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CONTENTS

Chairman: Mr. Edvard HAMBRO (Norway).

AGENDA ITEM 89

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

1. Mr. BEAULIEU (Canada) said that many of the points he had intended to make concerning the draft declaration had been amply covered by the representative of Norway in his statement at the 983rd meeting.

2. The text prepared by the Working Group (A/6570, annex, para. 1), being the result of a compromise, was not entirely satisfactory to his delegation, which would have liked some parts of it to be redrafted. However, Canada did not propose to put forward any formal amendments, and it hoped that a declaration could be adopted at the present session. The aim of such a document, which was to introduce a more liberal policy regarding the right of asylum, deserved to be encouraged, and despite its imperfections the draft would serve to promote that objective.

3. His delegation's misgivings concerning the text centred on those points which it felt were inappropriate in a general declaration of the kind envisaged or which were insufficiently precise. For instance, while Canada was by no means opposed to the idea embodied in article 1, paragraph 1, it felt that the inclusion of the words "including persons struggling against colonialism" was unnecessary and might prove to be confusing. According to the wording of that paragraph, article 14 of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) specified the categories of persons whose right to be granted asylum should be respected. Consequently, a person struggling against colonialism could only invoke article 1, paragraph 1, of the draft if he was covered by the provisions of article 14 of the Universal Declaration of Human Rights, otherwise, he could not.

4. Article 2, paragraph 2, was also somewhat ambiguous. Its drafting should have made it clear that it was not intended to infringe on the sovereignty of a State granting asylum. In his delegation's view, only the State granting asylum was entitled to determine whether or not it found difficulty in granting or continuing to grant asylum. Other States, whether acting individually or jointly or through the United Nations, should be free to offer to take appropriate measures to lighten the burden on that State only if the latter itself clearly indicated that it wished such assistance.

5. His delegation's most serious doubts related to article 3, and in particular to paragraph 1. It feared that the wording of the phrase "or, if he has already entered the territory in which he seeks asylum" might imply the introduction of a new category of persons entitled to asylum. The deletion of that phrase would have made the article more forceful and clear. The words "where he may be subjected to persecution" also seemed to occasion some difficulty, since the application of such a provision would require a subjective evaluation in each individual case. It was the contention of his delegation that, in accordance with the provisions of article 1, paragraph 3, any decision on the subject rested with the authorities of the State in which asylum was sought, and it should also be understood that the person seeking asylum must prove, to the satisfaction of the authorities concerned, that he was really in danger of persecution.

6. While the draft declaration would obviously not be legally binding on States, it was none the less to be hoped that it would be a valuable guide for future State conduct in the field with which it dealt.

7. Mr. ARANGIO RUIZ (Italy) said that his delegation shared the view, expressed by many representatives, that the draft declaration on territorial asylum should be accepted. It also felt, however, that the draft could be substantially improved. In submitting its comment on article 1 (see A/6570, annex, para. 33) his delegation had drawn attention to article 10 of the Italian Constitution, and had mentioned one major improvement to the draft which it considered desirable. However, Italy was prepared to accept the text as it stood, in the belief that it would represent no more than a declaration of goals and would be no more binding in character than any other resolution or declaration adopted by the General Assembly.

8. Whether the content of the draft declaration was consistent with the present state of international law in the field of territorial asylum was another matter. Without wishing to enter into the merits of the various provisions, his delegation would merely express the view that, wherever concordance was lacking, the existing law should prevail until such time as the relevant provisions of the declaration were incorporated into positive international law, either through the customary processes of development or through a treaty concluded on the basis of a draft prepared by the International Law Commission or by some other agency. It must be clear, however, that whenever the rules on territorial asylum came to be codified

by the appropriate body, the existence of the declaration should not in any way diminish the scope or depth of the work to be undertaken. In the meantime, the declaration could well serve the humanitarian purposes for which it was intended.

9. Mr. SECARIN (Romania) commended the Chairman and members of the Working Group on the excellent work they had accomplished. The adoption by the United Nations of a declaration on the right of asylum—an international instrument designed to guide State practice in a humanitarian field, thereby promoting international co-operation—was very important to his delegation, which derived its position from the principles underlying his country's policy, as enunciated in the Romanian Constitution. Under that basic law, Romania granted asylum to nationals of other States who suffered persecution because of their activities in defending workers' interests or participating in the struggle for national liberation or world peace. Under article 63 of the Constitution, the granting of asylum was a function of the Council of State, the highest organ of State power.

10. The provisions of article 1 of the draft declaration were in keeping both with international law and State practice and with the realities of contemporary international life, in which a major concern was the total elimination of the remaining vestiges of colonialism and the prompt implementation of the Declaration on the granting of independence to colonial countries and peoples, (General Assembly resolution 1514 (XV)). Accordingly, the granting of asylum to persons threatened with persecution as a result of anti-colonialist activities was fully justified. The draft Declaration quite rightly provided that asylum should not be granted to any person with respect to whom there were serious reasons for considering that he had committed a crime against peace, a war crime, or a crime against humanity. According to the draft declaration, the grant of asylum constituted an act of sovereignty and, as such, must be respected by all States and should not be considered an unfriendly act. That was fully in accord with the principles of the sovereignty and equality of States. The authors of the draft had been careful to ensure respect for those principles by providing a definition of the grant of asylum and incorporating the principle that States had the prerogative of evaluating the grounds for the grant of asylum. The draft also demarcated the sphere of international competence in respect of persons receiving asylum in accordance with article 14 of the Universal Declaration of Human Rights.

11. Those were the main reasons why his delegation found the draft acceptable as it stood, although on minor points of drafting the text could no doubt be improved. For example, the insertion of the word "international" before the phrase "instruments dealing with asylum and the status of refugees and stateless persons" in the last preambular paragraph would make for greater clarity and precision. With regard to article 2, paragraph 2, his delegation thought it only logical, since a State had the sovereign right to decide whether it was able to grant asylum, that international assistance should be provided only at the request of the State concerned. Indeed, the very notion of international solidarity implied such an approach, which should therefore be explicitly laid down in the text.

12. His delegation hoped that the Committee would be able, at the current session, to recommend the adoption by the Assembly of an instrument of substance, dedicated to the maintenance of international peace and security and the promotion of the Purposes and Principles of the United Nations Charter.

13. Mr. RICCHERI (Argentina) observed that asylum was one of the noblest institutions in the history of man's struggle to uphold his ideals. From the earliest days of their independence, the Latin American nations had been most active in the defence and promotion of that institution, as was evidenced by the many treaties, conventions and other instruments they had adopted among themselves. His delegation welcomed the preparation of a draft declaration on the institution of asylum which might serve as an antecedent to its incorporation into the positive norms of international law.

14. On the whole, Argentina found the text prepared by the Working Group acceptable, although some of its articles might be improved. Article 3, for example, should contain a provision making it perfectly clear that the State granting asylum was entitled to direct the person seeking asylum to whichever part of its territory it deemed most appropriate and to require him to refrain from acts that might damage good relations between the State granting asylum and his State of origin. In other words, the person seeking asylum should not have the same legal status as other aliens residing in the country of asylum, unless its Government wished to grant him such status. Article 4 could be deleted without adversely affecting the Declaration, since there were no international activities of the kind prohibited by that article.

15. It should be borne in mind, however, that the purpose of the Sixth Committee was not to draw up a legally binding instrument on territorial asylum, but simply to lay down a set of broad humanitarian principles to guide future State practice. The codification of internationally valid norms would be a task for the International Law Commission. Accordingly, and as an earnest of its desire to contribute to progress in the field under consideration, his delegation would support any draft resolution calling for the formal adoption, at the current session, of a declaration of principles on the institution of territorial asylum. As a State that had been generous in granting asylum, Argentina sincerely hoped that the Assembly would adopt a document that would extend to the entire world the benefits of so useful and humanitarian an institution.

16. Mr. SUCHARITKUL (Thailand) said that, in the light of the comments made in the general debate at the twenty-first session and the written comments and amendments submitted so far, his delegation saw no objection to the adoption by the General Assembly of the draft declaration on territorial asylum prepared by the Working Group. As the Chairman of the Group had explained, the text represented a compromise and was therefore by no means perfect. His delegation was prepared to give the draft declaration its general support, but would like to make clear its position regarding certain points.

17. The concept of territorial asylum arose out of the principle of territoriality, which was an acknowledged principle of contemporary international law. However, the term "right of asylum", whether it referred to territorial asylum or diplomatic asylum, comprised two distinct aspects. Firstly, according to the terms of article 1, paragraph 1, of the draft declaration, a State might grant or refuse asylum to individuals in the exercise of its sovereignty, and a State's right to grant or refuse asylum entailed corresponding obligations on all other States to respect the asylum, whether territorial or diplomatic, if it was granted. As stated in article 1, paragraph 3, it was for the State granting asylum to evalute the grounds for doing so. The second aspect of asylum, which was based not on legal but on humanitarian grounds, was the right of every individual, in accordance with article 14 of the Universal Declaration of Human Rights, to seek and to enjoy in other countries asylum from persecution. Persons entitled to invoke article 14 did not have the right to insist on the granting of asylum but were, nevertheless, protected against such measures as rejection at the frontier or, if they had already entered the territory where they sought asylum, expulsion or compulsory return to any State where they might be subjected to persecution.

18. Once territorial asylum had been granted to an individual, there arose a whole series of reciprocal rights and obligations between the State granting and the individual enjoying asylum. Thailand had on many occasions granted territorial asylum on humanitarian grounds and had sometimes experienced practical difficulties in granting or continuing to grant asylum. His delegation therefore welcomed the provision of article 2, paragraph 2, which sought to lighten the burden of States granting asylum.

19. In the interest of good-neighbourliness and regional co-operation, Thailand had taken the necessary measures to prevent persons enjoying asylum in Thailand from engaging in activities inimical to the Government of their State of origin. That went beyond the provisions of article 4 of the draft, which merely implied an obligation to withhold permission or encouragement. His delegation considered that persons granted asylum should also respect certain obligations. They should refrain from engaging in activities contrary to the purposes and principles of the United Nations, as stated in article 4, and they should also be obliged to respect the laws of the State granting asylum and to refrain from any act which might prejudice friendly relations between that State and its neighbours, including sabotage, espionage and subversive activities.

20. Subject to those reservations, his delegation would vote in favour of the adoption of the draft declaration as a whole.

21. Mr. JOEI (China) said his delegation hoped that the draft declaration on territorial asylum would be adopted by the General Assembly as soon as possible. As he had stated at the twenty-first session (923rd meeting), the question of territorial asylum was a matter of life and death for the millions of people who were forced to live under the tyranny of totalitarian régimes.

22. After careful study of the text prepared by the Working Group, his delegation was of the opinion that it seemed to represent a well-balanced consensus of the members of the Committee and that Governments should have little difficulty in giving it their general approval. His Government believed that the draft declaration on territorial asylum, if adopted by the Assembly, would have laid down an important rule of conduct of a humanitarian nature for all Governments, even though it did not impose any obligation of a legal nature. It would strengthen the institution of territorial asylum and would greatly facilitate the work of the United Nations High Commissioner for Refugees.

23. He wished to emphasize his Government's understanding that the basic principle of no expulsion and no compulsory return stated in article 3, paragraph 1, was subject to exception only for overriding reasons of national security or in order to safeguard the population, as stated in paragraph 2 of the same article, and that even that exception was subject to the consideration of providing an opportunity for the persons seeking territorial asylum to go to another country.

24. In view of the fact that an item on the right of asylum had been on the agenda of the General Assembly since 1960 and that a fairly thorough examination of the subject had been carried out during the past years, his delegation was very hopeful that consideration of that question would be brought to a successful conclusion during the present session of the Assembly.

25. Mr. YASSEEN (Iraq) said that, in principle, his delegation supported the draft declaration on territorial asylum produced by the Working Group. Nevertheless, he thought that it would be useful to present Iraq's views on certain points.

26. The draft declaration, when adopted, would not have the force of an international convention, and would therefore not affect existing conventions. The statement of that fact in the fifth preambular paragraph was sufficient, and a separate article to that effect was not necessary. Nevertheless, it should be borne in mind that the declaration might be the starting-point for the development of customs which could affect existing conventions.

27. The draft declaration seemed to be a well-balanced statement of all the relevant principles. In particular, his delegation welcomed the reference in article 1, paragraph 1, to persons struggling against colonialism. For the sake of compromise, it had abstained from submitting amendments to the text; otherwise, it would have suggested the insertion of the words "and in particular" before the words "persons struggling against colonialism", because such persons were serving the international community and should therefore be more favoured than those who merely disagreed with a particular political system.

28. The statement of the principle of non-refoulement in article 3 was one of the most important provisions in the draft declaration. Article 3 recognized that, while a State should not be obliged to accept a mass influx of refugees, it should, on humanitarian grounds, seek every means to avoid returning them to the State from which they were fleeing.

29. Article 4 was very well drafted. Its provisions were modest but indispensable. Persons enjoying asylum should not necessarily be obliged to respect the régime of the State granting it, but they should not be permitted to engage in activities contrary to the purposes and principles of the United Nations.

30. It was not possible at present to go beyond the provisions of the text before the Committee, which nevertheless constituted a necessary safeguard and a minimum statement of the principles which the international community should uphold in the matter of asylum.

31. Mr. OSIECKI (Poland) said that his delegation welcomed the draft declaration on territorial asylum prepared by the Working Group, whose report it had studied with great interest. The right of territorial asylum played a very important role in the contemporary world. Its humanitarian character was universally recognized, as was its necessity. His delegation considered that the draft declaration was a satisfactory development of the principle stated in article 14 of the Universal Declaration of Human Rights and should greatly facilitate the practical application of that principle. The text before the Committee was the result of a compromise and could not, therefore, be entirely satisfactory to any delegation. Since it did not seem desirable to reopen the discussion on the controversial parts of the text, he would confine himself to a few general observations.

32. In his delegation's view, the draft declaration could not change the character of the institution of territorial asylum, as already established in international practice and international law. Traditionally, the granting of asylum was based on a decision made by a State in exercise of its sovereignty. In the present text, that principle was not always stated as clearly as it should be. He cited in that connexion article 1, paragraph 2, and especially article 2, paragraph 2, which was neither clear nor necessary. The third preambular paragraph was also unnecessary, since article 13, paragraph 2, of the Universal Declaration of Human Rights dealt with a different question.

33. The wording of article 4 of the draft declaration was too vague. His delegation felt, in view of past experience, that it might be open to widely differing interpretations which could lead to difficulties in its practical application.

34. His delegation was glad that the Working Group, at the request of the delegations of Poland and Uruguay, had made it clear in the title of the draft declaration that its provisions applied only to territorial asylum and that other forms of asylum did not fall within the scope of the draft declaration. His delegation also welcomed the express mention, in article 1, paragraph 1, of asylum granted to persons struggling against colonialism and agreed with the arguments advanced by many delegations in support of its inclusion. His delegation approved the extension of the refusal of the right of territorial asylum to any person seriously suspected of having committed a crime against peace, a war crime, or a crime against humanity; it had suggested the inclusion of such a provision in the Third Committee at the seventeenth session.[1] It believed that asylum should be granted primarily to persons who were persecuted because of their struggle to attain the realization of the Purposes and Principles of the United Nations Charter. His delegation noted with satisfaction that the draft declaration had been made more universal through the replacement of the words "States Members of the United Nations and members of the specialized agencies" in the last preambular paragraph[2] by the more general term "States".

35. Mr. OGUNDERE (Nigeria) said that the draft declaration on territorial asylum, which had engaged the attention of the Sixth Committee since 1965, was now ripe for adoption. The draft was a compromise of conflicting views, and it would be inadvisable to reopen the issue, because there was no certainty that a better draft would emerge. The International Law Commission would in due course prepare draft articles on the law of territorial and diplomatic asylum. The Commission would no doubt have the benefit of the comments of Governments, including their comments on the application of the declaration, to enable it to perform the task of codifying and developing the law of asylum entrusted to it in General Assembly resolution 1400 (XIV).

36. The draft declaration, despite its imperfections, was acceptable to his delegation: since it did not impose on States any legal obligations, but only a moral and humanitarian duty, his delegation urged the Committee to recommend its adoption to the General Assembly.

37. Mr. RYBAKOV (Union of Soviet Socialist Republics) recalled that, in its resolution 2203 (XXI), the General Assembly had decided to place the item under discussion on the agenda of its twenty-second session with a view to the final adoption of a declaration on the subject. In the course of the lengthy and painstaking preparation of the draft declaration, the various aspects of the problem had been thoroughly discussed, and the compromise text prepared by the Working Group appeared to be generally acceptable to the overwhelming majority of members of the Committee. The Working Group had carried out its task, in accordance with the established practice, on the basis of the principle of consensus. Its members had had to overcome substantial difficulties in their search for a common denominator. It was only because they had succeeded in reaching a reasonable compromise that the Committee was able now to consider the item deliberately and calmly.

38. His delegation shared the view expressed by other delegations that the draft declaration set out the most important propositions or, in other words, those which represented the essence of the problem. Thus, the preamble was clearly based on the idea that the declaration should deal with questions arising in respect of persecuted persons fighting for the progressive Purposes and Principles proclaimed in the United Nations Charter. Accordingly, the draft declaration dealt with the granting of asylum to persons persecuted because they were fighting for

[1] See Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 46, document A/5359, para. 22.

[2] Ibid., annex

peace, for national liberation from colonialism and for progress. Such a document certainly was not, and could not, be concerned with the movement of particular individuals from one country to another for reasons unconnected with the struggle for the Purposes and Principles of the Charter. Unfortunately, there had often been cases in which some States had granted asylum to persons who had not been subjected to any political persecution in their own country—usually rogues, corrupt individuals inclined towards adventurism, persons to whom nothing was sacred and who were willing to sell everything, including honour and conscience, for money, and to commit any kind of crime. It was gratifying that the draft Declaration very clearly expressed the idea that the vicious practice of granting asylum to such persons and using them for improper purposes was entirely without legal foundation. The draft declaration left no doubt as to which persons should, and which should not, be granted territorial asylum.

39. His delegation fully shared the views of many other delegations concerning the exceptional importance of the statement in article 1, paragraph 1, that asylum should be granted to persons struggling against colonialism. The majority of the countries of Asia, Africa, Latin America and Europe had supported the inclusion of that statement. Although national liberation had made great strides in recent years, there were still countries where imperialists sought by force of arms to preserve the shameful colonial system. The forms of colonialism were becoming more refined, and colonialists were resorting to various tricks and trying to engineer coups d'état in the newly independent States, in order to preserve their domination and influence. However, the principle that colonialism, the racist policies of apartheid, and all forms of racial discrimination were crimes against humanity and threats to international peace and security had been unanimously accepted by all States Members of the United Nations in the historic Declaration on the granting of independence to colonial countries and peoples, and had been confirmed in many General Assembly documents proclaiming the duty of States to help to bring colonialism to a speedy end. Therefore, all States must respect asylum granted to persons struggling against colonialism. That key provision was unquestionably the corner-stone of the draft declaration. He endorsed the Iraqi representative's suggestion (see paragraph 27 above) concerning the wording of that provision.

40. The very important idea expressed in article 1, paragraph 2, reflected an existing rule of contemporary international law concerning international criminal responsibility for crimes against humanity. He cited, in that connexion, the principles affirmed in the Charter of the International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis and in the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East and in a number of General Assembly resolutions, particularly resolution 95 (I). The principle of the punishment of war criminals, as a generally accepted principle of contemporary international law, had been embodied in many multilateral conventions, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260A (III)) and the Geneva Conventions of 12 August 1949 for the protection of war victims.[3/] Thus, all States had an obligation not to harbour persons who had committed crimes against peace, war crimes or crimes against humanity, and, indeed, to prosecute them for the commission of those crimes.

41. It was gratifying that a common approach had been found to the inclusion of those key provisions in the draft declaration. The principles in question had already been approved in theory by the majority of States Members of the United Nations when the General Assembly had adopted its resolution 2203 (XXI), taking note of the report of the Sixth Committee (A/6570) to which the draft declaration had been annexed. The draft declaration was, of course, the result of a compromise and did not include everything that individual delegations, including his own, would have wished. Some provisions of the text might have been made more precise, so that the document would have been still more meaningful and well balanced. For example, his delegation would have welcomed the deletion of article 2, paragraph 2, which was diffuse, went beyond the scope of the draft declaration, and might be construed as allowing infringement of the sovereign rights of States and providing an opportunity for intervention in their internal affairs. His delegation was ready, however, to heed the Chairman's appeal not to introduce formal amendments, so that positive results might soon be achieved in a spirit of compromise. Despite its deficiencies, the draft declaration was generally acceptable, and his delegation would vote for its adoption at the present session. With regard to those provisions which, in his delegation's view, were not entirely successful and were outside the scope of the right of asylum, such as article 2, paragraph 2, and the reference in the preamble to the right to leave one's country, it was his delegation's understanding that they did not introduce any new elements into the practice established within the United Nations and generally accepted in relations among States.

The meeting rose at 4.35 p.m.

[3/] United Nations, Treaty Series, vol. 75 (1950), Nos. 970-973, pp. 31, 85, 135 and 287.

Litho in U.N. 77601—June 1968—2,050