelorussian SSR declared that the right of asylum was afforded to foreign citizens persecuted for defending the interests of the working people, for scientific activities or for struggling for national liberation.

30. The right of asylum was a fairly old and widespread doctrine of international law. There were cases, however, in which individual Governments still did not take a firm position in the matter. In order to establish a uniform practice of granting territorial asylum to persons subject to political persecution, including the victims of colonialism, efforts should be

made to complete and to adopt the United Nations draft Declaration on the Right of Asylum. The draft Declaration had travelled a tortuous path. As early as its first session, in 1949, the International Law Commission had included the right of asylum in the list of topics it had selected for codification. Since 1960 the question had been under consideration in the Economic and Social Council, the Sixth and Third Committees, the Commission on Human Rights and the International Law Commission. That odyssey of the draft Declaration, in itself indicated that the Sixth Committee would have to study the matter with its customary thoroughness. The text of the preamble and article 1 adopted by the Third Committee (see A/6367, annex III), which were acceptable to his delegation, would facilitate the Sixth Committee's task.

31. His delegation concurred in the view that the preliminary preparation for that work could best be accomplished by a working group composed of highly qualified jurists representing the different legal systems and States from different geographical areas. In the Working Group established at the twentieth session of the General Assembly^{5/} the representation accorded to the socialist countries had been clearly inadequate. In the present discussion the socialist States had already shown their great interest in the preparation of the norms of international law governing the right of asylum, and his delegation would insist that they be given proper representation in the new working group, which should prepare a final version of article 2-5 of the draft Declaration (see A/6367, annex II).

32. The Commission on Human Rights and the Third Committee had limited their work on the draft Declaration to the right of territorial asylum, considering it inadvisable at that stage to touch upon the more general question of the codification of the principles and norms of international law relating to the right of asylum as a whole. Some representatives, however, had thought that the norms relating to all aspects of the topic should be codified. Even if the Sixth Committee set itself the more limited task of preparing norms relating only to the right of territorial asylum, it should, in his delegation's opinion, determine the basic rights and duties both of the States granting asylum and of the persons who received it.

33. The right of asylum was generally recognized to be founded on humanitarian considerations. The Declaration, accordingly, should include a legal norm prohibiting States granting asylum from permitting or encouraging persons who had received asylum to be used for purposes of espionage, subversion or sabotage against other States. The adoption of such a rule would promote the purposes of the United Nations and help to establish friendly relations among States.

34. Mr. GUIRANDOU-N'DIAYE (Ivory Coast), exercising his right of reply, took note of the Ghanaian representative's statement at the previous meeting acknowledging that the charges brought by the Government of the Ivory Coast against the former régime in Ghana had been well founded. Events had now led to a normalization of relations between the two countries

^{4/} *Ibid.*, vol. 213 (1955), No. 2889.

^{5/} See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 63, document A/C.6/L.591.

and the conclusion of various mutual co-operation agreements.

35. The policy of the Ivory Coast was to maintain the best relations with all African countries wishing to build a united, tolerant, interdependent and fraternal Africa. Subversion, whatever its source, must be

banished so that Africa might build in peace and friendship. Accordingly, whenever the occasion arose, his country would denounce any subversive activities directed from abroad against its territorial integrity and the institutions that its people had freely chosen.

The meeting rose at 12.5 p.m.

United Nations
GENERAL
ASSEMBLY

TWENTY-FIRST SESSION

Official Records

SIXTH COMMITTEE, 921st
MEETING

Friday, 28 October 1966,
at 10.50 a.m.



NEW YORK

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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (*continued*)
(A/6367 and Add.1 and 2, A/C.6/L.587, A/C.6/L.588
and Corr.1, A/C.6/L.589-L.591, A/C.6/L.593 and
Add.1, A/C.6/L.599, A/C.6/L.604)

1. Mr. MANNER (Finland) said that his delegation attached great importance to the draft Declaration on the Right of Asylum (see A/6367) and would support all efforts to complete it. The spirit of the draft Declaration and the principles set forth in it were reflected in existing Finnish legislation: for example, the 1958 Aliens Decree provided that if an alien applied for political asylum shortly after arriving in Finland it could be granted by the Ministry of the Interior, after consultation with the Ministry of Foreign Affairs, provided that the alien had a well-founded fear of being persecuted in his own country because of his race, religion, nationality or membership in a certain social or political group, or that he had not been granted asylum in another country. According to the 1922 Extradition Act, a person could not be extradited for a political crime, unless the crime was particularly brutal or comprised a non-political crime and could not be deemed primarily political in nature. Monetary offences and murder or attempted murder that had not taken place in open conflict could in no case be considered political crimes. The right of asylum was also touched upon in the 1960 Act concerning extradition between Finland and the other Nordic countries. In certain respects Finnish law also recognized the principle that a person who had committed a war crime had forfeited his right to asylum.

2. His delegation felt that the Committee should consider the text of the draft Declaration as a whole. A certain distinction should, of course, be drawn between the preamble and article 1 on the one hand and articles 2, 3, 4 and 5 on the other, but his delegation would have no objection to the submission of amendments to the preamble and article 1, even though they had already been adopted by the Third Committee.

3. The Working Group established by the Sixth Committee at the twentieth session had considered that the Committee should prepare the draft Declaration

independently of the codification of the related rules of international law by the International Law Commission, and it had pointed out that the future declaration would, in fact, constitute only one of the elements available to the Commission in carrying out that task.^{1/} That view was confirmed by the fact that other bodies, such as the International Law Association, were dealing with the same problem. That being the case, his delegation believed that the draft Declaration should not be a detailed, practical codification of all the rules relating to the right of asylum; its main purpose should be to develop and clarify the principles contained in article 14 of the Universal Declaration of Human Rights. It should deal principally with the obligations of States and should not lay down the rules governing the conduct of persons enjoying asylum, which in most cases were established by national legislation.

4. In view of the universal nature of the proposed Declaration, his delegation felt that it would be preferable not to single out "persons struggling against colonialism" from among the many groups entitled to invoke article 14 of the Universal Declaration, and it would therefore vote against proposals to insert that phrase into articles 2 and 3 of the Commission's draft (see A/6367, annex II).

5. Article 2 of that draft should be revised so as to clarify the question of the measures to be taken by other States to ease the burden on a country that found it difficult to continue to grant asylum. His delegation was willing to accept the principle that a State could refuse to grant asylum when faced with economic or other material difficulties caused, for example, by a mass influx of refugees; but article 2 must be carefully worded in order to prevent States from using it as a pretext for exerting political pressure.

6. With regard to procedure, his delegation was in favour of setting up a new working group to prepare a revised draft, based on the documents before the Committee and the statements made during the general debate.

7. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the Committee was not starting its work on the present item with a clean slate. On the one hand, the preamble and article 1 of the draft Declaration on the Right of Asylum had been adopted by the Third Committee (see A/6367, annex III), and that action had been noted by the General Assembly. On the other hand, the Sixth Committee had before it articles 2-5 of the draft Declaration adopted by the Commission on Human Rights (*ibid.*, annex II). Some delegations had suggested that the Sixth Committee

^{1/} See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 63, document A/C.6/L.581.

understanding, if not indifference. It was true that the 1951 Convention on the Status of Refugees represented a marked improvement over the 1933 Convention, but the fate of most persons seeking asylum nevertheless continued to depend on unilateral national policies. Yet, as the United Nations High Commissioner for Refugees had observed in his statement to the Third Committee in November 1962, for the persons affected, the granting of asylum was "a condition for the enjoyment of all other human rights".^{3/}

14. In his country, the right of asylum was associated with traditions of the greatest antiquity, and his Government had tried to align its present attitudes and practices in that regard with international norms and standards. It had acceded to the 1951 Convention and had laid down its own principles and policies in the 1966 Refugees (Control) Act. It did not agree with those who considered asylum as merely the obverse of extradition. In Tanzanian law and practice there was no right of extradition or asylum, except as created by an affirmative, voluntary act of the State; thus, rights of extradition had been created in favour of certain States with which his Government had concluded extradition treaties, and rights of asylum had been created in favour of certain individuals falling within the category of refugees covered by the 1951 Convention or article 3 of the Refugees (Control) Act. In his Government's view, the right of asylum was wider than the right of extradition; the latter might limit or create an exception to the former. That view was consistent with the spirit and letter of article 14 of the Universal Declaration of Human Rights. His Government understood that some Member States might be facing certain problems with regard to asylum, but it felt that unique problems should not be allowed to distort principles that were generally sound.

15. It was clear, of course, that the international norms relating to asylum were not so clearly defined and universally accepted as would be ideally desirable. It was for that reason that his Government had approved the proposals of the Colloquium on Legal Aspects of Refugee Problems, held at Bellagio, Italy, in 1965, which were designed to secure international agreement for a modification of the 1951 Convention, and had participated in the work of the Commission on Refugees of the Organization of African Unity, which was attempting to draft a convention laying down rules for the treatment of refugees in Africa. For the same reason, his Government considered it appropriate for the General Assembly to try to resolve the existing differences in State practice by adopting a declaration on the right of asylum that would have the same force as the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty.

16. The international community was deeply indebted to the French delegation for having submitted the original proposal for a draft Declaration.^{4/} Such a

^{3/} Ibid., Seventeenth Session, Third Committee, 1192nd meeting, para. 3.

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

declaration would be of great benefit to persons seeking asylum, for, as the Argentine representative had rightly observed during the discussion in the Third Committee, "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".^{5/}

17. His delegation shared the Venezuelan representative's view that the Committee, if it wished, could include provisions relating to diplomatic asylum in the draft Declaration. It might, however, be preferable to conclude a declaration on territorial asylum first and then, if it was considered necessary, begin work on a new study on diplomatic asylum, bearing in mind that the latter topic could be considered under the heading of diplomatic privileges and immunities, as well as under that of human rights, and, too, that the matter of diplomatic asylum would eventually be taken up by the International Law Commission in connexion with its general work on the right of asylum.

18. He did not intend to discuss the substance of the draft Declaration in detail on the present occasion, but he wished to express support for the Iraqi-Algerian amendment to articles 2 and 3 (A/C.6/L.593 and Add.1); the proposed reference to "persons struggling against colonialism" would bring those articles into line with article 1, paragraph 1, of the draft (see A/6367, annex III) and would encourage the heroic peoples fighting against colonial domination.

19. Owing to a variety of geographical and political circumstances, his country, for years, had been host to numerous refugees of different nationalities many of whom had on arrival been suffering from the poverty and fear characteristic of the typical refugee. Faced with the problems occasioned by a mass influx of persons seeking asylum, the most benevolent Government might find itself torn between its sympathetic impulses and the need to maintain legal and social control. His delegation considered that the draft Declaration made a valiant attempt to deal with the various problems involved in the granting of asylum. As the preamble recognized, those problems often had economic, social and cultural aspects, as well as a humanitarian aspect. The draft Declaration should be subjected to detailed study in the light of that fact, taking into account the comments submitted by Governments and the statements made during the general debate. In his delegation's view, such a study could best be carried out by a working group, which would make recommendations to the Sixth Committee before the end of the session. The size and membership of the group should be determined by reference to certain well-established criteria, and the principle of equitable geographical distribution should be respected. Subsequent work on the draft Declaration might be facilitated if Governments were invited to submit comments on the draft adopted by the Committee, so that those could be taken into consideration at the next session of the General Assembly.

20. Mr. SETTE CAMARA (Brazil) expressed his delegation's appreciation for the support given by

^{5/} See Official Records of the General Assembly, Seventeenth Session, Third Committee, 1193rd meeting, para. 22.

40. Nor did his delegation consider it necessary to add article 2, paragraph 2, of the resolution of the meeting of the Institute of International Law, at Bath in September 1950, which said that the State which granted asylum to a person in its territory did not on that account incur any international responsibility other than that arising from the activity of any other alien living on its territory, and that the rule applied whether the State could expel the person receiving asylum or whether expulsion was impossible because other States refused to receive him. The rules of State responsibility did not distinguish between a State's jurisdiction over activities on its territory by subjects and its jurisdiction over activities by aliens, exiles or non-exiles.

41. His delegation accepted the Polish proposal for a new article 6 (A/C.6/L.589), as it had a similar provision in the 1963 Convention on Consular Relations. However, there were many extradition treaties requiring States to hand over non-political offenders but excluding political offenders, and there were a number of mixed offences. Under article 1, paragraph 3, of the draft Declaration (see A/6367, annex III), it rested with the State granting asylum to evaluate the grounds for the grant of asylum; but under the extradition treaties the State might be bound to accept other methods of evaluation. His delegation thought, therefore, that the words "and extradition" should be added to the new paragraph proposed by Poland.

42. Mr. PAYSSE REYES (Uruguay) said that his country, as a Latin American State, had had long and varied experience in the theoretical development and practical application of the institution of asylum. Inasmuch as that experience might be of value to the Committee in preparing the draft Declaration, he wished to offer the following chronological list of the leading Latin American treaties and conferences on the subject:

(a) Article 17 of the 1889 Treaty of Penal Law of Montevideo, a document already referred to by the representatives of Venezuela and Chile, had granted asylum to persons persecuted because of "political crimes"; but it had denied that right to the "perpetrators of common crimes".

(b) The International Commission of American Jurists (Rio de Janeiro, 1927), in article 2 of its draft Convention No. 10, had stated that asylum should be recognized and should be granted to persons accused or convicted of political crimes.

(c) The Convention on Asylum, signed at Havana on 20 February 1928, had provided in article 2 that asylum would be granted only to "political offenders" to the extent in which allowed, as a right and through humanitarian toleration, by the usages, the conventions or the laws of the country in which it was granted.

(d) The Convention on Diplomatic Officers of 1928 had laid down rules respecting diplomatic asylum that might also be usefully applied in the case of territorial asylum.

(e) The Convention on Political Asylum of Montevideo (1933) had reproduced and supported the principles of the Havana Convention.

(f) The Argentine draft Convention on the Right of Asylum was enunciated in 1937. Various political events, in particular the experience gained during the Spanish Civil War (1936-1939), had revealed the narrowness of the current rules governing the granting of asylum, and the Argentine Government had taken the initiative in broadening the traditional concept of asylum. At that time, Carlos Saavedra Lamas had proposed to add to the category of "persons accused or convicted of political crimes" the category of "persons persecuted because of political crimes or for political reasons".

(g) The Argentine draft of 1939 had followed the main criteria laid down in the Saavedra Lamas draft and retained the reference to "persons persecuted for political reasons". In particular, it denied asylum to "terrorists" and to "deserters", unless the desertion was of a political nature.

(h) The Uruguayan draft of 1939 had enlarged the traditional concepts to include common crimes having related political aspects, unless in the opinion of the judge the offence partook so much of the nature of a common crime that its political aspects were completely obscured.

(i) The Treaty on Political Asylum and Refuge (Montevideo, 1939) for the first time had confirmed in American conventional law the Argentine doctrine relating to persons persecuted for political reasons or because of political crimes or common crimes committed primarily in political circumstances, a doctrine accepted by the Institute of International Law in 1950.

(j) Because of its direct connexion with American conventional law, reference should also be made to the judgement of the International Court of Justice of 20 November 1950. In considering that historic judgement, which had been rejected by Latin American juridical thinkers, mention should be made of the work by the Mexican jurist, Francisco A. Ursúa, *El asilo diplomático* (1952).

(k) Reference should also be made to the First Hispano-Luso-American Congress of International Law, held at Madrid in 1951, at which the principle that when asylum was granted it was because the Government granting it regarded the applicant as a person persecuted for political reasons had been stated.

(l) The Inter-American Juridical Committee, meeting in Rio de Janeiro in 1952, as a consequence of the judgement of the International Court of Justice already referred to, had studied the problem of "urgency" as a condition for granting asylum and had outlined rules on that subject in articles 5, 6 and 7 of its draft.

(m) The Inter-American Council of Jurists, meeting in Buenos Aires in 1953, had prepared a new draft convention to be submitted to the Tenth Inter-American Conference at Caracas. That draft had confirmed the concept of "persons persecuted for political reasons or because of political crimes" and had left the evaluation of the facts entirely within the discretion of the State granting asylum.

(n) The Tenth Inter-American Conference at Caracas in 1954, in its Convention on Diplomatic

Asylum, had limited the existing law on asylum in Latin America to "persons being sought for political reasons or for political offenses" and had left it to the State granting asylum to determine the nature of the crimes or the reasons for the persecution (the first paragraph of article 1 and article 4). Likewise, in articles 5, 6 and 7 of the Convention it had introduced into positive conventional law clear rules concerning the determination of "urgency" as a matter left exclusively to the judgement of the State granting asylum.

(o) At Santiago, Chile, in 1959, the Inter-American Council of Jurists, in the draft of its additional protocol to the Inter-American Conventions on Diplomatic Asylum, had made the most recent contribution to the work of codification in article 4, which read as follows: "The State granting asylum has the right to define the nature of the crime or the reasons for persecution. It also has the right to determine whether or not the case is an urgent one".

(p) In 1960, the Government of Uruguay had laid down the following rules concerning the procedure to be followed in granting asylum: (i) those rules of conventional law that had been formally accepted by Uruguay must be scrupulously respected; (ii) there must be the strictest objectivity and neutrality in granting asylum to all persons, without any discrimination in respect of ideology, race, sex or religion; (iii) all persons persecuted for political reasons were entitled to seek and obtain asylum; (iv) even if the applicant had not committed any crime, the fact that he had been persecuted by the public authorities, elements of the population or organized associations was sufficient reason for granting him asylum, if the persecution had been motivated by political, social, religious, trade union or racial reasons; (v) serious threats and covert persecution motivated by the same reasons were also grounds for granting asylum; (vi) each case must be considered in the light of its specific circumstances by the competent authority.

43. With those precedents in mind, his delegation had the following comments to make on the draft Declaration:

(a) It was its understanding that the competence of the Sixth Committee was in no way limited by the preamble and article 1 prepared by the Third Committee (see A/6367, annex III).

(b) His delegation was concerned lest a declaration on territorial asylum should be interpreted in such a way as to detract from the importance of diplomatic asylum, which had been granted by many States during the Spanish Civil War. The text should include some saving clause, therefore, possibly in the form of a supplement to the article proposed by Poland (see A/C.6/L.589).

(c) Although the Declaration should emphatically affirm the institution of territorial asylum, it should

be as sparing as possible in the statement of concrete provisions, leaving the progressive development of the principle to the International Law Commission.

(d) Much confusion and discussion could be avoided by replacing the expression "declaration on the right of asylum" by the words "declaration on territorial asylum".

(e) The preamble should state that asylum could be claimed by any person suffering persecution by reasons of race, sex, language or religion, or because of his philosophical, political or social convictions.

(f) The addition of the phrase "persons struggling against colonialism" in article 1 would be unnecessary and inappropriate, because it merely referred to one form of political activity, and its inclusion would weaken the general force of the principle to be stated.

(g) In the Spanish text of article 1, paragraph 3, of the Third Committee's draft, the word "competete" should be substituted for "corresponderá", which might imply obligation.

(h) In article 2 of the Commission's draft (see A/6367, annex II), the word "forced" should be replaced by "impelled", because "force" implied an outside power, with the necessary authority to impose it; but "impelled" implied a subjective resolution, motivated by "persecution" or "well-founded fear".

(i) In view of the special system of diplomatic asylum recognized in Latin America, the words "or regional bodies" should be added after the reference to the United Nations in article 2.

(j) In accordance with the principle of universality, it would be advisable to refer in the preamble only to "States" and not to the United Nations or the specialized agencies.

(k) Article 3 should be replaced by the text proposed in the Uruguayan amendment (A/C.6/L.604), which would take into account the comments of the delegations of Ghana, Greece and the USSR.

(l) Article 4 could be deleted, inasmuch as its contents would be included in article 3.

(m) The current article 5 would become article 4, and the new article 5, proposed in the Uruguayan draft resolution, would also take into account the Polish proposal.

44. In conclusion, he drew attention to a mistake in the French translation of his amendments (A/C.6/L.604). He had proposed that the title "Declaration on the Right of Asylum" should be replaced by "Declaration on Territorial Asylum", but the word "right" had been retained in the French text.

The meeting rose at 1.15 p.m.



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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (continued)
(A/6367 and Add.1 and 2, A/C.6/L.587, A/C.6/L.588
and Corr.1, A/C.6/L.589-L.591, A/C.6/L.593 and
Add.1, A/C.6/L.599, A/C.6/L.604, A/C.6/L.605)

1. Mr. DARWIN (United Kingdom) said that it might well be that the referral to the Sixth Committee of the draft Declaration on the Right of Asylum was justified, inasmuch as the draft raised many legal problems concerning relations between States and the rights of States. He hoped that that long debated issue might find a solution in the Committee. Since, unfortunately, the Committee could only devote a limited time to the subject, it should be possible, after the general debate, to remit the study to a small but fully representative working group that might examine both questions of substance and any drafting points requiring consideration. The Committee would then discuss the proposals presented to it by the working group in its report. The group should make full use of the work already done on the draft, especially by the Third Committee, and it should be possible for it to complete work on the draft Declaration before the end of the current session of the General Assembly.

2. Turning to the texts and amendments submitted, he said that, generally speaking, his Government's preference would be not to attempt to deal with diplomatic asylum and territorial asylum together but to cover in the Declaration only territorial asylum, which was the topic of the study referred to the Sixth Committee. The preamble and article 1 adopted by the Third Committee (see A/6367, annex III) after careful consideration and protracted discussion should be used, even if the text was not entirely satisfactory, in particular on the point referred to by the French Government in its comments (see A/6367). Article 2 of the draft prepared by the Commission on Human Rights (*ibid.*, annex II) was generally satisfactory, although the second paragraph was not entirely clear. However, having carefully considered the amendment to that paragraph proposed by Norway and Togo (see A/C.6/L.588), his delegation had come to the conclusion that that amendment would not improve the

draft and would not be consistent with the general structure of the draft Declaration. It would not be appropriate to the granting of asylum, inasmuch as that fell within the competence of States, as was fully recognized in article 1, paragraph 3, of the Third Committee's draft. The matter would obviously be settled if the Committee adopted the Brazilian amendment proposing the deletion of the second paragraph of article 2 (A/C.6/L.605).

3. On the other hand, subparagraph 2 (b) of the amendment of Norway and Togo to article 3 (see A/C.6/L.588) was regarded as satisfactory by his delegation, which considered that the proposed new paragraph introduced a useful clarification. It could not, however, accept the amendment to the second paragraph of article 3 proposed by those two delegations; for if a State found it necessary not to grant asylum for the reasons indicated in the first paragraph of article 3, it could not be expected to accept too strict guidance as to what it should do in that situation.

4. Article 4 as currently drafted was of uncertain scope and might be used oppressively. On the other hand, during the earlier discussion, several delegations had suggested that there should be some reference to the duties of the refugee towards the host country. The amendment submitted by Greece (A/C.6/L.591) might, to a large extent, meet that concern. However, his delegation was not clear as to the scope of the Brazilian amendment (A/C.6/L.587), which it thought could give rise to legislative difficulties. The same criticism might be made of the Soviet amendment (A/C.6/L.590).

5. So far as the amendments of a purely drafting character were concerned—e.g., the Norwegian and Togolese proposal that reference should be made in the first paragraph of article 3 of the draft Declaration to persons entitled to invoke article 14 of the Universal Declaration of Human Rights (see A/C.6/L.588 and Corr.1) an amendment which the United Kingdom delegation supported—those could better be dealt with by the working group.

6. Mr. GONZALEZ GALVEZ (Mexico) recalled that one of the conclusions reached by the Working Group established by the Sixth Committee to facilitate study of the draft Declaration on the Right of Asylum had been that the Committee should consider the draft independently of the work of codification, which the International Law Commission would undertake at the appropriate time.^{1/} Once that Declaration had been adopted by the General Assembly, it would, of course, be one of the elements available to the International

^{1/} See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 63, document A/C.6/L.581.

Law Commission in the work of codifying and progressively developing the rules of international law relating to the right of asylum.

7. The discussion seemed to indicate that no one questioned the desirability of adopting such a declaration, provided that its scope was confined to territorial asylum. Accordingly, his delegation proposed that the Committee should authorize its Chairman to engage in the necessary consultations for the purpose of appointing, by general consensus and as soon as possible, a working group whose task should be to prepare a preliminary draft declaration on the right of territorial asylum, taking as its working documents: (a) the text of the draft Declaration on the Right of Asylum adopted by the Commission on Human Rights; (b) the text of the preamble and article 1 of the draft Declaration adopted by the Third Committee at the seventeenth session of the General Assembly; (c) the amendments and comments submitted in writing by Member States; (d) the specific suggestions made during the discussion of the item at the twenty-first session of the General Assembly; and (e) the existing international instruments relating to the matter. The members of the working group would be so designated as to ensure the balanced representation of the various geographic groups recognized by the United Nations and of the various schools of thought on the problem in question.

8. Mr. JEANNEL (France) restated his delegation's understanding of the institution of asylum and the reasons that had prompted it to submit a draft declaration on the right of asylum at the thirteenth session of the Commission on Human Rights. The French tradition of granting asylum observed the principle of the self-determination of peoples and of the absolute sovereignty of States; consequently, the offering of asylum to an exile could not be interpreted as a political decision on the part of the host country. It was a question of noting a human fact and drawing the human consequences from it.

9. In the international community, the Universal Declaration of Human Rights of 1948 had embodied a sort of consensus regarding the human person. A few years ago the French Government had thought that a common feeling also existed with regard to asylum—the natural complement of human rights on an essentially humanitarian plane. That had prompted its proposal, which it had linked directly with article 14 of the Declaration.

10. His delegation had considered that a joint declaration on the right of asylum, establishing those principles that France thought ought to be accepted in practice by all members of the international community, was preferable to a codification, the implementation of which might touch on certain aspects of State sovereignty. Such a declaration should not be given a peremptory character, inasmuch as theoretically it could only reflect common sentiments.

11. His delegation, therefore, was particularly grateful to the other delegations for their observations, proposals and amendments, thanks to which the original text of the French draft^{2/} had already been sub-

stantially improved. Those at present before the Committee should facilitate the work of the proposed working group and lead to the adoption of a document representing the common denominator of the universal conscience on the subject.

12. The Iraqi amendments (A/C.6/L.593) and article 1, paragraph 1, which was adopted by the Third Committee at the seventeenth session (A/6367, annex III), referred to persons "struggling against colonialism". In the French delegation's view, that might introduce an element, the political nature of which was difficult to reconcile with the neutrality of a text of essentially humanitarian scope, especially as article 14 of the Universal Declaration, to which article 1 expressly referred, made no distinction between the persons persecuted and therefore excluded none, whatever the reason for persecution. That unnecessary addition might also call into question the wholly general scope of article 14 by wrongly implying that it was not concerned with colonial persecution.

13. His delegation was in favour of establishing a working group. Its terms of reference should be clearly defined and should be to prepare a final draft for submission to the Sixth Committee at the end of the current session, on the basis of the drafts of the Commission on Human Rights and the Third Committee (*ibid.*, annexes II and III), all the proposed amendments and the observations submitted by Governments. The Working Group set up at the twentieth session could be renewed, inasmuch as it seemed to represent fairly the various schools of thought and geographical areas. In view, however, of the wishes expressed by some delegations, his delegation would not object to a possible increase in the membership of the new working group, provided that it was consistent with efficiency and allowed practical results to be achieved at the current session and that the former balance was not changed. Furthermore, the procedure used to effect that expansion should not be a burden to the Sixth Committee in its work.

14. Mr. HERRAN MEDINA (Colombia) noted that the question of asylum had come before the Sixth Committee after being studied by the International Law Commission from the legal point of view and by the Third Committee from the humanitarian aspect, the latter having already found expression in the Universal Declaration of Human Rights. Those two aspects summed up the historical development of the right of asylum, which, like many customs of a humanitarian character, had a religious origin and would in the end be governed by the rules of international treaty law, with customary law forming the link between the two.

15. At the end of the colonial era, there had developed in the new States of Latin America a practice of territorial asylum based on the *ius inter gentes* and the notion of the sovereignty of States and, later, on internal legislation and extradition treaties. The fiction of extraterritoriality, formerly accorded, for example, to the premises of diplomatic missions, was at the origin of diplomatic asylum. Amidst the civil conflicts with which the new Latin American States had frequently been afflicted at that period, the practice of that form of asylum had enabled the human suffering caused by political passions to be alleviated, and it had

^{2/} See Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 4, para. 208.

United Nations
**GENERAL
ASSEMBLY**

TWENTY-FIRST SESSION

Official Records



**SIXTH COMMITTEE, 923rd
MEETING**

Monday, 31 October 1966,
at 3.15 p.m.

NEW YORK

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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (continued)
(A/6367 and Add.1 and 2, A/C.6/L.587, A/C.6/L.588
and Corr.1 and Add.1, A/C.6/L.589-L.591, A/C.6/
L.593 and Add.1 and 2, A/C.6/L.599, A/C.6/L.604,
A/C.6/L.605)

1. Mr. KRISPIS (Greece) said that it seemed to be generally agreed that persons enjoying asylum would automatically be prohibited from engaging in activities contrary to the national security or public order of the State granting asylum, inasmuch as such activities were presumably prohibited under the criminal law of every State, and, under the Declaration, persons enjoying asylum would be subject to that law on the same basis as other persons residing within the territory of the State concerned. That was a consequence of the so-called principle of territoriality of criminal law, which had two aspects; namely, that every person (with the exception of those enjoying asylum under international law), being *corpore* in a State, regardless of whether he was a citizen of it or not, was subject to its criminal laws; and that no State could apply the criminal laws of another State. On the other hand, persons granted asylum in a certain country must, in principle, be accorded a status equal to anybody else in that country. In the light of the debate, his delegation believed that its amendment in document A/C.6/L.591 represented a statement of the obvious, inasmuch as the relevant provision was implied. Consequently, his delegation had decided to withdraw its amendment to article 4 of the draft Declaration; but if the Committee preferred to include in the draft Declaration a reference to the national security or public order of the State granting asylum, his delegation, of course, would agree.

2. With regard to the current text of article 4 (see A/6367, annex II), it might be questioned whether private persons could, strictly speaking, engage in "activities contrary to the purposes and principles of the United Nations"; for according to Articles 1 and 2 of the Charter those purposes and principles applied by their nature to the Members of the United Nations, i.e., to States. This observation was irrelevant to the question of whether private individuals were or were

not subject to the rules of international law. It could be argued, of course, that the United Nations had the right to call upon private individuals to act in a certain way if that was deemed necessary for the attainment of the Organization's purposes; but that was a major question that should not be touched upon in connexion with the draft Declaration. The case of the action taken by the United Kingdom, on the authority of Security Council resolution 221 (1966), with regard to the vessels *Ioanna B.* and *Manuela*, i.e., action aimed directly at private individuals, the owners of the ships and others, was interesting. It could also be argued that the reference to "acts contrary to the purposes and principles of the United Nations" in article 14, paragraph 2, of the Universal Declaration of Human Rights could be interpreted as applying to private persons; but for the reasons he had just explained, it would be possible to consider that reference a mistake from the legal point of view. In addition, the spirit and letter of article 14 of the Universal Declaration differed somewhat from those of article 4 of the draft Declaration. In his view, therefore, it would be more correct to say that it was for States, as Members of the Organization, to determine what private persons coming within their jurisdiction could or could not do with regard to the purposes and principles laid down in the Charter. His delegation would, indeed, prefer to have the whole draft Declaration formulated in such a way as to make States the direct subjects of its provisions and individuals seeking asylum the indirect beneficiaries. Of course, the current text of article 4 could not be interpreted as meaning that persons enjoying asylum must not advocate the modification of the Charter or the abolition of the United Nations; for every State should permit all persons coming within its jurisdiction to advocate the peaceful modification of both national and international law. Law was a living institution, because, like the life it governed, it was under constant evolution.

3. His delegation would prefer article 5 of the draft Declaration to be deleted, inasmuch as it merely referred to an existing text of the same legal value.

4. The Greek delegation favoured the establishment of a working group with the same membership as that set up at the last session; ^{1/} he would comment on the other articles and amendments when the working group had completed its work. His delegation believed that the draft Declaration should lay down the broad principles relating to the law of asylum, leaving the International Law Commission to formulate detailed draft articles on the subject. The draft Declaration,

^{1/} See Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 63, document A/C.6/L.581, para. 9.

of Human Rights, in particular article 14, and its status as an instrument could, at the most, be no more than that of the Universal Declaration itself. He therefore wished to place on record a formal reservation on the part of his delegation to the effect, first, that the Declaration and any votes which his delegation might cast in favour of it, should not in themselves in any way affect the interpretation or application of any bilateral or multilateral treaty to which Israel was a party without the specific consent of his Government, and, second, that with respect to any future similar treaties the Declaration might only be taken into consideration in accordance with the normal rules for the interpretation and application of treaties. That reservation applied particularly, but not solely, to treaties of extradition.

49. In that connexion, he recalled the statement made by his delegation on 1 October 1959, when it had stressed that a satisfactory general regulation of the law of asylum must be matched with an adequate system of extradition, in order to ensure that genuine cases of asylum would not become confused with what was mere criminality.^{4/} Inasmuch as that view appeared to be widely shared in the Committee, he would like to see it reflected, if not in the Declaration itself, then at least in the Committee's report to the General Assembly.

50. He agreed that the Committee currently was concerned only with territorial asylum, as distinct from diplomatic asylum. That point had been partly clarified in the text of article 1 already adopted by the Third Committee (see A/6367, annex III), and he shared the views of those representatives who had urged that that clarification should be made throughout the text, including, if necessary, the title.

51. He accepted, in principle, the amendments proposed by Norway, Togo and Costa Rica (A/C.6/L.588 and Corr.1 and Add.1), particularly with respect to article 3 of the draft Declaration, and also the other amendments along the same lines. He questioned, however, the need for the additional amendments proposed by Iraq in document A/C.6/L.593, inasmuch as the point made there was already covered in the original amendment, and the duplication proposed in the amendment would only weaken the text and lead to confusion.

52. A number of useful amendments to article 4 had been proposed; in his opinion, they were not irreconcilable. He was confident that the working group, which would undoubtedly be set up at the conclusion of the debate, would be able to produce a single text that would command general support. His delegation, however, could not support article 5 of the draft Declaration, because it considered it irrelevant, confusing and not in conformity with article 14 of the Universal Declaration of Human Rights.

53. Finally, with respect to the establishment and composition of the working group, his delegation was prepared to leave that matter to the Chairman, who would undoubtedly take into consideration both what had been decided by the Committee at its last session

^{4/} See Official Records of the General Assembly, Fourteenth Session, Sixth Committee, 605th meeting, para. 8.

and what had been said during the current debate. He reserved his delegation's right to make further and fuller observations, if necessary, at a later stage.

54. Mr. HUDA (Pakistan) briefly reviewed the history of the idea of asylum from ancient times down to the eighteenth century, when it had first assumed definite form as a legal concept and had then gradually taken its place in international law with the development of the institution of extradition. Political asylum had since become a universal and utilitarian practice, as had been acknowledged in general terms in article 14 of the Universal Declaration of Human Rights.

55. Although normally granted for humanitarian reasons, asylum had its roots in the sovereignty of States and their territorial supremacy. As Miss Morgenstern had pointed out in her article, it was an undisputed rule of international law that every State had exclusive control over the individuals in its territory.^{5/} It followed from that rule that the State had the power to regulate the admission or exclusion of aliens at will, even at the risk of inviting the displeasure of some other State. With the signing of extradition treaties, however, the situation had become more complex and the question of the return or expulsion of the fugitive more important. It was then necessary to determine whether the fugitive's offence had been of a political or non-political nature, a question that had been the subject of discussion in a number of European, Latin American and United States courts. Although the United States and United Kingdom extradition laws generally provided that no person should be surrendered for a political offence, the Latin American courts, in some cases, had given clear indications as to the duty of the State of asylum to observe certain criteria in granting asylum. In his treatise "Reflections Upon the Political Offence in International Practice", Professor Alona E. Evans had rightly concluded that the plea of the political offence, which was central to the request for political asylum, must be open to constant re-examination in the light of experience and with due regard to the current conditions of international law.^{6/}

56. Pakistan had always followed a peaceful policy, at home and abroad, and attached great importance to the right to asylum of persons seeking refuge. Even after the October Revolution of 1958, when President Ayub Khan had taken over the administration of the country, there had been no executions, prosecutions or convictions of persons belonging to the opposition party, something which was surely unprecedented in revolutionary history. His delegation, therefore, fully supported all the humanitarian precepts contained in the draft Declaration on the Right of Asylum and was prepared to accept any reasonable amendments that might facilitate the adoption of that instrument.

57. His delegation favoured the retention of the present wording of the preamble and article 1 adopted by the Third Committee (see A/6367, annex III).

^{5/} See Felice Morgenstern, "The Right of Asylum," The British Year Book of International Law (London, Oxford University Press, 1949), para. 327.

^{6/} See American Journal of International Law (Washington, D.C.) vol. 57, No. 1 (January 1963), pp. 1-24.

58. Article 2 of the draft drawn up by the Commission on Human Rights (*ibid.*, annex II) was acceptable to his delegation, but it preferred the wording proposed by Norway, Togo and Costa Rica (A/C.6/L.588 and Corr.1 and Add.1), which appeared to be an improvement over the original text. With respect to the Polish proposal that the word "territorial" should be inserted before the word "asylum" in that article (see A/C.6/L.589), he noted that that wording had already been accepted with respect to article 1 by the Third Committee and was therefore a necessary consequential change. The proposal of Iraq to add the words "and persons struggling against colonialism" in the first paragraph of article 2 (see A/C.6/L.593) was a further improvement and was also acceptable.

59. Concerning article 3, his delegation could accept the amendment proposed in document A/C.6/L.588 and Corr.1, together with the Iraqi amendment (see A/C.6/L.593), on the understanding that article 3 did not restrict the authority of the receiving State to refuse asylum for overriding reasons of national security.

60. His delegation could approve the text of article 4, subject to the amendments proposed by Greece (A/C.6/L.591) and by Norway, Togo and Costa Rica (A/C.6/L.588 and Corr.1 and Add.1).

61. Lastly, he expressed satisfaction with the text of article 5 prepared by the Commission on Human Rights.

62. Mr. BAL (Belgium), after recalling his country's traditional attachment to the principle of asylum, said that the task confronting the Sixth Committee differed somewhat from its usual work on the codification and progressive development of international law, inasmuch as it was not called upon, at the current time, to draw up a preliminary draft for an international convention. His delegation agreed that the Committee should formulate, on the basis of the available documentation, the political and humanitarian principles that should guide the practice of States in the exercise of their right to grant asylum. In the draft Declaration, therefore, it must endeavour to achieve a proper balance between the rights of the State and the protection to which the individual was entitled on humanitarian grounds. In that connexion, the Declaration should not in any way permit or encourage a restrictive interpretation of established juridical principles. In 1963, his Government had stressed the importance it attached to the rules set out in two instruments of positive law prepared under United Nations auspices: the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. Although the topic of asylum was perhaps not yet sufficiently developed to be included in a convention involving legal obligations, the Committee should do everything possible to develop and crystallize existing ideas on the subject. It certainly should do its best to ensure maximum conformity between the new text and those instruments of positive law concerning the protection of the individual that had already found wide acceptance among Member States.

63. With respect to articles 2-5 of the draft Declaration prepared by the Commission on Human Rights

(see A/6367, annex II), his delegation in general approved the amendments proposed by Norway, Togo and Costa Rica (A/C.6/L.588 and Corr.1 and Add.1), inasmuch as those proposals were apparently based on a policy of close collaboration with the international bodies responsible for protecting refugees and stateless persons—a policy also followed by his Government. Some representatives seemed to fear that the amendment proposed in that document to the second paragraph of article 2 was contrary to the concept of the sovereignty of States, but his delegation did not share that fear. It also supported the amendments to article 3 proposed by Norway, Togo and Costa Rica, because the Belgian Government had always considered that the words "overriding reasons... of safeguarding of the population" might encourage a policy of restricted or discriminatory admission. With regard to the last paragraph of article 3, it had been argued that the text proposed by Norway, Togo and Costa Rica might tend to create rules too strict for inclusion in a draft Declaration dealing mainly with the rights of States; but in view of the juridical nature of the instrument to be drafted, his delegation could not share that view.

64. Lastly, he supported the proposal to set up a working group to prepare a draft Declaration for consideration by the Committee.

65. Mr. EL-ERIAN (United Arab Republic) recalled that it had been the intention of the Commission on Human Rights that the draft Declaration should serve as a means of promoting respect for the right of territorial asylum as a humanitarian measure recognized by States. Inasmuch as the topic was already on the agenda of the International Law Commission, the Sixth Committee should try to draw up a declaration of a general, humanitarian character that would serve as a guide to the Commission in its work. In connexion with the draft Declaration already adopted by the Commission on Human Rights, his delegation fully supported the Iraqi proposal (A/C.6/L.593) to add a reference to persons struggling against colonialism or persecuted as the result of colonial oppression in articles 2 and 3, because that was one form of assistance that the United Nations could and should offer to people who had not yet obtained independence.

66. In conclusion, his delegation announced its support for the proposal made orally by the representative of Mexico (922nd meeting) concerning the establishment of a working group to prepare a preliminary draft Declaration on the right of territorial asylum.

67. The CHAIRMAN read out, as a formal resolution, the proposal concerning the establishment of a new working group that had been submitted orally by the representative of Mexico at the 922nd meeting. He invited the Committee to take a decision on it.

The draft resolution based on the oral proposal of Mexico was adopted.^{2/}

68. The CHAIRMAN said that he was prepared to undertake the task just entrusted to him by the Committee and that in doing so he would bear in

^{2/} The text of the resolution was subsequently circulated as document A/C.6/374.

mind the following points. It appeared to be generally agreed that the working group should be of a size permitting it to proceed expeditiously with its work and that it should therefore have about the same number of members as the 1965 group. Its composition should reflect the principle of equitable geographical distribution, adequate representation of the main legal systems of the world, the various views and interests involved and the nature of the item. Lastly, there seemed to be a consensus that the working group should have referred to it the draft Declaration on the Right of Asylum as prepared by the Commission on Human Rights; the text of the

preamble and article 1 approved by the Third Committee; and the amendments and proposals submitted to the Sixth Committee at the current session, together with the comments made during the current debate or submitted earlier in writing and the existing multilateral instruments in the field. On that basis, and subject to such other terms of reference as might emerge from his consultations, the working group would prepare a complete text of the draft Declaration for consideration by the Sixth Committee.

The meeting rose at 5.45 p.m.

United Nations
**GENERAL
ASSEMBLY**

TWENTY-FIRST SESSION

Official Records



**SIXTH COMMITTEE, 926th
MEETING**

Monday, 7 November 1966,
at 3.25 p.m.

NEW YORK

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*Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).*

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (continued)

1. The CHAIRMAN said that he understood the proposals he had put to the Committee at the previous meeting were now generally acceptable. He therefore invited the Committee to approve the following composition for the Working Group on the Draft Declaration on the Right of Asylum to be established in accordance with the decision taken by the Committee at the 923rd meeting: Australia, Belgium, Bulgaria, Ceylon, Colombia, France, Hungary, Iraq, Japan, Mali, Mexico, Nigeria, Norway, Philippines, Sudan, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States and Venezuela.

2. Mr. DELEAU (France) said that he would support the Chairman's proposal, in which the geographical composition of the General Assembly was reflected. The number of French-speaking representatives in the Working Group, however, would be small. In the establishment of future groups due regard should be paid to the need for equitable linguistic distribution.

The Chairman's proposal was adopted.

AGENDA ITEM 87

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United

Nations (continued) (A/6228, A/6230, A/6373 and Add.1):

- (a) Report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;
- (b) Report of the Secretary-General on methods of fact-finding

3. Mr. BANCROFT (United States of America) congratulated the Rapporteur of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States on his report (A/6230). General agreement had been reached in the Special Committee on two of the principles, and there had been a substantial narrowing of the area of disagreement on the other five. The extent of the consensus reached was not fully apparent from the report, which reflected only the formal results of the Special Committee's work and those parts of its debates for which records had been kept. When the whole underlying history was taken into account, it appeared that on three of the five unagreed principles, at some stage during the past two years, there had been comprehensive texts which, formally or informally, had won unanimous or almost unanimous support. The two on which no such agreement had ever been reached were the principle of non-intervention and the principle of equal rights and self-determination of peoples, which had been considered by the Special Committee for the first time in 1966 (*ibid.*, chaps. IV and VII). Although it was true that in some cases the degree of agreement reached had since diminished, the cumulative effect of the negotiations conducted by the two Special Committees had been to lay the foundation for a general agreement. In order to understand the significance of that cumulative process, it was necessary to consider the fact that for some years the General Assembly had been engaged in formulating legal texts that would be authoritative interpretations of broad principles of international law expressed in the United Nations Charter and that the juridical value of such texts was directly dependent on the extent to which they commanded general support. A text which merely set forth various controversial majority views was totally ineffectual as a declaration of international law.

4. In the 1964 Special Committee, agreement had been reached on a text on the principle of sovereign equality of States.^{1/} It was hardly possible for such a text to cover all those aspects of the principle that delegations would wish to see included, and a number of amendments had been submitted. His own delegation, for example, would have liked to see provisions

^{1/} See *Official Records of the General Assembly, Twentieth Session, Annexes, agenda items 90 and 94, document A/5746, para. 339.*

included on the supremacy of international law and the prohibition of arbitrary discrimination among States with regard to the rights and duties of membership in the organizations of the United Nations family. Except for certain modifications to the first paragraph of the 1964 text, the Drafting Committee had not been able to report any further agreement on the scope and content of the principle. It had, however, narrowed the area of disagreement on some of the new proposals put forward. On the subject of sovereignty over natural resources, for example, an amendment submitted by Kenya (see A/6230, para. 363) had formed the basis for a compromise text, which almost all delegations, including his own, had been willing to accept. The same had been true of two other proposals.

5. In the 1966 Special Committee agreement had been reached on a text on the principle that States should settle their international disputes by peaceful means (*ibid.*, chap. III). As in the case of sovereign equality, concessions had been made by all sides, and the agreed text did not cover every aspect of the question. In particular, his delegation regretted that those parts of the proposal sponsored by Dahomey, Italy, Japan, Madagascar and the Netherlands (*ibid.*, para. 159) relating to the judicial settlement of disputes had not been included, because they would have made an important contribution to the progressive development of institutions for peaceful settlement. But the fact that the texts agreed upon for those two principles did not cover various aspects supported by certain States did not lessen the value of the Special Committee's work.

6. At the current stage, the most prudent course might be to set the agreed texts aside for the time being. If another session of the Special Committee was convened, it might concentrate on reaching a comparable degree of agreement on the other five principles. When that had been done, it could be decided what was the next step to be taken on all seven principles. Whatever the decision, adjustments in the texts might well be necessary in order to ensure consistency and eliminate redundancy.

7. Regarding the crucial principle that States should refrain from the threat or use of force (*ibid.*, chap. II), it would be recalled that at the 1964 Special Committee a text had been produced which only his delegation had been unable to accept. Later his Government had considered the matter further and had reached the conclusion that it could support the text. At the same time, having considered the circumstances in which questions involving the principle were most likely to arise, it had suggested a slight amendment to the Sixth Committee at the previous session of the General Assembly in order to make it clear that the prohibition included not only recognized international boundaries but other international lines of demarcation.^{2/} In the 1966 Special Committee his delegation had co-sponsored a proposal containing that amendment and two other additions to the text (*ibid.*, para. 27). Various doubts had been expressed. For example, some had feared that the amendment would convert existing lines of demarcation into immutable frontiers not essentially different from international boundaries.

^{2/} *Ibid.*, document A/6165, para. 22.

That was not the case. Other lines of demarcation were mentioned only in order to make explicit the fact that although they differed in many ways from the traditional frontiers they were still covered by the prohibition contained in Article 2, paragraph 4, of the Charter. Various other proposals had been made with regard to the principle, but, unfortunately, at the end the original measure of agreement had diminished because some delegations had had second thoughts.

8. The 1966 Special Committee had not been able to reach agreement on the principle of non-intervention. It had been divided not merely on the substance but on an important preliminary question of principle having to do with the distinction between the Assembly's functions in formulating interpretations of international law, on the one hand, and the making of political pronouncements on the other. In particular, the Special Committee had not agreed on the relevance of General Assembly resolution 2131 (XX) to its work. A number of delegations, including his own, had regarded that resolution as a statement of political policy; others had considered it a statement of international law that should be incorporated verbatim in the Special Committee's texts. The result had been the adoption by a sharply divided vote of a procedural resolution (*ibid.*, para. 341) asserting that resolution 2131 (XX) was an authentic and definite principle of international law and barring the Drafting Committee from considering as much of the substance of the principle as was allegedly covered by resolution 2131 (XX). In his delegation's view, the Special Committee had complicated its task by adopting that procedural resolution. It would have been an important part of that task to extract the legal content of resolution 2131 (XX). His delegation considered, however, that the proposals put forward, together with the discussions in the working group of the Drafting Committee, provided a basis for further negotiations. There was nothing inherent in the approaches of any of the sponsors of texts which implied that the gaps between them could not be bridged.

9. The principle of equal rights and self-determination had run into difficulties, first, because of the sheer bulk of material bearing on it, and, second, because it was a new question for the Special Committee. Three major proposals and one amendment had been submitted, so that it was hardly surprising that agreement had not been reached by the end of the 1966 session. The debate had established the existence of a consensus that the principle was no longer to be regarded merely as a moral or political postulate, but, since the adoption of the Charter, as a principle of international law. The Committee had grappled in a preliminary way with such difficult questions as whether the principle was limited strictly to colonial situations, by what standards compliance with it was to be measured and what the relation was between it and the Charter's prohibition of the threat or use of force. All members of the Special Committee had learned much from the discussions, and his delegation looked for further guidance from States that had not been members.

10. The main enemy of agreement on the principle of good faith (see A/6230, chap. VIII) had been time.

Even so, considerable progress had been made in formal and informal negotiations. One of the difficulties had been due to the fact that some of the proposals put forward had sought to include, in relation to obligations assumed under treaties, fragments of the criteria by which the validity of treaties was determined in general international law. His delegation, among others, had thought that unwise, inasmuch as the entire law of treaties was in the process of codification on the basis of the draft prepared by the International Law Commission (see A/6309). Another point of difference had been the inclusion of the principle stated in Article 103 of the Charter, which was basic to the law of the Charter bearing on the question. Two of the three proposals put forward in the Special Committee, one of which had been co-sponsored by his delegation (see A/6230, para. 525), had included that principle or a variant of it, and his delegation did not understand the opposition to them. Although the differences still existing on the principle were not to be underestimated, the Special Committee should be able to resolve them without undue difficulty. His delegation would seriously question the advisability of the Sixth Committee itself trying to draft a text at the current session, particularly in view of the task it had undertaken in connexion with the right of asylum.

11. Problems of time had likewise prevented the Drafting Committee from producing a generally agreed text on the duty of States to co-operate with one another in accordance with the Charter (*ibid.*, chap. VI). As indicated in the statement by the Chairman of the 1966 Special Committee (*ibid.*, para. 570), intensive informal negotiations during the last days of its meeting had produced a text on which only small differences had ultimately remained. That suggested that work on the principle could be speedily concluded when next it was taken up.

12. Regarding the resolution to be adopted by the Sixth Committee on the agenda item under discussion, it would seem that many delegations, including his own, considered a further session of the Special Committee necessary. The Committee should be asked to continue work on the five principles on which there were no agreed texts, building on the foundations laid at the previous session. His delegation would not favour setting deadlines for the Special Committee but considered that the carefully negotiated terms of reference under which it had operated in 1966 should remain in force.

13. Mr. TAMMES (Netherlands) said that he would concentrate his remarks on the fifth principle, the duty of States to co-operate with one another in accordance with the Charter (see A/6230, chap. VI). It had been widely recognized in the Special Committee that there was a fundamental difference between that principle and the six other principles concerning friendly relations. Its unique character had been clearly described by the representative of the United Arab Republic (see A/AC.125/SR.36, para. 4), when he had referred to it as "the only principle born of man's creative genius and his victories in science and technology". Similar thoughts had been expressed by other delegations; the representative of India, for example, had aptly stated that "in the political sphere,

the concept of co-operation was the corollary of peaceful coexistence" and that "co-operation was a form of active coexistence" (see A/AC.125/SR.34, para. 19).

14. Both in the Special Committee and the Sixth Committee, it had repeatedly been asked what the binding force of the duty to co-operate really was. As the representative of France had stated with Cartesian logic (see A/AC.125/SR.35, para. 1): "The question arose whether the duty to co-operate was a legal rule or a moral rule, or whether perhaps it was a moral rule which the Charter had to some extent transformed into a legal rule". Other delegations had approached the problem from the negative side by stating that it was not as easy to determine whether a State was remiss in the performance of its duty in connexion with the principle of international co-operation as it was in connexion with other principles, such as that prohibiting the threat or use of force. The true criterion could perhaps be found in the debate that had taken place in the Special Committee (see A/6230, paras. 419-451), where it had been said that those principles which could be described as dynamic, creative, promotive or progressive were the ones which provided the legal framework for setting new goals and higher standards and generally making better law. Thus, moral duties were the guideposts for developing new rules within an accepted legal framework, and legal duties were the result of that creative process.

15. For example, a convention on the law of treaties could provide the legal framework for a set of moral principles, contained by assumption in the concept of jus cogens, that would serve as a guide in drafting new treaties or help to prevent the conclusion of immoral treaties. Acceptance of the duty of mutual co-operation would provide a legal framework for the recognition of the right of all peoples to share in the world's expanding prosperity as a moral principle to guide the "promotion of economic growth throughout the world, especially that of the developing countries" referred to in the Special Committee's report (*ibid.*, para. 570).

16. In connexion with the controversial paragraph 2 (b) of the fifth principle, he noted that the Special Committee had been unable to reach agreement on the two formulations suggested by its Chairman: the first had read "States shall conduct their international relations ... with a view to ensuring the realization of international co-operation"; and the second had read: "States shall conduct their international relations ... with a view to realizing international co-operation". In his opinion, if the duty to co-operate called for concerted action of a positive creative, promotive or progressive kind—if it was indeed a forward-looking principle—then it would not make much difference whether the declaration said that States should conduct their international relations with a view to such co-operation or with a view to realizing that co-operation or with a view to ensuring the realization of that co-operation. Whoever was prepared to realize a thing was also prepared to ensure its realization. Once the idea of non-discrimination between political, economic and social systems was accepted, it would be possible to realize and ensure co-operation that would be free from such discrimination.

United Nations
**GENERAL
 ASSEMBLY**

TWENTY-FIRST SESSION

Official Records



**SIXTH COMMITTEE, 953rd
 MEETING**

Friday, 9 December 1966,
 at 8.50 p.m.

NEW YORK

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Chairman: Mr. Vratislav PĚCHOTA
 (Czechoslovakia).

AGENDA ITEM 88

Progressive development of the law of international trade (continued) (A/6396 and Corr.1 and 2 and Add.1 and 2, A/C.6/L.613/Rev.1 and Add.1 and 2, A/C.6/L.615)

1. Mr. HERRAN MEDINA (Colombia), speaking on behalf of the sponsors of the draft resolution in document A/C.6/L.613/Rev.1 and Add.1 and 2, said that they had held several meetings with a view to improving and supplementing their text. As a result, the following changes had so far been agreed on: first, the second preambular paragraph would include some words of appreciation to the Secretary-General for his report; second, at the Bulgarian delegation's suggestion, a new preambular paragraph would be added, stating that co-operation between States in matters of trade law was an important factor in promoting friendly relations between States, thus contributing to the maintenance of international peace and security; third, certain phrases in the fifth preambular paragraph would be transferred to operative paragraph 8, concerning the proposed commission's functions; fourth, with regard to a proposal that had been made to include a reference in the draft resolution to the International Institute for the Unification of Private Law and The Hague Conference on Private International Law the Rapporteur would be asked, in his report to the General Assembly, to express the Sixth Committee's thanks for the collaboration of those two organizations. In conclusion, he noted that the sponsors were still engaged in negotiations with delegations representing the main geographic areas of the world, with a view to determining what the membership of the proposed United Nations commission on international trade law and its future site should be.

2. The CHAIRMAN thanked the representative of Colombia for his statement and said that further consideration of agenda item 88 would be deferred until

the sponsors of the draft resolution (A/C.6/L.613/Rev.1 and Add.1 and 2) had produced a second revised text.

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (concluded)* (A/6367 and Add.1 and 2, A/C.6/L.374, A/C.6/L.587, A/C.6/L.588 and Corr.1 and Add.1, A/C.6/L.589, A/C.6/L.590, A/C.6/L.593 and Add.1-3, A/C.6/L.599, A/C.6/L.604-606, A/C.6/L.614 and Corr.1, A/C.6/L.616 and Add.1 and 2)

3. Mr. SEATON (United Republic of Tanzania), Chairman of the Working Group on the draft Declaration on the Right of Asylum, introduced the Working Group's report (A/C.6/L.614 and Corr.1). The Working Group had approached its task with the understanding that it was not preparing legal norms but was merely laying down humanitarian principles that States might rely upon in seeking to unify their practices relating to asylum. It had felt that a declaration of the kind in question, in order to be of maximum effect, should be of a broad and general nature and couched in simple terms. It had therefore largely confined itself to the texts of articles 2-5 of the draft Declaration prepared by the Commission on Human Rights (see A/6367, annex II) and of the preamble and article 1 adopted by the Third Committee (*ibid.*, annex III), together with the various formal proposals and amendments submitted concerning those texts. The Working Group had not considered it desirable to enter into technical matters, such as the definition of asylum and its link to extradition and refugee questions, or into matters of detail, such as the many and varied ways in which asylum might be granted or might come to an end. Those issues could probably be dealt with more effectively when the International Law Commission took up the legal task of developing and codifying the law relating to asylum.

4. Speaking as the representative of the United Republic of Tanzania, he drew the Committee's attention to the draft resolution contained in document A/C.6/L.616 and Add.1 and 2, sponsored by his delegation and those of Iraq and Mali. The draft resolution was of a purely procedural nature and was based on the premise that Governments would want more time in which to reflect on the Working Group's report before the Declaration was finally adopted. He was confident that at the twenty-second session of the General Assembly it would be possible to proclaim the Declaration on Territorial Asylum as another of the milestones reached by the United Nations in its efforts to promote and encourage

* Resumed from the 926th meeting.

and Duties of Man.^{2/} Conventions concluded at Caracas in 1954 had perfected the main features of that humanitarian institution.

23. His country was proud that it had at all times followed, in theory and in practice, a generous policy of territorial asylum. Because of the repercussions of the civil war in Spain, Mr. Carlos Saavedra Lamas, the Argentine Minister for Foreign Affairs at that time, had prepared a draft convention on the right of asylum for consideration by the inter-American meeting at Lima in 1938. The principles of that draft convention had been incorporated in the Convention on Political Asylum adopted at Montevideo in 1939. Similarly, it had been the book Derecho internacional teórico y práctico, published in 1861 by the renowned Argentine international lawyer, Carlos Calvo, that had paved the way for the right of diplomatic asylum, which the American peoples had so badly needed because of frequent political disturbances. Moreover, his country had sheltered thousands of people seeking protection in its territory.

24. Without prejudice to the observations that his Government would make in due course on the draft Declaration submitted by the Working Group (A/C.6/L.614 and Corr.1), he wished to suggest that some expression such as "or other activities contrary to national security" should be added to article 4 of the draft. His delegation considered the draft resolution in document A/C.6/L.616 acceptable and would vote for it.

25. Mr. DARWIN (United Kingdom) said that although he could not express all his delegation's views on the draft Declaration submitted by the Working Group in the short time available, he wished to make a number of observations. First, his delegation supported the alternative formulation for the ending of article 3, paragraph 1, which read: "which could result in compelling him to return to or remain in a State, if there is a well-founded fear of persecution, endangering his life, physical integrity, or liberty in that State" (see A/C.6/L.614, para. 55). That would cover the case of a person who was returned to a State other than the State from which he had fled, which might return him to that State. Under that alternative formulation, there must be a real and not merely an imagined risk that his life would be endangered. That formulation had been adopted in other instruments not only in Europe but in other regions, including Africa. It was a well-trying wording and should not be lightly abandoned.

26. Secondly, his delegation opposed the text of article 4 adopted by the Working Group, because it might seem to require for its fulfilment that States should legislate to restrict the liberties of persons enjoying asylum. Moreover, the purposes and principles of the United Nations related to activities of States, not persons. His delegation could not support such an unclear and uncertain formulation.

27. Regarding the word "obligations" in paragraph 70 of the report to which the Israel representative had referred, it followed from the form of the instru-

ment being drafted that the word "obligations" in that paragraph could refer only to moral or humanitarian obligations. However, even such obligations should not be expressed in an uncertain or inexact way.

28. He hoped that at its next session the General Assembly would be able to agree on a declaration which would command general assent. The draft resolution in document A/C.6/L.616 seemed to suggest the appropriate action to be taken by the General Assembly at the current session, and his delegation would vote for it.

29. Mr. HARGROVE (United States of America) said that his delegation would support the draft resolution in document A/C.6/L.616. He would not comment in detail on the draft Declaration submitted by the Working Group (see A/C.6/L.614 and Corr.1), inasmuch as the draft resolution did not envisage substantive action.

30. His delegation was gratified that the Working Group had decided to retain article 2, paragraph 2 (*ibid.*, para. 47), which his delegation considered an important part of the text. In the English version of article 3, paragraph 1, the inclusion of a comma after the word "expulsion" was probably a typing error. In the deliberations of the Working Group (*ibid.*, paras. 48-62), there had been a time when the text had not included the phrase "where he may be subjected to persecution". The legal and logical effect of the paragraph at that time had been to prohibit expulsion *per se*. With the addition of the final phrase, it had become unnecessary to include a blanket prohibition of expulsion, and, accordingly, as his delegation understood it, in the current text both "expulsion" and "compulsory return" were governed by the phrase "to any State where he may be subjected to persecution". The addition of the last phrase in article 3, paragraph 2, meant, according to his delegation's understanding, that an exception might be made in cases other than a mass influx of persons, only if those cases were comparable in seriousness to a mass influx. His delegation supported the text of article 4 (*ibid.*, para. 72). The fact that article 4 did not mention the obligation of persons enjoying asylum to observe the laws of the country in which they enjoyed asylum did not imply that that obligation did not exist. On the contrary, that obligation had been regarded as legally self-evident, so that it would have been superfluous to mention it. Conversely, the inclusion of article 4 in its current form did not imply that States had a greater responsibility for the actions of persons enjoying asylum which were contrary to the purposes and principles of the United Nations than they had for similar actions by their own nationals.

31. Mr. RYBAKOV (Union of Soviet Socialist Republics) noted that the Working Group had been unable to complete its work for lack of time and other practical considerations. In the circumstances, the most appropriate procedure was that provided for in the draft resolution in document A/C.6/L.616, which his delegation supported. It also supported the preliminary text of the draft Declaration as a whole, although it would have certain comments to make at a later stage.

^{2/} See Novena Conferencia Internacional Americana: actas y documentos, vol.VI, Conclusiones (Bogotá, Ministerio de Relaciones Exteriores, 1953), p. 297.

32. Mr. RENOARD (France) regretted the fact that the draft Declaration, which was supposed to be purely humanitarian, contained a political element that might affect the interpretation of article 14 of the Universal Declaration of Human Rights. Some articles in the draft Declaration could be much improved in both substance and form. In particular, the expression "a crime against the peace" in article 1, paragraph 2, should be clarified. His delegation supported the draft resolution (A/C.6/L.616).

33. Mr. KOITA (Mali) said that the fact that lack of time had prevented the Working Group from finishing had led his delegation to co-sponsor the draft resolution. In its view, it was essential that the final text should retain the reference to persons struggling against colonialism that appeared in article 1, paragraph 1, of the draft Declaration.

34. Mr. PAYSSE REYES (Uruguay) said that since the sponsors of the draft resolution were in effect proposing that discussion of the Working Group's text be deferred, it would not be appropriate to comment on it at the current stage.

35. Mr. BAL (Belgium) said that he had no detailed comments to make on the draft Declaration but wished to note that among his Government's major concerns was the desire to ensure that the proposed Declaration would not be such as to encourage a restrictive interpretation of existing rules in that field—rules that were contained more particularly in instruments of positive law. In that regard, the wording of article 3 was open to criticism. Belgium supported the draft resolution.

36. Mr. MOLINA (Venezuela) said that he supported the procedural proposal made in the draft resolution and therefore would not comment on the draft Declaration. His silence, however, should not be taken to mean approval of everything in the text. Many Latin American countries felt that the wording did not correspond to their experience and would have to enter reservations at a later stage.

37. Mr. SEATON (United Republic of Tanzania), replying to the representative of Israel, said that a declaration of the kind under debate would generally have the binding value that any recommendation of the General Assembly had. Regarding the alleged discrepancy between paragraphs 13 and 70 (see A/C.6/L.614 and Corr.1), he observed that the Declaration was a humanitarian one. To a State, the granting of asylum was a right. To the person granted asylum, it was a benefit. To international society, it was an obligation of a humanitarian character, which, if generally accepted, could do much to bring about a true community of nations.

38. Mr. ROSENNE (Israel) asked for the substance of the exchange between the Tanzanian representative and himself to be included in the report.

39. The CHAIRMAN put the draft resolution contained in document A/C.6/L.616 and Add.1 and 2 to the vote.

The draft resolution was adopted unanimously.

The meeting rose at 10.45 p.m.