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

## AGENDA ITEM 89

### Draft declaration on Territorial Asylum (*continued*) (A/6570, A/6698; A/C.6/L.625)

1. Mr. SILVEIRA (Venezuela), introducing draft resolution (A/C.6/L.625) on behalf 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 said that he would not attempt to describe the stage of development which the institution of asylum had reached in Latin America, since that could be determined simply by referring to the Convention on Diplomatic Asylum and the Convention on Territorial Asylum, signed at Caracas in 1954 at the Tenth Inter-American Conference. Nor would he discuss the philosophical problems involved in the conception of territorial asylum, as the representatives of Uruguay and Argentina had already reviewed the question in their statements at previous meetings.

2. The draft declaration on territorial asylum (see A/6570, annex, para. 1) represented the culmination of many years of effort by the Commission on Human Rights, the Third Committee and the Sixth Committee. Although they considered that the draft declaration might have dealt with additional aspects of the institution of asylum, the sponsors of the draft resolution did not hesitate to submit it to the Committee, since it was well-balanced and did justice to the humanitarian ends which it pursued. The sponsors were confident that the declaration, together with the rules of international law which had been codified in the Americas to regulate the institution of asylum, would constitute a direct source of inspiration for a universal convention on the subject.

3. Mr. BLIX (Sweden) said that the paragraphs of the draft resolution preceding and introducing the text of the draft declaration were useful but would not, of course, be an integral part of the declaration itself. He proposed, therefore, that the title of the declaration should be followed by a colon and by the words "The General Assembly" so that the name of the declaring body would appear in the text of the

declaration when it was published as a separate document.

4. Mr. SEATON (United Republic of Tanzania) said that, as Chairman of the Working Group which had prepared the draft declaration, he would like to thank members of the Committee for their commendation of the Working Group's efforts. The Group had been able to achieve a consensus because of the rare sense of dedication and the truly progressive spirit shown by its members. He recalled that the idea of a declaration had been initiated by the Frech delegation,<sup>1/</sup> which had consistently advocated a liberal approach to the question of asylum.

5. He supported the Swedish oral amendment to the draft resolution.

6. Mr. OGUNDERE (Nigeria) also supported the Swedish amendment.

7. Mr. ALCIVAR (Ecuador) said that the sponsors of the draft resolution considered it unnecessary to insert the words "The General Assembly" in the text of the declaration. Since only the General Assembly could adopt the draft resolution, it would be obvious that the Assembly, and no other body, was proclaiming the declaration.

8. Mr. KANE (Senegal), speaking in explanation of his vote, said that, while the declaration would not have the binding legal force of a convention, it would impose a moral obligation on those States which approved it. His country was prepared to accept the draft declaration and urged its unanimous adoption.

9. The insertion of the words "and in particular" before the words "persons struggling against colonialism" in article 1, paragraph 1, of the draft declaration, as suggested by the representative of Iraq (986th meeting), would make the text more precise. He hoped that the Iraqi delegation would submit that suggestion as a formal amendment. Most members of the Committee knew that colonialism was not a thing of the past, and that the reference to persons struggling against colonialism was needed. In Africa, there were still many refugees from colonialist domination; Senegal had granted asylum to many refugees from so-called Portuguese Guinea, and there could be no question of their return until colonialism had been abolished.

10. Mr. YASSEEN (Iraq) said that, in view of the circumstances in which the compromise text had been drawn up, it did not seem desirable to reopen the discussion on it. He would not, therefore, submit a formal amendment.

<sup>1/</sup> See Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 4, para. 208.

11. Mr. RAO (India) supported the Swedish amendment. The text of the declaration should be complete, so that it could be reproduced for wide circulation without the introductory paragraphs of the draft resolution. That form had been followed in similar General Assembly resolutions in the past, including resolution 217 A (III) proclaiming the Universal Declaration of Human Rights.

12. Mr. JACOVIDES (Cyprus) said that his delegation would welcome the adoption by the General Assembly of a declaration on territorial asylum and found the text submitted by the Working Group generally acceptable. That text was the result of much effort to arrive at a compromise combining humanitarian considerations with the principle of the territorial sovereignty of the State granting asylum, which was unquestionably the legal basis of the right of asylum. His delegation considered that the balance between those two factors had been achieved in the text before the Committee, and it was therefore prepared to support it as formulated, notwithstanding any reservations it might have on particular points of wording.

13. While his delegation was supporting the text on the understanding that it did not create any legal obligations, it considered that its adoption by the General Assembly would serve the useful purpose of promoting the unification of State practice and would give an impetus to further efforts, through the International Law Commission or otherwise, to secure the adoption of legally binding instruments regulating the right of asylum in greater detail. The adoption of a declaration combining in a judicious and balanced manner the basic human right of asylum with the principle of State sovereignty would be no mean achievement. His delegation would vote for draft resolution A/C.6/L.625 and for the Swedish oral amendment.

14. Miss DEVER (Belgium) said that her delegation would support the draft resolution and hoped that the Swedish amendment would be incorporated in it. Belgium at the twenty-first session had expressed certain reservations concerning the draft declaration (953rd meeting) and it still thought that the text could be more satisfactory, in view of the importance of its subject. With regard to the substance, the draft declaration omitted to lay down expressly certain norms the formal proclamation of which would be in accord with the purposes and principles of the United Nations. The drafting was also insufficiently precise for an instrument that was intended to contribute to the development of international law. Despite those reservations, various important considerations made it possible for her delegation to overlook the imperfections of the draft.

15. It would be noted that, according to the last preambular paragraph, the declaration was not to be interpreted as affecting the application in full of existing instruments dealing with asylum and the status of refugees and stateless persons. In the matter of asylum, a number of countries applied a policy that was more liberal than the rules expressly laid down in the draft. Those policies were based in some cases on national instruments, such as the constitution, while in other cases they were in accordance with international commitments, such as those arising out

of international conventions concerning refugees and stateless persons concluded under United Nations auspices, and the declaration could in no case be used to justify any restrictive interpretation of the rules on the right of asylum embodied in such existing instruments, whether national or international.

16. The draft declaration was intended essentially to represent progress and not to mark a step backward. To the extent that they were designed to promote the granting of asylum, its provisions could not validly be given a restrictive interpretation. However, a restrictive interpretation was necessary in the case of stipulations which were designed to limit the exercise of the right of asylum, thus departing from the general principles of the declaration.

17. Belgium, in common with some other countries represented in the Working Group, had had misgivings concerning article 3, paragraph 2, fearing that the scope of the phrase "in order to safeguard the population" was not made sufficiently clear and that its unqualified acceptance might, in practice, encourage unwarranted departures from the principle of non-refoulement. In order to be justified under the terms of the declaration, any departure from the principle of non-refoulement must result from a situation similar to that created by a mass influx of persons.

18. It was clear from a careful reading of the text that the draft declaration was designed essentially to strengthen the institution of asylum. Taken as a whole, it laid down minimum rules the international acceptance of which appeared useful and desirable. As indicated in the preamble, it sought to serve humanitarian ends, and at the same time to promote friendly relations among all nations and international co-operation. In so far as its interpretation by States was guided by those objectives, the declaration would serve the cause of the United Nations in general and of human rights in particular.

19. Mr. DABIRI (Iran) observed that his delegation had consistently attached great importance to the question of drafting a declaration on the right of asylum. His Government's views on the subject had previously been presented.<sup>2/</sup> He was gratified to note that the deliberations of the Working Group had resulted in a widely acceptable compromise text which, despite certain imperfections, accurately reflected the various schools of thought among Member States. It contained provisions that were useful and humanitarian, and it combined principles concerning respect for human freedom and dignity with rules to safeguard the interests and security of States granting asylum. While not prejudicing existing conventions on the subject, the draft represented an important step towards the further regulation and codification of the institution of asylum by the competent organ of the United Nations. In view of those considerations, his delegation would vote in favour of the draft resolution and the Swedish amendment.

20. Mr. PRANDLER (Hungary) said that, under its Constitution, the Hungarian People's Republic recognized and respected the institution of territorial asylum granted by States in exercise of their sov-

<sup>2/</sup> E/CN.4/793.

foreign rights. His country had given and continued to give asylum to those persecuted because of their struggle for social progress, peace and national liberation. In speaking of the struggle for national liberation, he wished to draw the Committee's attention to the plight of refugees from South Africa and other parts of southern Africa. The recommendations of a sub-committee of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa which had studied the problem (see A/AC.115/L.206, paras. 61-69) were urgently being discussed by the Special Political Committee, and he thought it appropriate to emphasize the importance and relevance of the declaration on territorial asylum in that context.

21. As the draft was the result of a compromise, his delegation, which had been a member of the Working Group, had some reservations concerning it. First, it considered that article 2, paragraph 2, was neither clear nor necessary. Secondly, it would have favoured the inclusion of a clause explicitly excluding the granting of asylum to persons who would use it to conduct activities directed against law and order in other States. It would also have liked a clear statement that persons who were not threatened by persecution but simply left their countries for economic, social or other, sometimes selfish, considerations could not be considered refugees applying for asylum.

22. With regard to the second preambular paragraph of the draft resolution (A/C.6/L.625), while he agreed that the question should be dealt with by the International Law Commission in accordance with General Assembly resolution 1400 (XIV), he hoped that the paragraph would not be construed as prejudicing the order of priorities established by the Commission itself and by the General Assembly.

23. In view of the considerations he had mentioned and the fact that the declaration would not be legally binding, his delegation would vote in favour of the draft resolution.

24. Mr. ALMEIDA (Portugal) recalled that, as early as 1959, his Government had signified its support for the adoption of a declaration on asylum. On several occasions — for example, during the Second World War and even more recently — the Portuguese Government had had no hesitation in granting asylum to thousands of persons fleeing from persecution. His delegation favoured the strengthening of the institution of asylum and therefore supported the final text of the draft declaration as a whole, whatever its imperfections.

25. Nevertheless, it regretted the intrusion of undefined political elements into a declaration of humanitarian character. In its report to the General Assembly at the twenty-first session (A/6570), the Committee had hoped that, in arriving at evaluations of practical problems of asylum, humanitarian considerations would prevail over political considerations. The debates at the present session had revealed a state of mind which, it was to be feared, might not serve as a happy precedent for the future practice of asylum.

26. Mr. SAHOVIC (Yugoslavia) observed that the draft declaration indicated the basic legal principles

that should govern respect for the right of asylum, in keeping with the rules of contemporary international law. With its humanitarian aims, the declaration would undoubtedly occupy a special place among the instruments adopted by the United Nations for the purpose of strengthening respect for human rights. Therefore, despite its imprecisions, his delegation felt that it could be adopted as it stood. Yugoslavia would accordingly vote in favour of the draft resolution, which represented the culmination of two years of work by the Sixth Committee on the subject, and of the oral amendment proposed by the representative of Sweden.

27. Mr. AMAU (Japan) noted with satisfaction that the draft declaration had been completed as the result of a compromise, after lengthy discussions in the Working Group, in which his delegation had taken an active part. His delegation, in common with others, was not entirely content with the text as it stood, but it had refrained from making comments on points of detail, considering that the completion of a compromise text was in itself an achievement for the Committee.

28. He took it that the Committee would be voting on draft resolution A/C.6/L.625, with the oral amendment proposed by Sweden, on the understanding that the declaration would not constitute a set of legal norms but would merely lay down humanitarian principles which States might rely upon in seeking to unify their practices relative to asylum. In terms of international law, therefore, asylum would continue to be granted as a discretionary act by States in the exercise of their sovereignty. On that understanding, Japan would vote for the draft resolution and the amendment.

29. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, in voting for the adoption of the draft declaration, his delegation wished to emphasize the special importance it attached to the provision under which asylum would be granted to persons struggling against colonialism and to the provision that persons receiving asylum should not engage in activities contrary to the purposes and principles of the United Nations. His delegation also set great store by the provision which excluded the granting of asylum to any person who had committed a crime against peace, a war crime, or a crime against humanity. On the other hand, it felt that certain portions of the draft declaration—such as the third preambular paragraph dealing with the right of everyone to leave any country, and article 2, paragraph 2—fell outside the scope of the question of asylum, and his delegation's vote should not be interpreted as implying approval of the inclusion of those provisions.

30. The Soviet Union would vote for the draft as a whole, on the understanding that practical questions pertaining to the right to leave one's country should be decided in accordance with the procedure established in the country concerned and that the question of measures to lighten the burden of a State granting asylum should be settled on the basis of the principle of State sovereignty and in accordance with the practice established in the United Nations and in inter-State relations for assisting refugees.

31. He hoped it would be understood that the second preambular paragraph of the draft resolution (A/C.6/L.625) would not affect the work programme of the International Law Commission already approved by the Committee.

32. Mr. YASSEEN (Iraq) thought that the oral amendment proposed by Sweden would make the draft resolution more acceptable, since the text of the declaration would eventually be printed independently of the preambular paragraphs of the resolution. He therefore hoped that delegations which objected to the amendment would reconsider their position.

33. Mrs. RAOELINA (Madagascar) said that her delegation would vote for the adoption of the draft declaration. Madagascar considered that territorial asylum could be granted by a State, in the exercise of its sovereignty, for humanitarian purposes. However, persons enjoying the right of asylum should not be allowed to engage in activities contrary to the Purposes and Principles of the United Nations Charter or to the interests of the country granting asylum.

34. Article 1 of the draft declaration struck a proper balance between the need to respect State sovereignty and the need to afford protection to persons seeking asylum. Article 2 was acceptable, since it emphasized that the question concerned the entire international community. Article 3 represented a suitable compromise in enunciating the principle that persons seeking asylum could not be obliged to return to their country of origin or to remain in a particular territory. Article 4, which stated that persons receiving asylum must refrain from activities contrary to the purposes and principles of the United Nations, would have been more acceptable if it had also mentioned the obligations of such persons towards the country granting them asylum. In adopting the declaration on territorial asylum, the United Nations would be reaffirming its faith in fundamental human rights.

35. The CHAIRMAN observed that no opposition to the adoption of the draft declaration had been expressed and no amendments of substance had been proposed. He suggested that the draft resolution (A/C.6/L.625) might therefore be adopted by acclamation.

36. Mr. ALCIVAR (Ecuador) said that the repetition of the words "The General Assembly" at the beginning of the draft declaration might give the impression that, with the adoption of the draft declaration, the work of codifying the rules and principles relating to the institution of asylum within the United Nations system had been completed and the subject exhausted. In response to the appeal made by the representative of Iraq, his delegation and some other Latin American delegations which shared the same views would not vote against the Swedish amendment if a majority was in favour of it, but they would abstain from voting. It must, however, be clearly stated in the Committee's report that the adoption of the draft declaration on territorial asylum did not exhaust the subject and that the International Law Commission must continue the task of the codification of the principles and rules of international law relating to the right of asylum entrusted to it by the General Assembly in its resolution 1400 (XIV).

37. The scope of the draft declaration must also be clearly indicated in the Committee's report, for the declaration would be a legal expression of will and, as such, would have legal effects.

38. The CHAIRMAN invited the Committee to vote on the Swedish oral amendment to draft resolution A/C.6/L.625.

*The amendment was adopted by 68 votes to none, with 25 abstentions.*

39. Mr. ENGO (Cameroon), supported by Mr. RAO (India), suggested a short suspension of the meeting, in order to give time for further reflection and consultation. Since the point at issue was only a minor drafting change, it would be unfortunate if it prevented the unanimous adoption of the draft declaration.

40. Mr. KANE (Senegal) asked whether it was permissible, under rule 129 of the rules of procedure, to suspend the meeting when the voting had already begun.

41. Mr. ROSENSTOCK (United States of America) said that he supported the motion for a short suspension of the meeting and felt that rule 129 did not apply in the present case.

42. The CHAIRMAN agreed with the United States representative.

*The meeting was suspended at 5.25 p.m. and resumed at 5.45 p.m.*

43. The CHAIRMAN asked whether the Committee was now ready to adopt draft resolution A/C.6/L.625, as amended orally, by acclamation.

44. Mr. IBRAHIM (Ethiopia) said that, although his delegation had wished the draft resolution to be put to a vote with the understanding that the draft declaration, when adopted, would have no binding legal effect on any State and that the International Law Commission would continue its work on the codification of the rules and principles governing the right of asylum, it would willingly join in the general consensus...

*In the absence of any objection draft resolution A/C.6/L.625, as amended orally, was adopted.*

45. Mr. DARWIN (United Kingdom) said that his delegation had supported the draft resolution containing the draft declaration on territorial asylum and welcomed its adoption. The United Kingdom had always pursued a liberal policy in granting asylum to those who had a well-founded fear of persecution in other countries. It was right that the humanitarian impulse which had guided many countries in their policy and actions in that field should be enshrined in a declaration of the General Assembly. His delegation had spoken twice in the debate at the twenty-first session (922nd and 953rd meetings) and had taken part in the proceedings of the Working Group which had prepared the draft declaration. He would therefore confine himself to some brief comments on the present text.

46. Article 14 of the Universal Declaration of Human Rights was general in terms and concerned all persons seeking asylum from persecution. It seemed unfortunate to his delegation, as a matter of drafting,

that reference was made in article 1, paragraph 1, of the draft declaration to a specific instance of political activity which might be understood as detracting from the generality of the declaration and thus weakening an instrument which should be of general and long-lasting validity. His delegation would have abstained if a separate vote had been taken on the phrase "including persons struggling against colonialism".

47. The Working Group had rightly put on record, in its report (see A/6570, annex, para. 27), the view that the right of the State granting asylum to evaluate the grounds for the grant of asylum was a right to be exercised in good faith and in a non-arbitrary manner. The Working Group had also agreed to include in its report the view that the "right" stated in article 1, paragraph 2, was to be interpreted as a moral right and not as a legal right which imposed obligations on States. His delegation believed that those views were widely shared in the Committee and suggested that some reference to them should be included in the report to the General Assembly.

48. Article 2 was a useful provision, and the United Kingdom welcomed the mention in paragraph 2 of international collaboration in connexion with the granting of asylum. He noted with satisfaction that effective collaboration had been available in the past to assist States granting asylum in resolving the international problems which arose. However, it was clear that the clause in question did not constitute an authority for international interference in the national treatment of such matters, but rather provided that States might offer assistance to States which desired it.

49. In article 3, paragraph 1, the phrase "where he may be subjected to persecution" was open to criticism as loose wording; if a separate vote had been taken on that paragraph, his delegation would have felt obliged to abstain. The phrase proposed earlier by the Commission on Human Rights—"if there is well-founded fear of persecution endangering his life, physical integrity, or liberty"—was clearer, and the United Kingdom understood the present wording in that sense.

50. The wording of article 3, paragraph 2, was the result of a compromise reached with some difficulty in the Working Group, and the United Kingdom regarded it as satisfactory. As had been pointed out, the case of a "mass influx" was given as a specific example in the light of which the phrase "to safeguard the population" should be interpreted. The circum-

stances of the territory concerned must, of course, be taken into account in deciding what measures were required to safeguard the population in that or similar instances.

51. Article 4 was obscure in its wording and might be used to impose undue restrictions upon persons enjoying the right of asylum. If a separate vote had been taken on it, his delegation would have abstained. The United Kingdom understood the article as not calling for restrictions on the liberty of individuals in a free society, nor requiring States to take additional powers to impose such restrictions.

52. While the text did not therefore accord entirely with his delegation's views, it was the result of a compromise, and further discussion would probably have reopened consideration of a large number of points which had been settled in the Working Group, with no certainty of improvement. The United Kingdom, which vigorously supported the institution of asylum, thought it most desirable that the United Nations should place on record the principles that should guide States in exercising their powers in matters of asylum.

53. Mr. E. SMITH (Australia) said that Australia had voted for the draft resolution on the basis that Australia supported the text of the declaration, as a whole, as a humanitarian document. The draft declaration must be read within the existing framework of international law. As stated in article 1, paragraph 3, it rested with the State granting asylum to evaluate the grounds for doing so. His delegation, like others, would have preferred a different wording in some parts of the text, but in order to preserve the general consensus it had not pressed for any changes.

54. Mr. SECARIN (Romania) said that, during the debates at the twenty-first session and at the current session, his delegation had stressed the humanitarian purpose of the institution of asylum and the increasing need for an international instrument to guide State practice in the matter. In voting in favour of draft resolution A/C.6/L.625, his delegation had been fully mindful of the essence of its position, namely, that the draft declaration was based entirely on respect for the principle of the sovereignty of States, which alone had the right to evaluate and to make decisions concerning the granting of asylum. That principle was in keeping with the purposes and principles of the United Nations and with the development of friendly relations among States.

*The meeting rose at 6.5 p.m.*