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UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE EIGHTEENTH MEETING

held at the Palais des Nations, Geneva,
on Thursday, 27 January 1977 at 3.40 p.m.

Chairman: Mr. DO NASCIMENTO E SILVA (Brazil)

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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)

Proposed new article for insertion after article 2 (A/CONF.78/C.1/WP.3,
A/CONF.78/C.1/L.93) (continued)

1. Mr. FAJARDO-MALDONADO (Guatemala) said that his delegation opposed the inclusion of the new article contained in the working paper submitted by the informal working group of sponsors (A/CONF.78/C.1/WP.3), since the adoption of that article would considerably weaken the convention. The text proposed was superfluous, since paragraph 2 of draft article 3 in the consolidated text provided that persons whom there were reasons for regarding as a danger to the security of a country of asylum could not claim the benefit of paragraph 1 of that article. Moreover, the text proposed did not provide a balance between the interests of individuals and the rights of States.
2. His delegation totally rejected the proposed new article as it was now worded, and supported the Ecuadorian representative's view that, if it were to be adopted, it must contain a statement to the effect that its provisions were without prejudice to the principle of non-refoulement. He endorsed the view expressed by the Mexican delegation that the Conference was not competent to include in the convention a provision relating to the legal status of refugees.
3. Mr. PONCE (Ecuador), referring to the comment made at the previous meeting by the representative of Bangladesh, pointed out that draft article 3 in the consolidated text related not only to persons requesting asylum but also to those who had already been granted asylum.
4. It was very difficult to discuss the proposed new article until a decision had been adopted on the article concerning non-refoulement, with which it was very closely linked. His delegation supported the view that the Committee should decide whether it was competent to include the proposed new article.
5. Mr. de ICAZA (Mexico) said that the Committee could not adopt standards of behaviour for refugees or asylees without considering the question of their legal status. It therefore had no choice but to reject the proposed new article or to define the legal status of asylees, as the status of refugees was defined in the 1951 Convention.
6. Mr. AJAYI (Nigeria) said that the text of the proposed new article represented a compromise which had not been arrived at lightly. The amendment proposed by Ecuador (A/CONF.78/C.1/L.93) appeared uncontroversial, but in fact it raised certain difficulties. The comments made by the representative of Bangladesh were pertinent, since the situations referred to respectively in draft article 3 of the consolidated text and in the proposed new article were quite different. The United States representative had expressed misgivings concerning the word "subversive" in paragraph 3, but the concept of subversion was a universal one even if it was defined in different terms in different political, social and

cultural conditions. The determination of what constituted subversion should be left to the State granting asylum; and his delegation therefore had no objection to the words in square brackets in paragraph 3. It would, however, be willing to consider suggestions for possible alternatives to the word "subversive".

7. Mr. GRAHAM-HARRISON (United Kingdom) said that his delegation agreed with the view that the convention should not contain provisions relating to the status of persons to whom asylum had already been granted. However, without prejudice to the question of the competence of the Conference, he wished to make some comments on the proposed new article. It had been suggested, in particular by the delegation of the USSR, that the words in square brackets in paragraph 2 were unacceptable because they implied that some Contracting States could approve activities contrary to the purposes and principles of the United Nations. That view was quite incorrect, since the words in question related to the right to freedom of opinion and expression, which was affirmed in the Universal Declaration of Human Rights. His delegation supported the amendment proposed by the delegation of Ecuador, since an asylee should at least be protected against refoulement if a State decided to exercise its rights under paragraph 3 of the proposed new article.

8. Mr. GRIFFIN (Venezuela), speaking on a point of order, moved the closure of the debate under rule 26 of the rules of procedure.

9. Mr. de ICAZA (Mexico) supported the motion.

10. Mr. MICHEEL (German Democratic Republic) and Mr. KIBRIA (Bangladesh) opposed the motion.

11. The motion was rejected by 30 votes to 10, with 37 abstentions.

12. Mr. GOLOVKO (Byelorussian Soviet Socialist Republic) said that the draft article contained in the working paper submitted by the informal working group of sponsors (A/CONF.78/C.1/WP.3), of which his delegation had been a member, was an example of compromise. The representatives of the four States concerned had found a common language and had thus carried out the task assigned to them.

13. Some representatives appeared to believe that the content of the proposed new article fell outside the scope of the convention on territorial asylum. He could not agree with that view. The convention should not deal exclusively with the conditions for granting or refusing asylum.

14. With respect to the substance of the proposed new article, it was unlikely that anyone would object to paragraph 1, since nobody could maintain that, while nationals of a country granting asylum were obliged to comply with that country's laws and regulations, alien asylees were not obliged to comply with them. With regard to paragraph 2, he did not think that delegations attending a United Nations conference could vote against a provision calling for compliance with the Charter of the United Nations.

15. Paragraph 3 stated that, if a person enjoying the benefits of the convention engaged in subversive activities, the State granting asylum had a right to review and, if necessary, terminate his asylum status.

16. In his delegation's view, that paragraph was both fair and humane, and the text of the article as a whole was logical and useful. However, when the text was put to the vote, his delegation would vote against the words in square brackets in paragraphs 2 and 3.

17. He had no objection in principle to the amendment submitted by the representative of Ecuador (A/CONF.78/C.1/L.93), who addressed the Committee so frequently and from time to time adopted contradictory positions in his statements. However, as the representative of Bangladesh had currently pointed out, draft article 3 in the consolidated text dealt with the granting of asylum, while the proposed new article would deal with the legal status of an asylee.

18. Mr. CHARRY (Colombia) said that the text introduced by the previous speaker as an agreed text prepared by the informal working group was, in fact, far from being an agreed text, since two significant portions had been placed between square brackets.

19. The contents of paragraph 1 constituted a statement of the obvious. The laws and regulations of a country were binding upon everybody within that country, including asylees. The statement was therefore pointless.

20. With respect to paragraph 2, the requirements enunciated in the Charter of the United Nations had been authoritatively characterized by the Vienna Conference on the Law of Treaties as peremptory norms of general international law. In the circumstances, they were implicit in every international treaty and required no repetition. Thus, paragraph 2 was also pointless.

21. Paragraph 3 once again stressed the duties of the asylee without any reference to his rights. There was also the possibility that adoption of that paragraph might pre-judge a decision concerning draft article 8, which was yet to be considered. Also, the provisions of paragraph 3 were such that the asylee would never be free from anxiety and would never have a secure status. His delegation therefore endorsed the amendment by Ecuador, which was designed to remedy that situation.

22. Lastly, if the portions of the text in square brackets were deleted, his delegation would be altogether unable to accept the text.

23. Mr. DAWSON (United States of America) said that, while his delegation held the view that the convention should contain no article on the régime or status of asylees, it was bound to comment on the text that had been submitted.

24. When he had stated at the previous meeting that the word "subversive" in paragraph 3 was imprecise, he had been considering it in its context in paragraph 3 of the proposed new article, a context which would change completely if the words between square brackets were omitted. If those words were omitted, it would be left to unknown authorities to decide what was subversive and whether an act of subversion had been committed. That would be a direct and serious threat to the sovereignty of States. It was possible that the State of origin might make charges of subversion, or that an international organization might call upon the State of asylum to terminate the asylum status of a specific person. Those possibilities would be completely unacceptable to his Government. It was in that context, in particular, that he had described the word "subversive" as vague.

25. If the bracketed portion of paragraph 2 were removed, the situation would be still more serious. It was contrary to his country's Constitution to prohibit freedom of speech, freedom of assembly or freedom of the press, and a number of other democratic States had similar constitutional provisions. It was inadmissible that a draft which, in its first paragraph, spoke with great respect of the laws and regulations of the country granting asylum should, in its second paragraph, take no account of the constitutional provisions of many of the participating States.

26. Mr. MICHEEL (German Democratic Republic) said that his delegation supported the proposal for the insertion of a new article contained in document A/CONF.78/C.1/WP.3, and thought that the drafting of the text under discussion proved that consultations could lead to constructive solutions.

27. It felt that such an article should be included in the convention in order to demonstrate the necessary relationship between the rights and duties of a State with respect to the granting of asylum on the one hand, and the rights and the duties of the asylee on the other.

28. Paragraph 1 reflected the principle, accepted by all States, that every resident of a State had to comply with its laws and regulations. The formulation might appear to be a statement of the obvious, but it was necessary to point out that the asylee did not enjoy a privileged status.

29. With regard to paragraph 2, his delegation agreed with the proposal by the representative of the Union of Soviet Socialist Republics that the words in square brackets should be deleted, on the grounds that they were inconsistent with the remainder of the paragraph. Since all States represented at the Conference were Members of the United Nations and had subscribed to its Charter, the obligations stemming from the Charter took precedence over their national laws.

30. The words in square brackets in paragraph 3 should also be deleted, since they detracted from the clarity of its wording.

31. Mr. LEDUC (France) said that the proposed text appeared to be a somewhat imperfect compromise, in that it contained two significant portions between square brackets and there seemed to be considerable disagreement among its sponsors as to whether the words in question should be retained or not.

32. In addition, it was essential to know whether the intention was that, when the asylum status of a person was terminated under the provisions of paragraph 3, the State which had granted asylum would be entitled to send a person accused of subversive activities back to the State in which he had been persecuted and from which he had fled. The fate of such a person would not be an enviable one. One possibility, suggested in the amendment by Ecuador, would be to include a phrase stating that the provisions of the proposed new article were without prejudice to those of article 3.

33. However, as article 3 had not yet been adopted, his delegation did not see how a text "without prejudice to" that article could be discussed.

34. With respect to the substance of the problem, he could not see why only one aspect of an asylee's status should be dealt with, rather than his status in its entirety. The 1951 Convention on the Status of Refugees contained 34 articles on the status of refugees, only one of which (article 2) dealt with the matter which was the subject of the text under discussion. His delegation would not object to participating in a Conference to regulate the status of asylees, organized along the lines of the Conference that had prepared the 1951 Convention. In the meantime, however, it shared the view of the majority of the experts that a single provision, or a limited number of provisions, on the status of asylees would be out of place in the convention now under consideration.

35. Mr. AJAYI (Nigeria), referring to the remarks made by the representative of the United States of America concerning the word "subversive", said that the sponsors of the text were open to any suggestions for improving its wording.

36. With regard to the relationship between the proposed new article and article 3, he said that the provisions of the proposed new article could hardly apply in practice to an asylum-seeker at a frontier. Such a person would arrive at a frontier claiming to be persecuted, and possibly with security forces in hot pursuit, and it was difficult to see how the proposed new article could apply to him unless and until he were granted asylum.

37. Mr. IBRASHI (Egypt) thanked the delegations which had worked to produce the consensus text in a most desirable spirit of co-operation, but said that his delegation did not think that it was appropriate to deal with the question of the régime of asylees. If the Committee wished to consider the obligations of asylees, then it should logically also consider the rights of asylees.

38. With regard to the text itself, his delegation interpreted it as meaning that the rights accorded to national liberation movements would, in no way, be jeopardized or their activities hampered.

39. His delegation was in principle able to accept all three paragraphs despite the fact that "the purposes and principles of the United Nations as set forth in the Charter" applied to States rather than individuals.

40. Mr. DESY (Belgium) said that the instructions he had received from his Government prevented him from approving a text such as that now under discussion. His Government, like many others, considered that the convention which the Conference was preparing, at the invitation of the General Assembly, should deal with territorial asylum and not with the status of asylees.

41. A previous speaker had stated that, in parallel with the status of refugees, the status of asylees should be defined in a number of provisions which spelt out their rights as well as their obligations. In that connexion, he wished to remind the Committee that the Conference of Plenipotentiaries, which had prepared the 1951 Convention on the Status of Refugees, had in its Final Act expressed the hope that the Convention would have value as an example exceeding its contractual scope and that all nations would be guided by it in granting so far as possible to persons in their territory as refugees, and who would not be covered by the terms of the Convention, the treatment for which it provided.

42. It was obvious that the article 2 adopted on the previous day departed very considerably from the definition of a refugee contained in the 1951 Convention, and that the changes introduced would necessarily have some implications on the status of the persons enjoying the benefits of the convention on territorial asylum.

43. Mr. KARTASHIN (Union of Soviet Socialist Republics) said that the proposed new article flowed logically from article 2, which the Committee had adopted on the previous day and which referred to the granting of asylum to specific categories of persons. It was clear that an asylee could not violate the laws of the country granting asylum, since even citizens of that country had to obey its laws and regulations. No sovereign State was likely to permit its citizens or asylees to violate its laws.

44. He failed to see the need to retain the words in square brackets "to the extent to which it is possible under their laws", since freedom of expression was not unlimited. In that regard, he referred to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which showed clearly that freedom of speech was not an unlimited concept. He recalled that in 1970 the then United States representative in the Commission on Human Rights had said at an annual meeting of a United States association of international lawyers that the United States could not ratify the Convention on the Elimination of All Forms of Racial Discrimination because the provisions of the Convention prohibited propaganda in favour of racial discrimination and thus restricted freedom of speech.

45. He agreed with the view expressed by the Nigerian representative that it was Utopian to attempt to define subversive activities, since the concept of such activities differed from country to country. In conclusion, he said that his delegation was not in favour of retaining the words in square brackets in the working paper.

46. Mr. KIBRIA (Bangladesh) said that the proposed new article contained vital elements which had been mentioned in the Bellagio text, and in his view the convention on territorial asylum would be incomplete if those vital aspects were not covered.

47. Countries that were fortunate enough not to have to worry about subversion should take into account the legitimate concerns of countries that were threatened by subversive activities. Such an understanding of the problems of others would help to produce a **universally** acceptable convention.

48. The proposal represented a compromise text. However, there had been disagreement in two areas, and the words which had given rise to controversy had been placed in square brackets. The sponsors hoped that, after a decision had been taken on those controversial aspects, the remainder of the proposal would be supported by the majority of members.

49. With regard to paragraph 2, he said that it closely reproduced his own delegation's proposal. He favoured the retention of the words in square brackets because they met the concerns of a large number of countries.

50. Mr. PONCE (Ecuador), speaking in exercise of his right of reply to the remarks made by the representative of the Byelorussian SSR, said that a careful study of the rules of procedure had not revealed the existence of any rule that limited the number of times a delegation could take the floor. Consequently, his delegation would ask for the floor whenever it considered it appropriate to do so.

51. His delegation was opposed to the inclusion of the article proposed by the informal Working Group (A/CONF.78/C.1/WP.3) for reasons already given. However, since the majority in the Committee might take a different position, his delegation had proposed the amendment contained in document A/CONF.78/C.1/L.93 with a view to affording a minimum of guarantees to asylees, namely, the guarantees provided by the principle of non-refoulement.

52. His delegation considered that the Byelorussian delegation was not well placed to speak of contradictory positions, because it was precisely the countries of eastern Europe which, at the opening meetings of the Conference had said that they saw no need for a convention on territorial asylum since there were already many international instruments on the subject; and now those same countries were among those which were proposing the inclusion of a provision which went beyond the scope of the convention.

53. Mr. de ICAZA (Mexico), supported by Mr. KERLEY (United States of America), requested that rule 30 of the rules of procedure should be applied, and that the Committee should vote first on the question whether it was competent to vote on the text proposed by the informal working group.

54. The CHAIRMAN recalled that at the previous meeting the Mexican representative had said that he would have no objection to the introduction of the proposal, and had suggested that the Committee should discuss the proposal and then take up the question of competence. He (the Chairman) would point out that, by voting on the proposal, the Committee would in fact be voting on the question of competence. He appealed to members not to become involved once again in a discussion on the question of competence.

55. Mr. KIBRIA (Bangladesh) supported the Chairman's appeal and agreed that a vote by the Committee on the proposal submitted by the informal working group would also constitute a vote on the question of competence.

56. Mr. KARTASHIN (Union of Soviet Socialist Republics), Mr. ZEMLA (Czechoslovakia) and Mr. NIKOLOV (Bulgaria) supported the appeal by the Chairman and pointed out that, after discussing the question at such great length, the Committee could not logically decide that it was not competent to vote on it.

57. Mr. de ICAZA (Mexico) said that, from the outset, his delegation had been concerned with the question of competence. As a matter of courtesy, it had not wished to deprive representatives of the opportunity of discussing the proposed new article but had emphasized, at the previous meeting, that it none the less wished a vote to be taken on the question of competence under rule 30 of the rules of procedure. Unfortunately, his delegation's conciliatory attitude had been misinterpreted and regarded as a parliamentary filibuster. It should be noted that an affirmative vote on the question of the competence of the Committee would not necessarily signify a vote in favour of the article, since two entirely separate votes would be involved. He insisted that the Committee should vote on the question whether it was competent to deal with a régime for asylees. If the Committee did decide that it was competent, his delegation would be happy to submit a proposal for an article on the rights of asylees.

58. Mr. BRENNAN (Australia) proposed that the Committee should immediately proceed to a vote under rule 22 of the rules of procedure, which related to appeals against a ruling of the Chairman.

59. Mr. EVSEEV (Union of Soviet Socialist Republics) questioned whether rule 30 of the rules of procedure applied to the Committee, since it referred specifically to decisions on the competence of the Conference.
60. The CHAIRMAN pointed out that, under rule 50, the rules contained in chapter V of the rules of procedure applied, mutatis mutandis, to committees of the Conference. Earlier, he had simply made a suggestion. Now, he ruled that the Committee would decide whether or not to vote on the proposed new article (A/CONF.78/C.1/WP.3) and the amendment proposed by Ecuador (A/CONF.78/C.1/L.93).
61. It was decided by 43 votes to 8, with 14 abstentions, that the Committee should vote on the proposed new article and the amendment thereto.
62. Following a brief procedural discussion in which Mr. PONCE (Ecuador), Mr. ROSENNE (Israel), Mr. KIBRIA (Bangladesh) and Mr. ALMODOVAR SALAS (Cuba) took part, the CHAIRMAN suggested that the Committee should vote first on the amendment proposed by Ecuador (A/CONF.78/C.1/L.93) and then on the proposed new article (A/CONF.78/C.1/WP.3), paragraph by paragraph.
63. It was so decided.
64. The amendment to paragraph 3 proposed by Ecuador was adopted by 32 votes to 22, with 20 abstentions.
65. The phrase "by the State granting asylum" in paragraph 3 was adopted by 49 votes to 13, with 12 abstentions.
66. The CHAIRMAN put to the vote paragraph 3, as amended and with the square brackets deleted.
67. There were 32 votes in favour, 32 against and 13 abstentions. Paragraph 3 was not adopted.
68. The phrase "To the extent to which it is possible under their law" in paragraph 2 was adopted by 45 votes to 14, with 13 abstentions.
69. Paragraph 2, as a whole, was adopted by 36 votes to 30, with 8 abstentions.
70. Paragraph 1 was adopted by 46 votes to 18, with 11 abstentions.
71. The proposed new article, as a whole, as amended, was adopted by 35 votes to 31, with 10 abstentions.

The meeting rose at 6.5 p.m.