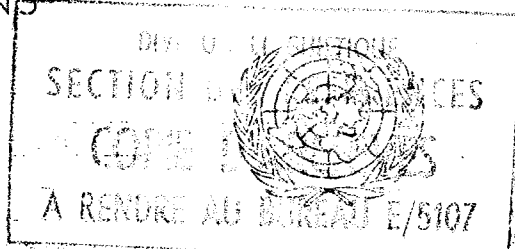


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UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 24TH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 2 February 1977, at 11.40 a.m.

Chairman:

Mr. DO NASCIMENTO E SILVA

(Brazil)

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TRIBUTE TO THE MEMORY OF MR. HAMBRO

1. At the invitation of the Chairman, the members of the Committee observed one minute's silence in tribute to the memory of Mr. Hambro, former President of the General Assembly of the United Nations, President of the Institut de droit International, member of the Curatorium of the International Law Academy of the Hague and member of the International Law Commission.

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 3 (A/10177*, A/CONF.78/7/Corr.1, A/CONF.78/C.1/L.2, L.10, L.17, L.28/Rev.1, L.38, L.39, L.44, L.48, L.49*, L.51/Rev.1, L.54, L.55, L.60/Rev.1, L.64, L.65, L.66/Rev.1, L.69, L.70 and L.102) (continued)

2. Mr. ZEMLA (Czechoslovakia) said that, in his view, the Committee should retain, in article 3 the principle of non-refoulement, according to which persons granted asylum on the grounds enumerated in article 2 should not be returned or expelled against their will by the State which had granted them asylum to the territory of a State in which their life or freedom would be threatened. It was obvious, however, that such a provision should not affect bilateral or multilateral agreements on the extradition of criminals to which a contracting State was or became a party. His delegation therefore supported the amendments submitted by the Soviet Union (A/CONF.78/C.1/L.69, para.2), the German Democratic Republic (A/CONF.78/C.1/L.64, para.2) and Japan (A/CONF.78/C.1/L.54, para.2).

3. To ensure that criminals would not be able to benefit from the convention, it also seemed necessary to replace the words "having been convicted ... serious crime" in the second paragraph by the words "having committed a particularly serious crime", as proposed by Romania in document A/CONF.78/C.1/L.48.

4. He noted that the frontier régimes of States differed considerably, depending on their laws and regulations. His delegation therefore supported the amendment by the Soviet Union (A/CONF.78/C.1/L.69, para.1) to delete the second sentence of paragraph 1, dealing with the problem of acceptance or rejection at the frontier, because it thought that the case of an asylum-seeker at the frontier was already covered by the provisions of articles 1, 2 and 9 of the draft convention.

5. In short, his delegation would support all the amendments submitted by the German Democratic Republic (A/CONF.78/C.1/L.64), Cuba (A/CONF.78/C.1/L.51) and by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/60 and Corr.1), as it felt that they substantially improved the wording of article 3. It would also support the amendments to the first sentence of paragraph 1 submitted by Pakistan (A/CONF.78/C.1/L.17) and Turkey (A/CONF.78/C.1/L.55), as well as the amendment to paragraph 2 presented by Argentina (A/CONF.78/C.1/L.65). Lastly, it would support the proposal by Ecuador (A/CONF.78/C.1/L.70) to delete paragraph 3, as it thought that the retention of that paragraph would constitute an inadmissible derogation in favour of common criminals who could, in no circumstances, be given the right to benefit from the convention.

6. Mr. FAJARDO MAIDONADO (Guatemala) said that the principle of non-refoulement set forth in article 3 was one of the basic aspects of the right of asylum. In his view, the distinction drawn in the consolidated text concerning the application of that principle between persons already in the territory of the State and those arriving at its frontiers was contrary to one of the fundamental objectives of the convention, namely, to strengthen the right of asylum by making the principle of non-refoulement a peremptory norm, as in article 3 of the 1967 United Nations Declaration on Territorial Asylum, and article 2, paragraph 3 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The conditions on which a person would have the benefit of asylum should be determined according to provisions and procedures which contained guarantees, and should not be left to the discretion of officials of the State, as was done in paragraphs 2 and 3 of article 3 which virtually annulled the principle of non-refoulement and, consequently, the right of asylum.

7. He pointed out that article 3 of the consolidated text was similar to article 33, paragraph 1 of the 1951 Convention relating to the Status of Refugees, which some contracting States already interpreted as authorizing them to refuse asylum to persons presenting themselves at their frontiers. He hoped that article 3 of the draft convention would not lend itself to that kind of interpretation and would not make an arbitrary distinction between persons already in the territory of the State and asylum-seekers at its frontiers, which could only encourage refugees to gain illegal entry into the country in which they were seeking asylum.

8. His delegation supported the proposal by Ecuador (A/CONF.78/C.1/L.70), to delete paragraphs 2 and 3 of article 3 as it thought that the principle of non-refoulement and the safety of the individual would be better safeguarded if paragraph 1 alone was retained. It also supported the joint amendment submitted by Australia, the Federal Republic of Germany, Nigeria and the United States of America (A/CONF.78/C.1/L.102), as the proposed change would considerably improve the text proposed by the Group of Experts. However, its support for that text was contingent upon the deletion of paragraphs 2 and 3.

9. Mr. MITIĆ (Yugoslavia) said that non-refoulement, as set out in article 3, was one of the most important principles in the convention. The draft article submitted by the Group of Experts - and paragraph 1 in particular - constituted a good basis for the solution of the problem of non-refoulement, because it took into account both the humanitarian aspect of territorial asylum and State sovereignty in the matter. His delegation was convinced that the expression "use its best endeavours" in paragraph 1 reflected the position of the majority of States and represented a distinct improvement on article 33 of the 1951 Convention relating to the Status of Refugees, which his country had ratified.

10. His delegation thought that amendments to make it binding on the State to grant asylum to persons presenting themselves at its frontiers had no chance of obtaining a consensus in the Committee. It was therefore unable to support them, because it thought that the convention should be universally acceptable and that the inclusion of such a commitment would prevent some States from ratifying it. Nor was it in favour of amendments which would weaken the principle of non-refoulement, as set forth in article 3, paragraph 1 of the consolidated text. That text seemed to offer a good basis for compromise between the different positions adopted in the Committee. Nevertheless, it took the view that, as a result of the changes made in article 2, paragraphs 2 and 3 had become unnecessary.

11. His delegation would thus support only those amendments which were designed to improve the consolidated text and to bring it into line with the wording of the articles already adopted.

12. Mr. EL IBRAHSHI (Egypt) said he agreed with those delegations which considered article 3 to be one of the most crucial articles in the future convention. A study of the amendments to that article revealed three main tendencies: the first was to restrict the rights of the State and extend those of the asylum-seeker; the second, on the contrary, was to extend the rights of the State to the detriment of those of the asylum-seeker; the third, which was reflected in the joint amendment (A/CONF.78/C.1/L.102), aimed at striking a balance between the other two.

13. In principle, his delegation approved the text proposed by the Group of Experts, because it was logical to differentiate between the obligations of a State according as the asylum-seeker was already within its territory or presented himself at its frontier. In the first case, the State should be bound not to adopt any measure such as return or expulsion which would compel the asylum-seeker "to return to a territory where his life or freedom would be threatened" while, in the second case, the State should simply be required to "use its best endeavours to ensure that no person is rejected at its frontiers if there are well-founded reasons for believing that such rejection would subject him to persecution, prosecution or punishment for any of the reasons stated in article 2." Moreover, his delegation thought that, in keeping with the principle of State sovereignty, it was for the State and not the asylum-seeker to determine whether those reasons were well-founded.

14. His delegation could not accept any amendment which would restrict the rights of the State or those of the asylum-seeker. It could therefore accept only those amendments which improved the consolidated text, such as those of Pakistan (A/CONF.78/C.1/L.17), Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60) and India (A/CONF.78/C.1/L.66/Rev.1).

15. Mr. DABIRI (Iran) said that, while recognizing that article 3 was a key provision which had a bearing on an important and delicate aspect of territorial asylum, he thought that there could no longer be any question of the Committee, at the current stage in its discussions, opting for one or other philosophical approach, as it had already made its choice by adopting the first two articles of the convention. It was sufficient, therefore, to bring the text of article 3 into line with those of the two articles already adopted. In that connexion, the text proposed by the Group of Experts, which constituted a good working basis, could be improved by the amendments to paragraph 1 contained in documents A/CONF.78/C.1/L.17, L.54, L.55 and L.60.

16. His delegation took the view that article 3 should provide for certain exceptions, and therefore supported the Turkish amendment to paragraph 2 (A/CONF.78/C.1/L.28), which would make it possible to fill a gap to which a number of delegations had already drawn attention in the text of the Group of Experts. Such an exception, far from weakening the protection offered to asylum-seekers, met a need which had been taken into account in article 3 of the 1967 Declaration on Territorial Asylum.

17. Lastly, he noted that some amendments were very similar, and indeed, almost identical, and he hoped that their sponsors would be able to agree on the preparation of a joint text.

18. Mr. DEL CASTILLO (Costa Rica) said that draft article 3, which dealt with the most humanitarian aspect of the right of asylum in its broadest sense, was designed to establish two additional safeguards for the right of asylum as such. For humanitarian reasons, States were to commit themselves, on the one hand, not to refuse admission to their territory of an asylum-seeker and, on the other, not to return an asylum-seeker or a person who had already been granted asylum to the territory of a State in which his life or his freedom would be threatened. The justification for those safeguards was confirmed by a large number of conventions and declarations, and a convention on territorial asylum would lose much of its importance if it ignored such an important problem. His delegation was thus quite satisfied with paragraph 1 of the consolidated text, and supported the four Power amendment (A/CONF.78/C.1/L.102).

19. His delegation also found paragraph 2 of the draft article acceptable, as it was based on the provisions of the 1951 Convention, but thought it essential that the United Kingdom amendment (A/CONF.78/C.1/L.38) should be incorporated in it. Paragraph 3, which reproduced in broad outline an idea expressed in the Declaration on Territorial Asylum adopted by the General Assembly in its resolution 2312 (XXII), formed a logical part of draft article 3. Nevertheless, the draft article prepared by the Group of Experts could be improved by the United Kingdom amendment (A/CONF.78/C.1/L.38), as the existing text of paragraph 3, taken in conjunction with paragraph 2, might permit a State to return any person that it regarded as a danger to its security to a country in which his life, integrity or freedom would be in danger.

20. Mr. TAIBI (Algeria) said that, as worded by the Experts, paragraph 1 of draft article 3 answered two questions, namely: what the behaviour of a State vis-à-vis an asylum-seeker in its territory or at its frontier should be, and what categories of persons should not be subjected to measures such as return, expulsion or rejection at the frontier.

21. His delegation found the basic text acceptable, as its provisions were in keeping with those of the 1951 Convention and the OAU Convention, to which Algeria was a party. Moreover, it took the view that the principle of non-refoulement should be applied on the same terms to persons within the territory of the State concerned as well as to those presenting themselves at its frontier, providing that they were entitled to the benefits of the convention. It could not subscribe, however, to the idea that States should admit into their territory any person who claimed he was seeking asylum, because a provision along those lines would probably have the effect of increasing considerably the number of beneficiaries of the right of asylum throughout the world.

22. In short, his delegation found the draft article 3 prepared by the Group of Experts acceptable, but was also able to support the amendments submitted by Cuba (A/CONF.78/C.1/L.51), India (A/CONF.78/C.1/L.66/Rev.1), and four Powers (A/CONF.78/C.1/L.102). On the other hand, it could not subscribe to the United Kingdom amendment (A/CONF.78/C.1/L.39).

23. Mr. RIOS DE MARIMON (Chile) said he agreed with those speakers who thought that draft article 3, which embodied the principle of non-refoulement and of admission at the frontier, was the keystone of the institution of asylum. Like draft article 4 on provisional admission, draft article 3 deserved the greatest attention on the part of the Committee. In any event, the principle of non-refoulement formed part of the positive law of all the countries - including Chile - which had ratified the 1951 Convention relating to the Status of Refugees, and Latin America had acquired valuable experience in applying that principle, which it respected in practice and had incorporated in its customary law. The principle of non-refoulement should thus be set forth with clarity and precision, in the interests of friendly relations among States, and draft article 3 should contribute to the progressive development of international law on asylum on a sound basis. In fact, without that article, the convention would be quite meaningless.

24. On the whole, the consolidated text, in which certain drafting changes could be made, was acceptable to his delegation. The distinction in paragraph 1 between non-refoulement and rejection at the frontier should not be eliminated. In his view, paragraphs 2 and 3 of the consolidated text were essential, and it would even be advisable to add to the draft article a paragraph on extradition. Consequently, his delegation supported the new paragraph proposed by Japan (A/CONF.78/C.1/L.54). It would present its views on the other amendments to draft article 3 when they were put to the vote.

25. Mr. CHATURVEDI (India) wholeheartedly supported article 3, paragraph 1, of the consolidated text, but reminded the Committee that his delegation had proposed (A/CONF.78/C.1/L.66/Rev.1) that the two sentences in paragraph 1 should form separate paragraphs. He could agree to a text which did not impose a legal obligation on States concerning admission at the frontier and which enabled them to safeguard their national interests. Consequently, the phrase "acting in the exercise of its sovereign rights" should be inserted before the words "a Contracting State", and the word "shall" should be replaced by "should". In other words, any formulation which imposed a legal obligation on States should be avoided; his country followed a liberal policy in that respect, but it was difficult to agree to such an obligation. For that reason, he could support the amendment proposed in document A/CONF.78/C.1/L.102 only if the sponsors agreed to replace the words "shall be subjected" by "should be subjected". His delegation could not accept either the amendment proposed by Pakistan (A/CONF.78/C.1/L.17), which weakened the basic text, or the amendment proposed by Turkey to paragraph 1 (A/CONF.78/C.1/L.55), but endorsed the Turkish amendment to paragraph 2 (A/CONF.78/C.1/L.28/Rev.1). It also supported the amendment to paragraph 2 proposed by the United Kingdom in document A/CONF.78/C.1/L.38, but could not agree to the proposal concerning paragraph 3, contained in the same document.

26. Nor could his delegation accept the United Kingdom sub-amendment (A/CONF.78/C.1/L.39) to the Australian proposal concerning paragraph 1 (A/CONF.78/C.1/L.10), or the proposal by Romania (A/CONF.78/C.1/L.48), as the mere fact of having committed a crime should not constitute an exception to the principle of non-refoulement, or yet the proposal by Cuba (A/CONF.78/C.1/L.51) to delete paragraph 3. He could however support the first part of the proposal by Japan (A/CONF.78/C.1/L.55), but was opposed to any reference in the draft convention to an extradition treaty.

27. He endorsed the formulation of paragraph 1 proposed by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60) but felt that their proposals concerning paragraph 2 considerably weakened the consolidated text. The amendment proposed by the German Democratic Republic (A/CONF.78/C.1/L.64) was not acceptable, because it ignored cases of persons seeking asylum at the frontier. He could agree to the amendment proposed by Argentina (A/CONF.78/C.1/L.65) to paragraph 1, but not to the wording it proposed for paragraph 2. In that connexion, he drew the Committee's attention to his delegation's proposal regarding paragraph 2 (A/CONF.78/C.1/L.66/Rev.1).

28. Lastly, his delegation could not support the amendment proposed by the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.69) to delete the reference to rejection at the frontier, or the proposal by Ecuador (A/CONF.78/C.1/L.70) to delete two paragraphs that were essential if the security of the State and the interests of the asylee were to be safeguarded.

29. Mr. RAHHALI (Morocco) said that the principle of non-refoulement, together with the granting of asylum, formed the cornerstone of the draft convention; the fact that it sought to reduce, as far as possible, the number of refugees "in orbit", made it a principle of particular importance. In that respect, the Committee should endeavour to clarify the concept of non-refoulement in order to obviate any difficulties which might be created by an improper interpretation that could well be at variance with the humanitarian considerations which, alone, should guide the efforts being made to protect mankind.

30. His delegation would vote in favour of amendments which improved the consolidated text in such a way that the principles enunciated in the draft convention did not remain absolute but were closely bound up with the fulfilment of other obligations and the exercise of other rights.

31. Mr. WISNOEMOERTI (Indonesia) said that, generally speaking, article 3 of the consolidated text was acceptable, subject to minor amendments that his delegation had proposed jointly with the delegations of Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1). In its present form, the article took into account both the sovereign rights of the State in respect of the granting of asylum and the human rights of the asylum-seeker.

32. His delegation agreed with the distinction drawn in paragraph 1 between persons already within the territory of the State from which asylum was being requested and persons at the frontier. It had doubts about the feasibility of a single régime for those two categories of persons, as proposed by the Federal Republic of Germany (A/CONF.78/7, article 3), Nigeria (A/CONF.78/C.1/L.2, article 4), Australia (A/CONF.78/C.1/L.10, paragraph 2) and the United States of America (A/CONF.78/C.1/L.44), and in the combined text submitted in document A/CONF.78/C.1/L.102. The indirect result of those amendments would be an absolute obligation on a contracting State to grant asylum to any eligible person at the frontier, as any rejection of his request would necessarily compel that person to remain in the territory in which his life and freedom were threatened. Such an obligation would not be in conformity with article 1, which did not express the obligation in absolute terms because it used the phrase "shall endeavour". Furthermore, his delegation was not convinced that the life and freedom of a person seeking asylum at the frontier would be better protected by a single régime, for his life and freedom were well protected by article 4 concerning provisional stay pending consideration of a request. Under that article, the person concerned would not be in danger of remaining in a territory where his life or freedom were threatened.

33. Nor could his delegation support the amendments proposed by the German Democratic Republic (A/CONF.78/C.1/L.64) and the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.69) to adopt a single régime, or more specifically to exclude persons at the frontier. It was important that the future convention should also protect that category of persons.

34. In principle, he favoured the retention of both the substance and the form of paragraph 1, but would not be opposed to consideration by the Drafting Committee of the possibility of dividing the two sentences of the paragraph into two separate paragraphs, as had been proposed by India (A/CONF.78/C.1/L.66/Rev.1). His delegation also supported in principle the amendments to paragraph 1 proposed by Pakistan (A/CONF.78/C.1/L.17), Japan (A/CONF.78/C.1/L.54), Argentina (A/CONF.78/C.1/L.65) and Romania (A/CONF.78/C.1/L.48).

35. Paragraph 2 of the consolidated text, concerning exceptions to the principle of non-refoulement, was of such importance that the proposal by Ecuador (A/CONF.78/C.1/L.70) to delete that paragraph was unacceptable. With regard to the first exception, his delegation, together with those of Malaysia and the Philippines was proposing (A/CONF.78/C.1/L.60/Rev.1) that the words "claimed by" should be replaced by "granted to", in order to improve the wording. As to the second exception, the word "being still liable to prosecution or punishment for", should be inserted after the words "who", and the words "particularly serious crime" should be replaced by "serious criminal offence". Such wording would be more in keeping with that of other provisions already adopted by the Committee. He welcomed the amendment proposed by Turkey (A/CONF.78/C.1/L.28) to include a third exception, and the drafting proposal made by the United Kingdom (A/CONF.78/C.1/L.38) in connexion with paragraph 2.

36. Paragraph 3 of the consolidated text was a necessary complement to the régime of exception contained in paragraph 2. For that reason, he was opposed to the deletion of paragraph 3, as proposed by Ecuador (A/CONF.78/C.1/L.70). On the other hand, he had no difficulty with the amendment proposed by the United Kingdom (A/CONF.78/C.1/L.38).

37. Mr. GRAHAM-HARRISON (United Kingdom) associated himself with the appeal, made at the previous meeting by the representative of the United Nations High Commissioner for Refugees, that the Conference should use its best endeavours, in drafting article 3, to improve the fate of those who would be in danger if they were returned to the country from which they had fled.

38. It was important, from the outset, to distinguish between the granting of asylum and non-refoulement. Refusal of asylum did not necessarily mean that the applicant had to return to the country from which he had fled. Non-refoulement was not always the equivalent of the granting of asylum. The person concerned might have to go to another country and, even if he was allowed to remain in the territory of the State which did not return him, he could be subject to restrictions imposed by the laws of that State on immigrants and not enjoy the benefits of asylum.

39. Under article 1, States had some discretionary powers in granting asylum. In article 3, however, the principle of non-refoulement should be enunciated in comprehensive terms, and exceptions to the application of that principle should be kept to a minimum. Accordingly, he supported the amendment proposed by Australia, the Federal Republic of Germany, Nigeria and the United States of America (A/CONF.78/C.1/L.102) to replace article 3, paragraph 1, by a single sentence

applicable both to persons who were legally or illegally within the territory of a contracting State and to those who were at the frontier. The needs of both categories of persons were the same, and any differentiation between them would be arbitrary and unjust. Admittedly, it would be necessary later to ascertain whether the person concerned had entered the territory in question legally or illegally; something which would not always be easy in practice. In such cases, the safeguard clause in article 4, concerning provisional stay pending consideration of the request for asylum, would operate in favour of the State. Often, it was not possible for a State to ascertain on the spot whether a person was entitled not to be returned. Like other representatives, he felt that it might be preferable to wait until the fate of article 4 was known before deciding on article 3.

40. His delegation welcomed the reference in document A/CONF.78/C.1/L.102 to "a well-founded fear", rather than to threats to life or freedom. The qualification "well-founded" removed any element of subjectivity from that phrase.

41. The phrase "No person eligible for the benefits of this Convention", used at the beginning of article 3 of the consolidated text and of the provision contained in document A/CONF.78/C.1/L.102, was not satisfactory. It had to be interpreted in the light of article 2, and therefore applied to persons covered by article 2, paragraph 1, excluding not only those who fell under article 3, paragraph 2, but also those who fell under article 2, paragraphs 2, 3 and 3 bis. Such an extensive range of cumulative exceptions to the application of the principle of non-refoulement could not be justified. Moreover, the grounds for refusing non-refoulement should be fewer than those for refusing to grant asylum. For that reason, his delegation was proposing, like the delegation of Argentina (A/CONF.78/C.1/L.65), that the beginning of paragraph 1 should be redrafted to read: "No person seeking asylum ...". Such wording did not mean, as the representative of Belgium had feared, that a request for asylum, even in bad faith, was enough for the person not to be returned. An applicant for asylum had to invoke grounds of persecution, and for the purposes of entitlement to the benefits of article 3, had to establish that he had well-founded fears of persecution.

42. His delegation was unable to support the amendments proposed by the German Democratic Republic (A/CONF.78/C.1/L.64) and the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.69), which would delete any reference to persons at the frontier, or the amendments proposed by Japan (A/CONF.78/C.1/L.54), Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1) and India (A/CONF.78/C.1/L.66/Rev.1), which would maintain two separate régimes. Nor could it support the amendment proposed by Turkey (A/CONF.78/C.1/L.55) to insert the word "legally"; such an insertion was unjust and contrary to article 33 of the 1951 Convention relating to the Status of Refugees and article 2 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

43. If the Committee could not agree to his delegation's proposal concerning the beginning of paragraph 1, paragraph 2 should perhaps be deleted, because the relationship between the two paragraphs would not be very clear and there would be an accumulation of exceptions. Consequently, the content of paragraph 3 should be strengthened by replacing the words "it shall consider the possibility of granting" by "it shall grant", as proposed by his delegation (A/CONF.78/C.1/L.38).

44. He could not agree to the Turkish proposal (A/CONF.78/C.1/L.28/Rev.1) for its effect would be, in exceptional cases, to prevent a great number of persons whose massive influx might "constitute a serious problem to the security of a Contracting State" from invoking the principle of non-refoulement; its wording was too vague and it implied too broad an exception to the application of that principle. Moreover, the words "a person" in article 3, paragraph 2, of the consolidated text could be interpreted as applying to one or more persons.

45. Lastly, the wording of paragraph 2 of the consolidated text, which was the result of thorough consideration and was in keeping with article 33 of the 1951 Convention relating to the Status of Refugees, was preferable to the amendments proposed by Romania (A/CONF.78/C.1/L.48), Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1) and India (A/CONF.78/C.1/L.66/Rev.1).

46. Mr. PONCE LEIVA (Ecuador) said that his delegation attached great importance to article 3, which imparted an obligatory character to the principle of non-refoulement and strengthened the institution of territorial asylum by offering the asylum-seeker a guarantee which was not, however, prejudicial to the sovereignty of State. For that reason, he would support all amendments which sought to ensure broad application of the principle in the context of humanitarian considerations. Such was the case with the amendment contained in document A/CONF.78/C.1/L.102, which provided equal protection for the two categories of persons covered by article 3 of the consolidated text. Nevertheless, it was essential to alter the first part of that proposed amendment, as it would be impossible for the State receiving the application to determine whether the applicant met the criteria for eligibility.

47. His delegation could support the amendments proposed by the United Kingdom (A/CONF.78/C.1/L.39) and by Argentina (A/CONF.78/C.1/L.65) to replace the phrase "No person entitled to the benefits of this Convention" by the phrase "No person seeking asylum", but it preferred the oral amendment proposed by Austria, which went further and included a reference to article 2, paragraph 1 (a) and (b). In that way a common criminal could not escape justice by invoking the terms of article 3.

48. The proposal by the German Democratic Republic (A/CONF.78/C.1/L.64) was not acceptable, as its effect would be to exclude persons at the frontier, in other words, persons who, more than any others, were in need of immediate protection. Nor could he agree to the amendments proposed by Japan (A/CONF.78/C.1/L.54), Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1) and by the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.69). He was also opposed to the proposal by India (A/CONF.78/C.1/L.66/Rev.1), because the existence of a single régime made it pointless to divide paragraph 1 into two parts.

49. The Turkish proposal (A/CONF.78/C.1/L.55), under which the principle of non-refoulement would not be extended to persons who had entered the territory of a State illegally was dangerous, as had been pointed out by the representative of Senegal, who had also shown how far removed that proposal was from reality. It was very difficult for a victim of persecution to comply with all the formalities necessary to leave his country and go to another. The principle of provisional entry was embodied in the legislation of his country and he would therefore vote against the Turkish proposal, which would in effect deprive the institution of asylum of any meaning. The amendment proposed by Argentina (A/CONF.78/C.1/L.65) which, in the Spanish version, would have the effect of replacing the word "castigada" by "penada", was not acceptable, because Ecuador ruled out any extra-judicial penalties that States might inflict on persons persecuted for their political views or their race.

50. His own delegation's proposal (A/CONF.78/C.1/L.70) to delete paragraphs 2 and 3 would not prevent the State, in the exercise of its sovereignty, from expelling a person who engaged in activities prejudicial to national security if the person in question contravened the laws of the State, whether or not he had obtained asylum. The amendment would prevent any person who had not committed an offence from being returned because he was considered a priori as a danger, something which would be contrary to the presumption of innocence established in article 11 of the Universal Declaration of Human Rights. If the amendment commanded the support of the Committee, his delegation would agree to the Cuban proposal concerning paragraph 2 (A/CONF.78/C.1/L.51/Rev.1).

The meeting rose at 1.05 p.m.