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UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM  
COMMITTEE OF THE WHOLE  
SUMMARY RECORD OF THE TWELFTH MEETING

held at the Palais des Nations, Geneva, on  
Monday, 24 January 1977, at 10.45 a.m.

Chairman: Mr. DO NASCIMENTO E SILVA (Brazil)

CONTENTS

Consideration of the question of territorial asylum in accordance with  
resolution 3456 (XXX) adopted by the General Assembly on 9 December 1975  
(item 11 of the agenda of the Conference) (continued)

Article 2 (continued)

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CONSIDERATION OF THE QUESTION OF TERRITORIAL ASYLUM IN ACCORDANCE WITH  
RESOLUTION 3456 (XXX) ADOPTED BY THE GENERAL ASSEMBLY ON 9 DECEMBER 1975 (item 11  
of the agenda of the Conference) (continued)

Article 2 (A/10177\*; A/CONF.78/C.1/L.2, L.10, L.12, L.17, L.19, L.20, L.21, L.22,  
L.23, L.24, L.26, L.27, L.29/Rev.1, L.32, L.33, L.35, L.36/Rev.1, L.37, L.39, L.40,  
L.43, L.46, L.47, L.50, L.58 and L.59; A/CONF.78/7) (continued)

1. The CHAIRMAN drew attention to the fact that according to General Assembly  
resolution 3456 (XXX), the Conference should complete its work by 4 February 1977.  
In two weeks, however, the Committee had adopted only one article. In his  
capacity as Chairman he was under a duty to ensure that the General Assembly  
resolution was implemented, and therefore found himself obliged, in order to speed  
up the Committee's work, to limit the time allowed to each speaker to five minutes  
in the case of delegations which had already spoken on draft article 2, and to  
ten minutes in the case of those which had not yet had the opportunity of doing so.  
He might further limit the time allowed to each speaker if such action proved  
necessary. After reading out rule 23 of the rules of procedure, he said that, if  
there was no objection, he would take it that the Committee endorsed his proposal.

2. It was so decided.

3. Mr. PONCE LEIVA (Ecuador) said that his delegation supported the Australian  
proposal (A/CONF.78/C.1/L.10) to insert the word "kinship" between the words  
"nationality" and "membership" in paragraph 1 (a). If that proposal was not  
adopted, however, the concept of persecution for reasons of membership of a  
particular "social group", referred to in the text proposed by the Group of Experts,  
would be adequate. He was unable to support the idea of listing the causes of  
persecution because the words "political opinion" already covered several  
possibilities. The Argentine amendment (A/CONF.78/C.1/L.20), which restricted the  
scope of paragraph 1 (b) of the text prepared by the Group of Experts, and the  
Cuban amendment (A/CONF.78/C.1/L.32) which introduced the idea of "just cause" in  
that paragraph, were unacceptable to his delegation, which considered the Group's  
text for paragraph 1, to be generally **satisfactory**.

4. Although his delegation appreciated the reasons underlying the Australian  
amendment to the introductory sentence of paragraph 2 (A/CONF.78/C.1/L.10), it was  
unable to support that proposed change and suggested that the Drafting Committee  
should consider adding the words "without having served a sentence" after the words  
"he has committed". In addition, it considered that the amendments proposed by  
Argentina (A/CONF.78/C.1/L.21) and the Soviet Union (A/CONF.78/C.1/L.23) exceeded  
the desirable scope of the convention and were in **conflict** with certain  
international instruments. It was, on the other hand, able to support the  
Guatemalan amendment (A/CONF.78/C.1/L.19). The additional provisions proposed by  
Argentina (A/CONF.78/C.1/L.21), the Soviet Union (A/CONF.78/C.1/L.23) and Colombia  
(A/CONF.78/C.1/L.36) would, in its opinion, prevent a number of States from  
acceding to the convention, and it suggested that the Drafting Committee should  
devise more general wording for paragraph 2 (a) and refer, for example, to "acts of  
terrorism condemned under international instruments".

5. Mr. NENSTRÖM (Sweden), noting that article 2 was one of the basic provisions of the draft convention, said that his delegation would have been prepared to endorse the text prepared by the Group of Experts if the Committee had adopted the draft article 1 proposed in document A/10177\* or a less restrictive text. But as the text of article 1 adopted by Committee was weaker than the basic text, his delegation considered that, in order to avoid watering down the draft convention even further, the provisions concerning eligibility and exclusion should be made as liberal as possible. Consequently, it would in general be unable to support any amendment that made article 2 more restrictive, and would favour proposals that tended to liberalize its provisions.

6. His delegation therefore supported the Australian proposal (A/CONF.78/C.1/L.10) with the possible addition of the amendments by Austria (A/CONF.78/C.1/L.26) and the United Kingdom (A/CONF.78/C.1/L.39), because it preferred the expression "serious non-political crime" to "serious common offence"; it also endorsed the Austrian amendment to paragraph 1 (b) (A/CONF.78/C.1/L.26). Since it was impossible to overlook new types of international crime, his delegation viewed sympathetically the amendment to paragraph 2 (b) proposed by the Netherlands (A/CONF.78/C.1/L.46), but could support other proposals of a similar nature. It would have no difficulty in endorsing the amendment to the final sentence of paragraph 1 proposed by Nigeria (A/CONF.78/C.1/L.2), and supported the Guatemalan proposal to delete paragraph 2 (c) (A/CONF.78/C.1/L.19).

7. In conclusion, his delegation endorsed the views expressed by those delegations that considered paragraph 1 (a) satisfactory, and could not support any amendment which would have the effect of lengthening the list it contained.

8. Mr. von STEMPER (Federal Republic of Germany), noting that his delegation had withdrawn its amendment to draft article 2 (A/CONF.78/7), said that it shared the views expressed by most delegations that the draft prepared by the Group of Experts was the most satisfactory of all the texts before the Committee. As that draft took account of a number of ideas expressed in the amendments, his delegation was prepared to support it, but at the same time recognized that its wording could be improved.

9. His delegation would vote in favour of any amendment that was intended to improve the position of persons seeking asylum, and welcomed the idea of safeguarding family unity reflected in certain amendments, such as the Argentine amendment (A/CONF.78/C.1/L.20). The Constitution of the Federal Republic of Germany protected marriage and the family, and his delegation was particularly anxious to assure protection not only for the person seeking asylum, but also for the members of his family whose fate was closely linked with his. However, because the issue of family unity was of crucial importance, it should be dealt with in a separate article. His delegation therefore supported the substance of the amendments submitted by the Holy See and Colombia (A/CONF.78/C.1/L.8) and by Switzerland (A/CONF.78/C.1/L.58), which proposed an article on those lines and specified that the members of the refugee's family who might be eligible for the benefits of the convention were his spouse and minor or dependent children.

10. His delegation also endorsed the amendments to paragraph 2 (b) by Australia (A/CONF.78/C.1/L.10), Austria (A/CONF.78/C.1/L.26) and the United Kingdom (A/CONF.78/C.1/L.37), which improved the Group's text without changing its substance.

11. In conclusion, he appealed to the members of the Committee to confine their comments to questions which were truly pertinent to territorial asylum and to refrain from discussing matters which were already being dealt with by other bodies.

12. Mr. NAKAGAWA (Japan) said that his delegation appreciated the reasons that had prompted the delegations of Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.2) and Pakistan (A/CONF.78/C.1/L.17) to propose amendments to the introductory sentence of paragraph 1, but considered that the provisions of draft article 9, together with draft article 1, adequately safeguarded the contracting State's right of discretion in granting or refusing asylum. However, his delegation considered that the provision relating to the security of the State embodied in article 3, paragraph 2 was useful in connexion with the principle of non-refoulement.

13. His delegation had proposed the deletion of paragraph 1(b) because it was of the opinion that that paragraph's meaning and relationship with paragraph 1(a) were not very clear. However, in view of the explanations given in the course of the discussions on that question, it had decided to withdraw its amendment. It could probably support amendments along the lines of those submitted by Ecuador, Guatemala and Mexico (A/CONF.78/C.1/L.35) and the United Kingdom (A/CONF.78/C.1/L.37).

14. His delegation had proposed that the concept of an attempted crime should be added in the first sentence of paragraph 2 because, under certain legal systems, not only criminal acts themselves, but also attempts to commit such acts were punishable. The Australian amendment (A/CONF.78/C.1/L.10) to the first sentence of paragraph 2 might, however, remedy that difficulty and, after consulting the Australian delegation, his delegation had decided to withdraw its own amendment in favour of the Australian amendment.

15. His delegation also supported the idea of a provision to facilitate family reunification. Each of the amendments submitted on that question by the Holy See and Colombia (A/CONF.78/C.1/L.8), Argentina (A/CONF.78/C.1/L.20) and Switzerland (A/CONF.78/C.1/L.58) had its merits, but his delegation preferred the Swiss text, and would support an amendment along those lines.

16. Mr. DABIRI (Iran) observed that the draft article under consideration raised a delicate question and noted that, in adopting draft article 1, the Committee had revealed its preference for the type of criteria on which the grant of territorial asylum should be based. The Committee should therefore retain those criteria in the case of draft article 2, and should above all take care to adopt provisions that were in complete harmony with draft article 1. Although not perfect, the text prepared by the Group of Experts established a judicious balance which the Committee should take into account to the fullest extent possible. It could nevertheless amend that text in order to make it more precise and coherent.

17. His delegation considered that the Committee should refrain from introducing in draft article 2 provisions that were susceptible of contradictory interpretations, and should proceed in such a way that as many members of the international community as possible would be able to accede to the future convention. It was in the light of those considerations that his delegation would cast its vote on the various texts.

18. Mr. ONG (Philippines) noted that his delegation had co-sponsored an amendment intended to emphasize State sovereignty (A/CONF.78/C.1/L.12), for a State obviously had the right to refuse asylum and was not required to explain the reasons for its decision. The question of the eligibility of the person seeking asylum became academic if the State from which he sought asylum refused to grant it, in the exercise of its sovereign rights. Moreover, as the text of article 2 must be consistent with that of article 1, which the Committee had already adopted, it would be only logical to replace the Group's wording by that proposed for the first sentence of paragraph 1 in amendment A/CONF.78/C.1/L.12.

19. His delegation's amendment to paragraph 2(b) was prompted by the consideration that it was for the State granting asylum to evaluate the seriousness of the asylum-seeker's criminal record in deciding whether or not it should grant him asylum. In addition, the word "crime" could be interpreted more easily than the word "offence".

20. The proposed new paragraph had already been supported by a number of delegations and its importance was obvious.

21. Referring to the amendments submitted by other delegations, he said that his delegation was able to support the Australian amendment to paragraph 1(a) (A/CONF.78/C.1/L.10) and the amendments concerning the acts of terrorism referred to in paragraph 2 submitted by Argentina (A/CONF.78/C.1/L.21), the Soviet Union (A/CONF.78/C.1/L.23) and Colombia (A/CONF.78/C.1/L.36/Rev.1). His delegation also endorsed the idea reflected in the amendments submitted by Cuba (A/CONF.78/C.1/L.32) and Czechoslovakia and Poland (A/CONF.78/C.1/L.33) relating to paragraph 2(b).

22. In addition, his delegation supported the incorporation in the convention of a provision to safeguard family unity, as proposed by the Holy See and Colombia (A/CONF.78/C.1/L.8), Argentina (A/CONF.78/C.1/L.20) and Switzerland (A/CONF.78/C.1/L.58).

23. His delegation would oppose the deletion from paragraph 1(a) of the words "including the struggle against colonialism and apartheid".

24. In conclusion, drawing attention to a drafting point, he suggested that the Drafting Committee should consider replacing, in the English text of the paragraph 1(a) proposed by the Group of Experts, the words "membership of" by the words "membership in".

25. Mr. AJAYI (Nigeria) said he supported the amendments submitted by the Arab States (A/CONF.78/C.1/L.29/Rev.1 and L.50) and fully agreed with the representatives of Ghana, Norway, the United Republic of Tanzania and Senegal concerning the need to retain the reference to the struggle against colonialism and apartheid in paragraph 1(a). His delegation also supported the Bangladesh proposal (A/CONF.78/C.1/L.59) to prohibit refugees from engaging in activities contrary to the purposes and principles set out in the Charter of the United Nations.

26. Recalling, in conclusion, the statement made on behalf of the African Group by the representative of Ghana, he said that the Nigerian delegation would co-sponsor an amendment for the insertion of the words "mercenary activities" between "war crime" and "or a crime against humanity" in paragraph 2(a); having consulted a number of delegations, it was convinced that the majority condemned such activities.

27. Mr. ARIAS SCHREIBER (Peru) said that, in his opinion, it would be better to vote on the various amendments in the order in which they appeared in the working paper prepared by the Secretariat (A/CONF.78/C.1/WP.1) and to entrust the Drafting Committee with the task of co-ordinating them.

28. While acknowledging that the reference to colonialism and apartheid could be regarded as being implicitly covered by the political and racial considerations mentioned in paragraph 1 (a), he felt it was necessary to retain that reference in the text, as colonialism and apartheid had been repeatedly condemned by the United Nations. He did not, however, consider it appropriate to mention a policy of aggression, war propaganda, nazism, neo-nazism, fascism, genocide and racism, as was proposed by the Soviet Union (A/CONF.78/C.1/L.23) and Cuba (A/CONF.78/C.1/L.32) because, although he condemned such ideologies, he felt it was impossible to list them all.

29. Mr. SALAS (Cuba) said that, in proposing the amendments contained in document A/CONF.78/C.1/L.32, his delegation had tried to ensure that the draft convention would become a truly universal instrument and would be of practical use to persons seeking asylum. By listing, in paragraph 1 (a), the various causes which could lead individuals to request asylum, his delegation had sought to enable persons struggling against evils condemned by all mankind to obtain asylum. In that connexion, it supported the amendment proposed by the Soviet delegation in document A/CONF.78/C.1/L.23.

30. The Cuban amendment to paragraph 2 (b) proposed to withhold the benefit of asylum from any person who had committed a common offence of a serious nature, not only "under the laws and regulations of the Contracting State granting asylum", but also under the "laws and regulations of the State of his nationality or of his former habitual residence". His delegation felt that the State of asylum should be able to refer to laws other than its own in order to combat international crime. In that regard, it supported the amendment to paragraph 2 (b) submitted by Czechoslovakia and Poland (A/CONF.78/C.1/L.33), which had a similar object to its own amendment.

31. His delegation also supported the new subparagraph which the Soviet Union proposed to add to paragraph 2 (A/CONF.78/C.1/L.23), and which would deny the benefits of the convention to persons guilty of the diversion of aircraft and other acts of terrorism. In that connexion, it was to be noted that Cuba, which had been subjected to terrorist attacks since 1968, had been the first country to suffer from the diversion of aircraft and to propose the conclusion of bilateral agreements to combat air piracy. His delegation would suggest that the new subparagraph proposed by the Soviet Union should be merged with the new paragraph proposed by Yugoslavia (A/CONF.78/C.1/L.22), which was aimed at excluding from the scope of the convention persons "requesting territorial asylum for purely economic reasons".

32. Mr. KEKOMAKI (Finland) said that his delegation, like many others, thought that the text proposed by the Group of Experts formed a very good basis for article 2, and hoped that it would be adopted with as few amendments as possible. In order to fulfil its humanitarian purpose, the convention must facilitate the access of refugees to the country of asylum, and at the same time debar criminals from such access. That delicate balance achieved in the Group of Experts' text could not be disrupted without damage to the international law of asylum.

33. Some of the amendments submitted were definite improvements on the original text. He could accept the Nigerian amendment to the final part of paragraph 1 (A/CONF.78/C.1/L.2, article 3), which called for the insertion of the words "domicile or" before "habitual residence". He also endorsed the Australian amendments to paragraph 2 (A/CONF.78/C.1/L.10) and the United Kingdom sub-amendment (A/CONF.78/C.1/L.39), which clarified the text. He supported the Austrian amendments to paragraphs 1 and 2 (A/CONF.78/C.1/L.26) and the United Kingdom amendment to paragraph 2 (A/CONF.78/C.1/L.37) which, like the new paragraph proposed by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.12), introduced a useful safeguard clause. Lastly, he supported the Netherlands amendment to paragraph 2 (b) (A/CONF.78/C.1/L.46), which took into account the problem of international crimes.

34. Although favouring the humanitarian principle of family reunion, his delegation did not consider the article proposed by the Holy See and Colombia (A/CONF.78/C.1/L.8) to be acceptable, because it imposed an obligation on the refugee's country of origin and thus went beyond the scope of the convention; the wording proposed by Switzerland (A/CONF.78/C.1/L.58) was more satisfactory in that regard. In the view of his delegation, the provision on that subject should not be included in article 2 but drafted as a separate article. In conclusion, he expressed the hope that the sponsors of the various amendments would be able to agree on wording acceptable to the majority of delegations.

35. Mr. WISNOEMOERTI (Indonesia) endorsed the Nigerian amendment (A/CONF.78/C.1/L.2, article 3), which made the text more precise by inserting the word "domicile" in the final part of paragraph 1. The Australian amendment to the introductory part of paragraph 2 (A/CONF.78/C.1/L.10), entailing the replacement of the words "has committed" by "is still liable to punishment for" was, in his view, more in keeping than the original text with the humanitarian spirit of the convention, without upsetting the balance between the interests of individuals and those of the contracting State concerned. He could not, however, accept the Australian amendment to paragraph 2 (b) (A/CONF.78/C.1/L.10); he preferred the wording proposed by his own delegation and the delegations of Malaysia and the Philippines (A/CONF.78/C.1/L.12). He welcomed the statement by the representative of Pakistan concerning his amendment to the introductory part of paragraph 1 (A/CONF.78/C.1/L.17), which was intended in a similar spirit to the amendment submitted by Indonesia, Malaysia and the Philippines.

36. In his view, the Austrian amendment to paragraph 1 (b) (A/CONF.78/C.1/L.26), which was identical to that of the United Kingdom (A/CONF.78/C.1/L.37), improved the text, as a person might be prosecuted or punished for something other than his acts. He was also sympathetic to the Austrian amendment to paragraph 2 (b) (A/CONF.78/C.1/L.26), involving the replacement of the word "offence" by "crime"; however, he thought that the word "serious" should be deleted, as proposed by his delegation in document A/CONF.78/C.1/L.12.

37. His delegation fully supported the amendments to paragraph 1 (a) proposed by Algeria and other Arab countries (A/CONF.78/C.1/L.29/Rev.1 and L.50), which it believed were necessary in order to make the scope of the convention more precise. However, for the reasons already adduced by the representatives of Tanzania and Ghana, it was opposed to the deletion of the reference to the struggle against colonialism and apartheid.

38. In his opinion, the amendment to paragraph 1 (b) proposed by Ecuador, Guatemala and Mexico (A/CONF.78/C.1/L.35) was devoid of any sound legal basis and would undermine the necessary legal nexus between subparagraph (b) and subparagraph (a). He was therefore opposed to that amendment, which in fact was already covered by the text of subparagraph (b) proposed by the Group of Experts. In his view, the new paragraph 3 proposed by Ecuador, Guatemala and Mexico in the same document was unnecessary, as the provisions of article 2, which dealt only with the criteria to be applied in determining eligibility for asylum and exceptions thereto, could not prejudice the right of the State of asylum "to assess the nature of the offences or the reasons for the persecution". He was therefore unable to support that proposal.

39. He fully supported the principle embodied in the new article proposed by Bangladesh (A/CONF.78/C.1/L.59), as he considered it imperative to ensure that refugees did not engage in activities harmful to the interests of other states. However, the wording of the final part of the proposed article, which read "to engage in activities contrary to the purposes and principles as set out in the Charter of the United Nations", was not satisfactory, and he was prepared to co-operate with the representative of Bangladesh in order to work out better wording. He also supported the proposal made orally by the representative of Ghana to include a reference to mercenary activities in paragraph 2 (a).

40. In conclusion, he wished to offer a few explanations concerning the amendments proposed by his delegation and the delegations of Malaysia and the Philippines in document A/CONF.78/C.1/L.12, in order to dispel certain misunderstandings which had arisen. With regard to the amendment to paragraph 2 (b), he noted that many delegations had similar misgivings about the expression "serious common offence" but arrived at different solutions. In his view, that was ~~more~~ a matter of substance than a point of drafting, and he would welcome any suggestion that would help to arrive at an acceptable solution.

41. He wished to stress that the new paragraph proposed in document A/CONF.78/C.1/L.12 in no way upset the balance between the interests of persons seeking asylum and the sovereign rights of the State, and that it did no more than clarify the scope of the convention. In his view, the criteria regarding eligibility for asylum laid down in paragraph 1 were sufficiently broad in scope - provided that certain of the amendments proposed were adopted - to dispel any misgivings concerning an exception which would be applicable only in specific circumstances, when the security of the State of asylum was at stake. In that connexion, his delegation was prepared to co-operate with the United Kingdom delegation in drawing up a joint text.

42. Mr. TINCA (Romania) said that the new paragraph proposed by his delegation in document A/CONF.78/C.1/L.47 was in no way intended to restrict the scope of the convention. The convention was applicable only to persons who met the conditions laid down in article 2, paragraph 1 - namely, persons requesting asylum for political reasons. Persons requesting asylum for reasons other than those stipulated in paragraph 1 were not covered by the convention. It was necessary to clarify that point by introducing a safeguard clause designed to ensure that the convention was correctly applied. The convention must not have the effect of limiting the freedom of the State to grant or refuse asylum in the exercise of its sovereignty, or of encouraging persons working against the interests of their



country. The convention should not be viewed from a purely legal standpoint; it was necessary to bear in mind that it would be applied in a specific context determined by particular economic, social and political conditions. The countries that were at present doing their best to improve their economic and social situation required political stability and co-operative and good-neighbourly relations with other countries; their efforts must not be jeopardized by internal or external tensions. Asylum should not be regarded as an abstract humanitarian principle, but should be viewed in its economic and social context. The appropriate way for delegations to arrive at a generally acceptable text was through consultations and not through a vote.

43. Mr. SOARES DOS SANTOS (Brazil) said he supported the Australian amendment to the introductory part of paragraph 2 (A/CONF.78/C.1/L.10), because its wording made it clear that a person might already have been punished for the crime he had committed or that there might be a statutory limitation on the penalty imposed on him.

44. With regard to the new paragraph proposed by Ecuador, Guatemala and Mexico in document A/CONF.78/C.1/L.35, he observed that qualification of the grounds for granting asylum was already dealt with in article 9. If a similar provision were to be incorporated in article 2, it might be held to be applicable only to that article. The paragraph proposed in document A/CONF.78/C.1/L.35 might be acceptable if article 9 were deleted; it would then be for the Drafting Committee to determine where the paragraph concerned should be inserted.

45. His delegation supported the new paragraph proposed by Yugoslavia in document A/CONF.78/C.1/L.22, specifying that the provisions of the Convention would not be applicable "to any person requesting territorial asylum for purely economic reasons", since it regarded that as an important point which had been omitted from the draft prepared by the Group of Experts.

46. The first part of the amendment to paragraph 2 (a) proposed by Japan (A/CONF.78/C.1/L.24) was acceptable; however, he did not consider the second part of that amendment, involving the addition, at the end of paragraph 2 (a), of the words "and to which the Contracting State from which he is seeking asylum is a party", to be necessary to an understanding of the text.

47. His delegation wished to point out that two of the amendments proposed to article 2 conflicted with article 1, as approved. The phrase "The Contracting States undertake not to grant" used by the delegations of Argentina and the Soviet Union in their amendments (A/CONF.78/C.1/L.21 and L.23) was in contradiction with the principle of the sovereignty of States which the Committee had recognized in adopting article 1. Therefore, while not opposed to the substance of the new provision proposed, his delegation would suggest a wording such as that proposed by the Group of Experts in the introductory part of article 2, paragraph 2, which would not curtail the freedom of the State to grant or refuse asylum.

48. Finally, his delegation supported the amendment proposed by Indonesia, Malaysia and the Philippines in document A/CONF.78/C.1/L.12.

49. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) noted that certain delegations had expressed doubts with regard to paragraph 2 (c) of the text proposed by the Group of Experts. Some delegations, such as those of Ecuador, Guatemala

and Mexico (A/CONF.78/C.1/L.35), had even suggested the deletion of that subparagraph, as they had wondered whether individuals could be "guilty of acts contrary to the aims and principles of the United Nations". That might have been a matter for doubt up to the Second World War, but the judgements of the military tribunals at Nuremberg and Tokyo had demonstrated in an irrefutable manner that persons could indeed commit crimes against peace and against humanity.

50. His delegation would vote against the amendment submitted by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.12) as well as against that of Austria (A/CONF.78/C.1/L.26) for the replacement of the word "offence" by "crime" in paragraph 2 (b) because, as several delegations had pointed out, crime was only one type of offence.

51. His delegation would also vote against the proposals for the introduction of a provision relating to family reunion because, on the one hand, the concept of family had not yet been legally defined and, on the other, because the application of such a provision would in practice involve interference in the internal affairs of States, which would be contrary to the provisions of Article 2, paragraph 7 of the Charter of the United Nations.

52. Mr. EL FATTAL (Syrian Arab Republic) recalled that article 1 reaffirmed a basic principle of international law, under which the State had the sovereign right to grant or not to grant asylum. Article 2, which specified the conditions that must be satisfied by a person in order to benefit from the provisions of the convention, should not contradict that principle. His delegation's comments regarding the amendments to article 2 were based on that fundamental consideration.

53. The proposal by Argentina to split article 2 into two separate articles, one on persons to whom asylum might be granted (A/CONF.78/C.1/L.20) and the other on the régime of exclusion (A/CONF.78/C.1/L.21) should not, in his delegation's opinion, give rise to any difficulty, as it strengthened both régimes by stressing the sovereignty of the State as regards inclusion and exclusion. The beginning and end of Argentina's amendment to paragraph 1 (A/CONF.78/C.1/L.20) seemed preferable to the text submitted by the Group of Experts in two respects: first, because the expression "may be granted" was in closer conformity with the principle set out in article 1 and secondly, because the notion of fear would be associated with that of a threat to the life, liberty or personal integrity of the person concerned.

54. His delegation could also accept the amendments to the beginning of paragraph 1 proposed by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.12) and by Pakistan (A/CONF.78/C.1/L.17). In view of the explanation given by the representative of Pakistan in support of his amendment for the deletion of the word "nationality" in paragraph 1 (a) (A/CONF.78/C.1/L.17), he was inclined to accept that proposal. His delegation could not, however, accept the Australian proposal to insert the word "kinship" in paragraph 1 (a) (A/CONF.78/C.1/L.10), as that word might well be interpreted differently in different States. It was also opposed to the proposal by Argentina for the deletion of any reference to colonialism and apartheid (A/CONF.78/C.1/L.20), and in that connexion he recalled that his country had been the first to sign the International Convention on the Suppression and Punishment of the Crime of Apartheid.

55. He supported the amendments to paragraph 1 (a) proposed by the Soviet Union (A/CONF.78/C.1/L.23) and Cuba (A/CONF.78/C.1/L.32) which, far from contradicting the amendments proposed by the Arab countries (A/CONF.78/C.1/L.29/Rev.1 and L.50) supplemented them. He would, however, ask for a separate vote on certain parts of those two amendments.

56. While he understood the legal considerations which had prompted the amendment submitted by Ecuador, Guatemala and Mexico to paragraph 1 (a) (A/CONF.78/C.1/L.35), he was afraid that it would restrict the scope of sub-paragraph (a). He supported the Nigerian amendment to the end of paragraph 1 (A/CONF.78/C.1/L.2, article 3).

57. He feared that the amendment by Argentina to the beginning of paragraph 2, (A/CONF.78/C.1/L.21) would unduly increase the State's responsibility, and he preferred the wording of the Group of Experts which, in his view, was more flexible. The amendment by Yugoslavia to paragraph 2 (a) (A/CONF.78/C.1/L.22) seemed acceptable, provided that States were not saddled with obligations stemming from international instruments to which they had not acceded.

58. His delegation supported the Algerian amendment to paragraph 2 (b) (A/CONF.78/C.1/L.27), but was unable to go along with the amendment by Poland and Czechoslovakia to that subparagraph (A/CONF.78/C.1/L.33), which might be interpreted as a departure from the norms governing extradition treaties.

59. He supported the new paragraph proposed by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.12) which recognized the right of a State to ensure its security. He also supported, on behalf of the group of Arab States, the proposal by the African group to mention the activities of mercenaries in paragraph 2 (a).

60. His delegation would give careful thought to the various proposals on family reunion, but considered that such reunion should not be used as a pretext for the colonization of areas belonging to another people and for the scattering of families, thus resulting in the creation of new refugees as in the past.

61. Mr. CHARRY SAMPER (Colombia) said that his delegation approved the substance of article 2 submitted by the Group of Experts, because it represented a minimum step on the path to progress and in the consolidation of international law which was the aim of the future convention. The countries of Latin America had a long tradition in matters of territorial asylum of which they could be proud and which imposed special obligations on them. That was why his delegation could not accept amendments which would have the effect of weakening the text of the Group of Experts.

62. Referring to the amendment by the delegations of Ecuador, Guatemala and Mexico (A/CONF.78/C.1/L.35) to introduce, in paragraph 1 (b), the concept of political offences and common offences committed for political ends, he pointed out that, under article 4 of the 1954 Caracas Convention on Territorial Asylum, the fact that a common offence had been committed for political ends might justify the refusal of extradition but did not justify either a request for or the grant of territorial asylum. The future convention should not require States to grant asylum to persons prosecuted or punished for common offences committed for political ends. The Caracas Convention provided for the grant

of asylum to persons prosecuted for their political opinions, their political affiliation or for acts which might be considered to be political offences, while the Convention relating to the Status of Refugees, covered persons persecuted because of their race, religion, nationality, their membership of a particular social group or their political opinions. Neither convention provided that persons prosecuted for common offences, of whatever nature, might obtain asylum; that was why his delegation was in favour of retaining the text proposed by the Group of Experts. His delegation had no objection to the deletion of paragraph 2 (b), despite the fact that the same provision was contained in article 1 of the Convention relating to the Status of Refugees. Nor had it any difficulty in accepting the proposed new paragraph 3, its wording being almost identical with that of article 4 of the 1954 Caracas Convention which his country had not yet ratified.

63. In the opinion of his delegation, it was essential, out of solidarity with the African and Asian nations which were fighting for their independence, to include a provision that explicitly condemned colonialism and apartheid in the future convention. The activities of mercenaries should also be condemned as they constituted inadmissible interference in the internal affairs of States. His country had always defended the grant of asylum in the case of a political offence, a concept which did not include acts of terrorism; such acts should not be confused with the legitimate struggle of peoples who were seeking to win a homeland of their own. His delegation was vehemently opposed to terrorist acts which were intended to wrest illegitimate concessions from certain States by means of criminal activities such as kidnapping, violent attacks and pressures of all kinds, which were common offences and had nothing to do with the right to asylum.

64. His delegation had submitted two amendments designed to improve the text of the Group of Experts. The first, co-sponsored by the Holy See (A/CONF.78/C.1/L.8), proposed a new article on family reunion and had been favourably received by a considerable number of delegations. Although he found the Argentine and Swiss amendments on family reunification (A/CONF.78/C.1/L.20 and L.58) acceptable, he hoped that the Committee's preference would go to his own delegation's amendment. Indeed, that amendment was more specific than the others since it provided that, in order to assure the right to family unity, family reunion should be facilitated in a humanitarian spirit. Moreover, it specified that the provision in question applied to the asylee's spouse and minor dependent children. Finally, it stated that such persons should be entitled to the same benefits as the asylee.

65. In the second document submitted by his delegation (A/CONF.78/C.1/L.36/Rev.1) it was proposed that the words "for considering" at the beginning of paragraph 2 should be replaced by the term "for demonstrating", which was more objective. As that question was basically a matter of drafting, his delegation withdrew its amendment. It also withdrew the second amendment in document A/CONF.78/C.1/L.36/Rev.1 for the addition of a new subparagraph (d) to paragraph 2, in the hope that a joint text could be arrived at on the basis of the Japanese and Yugoslav amendments (A/CONF.78/C.1/L.22 and L.24), which contained the same idea.

66. Mr. TAIBI (Algeria) said that, in general, his delegation was satisfied with the article 2 proposed by the Group of Experts, even though it might be improved.

67. His delegation would be obliged to vote against all amendments for the deletion, in paragraph 1 (a), of references to persons fighting against colonialism and apartheid. As for paragraph 2, to subparagraph 2 of which his delegation had submitted an amendment (A/CONF.78/C.1/L.27), it was unable to accept any proposal requiring States not to grant asylum to a particular category of persons; a requirement of that nature would be contrary to the article 1 adopted by the Committee.

68. His delegation felt that persons engaged in mercenary activities should not be entitled to benefit from the provisions relating to territorial asylum. It also considered that any reference, in paragraph 2, to international instruments to which a large number of States had not acceded would restrict the scope of the future convention. It would oppose any amendment to that effect and any proposal to mention offences which the General Assembly had not yet succeeded in defining.

69. Mr. RAHHALI (Morocco) thought that, although the article 2 submitted by the Group of Experts constituted a good basis, it should be made more stringent and precise. His delegation, together with other Arab and African delegations, had submitted two amendments (A/CONF.78/C.1/L.29/Rev.1 and A/CONF.78/C.1/L.50); it also endorsed the statement made by the representative of Ghana on behalf of the African group regarding the activities of mercenaries.

70. His delegation would make known its views on the various amendments when they were put to the vote, but wished to state unequivocally from the outset that it would vote against any proposal to delete references to colonialism and apartheid. On the other hand, it supported the idea expressed in the new article proposed by the delegation of Bangladesh (A/CONF.78/C.1/L.59) that States should not permit refugees, to the extent possible under their law, to engage in activities contrary to the purposes and principles of the Charter of the United Nations. That idea had also been reflected in article 10, entitled "Regime of asylees", set out in the report of the Group of Experts (A/10177\*, para. 127). The draft convention submitted by the Nigerian delegation (A/CONF.78/C.1/L.2) also contained an article prohibiting a refugee from engaging in subversive activities against his State of nationality, the host country, or the country of his former domicile or habitual residence. That provision was similar to article III of the OAU Convention governing the specific aspects of refugee problems in Africa. His delegation was in favour of a similar provision in the future convention.

71. Mr. KERLEY (United States of America) found the draft text of article 2 generally acceptable, and in particular appreciated paragraph 1, which the Group of Experts had drawn up on the basis of the relevant provisions of the 1951 Convention relating to the Status of Refugees.

72. He endorsed the Australian representative's remarks regarding the amendments proposed by the Soviet Union (A/CONF.78/C.1/L.23) and Cuba (A/CONF.78/C.1/L.32) to paragraph 1 (a), in which the reasons given for possible persecution should remain general in nature. It would be dangerous to seek to list in specific terms the various types of régimes in which persecution could take place, as some might be omitted, and a large number of refugees therefore be excluded from the benefits of the convention. In that connexion, his country had made it known in its comments on the draft convention that it would be desirable to delete references to colonialism and apartheid which duplicated what had been said earlier. Similarly,

his delegation was opposed to the amendment submitted by the Arab States (A/CONF.78/C.1/L.29/Rev.1), as its adoption might prevent certain States from acceding to the convention. To the extent that Members of the United Nations had agreed on the concepts alluded to in that amendment, they were already covered by the general expressions employed by the Group of Experts.

73. The criteria set forth in paragraph 2 of the text of the Group of Experts had stood the test of time. His delegation was, however, in favour of the proposal by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.12) for the addition of a new paragraph relating to the security of the State granting asylum, and it was also sympathetic to the amendments submitted by Israel (A/CONF.78/C.1/L.40) and the Netherlands (A/CONF.78/C.1/L.46). There should be no doubt in anyone's mind that the acts referred to in those amendments could not, in any circumstances, be viewed as permissible political actions. Furthermore, there was nothing to prevent the State granting asylum from prosecuting a refugee who had committed acts over which such State had jurisdiction.

74. Referring to the amendments by Czechoslovakia and Poland (A/CONF.78/C.1/L.33) and Cuba (A/CONF.78/C.1/L.32) to paragraph 2 (b), he pointed out that the laws and regulations of some States provided that persons who left the country without permission and sought asylum abroad were subject to penalties which were often severe. Under article 14, paragraph 1, of the Universal Declaration of Human Rights, "everyone has the right to seek and to enjoy in other countries asylum ...". States participating in the Conference should not adopt a convention which would very often have the effect of making a request for asylum a criminal act.

75. His delegation supported the new paragraph proposed by Ecuador, Guatemala and Mexico (A/CONF.78/C.1/L.35), although the draft article 9 submitted by the Group of Experts already contained a provision of the same kind. It approved the United Kingdom's amendments to paragraph 1 (b) (A/CONF.78/C.1/L.37) and paragraph 2 (b) (A/CONF.78/C.1/L.39), which it proposed strengthening by replacing the words "serious non-political offence", proposed by the United Kingdom, by "serious non-political crime".

76. Mr. CHAPATTE (Switzerland), introducing the new article on family reunification proposed by his delegation (A/CONF.78/C.1/L.58) and to which several delegations had already referred in connexion with the Argentine amendment to article 2 (A/CONF.78/C.1/L.20), noted that the debates in the Committee of the Whole had clearly indicated that States enjoyed the sovereign right to grant or refuse asylum. Accordingly, they were equally sovereign in matters pertaining to the admission to their territory the immediate family of a person who obtained asylum. The article proposed by his delegation was fully in keeping with the purpose and humanitarian spirit of a convention on territorial asylum, and was certainly not designed to allow the improper application of the principle of family reunion. In the proposal, the rules relating to non-refoulement and provisional stay, referred to in articles 3 and 4 proposed by the Group of Experts, would apply equally to the spouse and minor or dependent children of the person who requested asylum.

77. The principle of family reunification had already been recognized as an essential right of the refugee in the Final Act of the 1951 Convention relating to the Status of Refugees. That right was so important that it should be the subject of a separate article in the future convention, to be inserted either after article 2 or after article 4.

78. It was for the Chairman to decide when a vote should be taken on the Swiss amendment. In view of its similarity to the Argentine amendment (A/CONF.78/C.1/L.20), the Swiss amendment might be voted on at the same time, although the Drafting Committee would have to determine where the new article proposed by his delegation would appear in the convention.

79. The amendments submitted by the Holy See and Colombia (A/CONF.78/C.1/L.8), by India (A/CONF.78/C.1/L.68) and by Argentina (A/CONF.78/C.1/L.20) reflected the same concern, but differed from the Swiss proposal on points which were not merely of a drafting nature. However, his delegation considered the amendment by the Holy See and Colombia to be acceptable.

80. Mr. GOMEZ FYNIS (Uruguay) said he wished to explain why his delegation, in its amendment to article 2, paragraph 2 (b) (A/CONF.78/C.1/L.43), had proposed that the expression "a serious common offence" should be replaced by "a common offence". He felt that the amendment in question should be referred to the Drafting Committee.

81. In the view of his delegation, each contracting State should be free to determine, without any international commitment, whether the act committed by the person seeking asylum, certain aspects of that act, or concomitant acts constituted offences or crimes, serious or not, political or non-political, their implications from the standpoint of the country's legislation, and the measures which should be taken in conformity with the convention. It seemed difficult to express such an idea without leaving the matter entirely to the legislation of each contracting State, as was provided at the end of paragraph 2 (b). The legislation of States differed considerably in describing various offences. Certain categories of offence were defined in some States but not in others, and in some cases the same expression was used to describe different offences in different countries. That was why his delegation felt that it was better to leave the matter up to the laws and regulations of the contracting State that granted asylum, rather than to describe a particular offence as serious. In the final analysis, what was important was the will of the State and consistency between its decisions and its laws and regulations. For that reason, his delegation proposed the deletion of the word "serious" in paragraph 2 (b).

82. Mr. LEDUC (France), referring to the amendments submitted to the beginning of paragraph 1, and more particularly to those contained in documents A/CONF.78/C.1/L.12, L/17, and L/20, said that his delegation was unable to accept proposals which would have the effect of further weakening a text which set forth rules that fell considerably short of the liberal standard established in France, and of replacing an obligation by an option.

83. The many amendments submitted to paragraph 1 (a) were aimed at supplementing or paring down that provision. His delegation which, for instance, objected to the deletion of the word "nationality", was in favour of retaining the text proposed by the Group of Experts, and considered that it should not be weakened by a restrictive enumeration. For that reason, it supported the Argentine amendment (A/CONF.78/C.1/L.20), but was unable to accept proposals to insert ideas as vague as that of foreign occupation, which would have direct repercussions on certain European countries if it was to be applied to the presence of foreign troops on the territory of a State. Other expressions employed seemed to be propaganda slogans, as in the case of policy of aggression and war propaganda, because in every conflict each belligerent declared the other belligerent to be the aggressor. Moreover, it was possible to advance reasons for persecution standing in opposition to those proposed by some delegations. For instance, dictatorship, particularly the dictatorship of the proletariat, might be set against fascism and nazism. Colour gradations were sometimes highly subtle.

84. Paragraph 1 (b) was not clear. "Acts directly related to the persecution" might also be interpreted as meaning the taking of hostages as well as the destruction of an aircraft with its passengers. That provision was admittedly tempered by paragraph 2 (b), which excluded serious common offences, but as an act of terrorism could be viewed as a political offence under the laws and regulations of a State, it might not fall within the scope of that subparagraph. He also wondered why paragraph 1 (b) mentioned only acts and not omissions, because in certain countries failure to participate in certain events was a reason for persecution. His delegation therefore preferred the word "reasons" to "acts" or, better still, the Bellagio formula.

85. His delegation was unable to support the Australian amendment (A/CONF.78/C.1/L.10) to replace the words "has committed" by "is still liable to punishment for" at the beginning of paragraph 2. An offender might well have served his sentence or been amnestied abroad but could still be liable to conviction in the country to which he applied for asylum, so that the latter could not undertake to grant it to him. His delegation considered that the words "that he had committed or attempted to commit" in the Japanese amendment (A/CONF.78/C.1/L.24) introduced a subjective element which it could not accept, as it was against enlarging the list of exceptions. The amendments by the Cuban delegation (A/CONF.78/C.1/L.32) and the Polish and Czechoslovak delegations (A/CONF.78/C.1/L.33) seemed to be at variance with article 1, which emphasized the sovereignty of the State, since they would make it necessary to take into account the legislation of the State of the nationality of the person seeking asylum, namely, the very State from which he was fleeing. Those amendments were consequently unacceptable.

86. Referring to the United Kingdom amendment (A/CONF.78/C.1/L.37) to add the words "or that he is a danger to the security of the country in which he is seeking asylum" at the end of paragraph 2, he noted that a safeguards clause of that nature was already contained in article 3, paragraph 2, and that article 1, in its watered-down version, also allowed for the exclusion of the category of persons referred to in the United Kingdom amendment. In any event, his delegation



was not in favour of increasing the number of exceptions to the grant of exile, and could therefore not accept the new paragraph 3 proposed by the Indonesian, Malaysian and Philippine delegations (A/CONF.78/C.1/L.12). His delegation was not opposed to the new paragraph 3 proposed by the Yugoslav delegation (A/CONF.78/C.1/L.22) nor that proposed by the Romanian delegation (A/CONF.78/C.1/L.47), but considered that a negative definition was unnecessary. There was no need to explain the reasons for refusing asylum, as the reasons for granting it were already restricted.

87. His delegation was in favour of the proposals relating to family reunification, and particularly the Swiss amendment (A/CONF.78/C.1/L.58). Any provision on that question ought to be drafted in stringent terms and might be based on the distinction drawn by the Yugoslav representative between the immediate family members who accompanied the person seeking asylum to the frontier and those who applied to join him once he had obtained asylum. Although such cases had given rise to abuses, his delegation might accept a provision limited to the spouse and minor unmarried children.

88. With respect to terrorism, the future convention should seek to increase the possibilities of granting asylum provided for in the 1951 Convention relating to the Status of Refugees. Any proposal designed to restrict those possibilities would be quite contrary to the objectives of the Conference. All conventions on terrorism were based on the principle of "extradite or prosecute" in the case of a political offence. States were therefore free to grant asylum, but the granting of asylum did not mean that a person to whom the provisions of those conventions were applicable should go unpunished. The punishment of terrorism and the grant of asylum were two separate things. If the granting of asylum had an effect on extradition, it should not affect the other obligations which States assumed as a result of their international commitments.

89. Mr. KARTASHKIN (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said he was unable to ignore the assertion made the previous day and at the present meeting that the enumerations in the amendments to paragraph 1 (a) submitted by the Soviet Union and Cuba respectively (A/CONF.78/C.1/L.23 and L.32) were political in character. It had been stated that references to a policy of aggression, war propaganda, fascism, nazism, neo-nazism, genocide, racism and neo-colonialism were merely ideological propaganda. Yet, international instruments indicated exactly the opposite. The Convention on the Prevention and Punishment of the Crime of Genocide, which was certainly not an instrument of ideological propaganda, described genocide as an international crime. The group of experts set up by the Commission on Human Rights to study the question of genocide, and in which the western countries had taken part, had reached the same conclusions. The other régimes which it was proposed to mention in paragraph 1 (a) had been condemned on many occasions in resolutions of the General Assembly, which could not be suspected of indulging in propaganda. Similarly, the International Convention on the Elimination of All Forms of Racial Discrimination was unquestionably a legal instrument with no propaganda designs.

90. Several delegations had stated that if article 2 was amended in the way proposed by his delegation, it might impede the exercise of State sovereignty and contravene article 1. He believed that, on the contrary, that article was supplemented by his delegation's amendment. The exception proved the rule, and indeed the rule in article 1 was proved by article 2, paragraph 1. That paragraph alluded to international agreements to which most States were parties and which contained rules of jus cogens.

91. His delegation was against the Japanese amendment to paragraph 2 (a) (A/CONF.78/C.1/L.24), which would have the effect of excluding from the application of the future convention a person who had committed war crimes within the meaning of the relevant international instruments, "and to which the Contracting State from which he is seeking asylum is a party". The principles proclaimed by the Nuremburg Tribunal were mandatory for all States and, according to the Vienna Convention on the Law of Treaties, States were required to perform their international obligations. The principles referred to in article 2, paragraph 2, were universally recognized, and must therefore be respected by all States, whether or not they were parties to the international instruments in which they were embodied.

92. Finally, alluding to the proposal to delete paragraph 2 (c) relating to acts contrary to the purposes and principles of the United Nations, he stressed that all Member States of the United Nations had undertaken to act in accordance with certain general principles which it was entirely appropriate to mention in the future convention.

The meeting rose at 1.25 p.m.