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*Chairman:* Mr. Edvard HAMBRO (Norway).

## AGENDA ITEM 89

### Draft Declaration on Territorial Asylum (*continued*) (A/6570, A/6698)

1. Mrs. HARRIS (United States of America) said that, as her delegation's views on the question of a draft declaration on the right of asylum had been set out at length during previous sessions of the General Assembly, she would confine herself to a brief explanation of its position on the draft declaration on territorial asylum (A/6570, annex, para. 1) now before the Committee.

2. Her delegation had participated in the Working Group established by the Committee at the twenty-first session of the General Assembly (926th meeting) to prepare a preliminary draft declaration on territorial asylum. Because there had not been time for adequate consideration of the draft at that session, the General Assembly had adopted its resolution 2203 (XXI) placing the question on the provisional agenda of the twenty-second session, "with a view to the final adoption of a declaration on this subject", and requesting the Secretary-General to transmit to Member States, for their further consideration, the text produced by the Working Group, together with the report of the Sixth Committee. Thus, there had been ample time for Member States to consider fully the provisions of the Working Group's draft.

3. Her delegation firmly supported the early adoption by the General Assembly of a declaration on asylum, and believed that the draft prepared by the Working Group constituted an acceptable text. It contained the essential elements of any declaration on an important concept which was set forth in the Universal Declaration of Human Rights. The Chairman of the Working Group had explained at the preceding session that the Group had approached its task on the understanding that it was not preparing legal norms, but was laying down humanitarian principles which States might rely upon in seeking to unify their practices relating to territorial asylum. As the representative of Norway had pointed out at the 983rd meeting, States would remain free to adopt practices even more broadly humanitarian than the principles set

forth in the Declaration, which was intended as a statement of minimum, and not maximum, standards of practice.

4. Article 1 of the draft declaration made it clear that the granting of asylum was a matter within the competence of each State, in the exercise of its sovereignty, and that it was for the State granting asylum to evaluate the grounds for doing so. Article 2, paragraph 2, dealt with the important problem arising when a State found difficulty in granting or continuing to grant asylum. In her delegation's view, the provision that, in such a situation, States individually or jointly, through the United Nations, should consider appropriate measures to lighten the burden on that State was most important and, as formulated, was not open to an interpretation that would permit infringement on the sovereignty of States; indeed, State sovereignty was expressly reaffirmed in article 2, paragraph 1.

5. The draft declaration was the result of a compromise on the part of all concerned. It was not wholly satisfactory to her delegation, nor, probably, to other members of the Working Group. For example, article 3, paragraph 2, provided that exception might be made to the principle expressed in paragraph 1 of the same article—that a State should not reject at the frontier a person seeking asylum or expel him to any State where he might be subjected to persecution—"only for overriding reasons of national security or in order to safeguard the population. as in the case of a mass influx of persons". Although that paragraph, as drafted, allowed an exception to be made in cases other than a mass influx only if those cases were comparable in seriousness to such an influx, that concept might have been expressed more precisely.

6. Indeed, greater precision generally would have strengthened the text. For example, in article 3, paragraph 1, the phrase "where he may be subjected to persecution" was a less precise expression of the concept than the words "if there is well-founded fear of persecution",<sup>1/</sup> which had been adopted by the Commission on Human Rights. However, in view of the importance of proceeding expeditiously with so important an item, and since the present text, although a compromise one, was well balanced and should be generally acceptable, her delegation hoped that the Committee would recommend the adoption by the General Assembly of a declaration on territorial asylum which accorded with the draft produced by the Working Group.

<sup>1/</sup> See *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 46, document A/5359, para. 6, article 3.

7. Mr. VIRALY (France) said that the draft declaration on territorial asylum prepared by the Working Group at the twenty-first session was the culmination of lengthy consideration of the subject by the United Nations. The draft represented a compromise, and concessions had had to be made by all, in order to arrive at a common text on a subject on which it was now more desirable than ever, for humanitarian reasons, to have a text that would serve to guide State practice and promote some degree of uniformity.

8. The present text was only remotely similar to what his delegation had envisaged when, many years previously, it had taken the initiative in raising the question of the right of asylum. The draft contained certain ambiguities which might have been avoided, but which could perhaps be removed by a few drafting changes during the current session. For example, in article 3, paragraph 1, the phrase "if he has already entered the territory in which he seeks asylum" was pleonastic, since a person could not be subjected to expulsion from a territory to which he had not been admitted. The retention of that phrase would create an undesirable ambiguity, and its deletion would improve the text without changing the meaning.

9. Although his delegation would have liked to suggest other amendments, it would refrain from doing so for the time being, lest its suggestions should be regarded as touching on the substance of the text, thus jeopardizing the compromise which had been achieved. In order to preserve that compromise, his delegation was prepared to accept the draft declaration as it stood. As had been stressed during the twenty-first session, particularly by the Chairman of the Working Group, the purpose of the draft declaration was essentially humanitarian, and the text should therefore be free from any political overtones. His delegation regretted that it was not entirely so. Even though the draft declaration, when adopted by the General Assembly, would not be binding upon States, it should nevertheless be sufficiently impartial to serve as a guide for State practice. By thus unifying State practice, it would perhaps lead to the establishment of new customary rules, creating new obligations for States. Whatever compromise was made must therefore be a fair and reasonable one.

10. If the compromise previously achieved was called in question and substantial amendments were proposed, his delegation would feel free to submit amendments of its own and to take the floor again in order to explain its position.

11. Mr. SMEJKAL (Czechoslovakia) said that, at the present stage, he would not enter into any detail on questions of substance but would merely present his delegation's general views on the draft declaration on territorial asylum prepared by the Working Group.

12. In considering that text, it was essential to bear in mind that it was a statement, not of juridical norms, but of humanitarian principles which might serve as a guide for the unification of State practices. His delegation had intended to propose certain amendments to the draft declaration, but would refrain from doing so, in order to preserve the compromise which had been arrived at and avoid any delay in

the adoption of a text. Nevertheless, his delegation had considerable misgivings concerning article 2, paragraph 2. Firstly, the text seemed unduly complicated; secondly, the provision in question was outside the scope of the draft declaration, the subject of which was not international aid; thirdly, the paragraph might be interpreted as permitting a violation of State sovereignty and intervention in the domestic affairs of States. The paragraph could be deleted; it would also be a solution to adopt the amendment proposed by Colombia (A/6570, annex, para. 40 (e) (iii)) or that proposed by the Sudan (*ibid.*, para. 40 (f)), thus making it clear that assistance would be given only if States requested it. However, his delegation would not press for such an amendment if other delegations found the text acceptable as it stood. It might wish to speak again if other amendments were proposed.

13. Mr. NAINA MARIKKAR (Ceylon) said his delegation considered that the draft declaration on territorial asylum produced by the Working Group, of which it had been a member, merited support.

14. Although the problem of asylum was an old one and was widely prevalent, it would be difficult to maintain that any general principles of law had evolved in that area. The draft declaration was a first look forward to the time when the International Law Commission would have completed its work on territorial asylum, making it possible for States to consider and accept a legally binding international instrument in that field. The draft declaration derived its inspiration from article 14 of the Universal Declaration of Human Rights (General Assembly resolution 217A (III)), which stated the right of every person "to seek and to enjoy in other countries asylum from persecution", and drew heavily upon the rules of territorial asylum that had evolved over the years among the States of Latin America. His delegation believed that the Working Group had achieved its avowed purpose of "laying down humanitarian principles which States may rely upon in seeking to unify their practices relating to asylum" (A/6570, para. 40). He agreed with the representative of Norway (983rd meeting) that the draft must be viewed as the result of a compromise and as reflecting the widest area of agreement obtainable at the present time. As his delegation had pointed out at the twenty-first session (953rd meeting), it would have wished to see included in the operative part of the draft some provisions on the extradition of those persons who, having received asylum, were found to be guilty only of non-political crimes. Such a provision was included in article 14, paragraph 2, of the Universal Declaration of Human Rights. Similarly, it might have been desirable to include a reference to the action a State might appropriately take regarding an alien refugee who abused the hospitality afforded him. The draft declaration was also open to some criticism on the ground of vagueness; he had in mind, in particular, the terms of article 3, paragraph 2.

15. Although his delegation would still welcome the improvement of the text in those respects, it believed that, in view of the present stage of development of that branch of the law and bearing in mind the limits set by the drafters, it was capable of adoption as it stood. In the future it could provide

a valuable point of reference whereby to assess the development of the law in the areas covered by it and, at the same time, could help to indicate whether or not the time was ripe for the final step of elaboration and codification of precise legal rules relating to territorial asylum. His delegation would therefore support the draft declaration in its present form.

16. Mr. BHANDARE (India) said that the text prepared by the Working Group (A/6570, annex, para. 1) was generally acceptable to his delegation. As the Committee had rightly pointed out in paragraphs 15 and 16 of its report to the General Assembly at the twenty-first session (A/6570), the draft declaration was not a legal statement of the right of asylum but was intended only to elaborate a series of broad humanitarian principles, which would serve as a basis for unifying State practices in the matter of granting territorial asylum. If it was considered necessary later, the International Law Commission could take up the matter of codification of the law on territorial asylum. The present text, if adopted, would undoubtedly contribute to the development of friendly relations and co-operation among States.

17. His delegation approved the retention of the words "without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons" in the last paragraph of the preamble of the draft declaration, as it appropriately covered all the

existing instruments dealing with the subject of refugees, whether or not they were legally binding instruments. The need for such provisions as those of article 2, paragraph 2, had long been recognized by refugee organizations. The draft declaration rightly struck a balance between the rights and obligations of States and the protection to which the individual should be entitled on humanitarian grounds. His delegation particularly welcomed, in that regard, the provisions of article 1, paragraph 3, which recognized the right of the State concerned to evaluate the grounds for the grant of asylum. It also welcomed the new formulation of article 3, which recognized the fact that the principle of non-refoulement embodied in paragraph 1 of that article must be subject to certain exceptions for overriding reasons of national security or on other grounds. His delegation preferred the wording "where he may be subjected to persecution", in paragraph 1, to the other formulations suggested in the past. It approved the retention of the reference to colonialism in article 1, paragraph 1, for there were still territories which had not been liberated from the yoke of foreign colonial rule.

18. His delegation hoped that the Committee would be able to endorse the text of the draft declaration on territorial asylum and that the General Assembly could finally adopt it at its current session.

*The meeting rose at 3.55 p.m.*