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DRAFT DECLARATION ON TERRITORIAL ASYLUM

Report of the Sixth Committee

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I. INTRODUCTION

1. By paragraph 3 of its resolution 2203 (XXI) of 16 December 1966, the General Assembly decided "to place an item entitled 'Draft Declaration on Territorial Asylum' on the provisional agenda of its twenty-second session, with a view to the final adoption of a declaration on this subject". At the twenty-second session of the General Assembly, the General Committee recommended that this item should be included in the agenda and allocated to the Sixth Committee (A/6840). The General Assembly so decided at its 1564th plenary meeting on 23 September 1967. Subsequent consideration of the item by the Sixth Committee has resulted in the unanimous recommendation to the General Assembly of the draft resolution containing a declaration on territorial asylum which will be found at the conclusion of the present report.
2. The present report, after briefly outlining some of the relevant facts in the previous history of the item, summarizes the proceedings relating to it in the Sixth Committee at the twenty-second session of the General Assembly. This summary includes an article-by-article account of the points made in the debate on the declaration recommended for adoption by the General Assembly (see paras. 9 to 61 below), together with the proposal submitted and the discussion thereon (see paras. 62 to 69 below).

II. HISTORY OF THE ITEM PRIOR TO THE TWENTY-SECOND SESSION OF THE GENERAL ASSEMBLY

3. The elaboration of a declaration on asylum has been under consideration by various United Nations organs for a considerable number of years.^{1/} In 1960, by its resolution 772 E (XXX), the Economic and Social Council transmitted to the General Assembly the text of a draft declaration on the right of asylum prepared by the Commission on Human Rights, consisting of a preamble and five articles.^{2/}

^{1/} For a more detailed account of the history of the item prior to the twentieth session of the General Assembly, including a summary with relevant documentary references to the proceedings of the Commission on Human Rights, the Economic and Social Council, and the Third Committee of the General Assembly, see Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 63, document A/C.6/L.564.

^{2/} Official Records of the Economic and Social Council, Thirtieth Session, Supplement No. 8, para. 147, and Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 46, document A/5359, para. 6.

On the basis of this text the Third Committee, at the seventeenth session of the General Assembly, in 1962, adopted the preamble and article 1^{3/} of a draft declaration.^{4/} Because of pressure of other work at subsequent sessions, the Third Committee was unable to complete the text of the draft declaration. The General Assembly therefore decided to transfer the item to the Sixth Committee at the twentieth session, as it did not have such a heavy agenda as the Third Committee and as the item involved many legal questions, in order to finalize the draft declaration at the earliest opportunity.

4. At the twentieth session, in 1965, the Sixth Committee established a Working Group to examine the various procedural questions which arose in connexion with the transfer of the item from the Third to the Sixth Committee, in order to expedite its further consideration. The Sixth Committee also recommended to the General Assembly a draft resolution, adopted by the latter as resolution 2100 (XX) of 20 December 1965, the last operative paragraph of which provided that the item should be taken up again at the twenty-first session, "with a view to completing the text of a draft Declaration as a whole."^{5/}

5. At the twenty-first session a further Working Group was set up by the Sixth Committee, with the task of preparing a preliminary draft declaration on the right of territorial asylum, taking into account the text of the draft declaration adopted by the Commission on Human Rights; the text of the preamble and article 1 adopted by the Third Committee; the amendments and comments submitted in writing by Member States; specific suggestions made during the discussion of the item at the twenty-first session of the General Assembly and the existing international instruments relating to the matter. The Working Group submitted a report,

^{3/} An amendment to article 1 accepted by the Third Committee, to refer expressly to "territorial asylum", indicated that the draft declaration was to be limited to that form of asylum. An express limitation of this nature had not appeared in the text prepared by the Commission on Human Rights, but arose as a necessary implication of the provisions of that text. See Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 46, document A/5359, paras. 18 and 24.

^{4/} Ibid., para. 35.

^{5/} For the discussion of this item at the twentieth session, see Official Records of the General Assembly, Twentieth Session, Sixth Committee, 872nd, 882nd and 895th meetings; and ibid., Plenary Meetings, 1404th meeting. For the Reports of the Sixth Committee and of the Working Group see ibid., Annexes, agenda item 63, documents A/6163 and A/C.6/L.581.

containing the text of a draft declaration on territorial asylum,^{6/} which forms an annex to the report of the Sixth Committee to the General Assembly on the item.^{7/} As the report of the Working Group was submitted towards the close of the session, the Sixth Committee decided to postpone substantive consideration of the text of the draft declaration drawn up by the Working Group until the twenty-second session of the General Assembly. The Sixth Committee therefore recommended to the Assembly a draft resolution, providing inter alia that the text of the draft declaration, together with the report of the Sixth Committee thereon, should be transmitted to Governments for their further consideration. The General Assembly adopted this draft in its resolution 2203 (XXI), to which reference has already been made.

III. CONSIDERATION OF THE ITEM BY THE SIXTH COMMITTEE AT THE
TWENTY-SECOND SESSION OF THE GENERAL ASSEMBLY

A. Meetings and Documentation

6. At the twenty-second session, the Sixth Committee considered the item entitled "Draft Declaration on Territorial Asylum" at its 983rd to 989th meetings, between 26 October and 2 November 1967.

7. The Committee had before it the report it had adopted at the twenty-first session of the General Assembly, with the annexed report of the Working Group containing the text of a draft declaration on territorial asylum prepared by the latter.^{8/} The Committee also had available a brief note by the Secretary-General,^{9/} drawing attention to the relevant documentation, and informing the General Assembly that the Secretary-General, pursuant to resolution 2203 (XXI), had drawn the attention of Member States to the draft declaration and to the Sixth Committee's report by a letter of 25 January 1967.

6/ Official Records of the General Assembly, Twenty-First Session, Annexes, agenda item 85, document A/6570, annex, para. 1.

7/ Ibid., document A/6570. For discussion of the item at the twenty-first session, see ibid., Sixth Committee, 919th to 923rd, 925th, 926th and 953rd meetings, and ibid., Plenary Meetings, 1496th meeting.

8/ Ibid.

9/ A/6698

8. At the 988th meeting of the Sixth Committee, on 1 November 1967, after the Committee had considered in detail the draft declaration prepared by the Working Group, a draft resolution was introduced,^{10/} on behalf of twenty-four Member States, which inter alia embodied the text of the draft declaration recommended by the Working Group. An oral amendment, which did not alter the substance of the proposed declaration, was also introduced at the same meeting. The draft resolution, an amendment to it and the debate thereon are considered in greater detail in paragraphs 62 to 69 below.

B. Discussion of the draft declaration

9. In the discussion of the draft declaration on territorial asylum, which had been drawn up by the Working Group at the twenty-first session and was embodied in the draft resolution before the Sixth Committee at the twenty-second session, representatives made general comments on the acceptability of the text and on the purpose and legal effect of the adoption of the declaration by the General Assembly. Representatives also commented upon the various specific provisions of the draft. These comments are summarized in the present section of this report.

1. General comments

(a) Acceptability of the text of the draft declaration prepared at the twenty-first session

10. In their general comments on the text of the draft declaration prepared by the Working Group, many delegations congratulated the Working Group on the valuable results it had achieved. It was stated that the Working Group had been able to build upon many years of previous work on the institution of asylum in the United Nations, and had succeeded in bringing that work close to fruition so far as a declaration on territorial asylum was concerned. The text it had prepared was a well-balanced one, representing a compromise between the many different views which had been advanced on the question and a reconciliation of the various interests and requirements of those immediately concerned, namely refugees seeking asylum, the State of origin, the State of refuge and the international community. The text which had emerged from the Working Group gave due weight both to the sovereign rights of States and to the humanitarian considerations underlying the institution of asylum.

11. It was further said that, as it was a compromise, the Working Group's text was bound not to be wholly satisfactory to each delegation. However, if the members of the Sixth Committee wished to proceed expeditiously and to succeed in securing the proclamation of the declaration at the current session, they would have to exercise restraint in suggesting amendments which might destroy the balance achieved by the Working Group without any assurance that a better draft would result. While individual representatives might have misgivings on the scope of the draft declaration and on the wording of certain parts of the text which they believed might be open to improvement and greater precision, it would be necessary not to press their reservations in the interest of the consensus arrived at by the Working Group.

12. It was therefore the virtually unanimous view in the Sixth Committee that, as a compromise text, the one proposed by the Working Group was generally acceptable since it contained the essential elements of a declaration on territorial asylum and represented the widest area of agreement at present obtainable. Members of the Committee expressed their gratification that, after consideration of the item by the Committee at two previous sessions; it was now possible to proceed with the final proclamation of the declaration.

(b) Purpose and effect of the proclamation of the declaration

13. The great majority of delegations stressed that the draft declaration under consideration was not intended to propound legal norms, but to lay down broad humanitarian and moral principles upon which States might rely in seeking to unify their practices relating to asylum. In this respect it would constitute a valuable elaboration of article 14 of the Universal Declaration of Human Rights, which dealt with asylum. The declaration on territorial asylum, when adopted, like any other recommendation of the General Assembly addressed to Governments in the field of human rights, would not of itself be a legally enforceable instrument or give rise to legal obligations, and for that reason would not affect existing international undertakings or national legislation relevant to the subject of asylum and related matters. To the extent that the declaration might, in some respects, go beyond the present state of international law, existing law would continue in effect until such time as the relevant provisions of the declaration were incorporated into positive international law.

14. Other representatives, while agreeing that the declaration would not be binding on States, pointed out that if it achieved its purpose of serving as a guide for State practice it might eventually, through the unification of such practice, lead to the establishment of new customary rules of international law, creating new obligations for States.

15. The view was expressed also that adoption of the declaration by the General Assembly would be a legal expression of will and, as such, would have legal effects.

16. It was also said that the practical effect given to the declaration by States would help to indicate whether or not the time was ripe for the final step of elaborating and codifying precise legal rules relating to asylum. In this respect, many representatives expressed the conviction that the declaration, when adopted, should be regarded as a transitional step, which should lead in the future to the adoption of binding rules of law in an international convention. They drew attention to the fact that asylum was on the programme of work of the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of

21 November 1959. The declaration now to be adopted would be one of the elements to be considered by the Commission in its work. Certain of these representatives expressed the hope that, when it took up the codification of the Institution of asylum, the Commission would correct some of the ambiguities in the terms of the Declaration and would also extend the subject to cover other forms of asylum, such as diplomatic asylum, on which there was extensive Latin American treaty law and practice, both in Latin America and elsewhere. It was also said that the existence of the Declaration should not in any way diminish the scope or depth of the work to be undertaken when the International Law Commission took up the subject of asylum.

17. A number of representatives, while expressing the hope that the declaration would help to gain new adherents for a liberal policy on the right of asylum and be a valuable sequel to the 1951 Convention relating to the Status of Refugees, wished to place on record that they considered the draft declaration to represent a minimum, not a maximum. They stated that it must not be interpreted as placing a limitation upon the policy of their Governments relating to asylum, which already went further than the draft declaration in safeguarding the interests of persons seeking asylum.

18. Several representatives stressed that the current session of the General Assembly would be particularly auspicious for the proclamation of a declaration

elaborating upon article 14 of the Universal Declaration of Human Rights, in view of the fact that in 1968 the United Nations would be celebrating the twentieth anniversary of the Universal Declaration and the International Year for Human Rights. Certain representatives stated that their Governments attached particular importance to the early proclamation of a declaration on territorial asylum in view of the necessity for strengthening the institution of asylum at the present time, when there were certain areas in the world where serious refugee problems were appearing. As long as racial discrimination, religious intolerance and political persecution remained, the institution of asylum would continue to be a vital humanitarian necessity. The adoption of a declaration on the subject should, however, serve to: alleviate some of the problems that arose; facilitate the work of the United Nations High Commissioner for Refugees; strengthen the growth of friendly relations and co-operation among States; further the maintenance of international peace and security and promote the purposes and principles of the United Nations. It would also serve as yet another landmark in the history of United Nations declarations furthering the cause of human rights.

2. Title, preamble and recommendatory paragraph

(a) Text

19. The Working Group had recommended that the declaration, in final form, be entitled "Declaration on Territorial Asylum", and had proposed the following preamble and recommendatory paragraph:

"Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations, and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

"Mindful of the Universal Declaration of Human Rights which declares in article 14 that '(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations',

/...

"Recalling also paragraph 2 of article 13 of the Universal Declaration of Human Rights which states 'Everyone has the right to leave any country, including his own, and to return to his country',

"Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State,

"Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:"

The above text was included verbatim in the draft resolution introduced in the Sixth Committee at the twenty-second session.

(b) Title

20. Many representatives welcomed the fact that the Working Group had made it explicit that the Declaration was limited to territorial asylum by making express reference to "territorial asylum" in the title of the Declaration and the recommendatory paragraph.^{11/} They said that territorial asylum was the most important element of the institution of asylum and the one with regard to which the widest State practice existed. While the view was expressed that the text of the Declaration might be improved by referring to "territorial asylum" throughout, rather than to "asylum", no formal amendment to this effect was introduced in view of the reference to "territorial asylum" in the title and the recommendatory paragraph.

21. Some representatives, however, regretted that it had not proved possible to extend the scope of the Declaration to diplomatic asylum, in view of the essentially humanitarian nature of the Declaration and of the substantial practice of certain countries, particularly in Latin America, relating to diplomatic asylum. These representatives expressed the hope that, when the International Law Commission undertook its study of asylum it would be able to extend any draft it prepared to cover diplomatic asylum. It was also suggested that the Sixth Committee might consider setting up another working group to prepare a draft declaration on diplomatic asylum, but no formal proposal to this effect was pressed.

^{11/} See Official Records of the General Assembly, Twenty-First Session, Annexes agenda item 85, document A/6570, annex, para. 12.

(c) First preambular paragraph

22. Several representatives expressed approval of the change made by the Working Group in the first paragraph of the preamble as adopted by the Third Committee so that it referred to "nations" rather than "States" for reasons of conformity with article 1, paragraph 2, of the Charter.^{12/}

(d) Second preambular paragraph

23. A number of representatives felt that the second paragraph of the preamble, recalling article 14 of the Universal Declaration of Human Rights, was of particular importance in determining the scope and spirit of the draft Declaration on Territorial Asylum as a whole. These representatives said that this, and other paragraphs of the preamble, clearly indicated that the draft Declaration dealt with questions relating to persecuted persons fighting for the principles and purposes proclaimed in the Charter of the United Nations.

(e) Third preambular paragraph

24. Reservations were expressed by a few representatives regarding the third preambular paragraph of the draft Declaration, which recalled paragraph 2 of article 13 of the Universal Declaration of Human Rights, which proclaimed the right of everyone to leave any country, including his own, and to return to his country. These representatives thought that the paragraph was unnecessary in a declaration on territorial asylum as it fell outside the scope of the question of asylum. The view was also advanced that the paragraph should be understood to mean that practical questions pertaining to the right to leave one's country should be decided in accordance with the procedures established by the country concerned.

25. Certain other representatives, however, were of the opinion that, because of the reference to the right of return in the preamble, it was not necessary to include an article on that subject in the substantive part of the Declaration, the preambular reference being sufficient for the purposes of the draft. These representatives cited with approval the decision of the Working Group to delete article 5 of the draft prepared by the Commission on Human Rights, which had dealt

^{12/} Ibid., para. 10.

expressly with the right of return.^{13/} Regret was expressed by one representative that it had not proved possible to replace article 5 of the draft of the Commission on Human Rights by another article of a similar nature regarding the termination of asylum, either through the person enjoying asylum acquiring permanent residence in the country of asylum or through his departure from that country.

(f) Fourth preambular paragraph

26. The inclusion of the fourth preambular paragraph of the draft Declaration, recognizing that the grant of asylum was a peaceful and humanitarian act which cannot be regarded as unfriendly by any other State, was particularly welcomed by some representatives. They expressed the hope that it would go a long way towards avoiding misunderstandings among States, and that it would serve as a basis for rejecting uncalled-for and provocative threats, which were sometimes made by the State of origin of refugees against the State granting asylum.

(g) Recommendatory paragraph

27. Certain representatives were of the view that the words "without prejudice to existing instruments dealing with asylum and stateless persons", appearing in the recommendatory paragraph of the draft Declaration, were superfluous, since the Declaration could not affect in any way existing legal obligations. Other representatives, however, welcomed the inclusion of the phrase, and some of them indicated that they understood it to cover all existing instruments dealing with the status of refugees and stateless persons, whether or not they were legally binding instruments. It was also stated that, while a separate article on the matter might have been preferable, a formal amendment to that effect was not necessary because of the reference to the question in the preamble.

28. While the view was expressed that the clarity of the phrase in question might have been improved by the addition of the word "international" before the word "instruments", it was argued, on the other hand, that the phrase should be understood to cover not only international instruments, but also national instruments, such as constitutions. Constitutional or other legislative provisions in some countries were more liberal in the matter of asylum than the draft Declaration, which must not be considered as calling for a restrictive interpretation of liberal provisions of that nature.

^{13/} Ibid., paras. 73-78.

29. It was suggested also that the phrase was perhaps too narrowly drawn as it did not refer specifically to other instruments, such as extradition treaties, the addition of a reference to which would make the paragraph clearer. In a statement agreeing not to an amendment to that effect, it was said that the phrase must necessarily be understood also to cover existing extradition treaties. Doubt was expressed also as to whether the term "instrument" was the best choice in the circumstances, as that term was used in the International Law Commission's draft articles on the law of treaties to refer to instruments of ratification, accession, reservation or withdrawal, rather than to the texts of conventions themselves. However, no formal change was proposed in this respect.

30. In addition to the foregoing remarks on the recommendatory paragraph, a number of representatives welcomed the decision of the Working Group to replace, in the text adopted by the Third Committee, the words "States Members of the United Nations and members of the specialized agencies" by the more general term "States".^{14/} It was said that the change emphasized that the Declaration should be of a universal character and that its scope should not be restricted with respect to the States to which it was addressed.

3. Article 1

(a) Text

31. Article 1 of the Working Group's text read as follows:

"1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

"2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

"3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum."

^{14/} Ibid., para. 14.

(b) Paragraph 1

32. Representatives cited with approval the express recognition in paragraph 1 of the fact that the grant of asylum was a sovereign right of States and not a right of individuals to insist upon admission. It was pointed out, in this connexion, that the drafters of the Universal Declaration of Human Rights had themselves rejected a wording for article 14 to the effect that an individual had the right both to seek and to be granted asylum.

33. The decision whether or not to grant asylum, it was said, was within the sole prerogative of the State concerned, as part of its indisputable right of control over individuals within its territory, from which derived the competence to admit or to refuse admission to those seeking asylum at that State's discretion and in accordance with its own legal system, however this right was balanced, by the humanitarian aspect of asylum, which gave every individual the right to seek and, if it was granted, to enjoy asylum in other countries from persecution. In exercising their legal rights, States should bear in mind that humanitarian considerations should prevail over all others.

34. There was considerable discussion in the Sixth Committee concerning the insertion in paragraph 1 of the phrase "including persons struggling against colonialism". Many representatives said that they attached particular importance to the phrase, which was a key provision of the draft Declaration, in view of the legitimacy of the struggle against colonialism and in view of the special consideration and protection which should be given to those who were performing an international duty by struggling for the independence and freedom of their people.

35. A suggestion was made, but not pressed, that the phrase should be further strengthened to read "and in particular persons struggling against colonialism". It was also said that the reference continued to be a particularly timely one and in line with the realities of modern life, as there were still territories which had not been liberated from the yoke of foreign colonial rule and as the prompt implementation of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples was a matter of major international concern.

36. Several delegations considered that the phrase strengthened the over-all tenor of the Declaration, which, they said, dealt with the granting of asylum

to persons persecuted because they were fighting for peace and for the realization of the purposes and principles of the United Nations. The view was also expressed that the Declaration was not concerned with individuals who had left their countries for economic, social or other similar reasons and been given refuge in certain States, where they had engaged in activities against their countries of origin. The grant of asylum in such cases was improper and without legal foundation, and the draft Declaration might have been further strengthened if it had contained an express provision that such persons could not be considered to be refugees applying for asylum.

37. Other representatives, however, regretted the inclusion of the phrase in question, on the ground that it injected political overtones into a Declaration which was essentially humanitarian and might consequently weaken its humanitarian impact. It was said that the category of persons to whom paragraph 1 applied were those entitled to invoke article 14 of the Universal Declaration. A person struggling against colonialism might come within the ambit of that article, in which case the specific reference to such a person was unnecessary; if he did not come within the scope of that article, the reference was wrong and confusing. Either all specific categories of persons entitled to seek asylum should be enumerated, and not just a single example, or the definition of such persons should remain a general one.

38. Furthermore, it was said that the word "colonialism" was often used in a variety of meanings. In this connexion the view was expressed that the phrase could not apply to persons involved in wars of national liberation. It was further argued that colonialism was a vanishing phenomenon, and mention of it in the Declaration would weaken a document which should be of general and long-lasting validity.

39. The view was also expressed that the confining of paragraph 1 to persons entitled to invoke article 14 of the Universal Declaration was perhaps unnecessarily limitative, a fault which should be corrected at a later stage of United Nations work on the institution of asylum.

40. The text of paragraph 1 was widely commended for its express recognition that a grant of asylum by one State was to be respected by all other States. It was said that, as a result, the State of origin was under an obligation not to regard the grant of asylum as a hostile act justifying retaliation.

(c) Paragraph 2

41. There was some discussion in the Sixth Committee concerning the reference, at the beginning of paragraph 2, to "the right to seek and to enjoy asylum". It was said that this phrase was perhaps misleading, in that the granting of asylum was the sovereign prerogative of States and not a right of individuals to gain admission to other countries. In this respect a number of delegations cited with approval, and wished to have placed again on record, the view expressed in the Working Group's report^{15/} that the word "right" was to be interpreted as a moral right and not as a legal right which imposed obligations upon States.

42. Certain delegations welcomed the inclusion of paragraph 2 in the text, and stressed the importance they attached to it. They said that all States had an obligation not to grant asylum to persons who had committed crimes against peace, war crimes, or crimes against humanity. On the contrary, States had the obligation to prosecute such persons. The terms of paragraph 2, it was argued, reflected existing rules of contemporary international law to be found in the Charter of the International Military Tribunal at Nürnberg, the Charter of the International Military Tribunal for the Far East, the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, and in a number of General Assembly resolutions, particularly resolution 95 (I) of 11 December 1946 entitled "Affirmation of the principles of international law recognized by the Charter of the Nürnberg Tribunal".

43. It was also stressed that asylum should not be granted to persons who had committed common crimes, and reference was made to provisions made in extradition treaties for the return to the State of origin of persons who had committed therein offences qualified as common crimes by the laws of both the state of origin and the State of refuge. It was pointed out that the incorporation of the text of article 14 of the Universal Declaration of Human Rights in the preamble to the draft Declaration under discussion and the reference to that article in article 1, paragraph 1, clearly established that persons seeking to escape prosecution for common crimes were excluded from the benefits of the draft Declaration.

^{15/} Ibid., para. 27.

(d) Paragraph 3

44. A number of representatives, while supporting the inclusion of paragraph 3, stressed and wished to have recorded their view that in evaluating the grounds for the grant of asylum the State concerned was obliged to exercise its right in good faith and in a non-arbitrary manner.

45. Other representatives pointed out that the right of a State to evaluate the grounds for the grant of asylum derived from the principles of the sovereignty and equality of States, and that the exercise of such a right could not be considered an unfriendly act. Nevertheless, States, while paying full regard to humanitarian considerations, should satisfy themselves that persons seeking asylum had not committed any acts contrary to the purposes and principles of the United Nations, or any war crimes, crimes against peace, crimes against humanity or common crimes.

4. Article 2

(a) Text

46. Article 2 of the Working Group's text read as follows:

"1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

"2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State."

(b) Paragraph 1

47. A number of representatives welcomed the inclusion of paragraph 1 as an explicit recognition that the situation of persons compelled to seek asylum was a matter of concern to the international community. The paragraph demarcated the sphere of international competence with respect to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, and enshrined the principle of co-operation of all States with a view to ensuring respect for human rights and protection of individuals. It was said that the paragraph reflected one of the main considerations on which any declaration on asylum should be based.

(c) Paragraph 2

48. A number of representatives were of the view that paragraph 2 was a valuable one, which broadened the essentially humanitarian scope of the draft Declaration and which would lighten the burden of States that had found their resources overtaxed by an influx of refugees. It was most important to provide expressly for the possibility of international assistance in cases where a State found difficulty in granting or continuing to grant asylum, and the inclusion of the paragraph in the draft Declaration would assist refugee organizations in their work. Since the draft Declaration called upon States to adopt a liberal policy in matters of asylum, it was only right that States so doing could make certain claims on the international community in seeking to alleviate the suffering of refugees who were dispossessed and destitute of the means of subsistence.

49. Certain representatives, however, expressed reservations regarding paragraph 2 and indicated that they would have preferred it to have been amended or deleted. It was said, in these respects, that the paragraph was unnecessary as it went beyond the scope of the Declaration, which dealt with asylum and not with international aid. It was also argued that in its present wording the paragraph might be open to the interpretation that it permitted a violation of State sovereignty and intervention in domestic affairs. The paragraph would therefore have been more satisfactorily worded if it had ended with the words "at its request", thus making it plain that only the State granting asylum could define whether or not it was in difficulty and wished for assistance from other States. Such an approach was inherent in the very idea of international solidarity, but the text should in any event be understood as not introducing any new elements into relations between States.

50. Other representatives were of the opinion that the wording, as it stood, did not imply any possibility of infringement of State sovereignty or interference in domestic affairs. It was pointed out that State sovereignty was expressly reaffirmed in paragraph 1 of the same article. Paragraph 2 was to be understood to mean that States might request assistance if they deemed it necessary as a consequence of difficulties confronting them in granting or continuing to grant asylum.

5. Article 3

(a) Text

51. Article 3 of the Working Group's text read as follows:

"1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

"2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

"3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State."

(b) Paragraph 1

52. Many representatives stressed the importance which they attached to article 3 as a whole, and to paragraph 1 in particular, which embodied the principle of non-refoulement and which was perhaps the key provision in the draft Declaration. It was said that the article sought to strike a fair balance between the sovereign rights of States and the protection to which an individual should be entitled on humanitarian grounds.

53. Some representatives believed, however, that paragraph 1 might have been more precisely drafted. Certain of these representatives considered that the words "if he has already entered the territory in which he seeks asylum" were redundant, since a person could not be subjected to expulsion from a territory to which he had not been admitted. They were of the opinion that the deletion of these words would improve the text by making it more forceful and clear and by establishing more closely the link between rejection at the frontier and expulsion or compulsory return, all of which should be considered as qualified by the phrase "to any State where he may be subjected to persecution". The principle of non-refoulement, of which the prohibition of rejection at the frontier was a part, was only valid with respect to a State where the person seeking asylum would be exposed to persecution if he were returned.

54. The words "where he may be subjected to persecution" were also the subject of comment. While some delegations preferred this formulation, others considered that it lacked precision, and would require a subjective evaluation in each case. These representatives indicated their continuing preference for the original draft of the Commission on Human Rights, which had referred to "a well-founded fear of persecution endangering his life, physical integrity, or liberty". It was said that in order to benefit from the provisions of paragraph 1, the person seeking asylum must prove, to the satisfaction of the authorities of the State involved, that he was really in danger of persecution. The representatives concerned indicated that they would continue to understand the present wording in the sense originally indicated by the Commission on Human Rights, as the wording in paragraph 1 was a less precise formulation of the same notion as "a well-founded fear of persecution endangering his life, physical integrity or liberty".

(c) Paragraph 2

55. With respect to paragraph 2, dealing with exceptions to the principle of non-refoulement, a number of representatives indicated that they found the present wording somewhat vague, and regretted that it had not been possible to express the concept involved more precisely. They feared that the present text might, in practice, be used to encourage unwarranted departures from the principle of non-refoulement, but recognized that any change would present considerable problems at this stage, the text, as it stood, representing a compromise reached with some difficulty in the Working Group.^{16/}

56. Representatives who spoke on the point recorded their understanding that paragraph 2 permitted exceptions to the principle of non-refoulement in instances other than those expressly mentioned in the paragraph. However, such an exception, in their view, could be made under this paragraph only if the case involved was comparable in seriousness to a mass influx of persons. It was further stated that, in deciding whether or not to make exceptions, it was necessary to take into account the conditions prevailing at the time in the territory concerned in determining what measures were necessary to safeguard the population. It was also stressed that, where a State invoked paragraph 2, paragraph 3 became relevant, and the persons concerned should be accorded the opportunity to go to another country.

^{16/} Ibid., paras. 56 to 59.

(d) Paragraph 3

57. There was little specific comment on the provisions of paragraph 3 in the Sixth Committee. It was pointed out, however, that implementation of the paragraph might give rise to difficulties for land-locked States which formed enclaves surrounded by the territory of the State of origin of the persons seeking asylum. In such cases it might in practice prove necessary to negotiate transit facilities for the persons concerned through the territory of the State of origin.

6. Article 4

58. Article 4 of the Working Group's text read as follows:

"States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations."

59. A number of representatives welcomed the inclusion of article 4, which was said to be well drafted and modest but nonetheless indispensable, as persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

60. Some representatives regretted, however, that specific mention had not been made, in article 4 or elsewhere in the Declaration, of the right of States to exercise surveillance over persons to whom asylum had been granted or to direct them to reside in certain areas. It was said, furthermore, that a State would become internationally responsible if it permitted and in fact encouraged a person enjoying asylum in efforts to subvert his State of origin. These representatives indicated that they would have found the text more acceptable if it had prohibited the use of persons enjoying asylum "for purposes of espionage, subversion or sabotage against other States". It was said also that the text would be improved if it provided that asylum should be terminated in such cases, or when a refugee otherwise abused the hospitality afforded him. Refugees should be obliged to respect the laws of the State granting asylum and to refrain from acts involving the use of force or violence against the State of origin or any other acts which might prejudice friendly relations between that State and its neighbours or other States with which the former maintained relations.

61. Other representatives considered that article 4 could have been deleted without adversely affecting the Declaration, as its terms were vague, as it might be open to widely differing interpretations, and as it was difficult to see how persons could engage in activities contrary to the purposes and principles of the United Nations, such purposes and principles being directed to States and not to individuals. If the present text were to stand, it should include some examples of the kind of activities that were prohibited. Even though the wording derived from the Universal Declaration of Human Rights, that did not preclude its improvement. These representatives feared that the provision might in practice be invoked to justify the adoption of measures unnecessarily restricting the liberty of persons enjoying asylum, and wished to place on record their understanding that the article did not call for restrictions on the liberty of individuals or require States to take additional powers to impose such restrictions.

C. Consideration of the draft resolution and amendment

1. Draft resolution

62. As mentioned in paragraph 8 above, a draft resolution (A/C.6/L.625) was introduced at the 988th meeting of the Sixth Committee on 1 November 1967. The opening paragraphs of this draft, which was sponsored by the delegations of Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Somalia, Uruguay and Venezuela, read as follows:

"The General Assembly,

"Recalling its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning the Declaration on the Right of Asylum,

"Considering the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

"Adopts the following

Declaration on Territorial Asylum".

/...

The draft resolution then incorporated verbatim the text of the declaration as drawn up by the Working Group in 1966 and as set out above, article by article, in paragraphs 19 to 61 of the present report.

63. It was explained on behalf of the sponsors that, although they considered that the draft Declaration prepared by the Working Group might have dealt with additional aspects of the institution of asylum, it represented the culmination of many years of effort by the Commission on Human Rights, the Third Committee and the Sixth Committee and was a well-balanced document which did justice to the humanitarian ends which it pursued. The sponsors had therefore decided to incorporate the Working Group's text verbatim in their draft resolution, and were confident that the Declaration, together with the rules of international law which had been codified in Latin America to regulate the institution of asylum, such as the Havana Convention on Asylum, 1928, and the Conventions on Diplomatic and Territorial Asylum signed at Caracas in 1954, would in the future constitute a direct source of inspiration for a universal convention on the subject.

64. It was further explained that the sponsors had found it necessary, in order to stress that the adoption of a declaration on territorial asylum would not bring to an end the work of the United Nations in codifying the rules and principles relating to the institution of asylum, to make a reference at the very beginning of the draft resolution, in a preambular paragraph to the proposed Declaration, to the work of codification of the right of asylum to be undertaken by the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of 21 November 1959.

65. Some other delegations, while accepting such a reference, recorded their understanding that the preambular paragraph in question should not be understood as modifying or prejudicing in any way the order of priorities for the consideration of items already established by the International Law Commission and by the General Assembly.

2. Amendment

66. At the 988th meeting of the Sixth Committee, shortly after the introduction of the draft resolution, the representative of Sweden orally proposed an amendment to it, to the effect that the title of the Declaration contained therein should be

followed by the words "The General Assembly", so that the relevant portion would read as follows:

"Adopts the following declaration on territorial asylum

"The General Assembly,"

67. In support of this amendment it was pointed out that while the paragraphs of the draft resolution preceding the text of the proposed Declaration were necessary and useful, they were not an integral part of the Declaration itself. It was therefore necessary to insert a reference to the General Assembly at the beginning of the Declaration, so that the name of the declaring body would appear in the text of the Declaration when it was published as a separate document. Declarations of this nature were bound to have a very wide circulation and should be complete in themselves. The Swedish amendment, designed to complete the Declaration, was in line with previous precedents in similar General Assembly resolutions, such as resolution 217 (III) of 10 December 1948 proclaiming the Universal Declaration of Human Rights.

68. One representative, while indicating that he would not vote against the Swedish amendment, felt that, as the draft resolution itself opened with the words "The General Assembly" it was repetitious to insert them at the beginning of the Declaration, and that might also diminish the force of the preambular paragraph prefacing the Declaration which referred to the work of codification to be undertaken by the International Law Commission. He therefore wished it placed on record that the adoption of the resolution would not bring this work of codification to an end.

3. Voting

69. The Sixth Committee voted on the Swedish amendment and on the twenty-four-Power draft resolution at its 988th meeting. The amendment was adopted by 68 votes to none, with 25 abstentions. The resolution, as amended, was then adopted by acclamation. Points made by the delegations of Australia, Belgium, Hungary, Iran, Iraq, Japan, Madagascar, Portugal, Romania, the Union of Soviet Socialist Republics, the United Kingdom, Yugoslavia and Zambia in explanation of vote regarding the text and the effect of the Declaration on Territorial Asylum have been recorded in the

immediately preceding section of this report, in connexion with the article-by-article consideration of the Declaration (see, in particular, paragraphs 10-13, 17, 18, 24, 26-28, 40, 41, 44, 47-50, 52, 54, 56, 60, 61, 65 and 67 above).

IV. RECOMMENDATION OF THE SIXTH COMMITTEE

70. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Declaration on Territorial Asylum

The General Assembly,

Recalling its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

Considering the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

Adopts the following declaration on territorial asylum:

The General Assembly,

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations, and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Mindful of the Universal Declaration of Human Rights, which declares in article 14 that:

"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution;

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

Recalling also article 13, paragraph 2, of the Universal Declaration of Human Rights, which states:

"Everyone has the right to leave any country, including his own, and to return to his country",

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State,

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

Article 2

1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

Article 3

1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

Article 4

States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.
