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

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

AGENDA ITEM 46

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

GENERAL DEBATE (continued)

1. Mr. LEIRO (Norway) shared the view expressed by the United Nations' High Commissioner for Refugees (1192nd meeting), namely, that the right of asylum was a prerequisite for the enjoyment of all other rights for persons fleeing from persecution. That right had always occupied the attention of the United Nations, and the General Assembly had proclaimed it in 1948 in the Universal Declaration of Human Rights (resolution 217 (III)).

2. Since, at the present time, it did not seem possible to embody the right of asylum in a legally binding instrument such as a convention, it had been considered advisable to prepare a draft declaration recognizing the need for protection of persons fleeing from persecution. The authors of that draft had succeeded in reconciling the legitimate concern of States with the safeguarding of their authority and the interests of persons seeking asylum. In its present form, the text of the draft Declaration on the Right of Asylum (E/3335, para. 147) did not impose any legal obligations on States, whose sovereignty it respected, while at the same time encouraging them to adopt a liberal attitude.

3. His delegation thought that some changes, chiefly with respect to form, might be made in the draft. For that reason, it had submitted, together with the Togolese delegation, a number of amendments (A/C.3/L.1035). Those which it proposed for article 2, paragraph 1, and article 3, paragraph 1, were aimed at bringing those paragraphs into conformity with article 1. The change in article 2, paragraph 2, was designed to remedy the omission in that article of any reference to the original granting of asylum. With respect to article 3 of the draft Declaration, the amendment calling for the replacement of the word "should" in the English text by the word "shall" was based on the practice followed in the Universal Declaration. Moreover, both his delegation and the Togolese delegation

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

4. The sponsors of the amendments had no objection to the insertion of the word "territorial" before the word "asylum" in the title of the draft, in accordance with the wish expressed by some delegations that diplomatic asylum should be excluded from the scope of the Declaration.

5. The CHAIRMAN said that if the Committee had no objections, he would like to invite the Rapporteur to take the Chair so that he himself could speak as representative of Brazil.

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

6. Mr. ALBUQUERQUE MELLO (Brazil) thought that the draft Declaration should be considered carefully and above all without reference to any considerations of national policy; otherwise it would be preferable that asylum should continue to be governed by the customary law which most States observed.

7. Since the problem of asylum was connected, on the moral and philosophical level, with the protection of the life and liberty of the individual, that might justify the preparation of a legal document codifying the various forms of asylum; but such a work would encounter a number of obstacles, due, first, to various *de facto* situations, and, second, to the increasing difficulty of drawing a sharp distinction between the beneficiary of asylum—which was originally purely political—and the refugee, who was the victim of vast social movements, resulting from struggles in which he often had no part. In addition, there were two opposite schools of thought with respect to State sovereignty: some considered the granting of asylum to be an act of sovereignty of which the State should be the sole judge, whereas others, viewing the matter from the standpoint of the protection of the individual in the international community, regarded asylum as a duty of the State.

8. For that reason, although the right of asylum was enunciated in article 14 of the Universal Declaration of Human Rights, it was premature to attempt to codify

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Mr. Albuquerque Mello (Brazil) resumed the Chair.*

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

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

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

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

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

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

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

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

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

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

27. She approved in principle of the text of the draft. However, she wished to submit a few amendments.<sup>2/</sup>

<sup>2/</sup> Subsequently circulated as document A/C.3/L.1037.

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

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

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

The meeting rose at 4.15 p.m.