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DRAFT DECLARATION ON THE RIGHT OF ASYLUM

Report of the Sixth Committee

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CONTENTS

I. INTRODUCTION

A. HISTORY OF THE ITEM PRIOR TO THE TWENTIETH SESSION OF THE GENERAL ASSEMBLY

1. The item entitled "Draft Declaration on the Right of Asylum" has been before the General Assembly since 1960, the Commission on Human Rights having adopted a draft Declaration consisting of a preamble and five articles on 15 March 1960.[1/] Subsequent consideration of the draft Declaration by the Third Committee resulted in the adoption by that Committee, of a preamble and one article.[2/] Because of lack of time, the Third Committee was unable to complete its consideration of the remaining articles of the draft Declaration and at its twentieth session the General Assembly decided to allocate the item to the Sixth Committee, which did not have such a heavy agenda as the Third Committee, in order to finalize the draft Declaration at the earliest opportunity.

B. CONSIDERATION OF THE ITEM AT THE TWENTIETH SESSION OF THE GENERAL ASSEMBLY

2. At the twentieth session the Sixth Committee, on the proposal of its Chairman, established a working group to examine the various procedural questions which arose in connexion with the item and to report its recommendations to the Sixth Committee. Among the recommendations of the Working Group[3/] were the following:

(a) The Sixth Committee should prepare a text of the draft Declaration, independently of the work of codification to be undertaken in due course by the International Law Commission, which had the subject of asylum on its future programme of work.

(b) Taking into account the fact that the Third Committee had adopted a text of the preamble and article 1 of the draft Declaration, it would be the task of the Sixth Committee to proceed with the consideration of articles 2 to 5 as submitted by the Commission on Human Rights and to submit to the General Assembly a complete text of a draft Declaration, making such a review of the preamble and article 1 as might, for that purpose, appear to be necessary.

1/ A/6367, annex II.

2/ A/6367, annex III.

3/ See Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 63, document A/C.6/L.581.

(c) The Secretary-General should consult the sponsors of the amendments to the draft Declaration previously submitted to the Third Committee and ascertain whether they wished those amendments to be presented, with or without modification, to the Sixth Committee at the twenty-first session.

3. In addition, the Working Group submitted a draft resolution, which was approved by the Sixth Committee and recommended for adoption in its report to the General Assembly.[4/] At its 1404th plenary meeting on 20 December 1965 the General Assembly adopted this draft resolution without change as its resolution 2100 (XX), the operative paragraphs of which read as follows:

"The General Assembly,

"....

"1. Requests the Secretary-General to invite those Member States which have not yet done so to submit their comments on the draft Declaration on the Right of Asylum before the twenty-first session of the General Assembly, and to invite those Member States which have previously submitted comments to submit supplementary comments if they so wish;

"2. Decides to take up the item entitled 'draft Declaration on the Right of Asylum' as soon as possible at its twenty-first session, with a view to completing the text of the draft Declaration as a whole."

C. SUMMARY OF PROCEEDINGS AT THE TWENTY-FIRST SESSION OF THE GENERAL ASSEMBLY

4. At the twenty-first session of the General Assembly, the General Committee recommended that the item entitled "Draft Declaration on the Right of Asylum" be allocated to the Sixth Committee (A/6395), and the Assembly so decided at its 1415th plenary meeting on 24 September 1966.

(1) Procedures adopted by the Sixth Committee

5. The Sixth Committee held a general debate on this item at its 919th to 923rd meetings between 26 October and 2 November 1966. At its 923rd meeting it adopted a proposal by Mexico that a Working Group should be appointed by general consensus, following on consultations by the Chairman, with the task of preparing "a preliminary draft declaration on the right of territorial asylum" (A/C.6/374).

4/ Ibid., document A/6163.

The Chairman's proposals to this effect were approved by the Sixth Committee at its 923rd meeting on 31 October 1966. The establishment and terms of reference of the new Working Group are described in detail in part II of its report, which is annexed to and forms an integral part of the present report.

6. The report of the Working Group (A/C.6/L.614) was submitted to the Sixth Committee on 7 December 1966, and was discussed by the Committee at its _____ to _____ meetings on _____ to _____ December 1966. Part I of that report contains the text of a draft Declaration on Territorial Asylum which was prepared by the Working Group, and part III describes the proceedings of the Working Group, and includes the texts of all proposals, amendments and sub-amendments before it.

(2) Documentation, proposals and amendments

7. In the course of its consideration of this item the Sixth Committee had before it the comments received from Governments in accordance with General Assembly resolution 2100 (XX), together with a guide to documentary references on previous comments by States[5/] and a note by the Secretary-General on the previous history of the item (A/C.6/L.599).

8. Furthermore, as proposed by the Working Group established at the twentieth session (see paragraph 2 (c) above), the Sixth Committee had before it those proposals, amendments and sub-amendments previously submitted to the Third Committee which Governments, after consultation with the Secretary-General, asked to have presented, with or without modification, to the Sixth Committee at the twenty-first session. These proposals, amendments and sub-amendments are as follows:

(a) Brazil - amendment to article 4 of the draft Declaration (A/C.6/L.587);

(b) Costa Rica, Norway and Togo - amendments to articles 2, 3 and 4 of the draft Declaration (A/C.6/L.588 and Add.1 and Corr.1);

(c) Poland - amendments to the title and articles 2, 3 and 4 of the draft Declaration and proposal for the addition of a new article (A/C.6/L.589);

(d) Union of Soviet Socialist Republics - amendment to article 4 of the draft Declaration (A/C.6/L.590);

5/ A/6367 and Add.1 and 2 and A/C.6/L.606.

(e) Greece - amendment to article 4 of the draft Declaration (A/C.6/L.591);[6/]

(f) Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, United Arab Republic and United Republic of Tanzania - sub-amendments (A/C.6/L.593 and Add.1 to 3) to the amendments submitted by Costa Rica, Norway and Togo to article 2, paragraph 1, and article 3, paragraph 1, of the draft Declaration (A/C.6/L.588 and Add.1 and Corr.1). In the course of the Sixth Committee's general debate on this item, in addition to the foregoing, new amendments were submitted by Uruguay to the title, the preamble and articles 1, 2, 3, 4 and 5 of the draft Declaration (A/C.6/L.604) and by Brazil to article 2 (A/C.6/L.605). The texts of the proposals, amendments and sub-amendments (except for that of Greece as explained in foot-note 6) are set out in full in the annexed report of the Working Group, under the particular portion of the text to which they relate.

8a. On 8 December 1966, after the Sixth Committee had received the report of the Working Group, the following draft resolution was submitted to the Sixth Committee by Iraq, Mali and the United Republic of Tanzania (A/C.6/L.616):

"The General Assembly,

"Recalling its resolutions 1839 (XVII) of 19 December 1962, and 2100 (XX) of 20 December 1965, relating to the draft Declaration on the Right of Asylum,

"1. Takes note of the Report of the Sixth Committee (A/6570) containing a draft Declaration on Territorial Asylum, together with the amendments and proposals considered in connexion with the elaboration thereof,

"2. Requests the Secretary-General to transmit to States Members of the United Nations the above-mentioned text of the draft Declaration, together with the report of the Sixth Committee thereon, for their further consideration;

"3. Decides to place an item entitled 'Draft Declaration on Territorial Asylum' on the provisional agenda of the Twenty-Second Session of the General Assembly with a view to the final adoption of a Declaration on this subject."

6/ This amendment was to the effect that, in article 4 of the draft Declaration, after the words "activities contrary to" the following phrase should be added "the national security or public order (ordre public) of the State granting asylum and...". It was withdrawn by the representative of Greece at the 923rd meeting of the Sixth Committee, before the establishment of the Working Group. It is not therefore reflected in the Working Group's report.

II. CONSIDERATION OF THE ITEM IN THE SIXTH COMMITTEE

A. GENERAL DEBATE

(1) General considerations relating to the draft Declaration

9. In the general debate on the draft Declaration, representatives traced the history of the institution of asylum, which was said to have ancient roots in African, Asian, Christian and Islamic cultures. Particular reference was made to the contribution of Latin America to the development of that institution. Representatives also commented upon whether or not the Sixth Committee should limit itself at this stage to territorial asylum, discussed the effect of the adoption by the Third Committee of the preamble and article 1 of the draft Declaration under consideration, and outlined the basic humanitarian purposes of the Declaration.

10. On the Latin American contribution to the growth of the law of asylum, it was said that asylum, both territorial and diplomatic, was one of the most deeply rooted norms of Latin American international law. Reference was made, in this respect, to the following inter-American conventions: the Treaty of Penal Law, Montevideo, 1889; the Havana Convention on Asylum, 1928; the Convention on Diplomatic Officers, 1928; the Convention on Political Asylum, Montevideo, 1933; the Treaty on Asylum and Political Refugees, Montevideo, 1939; and the Convention on the Right of Asylum, Caracas, 1954. Reference was also made to the work of the Inter-American Council of Jurists in seeking to elaborate on the law of asylum and to the Judgement of the International Court of Justice of 20 November 1950 in the Asylum Case between Colombia and Peru.

11. It was said that in Latin America the right of territorial and diplomatic asylum had gradually evolved from a customary rule to a peremptory norm, designed to protect individual freedoms against persecution. Diplomatic asylum, which was an institution of regional international law and had evolved out of historical circumstances peculiar to Latin America, was granted in places enjoying immunity from the jurisdiction of the State from whose authority the person seeking asylum for political offences or political reasons sought to remove himself. That privilege of immunity was the modern equivalent of the status of extra-territoriality at one time granted to diplomatic missions. It rested with States granting diplomatic asylum to determine the nature of the offence and to decide whether a case of urgency was involved. Once diplomatic asylum was granted, the State granting it could request that the refugee should be allowed to depart for foreign territory,

and the territorial State was under an obligation, except in certain exceptional cases, to grant a safe-conduct and the necessary guarantees. The process of transfer abroad transformed what was initially diplomatic asylum into territorial asylum. Some representatives expressed the hope that it would one day be possible to transform the institution of diplomatic asylum from a norm of regional international law into a norm of general international law.

12. While a few representatives considered that the Sixth Committee should feel perfectly free to study both diplomatic and territorial asylum, it was the general view that the Committee should limit itself at this stage to territorial asylum and should ensure that this limitation was adequately reflected in the text of the draft Declaration, as proposed, for example in the amendments of Poland[7] and of Uruguay.[8] It was pointed out that the draft Declaration prepared by the Commission on Human Rights was intended to elaborate upon article 14 of the Universal Declaration of Human Rights, which, by its reference to "asylum in other countries", was clearly limited to territorial asylum and did not apply to other forms of asylum, such as diplomatic asylum and asylum aboard warships and military aircraft. Furthermore, the draft prepared by the Commission on Human Rights was, by clear implication, limited to territorial asylum, as it referred in articles 2 and 3[9] to persons who were forced to leave a country and seek refugee in another. This fact had been confirmed by the Third Committee, which had adopted a Polish amendment to refer in paragraph 1 of article 1 to "territorial asylum".[10]

13. It was also argued that there were fundamental distinctions between territorial and other forms of asylum which made it desirable to deal only with the former at the present stage. Territorial asylum was an application of the principle of the sovereignty of the State granting asylum, whereas diplomatic asylum was a limitation on the sovereignty of the territorial State.

14. It was stressed by a number of representatives that the task of the Sixth Committee at the present stage was not to prepare a legal statement of the right of asylum but to elaborate a series of broad humanitarian principles on territorial asylum, independently of the work of codification to be undertaken in due course by the International Law Commission pursuant to General Assembly resolution 1400 (XIV). While some representatives thought that the Sixth Committee had

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7/ See the annex to this report, paragraphs 12, 40, 51 and 65.

8/ Ibid., para. 12.

9/ Ibid., paras. 29, 38 and 48.

10/ Ibid., para. 19.

broad and flexible terms of reference to consider the draft Declaration as a whole and was not bound by previous decisions of the Third Committee, many of those who discussed the point considered that the Sixth Committee should devote its attention principally to articles 2 to 5 proposed by the Commission on Human Rights, the text of the preamble and article 1 having been already adopted by the Third Committee. In this latter respect reference was made to the recommendations of the Working Group established at the twentieth session, which are referred to in paragraph 2 of the present report.

15. As regards the basic objectives of the proposed Declaration, it was said that the institution of territorial asylum would be considerably strengthened if the General Assembly adopted a declaration on the subject which would serve as a basis for unifying State practices, represent a further stage of progress towards the rule of law, and contribute to the development of friendly relations and co-operation among States. Such a declaration should give suitable recognition to the need for the protection of persons fleeing from persecution and should encourage States to adopt a liberal practice in granting asylum, which was a condition for the enjoyment of all other human rights. The declaration should not, however, impose any legal obligations and should also reflect that the granting of asylum was, in principle, the prerogative of sovereign States. It should seek to establish a proper balance between the rights of the State and the protection to which the individual was entitled on humanitarian grounds.

(2) Preamble

16. Those representatives who commented on the text of the preamble[11/] found it generally satisfactory. It was suggested by one representative, however, that consideration should be given to the addition of the words "or philosophical, political or social convictions" at the end of the first preambular paragraph. Some representatives also suggested that the recommendatory paragraph at the end of the preamble should be addressed to "States" rather than "States Members of the United Nations and members of the specialized agencies" because, in their view, a declaration of the nature here contemplated should be universal in character.

11/ Ibid., para. 8.

(3) Article 1

17. Remarks in the general debate in the Sixth Committee on article 1 of the draft Declaration, as adopted by the Third Committee at the seventeenth session of the General Assembly[12/] were for the most part directed to three points, namely, whether or not to retain in paragraph 1 a reference to persons struggling against colonialism, the persons entitled to receive asylum referred to in paragraph 2 of the article, and observations on the sovereign right of a State to grant or to deny asylum and to evaluate the grounds for the granting of asylum which are referred to in paragraphs 1 and 3 of the article.

18. Some delegations favoured the retention in paragraph 1 of a reference to persons struggling against colonialism and, in principle, also favoured the insertion of similar references in other articles, as proposed by Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, United Arab Republic and the United Republic of Tanzania.[13/] It was said that, although the cause of national liberation had made substantial strides in recent years, there were still countries where colonial rule was maintained by force of arms. Furthermore, neo-colonialism now existed and sought to maintain newly independent countries in a state of dependence and under-development. The General Assembly had stressed, on a number of occasions, that the continuation of colonial rule, and the practice of apartheid and other forms of racial discrimination threatened international peace and security and thus States were obliged to help bring colonialism to an end as quickly as possible. Persons struggling against colonialism were performing an international duty in furthering the goals of the international community, as laid down in the Charter. In the context of asylum, this meant that all States should respect the grant of territorial asylum to persons struggling against colonialism. This fact, which was also reflected in the legislation of many countries, should be recorded in any declaration adopted on asylum at the present time, as such a declaration should not be an abstraction, but must be set in its historical context. It would encourage the heroic peoples fighting against

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12/ Ibid., para. 19.

13/ Ibid., paras. 31 and 51.

colonial domination, who should be allowed to invoke that struggle as a moral and legal basis for receiving asylum.

19. As regards the persons entitled to receive asylum, some representatives listed various categories of persons mentioned in their national legislation. Reference was made, in this respect, to persons persecuted or having well-grounded fears of persecution for reasons of race, nationality, religion and political or social belief, or for reasons of artistic, scientific and trade union activities and of participation in or support of national liberation movements, or for reasons of activities in the interests of the working people and in defence of peace.

20. On the other hand, some representatives stressed that asylum could not be sought in the case of prosecutions genuinely arising out of common crimes. It was said, in this connexion, that there had been a progressive widening of the scope of asylum and a blurring of the difference between political and non-political offences which had permitted some persons guilty of criminal offences to evade justice. These representatives therefore suggested that further consideration should be given to the insertion of an express reference in paragraph 2 of article 1 to the fact that common criminals were excluded from the protection of the right of asylum. It was also suggested that reference might be made to the need to match regulation of the law of asylum with an adequate system of extradition.

21. Other representatives thought that this matter was already adequately provided for in the preamble, where article 14 of the Universal Declaration of Human Rights, which expressly excluded common criminals from the benefits of asylum, was quoted in full. These representatives said that a declaration of this nature should be simple and intelligible to be effective and should not therefore attempt to define the various categories of persons who should or should not be considered bona fide applicants for asylum.

22. A number of representatives supported the existing text of paragraph 2, providing that the right to seek and enjoy asylum could not be invoked by persons who had committed a crime against peace, a war crime, or a crime against humanity. Reference was made, in this respect, to the Charter of the International Military Tribunal at Nürmberg, the Charter of the International Military Tribunal for the Far East, the Convention on the Prevention and Punishment of Genocide, 1948, and

the Geneva Convention on the Protection of Civilian Persons in Time of War, 1949. It was said that, by virtue of principles which had received full recognition in present-day international law, all States had a general obligation to prosecute crimes of the nature here concerned, if the criminals were within their jurisdiction.

23. There was general support in the Sixth Committee for the affirmation, in paragraph 1 of article 1, of the sovereign right of States to grant asylum. It was stressed, in this respect, that there was no rule of international law making it mandatory for a State to grant asylum. While it was true that the State's right was closely related to the human and moral right of the individual to seek and enjoy protection from persecution through asylum, the legal basis of the institution was the right of the State to grant, not the right of the individual to receive, asylum. From this it resulted that, as stated in paragraph 3 of article 1 of the draft Declaration, the State granting asylum was alone competent to evaluate the grounds for the grant of asylum. It was said, in this latter respect, that the right of a State to evaluate the grounds for the grant of asylum on its territory should be exercised in good faith and not abused. It was also said, that in arriving at evaluations, humanitarian considerations should prevail over political considerations. It was also stressed that the granting of asylum by a State could not be regarded as an unfriendly act by another State.

(4) Article 2

24. Representatives who referred in the general debate to article 2 of the draft Declaration, as adopted by the Commission on Human Rights[14/] addressed themselves mainly to paragraph 2. A number of them considered that, as drafted, the paragraph was vague and might be taken as a basis for infringing the sovereignty of States, or interfering in their internal affairs under the pretext of rendering assistance in cases of difficulty arising out of the grant of asylum. They therefore favoured its deletion.

25. Other representatives, however, were in favour of its retention, subject to certain possible clarifications. It was said that, by drawing attention to the moral obligation of other States to render assistance to a State experiencing difficulties as a result of granting asylum, possibly in the case of a mass influx of persons, it would lighten the burden on the latter State and enhance

14/ Ibid., paras. 29 and 38.

the humanitarian purposes of the declaration. It was suggested, however, that it should be made clear that the paragraph did not derogate from the sole right of the State to determine whether or not to grant asylum, and that some indication might be given of the type of measures to be taken by other States to ease the burden on a country which found itself in difficulties in continuing to grant asylum.

(5) Article 3

26. Article 3 of the draft Declaration prepared by the Commission on Human Rights[15/] dealt with the principle of non-refoulement, the possible grounds for exception to it, and the alternatives to making such exceptions. In the general debate various views were advanced on whether States should be left with a completely unfettered direction in matters of rejection at the frontier and expulsion or whether the Declaration should indicate certain guide-lines to be taken into consideration by a State when arriving at decisions on this matter.

27. On the one hand it was stressed that the grant of asylum, as laid down in article 1, was a sovereign prerogative of States, and that article 3 might be interpreted to derogate from this prerogative to decide on the grant, continuance or refusal of asylum. Furthermore, if a State found it necessary not to grant asylum it could not be expected to accept too strict guidance as to what it should do in that situation. On the other, it was said that the Declaration under consideration was of a humanitarian character, and should therefore indicate definite limitations on the rejection or expulsion of persons seeking or enjoying asylum. In this latter respect, some representatives stated that they considered "safeguarding of the population" to be too wide a ground of exception to the principle of non-refoulement and would permit discriminatory practices. These representatives indicated their preference for replacing this phrase by reference to a mass influx of persons.

28. Some representatives indicated their approval in principle for a reformulation of the article along the lines suggested by Costa Rica, Norway and Togo[16/] to state the principle of non-refoulement in one paragraph, and the possible grounds for exception thereto in a separate paragraph.

15/ Ibid., para. 48.

16/ Ibid., para. 53.

29. A number of representatives also commented on the concept of provisional asylum, referred to in paragraph 2 of article 3 as drafted by the Commission on Human Rights. It was said, in this respect, that the paragraph went beyond the terms of article 14 of the Universal Declaration of Human Rights and that a temporary form of asylum might be prolonged for an indefinite period if efforts to find refuge in another country proved fruitless. Some representatives, however, welcomed the reference to provisional asylum as an important contribution to the development of the institution of asylum and its adaptation to international realities and State practice. It was, however, suggested that consideration might be given to the alternative formulation suggested by Costa Rica, Norway and Togo,[17/] which did not employ the words "provisional asylum", as the institution of provisional asylum was unknown in some countries and had no recognized meaning in international practice.

(6) Article 4

30. Article 4 of the draft Declaration adopted by the Commission on Human Rights[18/] provided that persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations. It therefore served as the basis for comments, in the general debate, on the status and obligations of a person enjoying asylum vis-à-vis the host State and his State of origin or other States.

31. A number of representatives referred to their national legislation, and said that persons enjoying asylum in their States had the same rights and duties as other aliens in those States. Being within the jurisdiction of the host State, persons enjoying asylum were obviously subject, like any other persons within that jurisdiction, to the laws of the host State. So far as international law was concerned, the only applicable rules were those governing the position of aliens. Those representatives who considered that such principles were axiomatic, did not think it was necessary to spell them out in article 4 of the draft Declaration,

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17/ See paragraph 28 above.

18/ See the annex to this report, paragraph 63.

and cautioned against any effort to do so, as such provisions belonged more properly to the general law applicable to all persons living in the territory of a State.

32. A number of representatives, however, suggested that further consideration should be given to elaborating article 4, possibly through the inclusion of a statement that persons enjoying asylum should not engage in activities contrary to law and order or prejudicial to the interests of the State granting asylum and should not in any other way abuse the hospitality of the community to which they had been admitted. It would thus be on record that the State granting asylum had the right, in appropriate cases, to place persons enjoying asylum under surveillance, or even intern them if their continuation of undesirable activities rendered this necessary.

33. It was also said that a person enjoying asylum should not be permitted to engage in espionage, subversion or sabotage against other States. In this respect it was stated that, if a Government assisted persons enjoying asylum on its territory in activities directed against another Government, the former Government might incur responsibility under international law. There was, according to some representatives, a practice in certain States of granting asylum to reckless elements and then using them for improper purposes. These representatives, therefore, thought that a prohibition of activities of this nature should be written into the Declaration, as proposed by the Union of Soviet Socialist Republics,[19/] and said that such a course of action would promote the purposes of the United Nations and help to establish friendly relations among States. Other representatives, however, did not consider that the present Declaration was a suitable place for suggesting what legislation a State should adopt regarding the activities and conduct of persons under its jurisdiction, or for restricting the liberties of the individual.

34. A number of representatives expressed some doubts considering the existing wording of article 4. It was difficult, in their view, to envisage how private persons could engage in "activities contrary to the purposes and principles of

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19/ Ibid., para. 65.

the United Nations", as those purposes and principles were addressed to States and not to individuals. These representatives thought that it would be more correct to say that it was for States to determine what private persons coming within their jurisdiction could or could not do with regard to the purposes and principles laid down in the Charter. As States were the subjects of the other provisions of the draft Declaration, they should also be the subjects of article 4.

(7) Article 5

35. Article 5 of the draft Declaration prepared by the Commission on Human Rights[20/] reaffirmed the right of everyone to return to his country as stated in article 3, paragraph 2, of the Universal Declaration of Human Rights. Of the few delegations commenting on article 5 in the general debate, some believed that it was irrelevant and confusing in this context and that its omission should therefore be considered.

36. A suggestion was made that, if the article were retained, it should be amplified by drawing a distinction between persons enjoying asylum who were "political internees" and those who were not. It was pointed out, in this context, that certain inter-American Conventions, namely the Convention on Political Asylum, Montevideo, 1933, and the Convention on Territorial Asylum, Caracas, 1954, made the departure of internees from a country of asylum contingent on the fulfilment of certain special conditions. The view was also put forward that the article might be further qualified, in favour of persons enjoying asylum, by requiring a public declaration by such persons of their intention to exercise the right of return.

(8) Proposed new articles

37. There was some comment in the general debate on the proposals of Poland (A/C.6/L.589) and of Uruguay (A/C.6/L.604)[21/] to add a new article affirming that the Declaration did not affect treaty obligations relating to asylum. It was

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20/ Ibid., para. 73.

21/ Ibid., para. 33.

suggested that, if such an article were eventually included, it might also refer to treaties of extradition, because of the link between asylum and extradition. It was also said that the article might be qualified by a reference to the supremacy of the purposes and principles of the United Nations.

38. A few representatives also thought that consideration might be given to inserting additional articles on matters such as the definition of asylum, the differences between asylum and extradition, and the termination of the status of a person enjoying asylum through processes such as voluntary renunciation, marriage, or a change in the circumstances on which the claim to asylum was originally based.

B. CONSIDERATION OF THE REPORT OF THE WORKING GROUP AND OF THE DRAFT RESOLUTION.

39. The Chairman of the Working Group presented the Group's report[22/] to the Sixth Committee at its 953rd meeting, on 9 December 1966. He explained that the Working Group had approached its task on the understanding that it was not preparing legal norms, but was laying down humanitarian principles which States may rely upon in seeking to unify their practices relating to asylum. The Working Group had therefore felt that, to have maximum effect, the Declaration should be of a broad and general nature and in simple terms. The Working Group had not thought it desirable to enter into technical matters, such as the definition of asylum and its link to extradition and refugee questions, nor into matters of detail, such as the ways for granting or ending asylum. These appeared to be issues better dealt with when the International Law Committee took up the legal task of developing and codifying the law relating to asylum. The Working Group had therefore confined itself, in large measure, to the text of articles 2 to 5 of the draft Declaration prepared by the Commission on Human Rights and the Preamble and article 1 adopted by the Third Committee, together with the various formal proposals and amendments submitted to those texts.

40. Representatives who intervened in the subsequent debate on the report of the Working Group congratulated the members of the Group on the results they had achieved, and stated that the text prepared by the Group was a valuable contribution deserving most serious consideration by Governments. It was nearly

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22/ See annex to this report.

twenty years since the Universal Declaration of Human Rights had been adopted and it was regrettable that no definitive text on asylum, referred to in article 14 of that Declaration, had yet been arrived at, in view of the pressing need for such a text, which, while not laying legal obligations on States, would set forth positive humanitarian principles. The results achieved by the Working Group now made it most probable that such a text could be proclaimed by the General Assembly at its next session.

41. A number of representatives indicated certain points on which they wished to reserve the position of their delegations pending full consideration of the text prepared by the Working Group. Among these points were the following: (a) the limitation or otherwise of the proposed declaration to persons entitled to invoke article 14 of the Universal Declaration of Human Rights; (b) the inclusion or deletion of the reference to persons struggling against colonialism in paragraph 1 of article 1; (c) the further clarification of the term "crimes against the peace" in paragraph 2 of article 1; (d) the inclusion or deletion of paragraph 2 of article 2; (e) the possible reformulation of paragraph 1 of article 3 to refer to a "well-founded fear of persecution, etc.", as suggested in paragraph 55 of the Working Group's report; (f) the further clarification of paragraph 2 of article 3, in particular the final phrase thereof referring to a mass influx of persons; (g) the wording of article 4, which several representatives considered to be vague and unclear; and (h), the possible insertion in the declaration of a reference to the need to match any regulation of asylum by an adequate system of extradition.

42. One representative raised the question of the legal effect of the proposed declaration, in view of what he stated to be the ambiguity of the expression "declaration" in United Nations practice. He said that, in order to facilitate consideration of the text, there should be absolute clarity on the question of whether the draft declaration was or was not intended to be binding upon States. In response to these remarks, the Chairman of the Working Group said that the proposed declaration would have the same force as any other recommendation addressed to Governments by the General Assembly in the field of human rights, and that its basic purpose was purely humanitarian.

43. In addition to the discussion of the report of the Working Group, the Sixth Committee also took up the draft resolution sponsored by Iraq, Mali, and the United

Republic of Tanzania (A/C.6/L.616 and Add.1 and 2) at its 953rd meeting. Introducing that resolution, the representative of the United Republic of Tanzania said that it was of a simple procedural character and was based on the premise that, at such a late stage in the twenty-first session of the General Assembly, Governments did not have the opportunity to reflect in full upon the text presented in the report of the Working Group and would therefore prefer more time for study before the Declaration was finally adopted. It was therefore proposed that the draft Declaration and report of the Sixth Committee should be sent to Governments for their further consideration and that the draft should be finalized and proclaimed at the next session of the General Assembly.

44. All representatives who spoke in the debate welcomed the draft resolution and the opportunity it afforded for further study. They expressed the conviction that it should prove possible to proclaim the Declaration at the twenty-second session.

45. The draft resolution was put to a vote at the conclusion of the 935th meeting of the Sixth Committee on 9 December 1966 and was adopted unanimously.

III. RECOMMENDATION OF THE SIXTH COMMITTEE

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

Draft Declaration on the Right of Asylum

The General Assembly,

Recalling its resolutions 1839 (XVII) of 19 December 1962 and 2100 (XX) of 20 December 1965 relating to the draft Declaration on the Right of Asylum,

1. Takes note of the report of the Sixth Committee[23/] containing a draft Declaration on Territorial Asylum, together with the amendments and proposals considered in connexion with its elaboration;

2. Requests the Secretary-General to transmit to States Members of the United Nations for their further consideration the above-mentioned text of the draft Declaration, together with the report of the Sixth Committee thereon;

3. Decides to place an item entitled "Draft Declaration on Territorial Asylum" on the provisional agenda of the twenty-second session of the General Assembly with a view to the final adoption of a Declaration on this subject.

23/ A/6570.

ANNEX

REPORT OF THE WORKING GROUP ON THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM

Chairman-Rapporteur: Mr. E. E. Seaton (Tanzania)

CONTENTS

I. TEXT OF THE DRAFT DECLARATION PREPARED BY THE WORKING GROUP

1. In the light of the report set out below, the Working Group on the draft Declaration on the Right of Asylum has prepared and hereby submits to the Sixth Committee the following text of a draft Declaration:

Draft 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 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 humaritarian 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,[1/] States should base themselves in their practices relating to territorial asylum on the following principles:

1/ Observations and suggestions regarding the phrase "without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons" which were reserved for possible further consideration will be found in paragraphs 15 to 18 below of the present report.

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, of persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism,[2] 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.[3]

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/ Some representatives favoured the deletion of the words "including persons struggling against colonialism". For observations made and other suggestions see paragraphs 21 to 24 below of the present report.

3/ Some representatives favoured the deletion of this paragraph. For observations and suggestions see paragraphs 41 to 43 below of the present report.

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.

II. ESTABLISHMENT AND TERMS OF REFERENCE OF THE WORKING GROUP

2. At the 922nd meeting of the Sixth Committee, on 28 October 1966, the representative of Mexico orally introduced the following proposal:

"The Sixth Committee

"Authorizes its Chairman to engage in such consultations as he considers appropriate for the purpose of appointing by general 'consensus', and as soon as possible, a working group whose task shall be to prepare a preliminary draft declaration on the right of territorial asylum. In carrying out this task, the working group will have as working documents:

"(a) The text of the draft Declaration on the Right of Asylum adopted by the Commission on Human Rights on 15 March 1960;

"(b) The text of the preamble and article 1 of the draft Declaration adopted by the Third Committee at the seventeenth session of the General Assembly;

"(c) The amendments and comments submitted in writing by Member States;

"(d) Specific suggestions made during the discussion of the item at the twenty-first session of the General Assembly;

"(e) The existing international instruments relating to the matter."

The Sixth Committee adopted this proposal on 31 October, at its 923rd meeting (A/C.6/374).

3. The Chairman of the Sixth Committee reported to the Committee at its 925th meeting, on 4 November 1966, on the consultations he had held pursuant to the foregoing decision, and suggested that a Working Group of twenty members should be established, to consist of Australia, Belgium, Bulgaria, Ceylon, Colombia, France, Hungary, Iraq, Japan, Mali, Mexico, Nigeria, Norway, Philippines, Sudan, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Venezuela. The Chairman further suggested that the Rapporteur of the Sixth Committee should be authorized to attend the meetings of the Working Group, and indicated that the terms of reference of the Group, and the documents it would use as a basis for its work, were those mentioned in the resolution set out in the preceding paragraph of this report. Finally, the Chairman proposed that the Group should elect its own officers and establish its own methods of work.

4. The foregoing suggestions and proposals of the Chairman were approved by the Sixth Committee at its 926th meeting on 7 November 1966.

III. PROCEEDINGS OF THE WORKING GROUP

A. Organization and methods of work

5. The Working Group held 14 meetings between 14 November and 6 December 1966. At the outset of its work the Group, on the proposal of Iraq, unanimously elected Mr. E.E. Seaton (United Republic of Tanzania) as its Chairman-Rapporteur.

6. In accordance with its mandate, the Working Group discussed its methods of work at its second and third meetings on 15 November. Initially, varying views were expressed as to whether the Group should commence with the preamble, with article 1, or with article 2 and subsequent articles. In the outcome, it was unanimously decided to begin with article 2, and to proceed thereafter to consider the succeeding articles, on the understanding that the Group could undertake a review of the preamble and article 1 at any stage, if issues raised in connexion with the subsequent articles rendered this appropriate.

7. While the Group proceeded in the manner just indicated, and completed its consideration of article 2 and the remaining articles before reviewing the preamble and article 1, the present report, for purposes of convenience, deals first with the preamble, and thereafter with the articles in their numerical order.

B. Consideration of the draft Declaration

1. Preamble

8. The text of the preamble and recommendatory paragraph of the draft Declaration adopted by the Third Committee at the seventeenth session of the General Assembly, on which the Working Group based its review, reads as follows:

"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 States, 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 Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles:".

9. Amendments to the first and fifth of the above paragraphs, submitted by Uruguay (A/C.6/L.604) to the Sixth Committee, provided as follows:

"First paragraph: Add the following at the end: 'or philosophical, political or social convictions',

"Fifth paragraph: Insert the word 'territorial' before the word 'asylum'. Delete the words 'Members of the United Nations and members of the specialized agencies'."

10. Members of the Working Group were not in favour of the adoption of the amendment of Uruguay to refer, in the first preambular paragraph, to "philosophical, political or social convictions". It was pointed out, in this connexion, that the preambular paragraph in question paraphrased certain of the purposes and principles of the United Nations, set out in Article 1, paragraphs 1 to 3, of the Charter, which paragraphs did not contain the additional words suggested by Uruguay. It was therefore decided to leave the first paragraph of the preamble without change in this respect, so as to conform to the corresponding provisions of the Charter. For reasons of conformity also and in view of the reference in Article 1, paragraph 2, of the Charter to developing friendly relations among "nations", the Working Group decided to change the word "State" in the first preambular paragraph to "nations".

11. No amendments to the second, third and fourth paragraphs of the preamble having been suggested, the Working Group left these paragraphs unchanged.

12. In its consideration of the paragraph following on the preamble and containing the recommendation of the General Assembly, the Working Group took up a number of points, as well as the amendment of Uruguay. Noting that its terms of reference required it to prepare a draft declaration on "territorial asylum", and that amendments had been proposed to the preamble and other articles to insert the word "territorial" before the word "asylum", the Working Group agreed that this matter could be dealt with most appropriately by entitling the draft as the "Draft Declaration on territorial asylum" (as had been proposed by Poland and by Uruguay in documents A/C.6/L.589 and A/C.6/L.604 respectively), and by inserting the words "relating to territorial asylum" in the paragraph containing the recommendation of the General Assembly, so that the end of that paragraph would read as follows: "should base themselves in their practices relating to territorial asylum on the

following principles". The Working Group was of the view that these references were fully adequate to denote that the operative articles of the draft Declaration related solely to territorial asylum, and that it would not therefore be necessary to insert the word "territorial" before the word "asylum" in those articles.

13. The Working Group also noted that in the English text of the recommendatory paragraph it was proposed that States "should base themselves" (underlining added), while in the operative articles, a number of amendments had been submitted to replace the word "should" in English by the word "shall". The Working Group considered that it was appropriate to retain the word "should" in the recommendatory paragraph, but that the word "shall" should be used in the relevant operative articles which, while not of a binding character, would be strengthened in their humanitarian purposes and have more persuasive value as a result of this change.

14. The Working Group accepted the amendment of Uruguay to delete the words "Members of the United Nations and members of the specialized agencies" in the recommendatory paragraph, as it was felt that a declaration of this nature should be universal in character and that the operative paragraphs were drafted in such a manner as not to indicate any limitation on the scope of the draft Declaration.

15. Various observations and suggestions were made in the Working Group regarding the phrase "without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons". Some representatives believed that the phrase was satisfactory as it stood, and pointed out that it had been examined in detail in the Third Committee. They considered that the phrase properly referred to "instruments" rather than to treaty obligations, as there were a number of instruments other than formal treaties, such as recommendations of international bodies, on which States acted in this field. They also felt that, in view of an earlier decision of the Working Group (see paragraphs 79 and 80 below) not to add an additional article to the draft Declaration on this subject, because it was covered in the preamble, it would now be tantamount to reconsideration to reopen the matter.

16. Some other representatives, however, believed that the phrase was unnecessary, as a declaration of the character here concerned could obviously not affect the legal obligations of States under treaties and similar instruments, and insertion

of it might therefore give rise to some misunderstanding on this matter. Furthermore, in the view of these representatives, the phrase was either too narrowly drawn in not referring to other instruments such as extradition treaties which might be involved, or incorrect in not confining itself expressly to international instruments. It was suggested by a number of these representatives that the phrase might be reworded on the following lines: "without prejudice to existing international instruments", or "without prejudice to existing valid international instruments", references to asylum refugees and stateless persons being omitted. Another alternative suggested was "without prejudice to international instruments affecting the institution of asylum and the status of refugees and stateless persons".

17. As the Working Group, in the time at its disposal, was unable to resolve this particular matter, it was decided to retain the phrase in its existing form, on the understanding that the various observations and suggestions made would be remitted to the Sixth Committee for its consideration, if it so desired.

18. On the basis of the foregoing, the Working Group left unchanged the second, third and fourth preambular paragraphs and submits the first preambular paragraph and the recommendatory paragraph, the latter being subject to the observations just made, to the Sixth Committee in the following form:

> "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,
>
> ".....
>
> "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 full text of the draft Declaration, including all the preambular paragraphs, will be found at the outset of the present report.

2. Article 1

19. Article 1, paragraphs 1, 2 and 3 of the draft Declaration adopted by the Third Committee at the seventeenth session of the General Assembly, on which the Working Group based its review, reads as follows:

> "1. Territorial 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 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."

20. An amendment to paragraph 1 of article 1 was submitted to the Sixth Committee by Uruguay (A/C.6/L.604), and in the course of the proceedings of the Working Group formal amendments to paragraphs 1 and 2 were submitted by Colombia. These amendments were to the following effect:

> (a) Uruguay: "In paragraph 1 delete the words 'including persons struggling against colonialism'" (A/C.6/L.604).
>
> (b) Colombia: "Paragraph 1. Replace the words 'entitled to invoke' by the words 'having serious reasons for invoking';
>
> "Paragraph 2. (i) Replace the words 'The right to seek and to enjoy asylum may not be invoked' by the words: 'The benefits of the article mentioned in the foregoing paragraph may not be invoked or enjoyed'; (ii) Between the new word 'enjoyed' and the words 'by any person', insert the following: 'by any person charged with common crimes or'."

21. The amendment of Uruguay to delete the words "including persons struggling against colonialism" was considered by some members of the Working Group to be an issue which should be resolved in the Sixth Committee and not in the Working Group. Those representatives who supported specific mention of persons struggling against colonialism considered that such mention was timely and appropriate in view of the great importance presently attached to the anti-colonial struggle,

as reflected in the numerous international instruments referring to the need to liquidate colonialism. The struggle against colonialism was a struggle to secure the realization of certain of the purposes and principles of the United Nations, and persons engaged in that struggle were performing an international function and were entitled to special consideration and protection. While such a reference would no doubt have political connotations, the question of asylum had always been a political matter and a declaration adopted at this time must be realistic and must not ignore modern realities, particularly in Africa, and present-day humanitarian considerations. Furthermore, because the struggle against colonialism was relatively novel, it was most desirable to draw the attention of States specifically to the fact that persons engaged in that struggle were entitled to asylum, together with any of the other categories of persons covered by article 14 of the Universal Declaration of Human Rights. This was particularly necessary, in view of the right of States granting asylum, set out in paragraph 3 of article 1, to evaluate the grounds for the grant of asylum. Finally, it was said that the Working Group could not go back on decisions of substance made by the Third Committee in respect of article 1, one such decision being the insertion of the reference to persons struggling against colonialism.

22. Other representatives, however, favoured the deletion of the phrase in question as they considered that it was unnecessary, undesirable and introduced a contentious political element into what should be a generally acceptable text. Any declaration adopted by the General Assembly on asylum should be of continuing value. The colonial era was now virtually ended, and thus to make specific mention of persons struggling against colonialism would be to clutter up the text with a reference which would not be of any interest or concern in the future. Furthermore, to single out a particular category of persons in the manner done in paragraph 1, might be understood to imply that this category was not already covered by article 14 of the Universal Declaration of Human Rights. Persons struggling against colonialism either came already within the ambit of that provision or, if they did not, they should not be included specifically in a declaration elaborating upon article 14 of the Universal Declaration.

23. A number of representatives thought that, if the reference to persons struggling against colonialism were to be retained, it should be redrafted either

in paragraph 1 or placed in an appropriate wording in the preamble. It was suggested, on behalf of the Latin American group of States, that the reference should be retained in paragraph 1 in the following form "including those persons who are persecuted for their struggle against colonialism", which was considered to be more appropriate by those States in the context of a declaration relating to persons fleeing from various forms of persecution. Another representative suggested that the reference in question should be deleted from paragraph 1 and inserted as a new preambular paragraph, immediately preceding the recommendatory clause affirming that persons persecuted for struggling against colonialism are entitled to invoke article 14 of the Universal Declaration of Human Rights.

24. The Working Group was unable to resolve the issue of the retention, deletion of reformulation of the phrase in question, and therefore remits the above observations and suggestions to the Sixth Committee for its possible further consideration of the matter.

25. The Working Group was of the view that the amendment by Colombia to paragraph 1 of article 1, was mainly of a terminological character affecting the Spanish text. It was therefore decided to retain "entitled to invoke" in the English text, and to substitute the words "justificación para" for "derecho a" in the Spanish text.

26. The amendment by Colombia to paragraph 2 was supported in principle by a number of representatives. Others, however, pointed out that the main purport of that amendment, which was to indicate that persons guilty of non-political crimes were not entitled to seek asylum, was already covered in paragraph 2 of article 14 of the Universal Declaration of Human Rights, which appeared verbatim in the preamble and which was incorporated by reference into paragraph 1 of article 1. On the understanding that this fact would be recorded in the report of the Working Group, the amendment of Colombia was withdrawn.

27. It was also decided to record in the report a view expressed to the effect that the right of the State granting asylum, as set out in paragraph 3 of article 1, to evaluate the grounds for the grant of asylum, was a right to be exercised in good faith and in a non-arbitrary manner. Furthermore, it was agreed to include the view that the word "right" appearing in paragraph 2 of article 1 was to be interpreted as a moral right and not as a legal right which imposed obligations on States. In this respect Nigeria proposed that the opening words of paragraph 2

should be reformulated as follows: "The benefits of this declaration may not be claimed by any person with respect to whom there are serious reasons etc."

28. On the basis of the foregoing, and subject to the observations and suggestions set out in paragraphs 21 to 24 above with respect to the phrase "including persons struggling against colonialism", the Working Group submits article 1, paragraphs 1, 2 and 3 to the Sixth Committee in the following form:

"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."

/

3. Article 2

(i) Paragraph 1

29. Article 2, paragraph 1, of the draft Declaration adopted by the Commission on Human Rights reads as follows:

> "The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community." (A/6367, annex II)

30. Amendments to this paragraph were submitted to the Sixth Committee by Costa Rica, Norway and Togo (A/C.6/L.588 and Add.1) and by Uruguay (A/C.6/L.604). A sub-amendment to the first of these amendments was submitted by Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, the United Arab Republic and the United Republic of Tanzania (A/C.6/L.593 and Add.1 to 3). In the course of the Working Group's consideration of this paragraph, formal amendments were submitted by the United States of America and by Colombia.

31. The foregoing amendments and sub-amendments were to the following effect:

(a) Costa Rica, Norway and Togo: "Replace 'The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution' by 'The situation of persons entitled to invoke article 14 of the Universal Declaration of Human Rights'" (A/C.6/L.588 and Add.1).

(b) Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, United Arab Republic and United Republic of Tanzania: "Sub-amendment to the amendment by Costa Rica, Norway and Togo to add at the end of that amendment the words 'and persons struggling against colonialism'" (A/C.6/L.593 and Add.1 to 3).

(c) Uruguay:

"(i) Replace the word 'forced' by the word 'impelled'.

"(ii) Add the words 'or regional bodies' after the reference to the United Nations" (A/C.6/L.604).

(d) United States of America: "Replace the words 'persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution' by the words 'persons referred to in the first paragraph of the preceding article...'"

(e) Colombia: "Replace the text by the following: 'The situation of persons referred to in paragraph 1 of the foregoing article is of concern to the international community, without prejudice to the sovereignty of States or to the purposes and principles of the United Nations.'"

32. There was general support in the Working Group for some formulation which would standardize and simplify references throughout the articles to the persons covered by those articles, as suggested in the amendment of Costa Rica, Norway and Togo and in the amendment of the United States. In this respect, the Working Group decided to adopt, as the most succinct approach, that suggested by the United States amendment, as reformulated in the course of discussion, namely to insert references to "persons referred to in article 1, paragraph 1". Certain representatives stated that their acceptance of this approach was conditioned on their understanding that article 1, paragraph 1, would remain unchanged.

33. The Working Group took into account, in this respect, the comments by Italy (A/C.6/L.606) to the effect that it might be unduly restrictive to limit the proposed declaration only to persons entitled to invoke article 14 of the Universal Declaration of Human Rights (i.e., the persons referred to in article 1, paragraph 1, of the present draft Declaration). Representatives on the Working Group, while some of them expressed their understanding for the preoccupations of the Italian Government, felt that the draft Declaration they were considering was in the nature of an elaboration upon article 14 of the Universal Declaration of Human Rights and should therefore not be extended at this stage to persons other than those mentioned in article 14. Different States might have different views or legislation on the categories of persons to whom asylum should be granted, but it was the task of the Working Group to base itself on a well-established international definition, such as that contained in article 14 of the Universal Declaration.

34. In the light of the solution adopted by the Working Group with respect to the standard formulation of persons covered by the articles on asylum, it was not

necessary to consider in detail the amendment of Costa Rica, Norway and Togo, or the sub-amendment thereto submitted by Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, United Arab Republic and United Republic of Tanzania, nor was it necessary to consider the first amendment of Uruguay to replace the word "forced" by the word "impelled", as the phrase containing that word was replaced by the new formulation. Furthermore, as that new formulation contained the word "State" rather than the word "country" it was decided that, in the interest of uniformity, the word "State" should be employed throughout the text of the articles.

35. The second amendment of Uruguay, to insert a reference to "regional bodies" after the reference to the United Nations in paragraph 1, was considered by some representatives to raise a possibly contentious issue. It was generally felt that such an additional reference was unnecessary, as the purposes and principles of the Charter were wide enough to embody all the relevant purposes and principles of regional organizations.

36. The amendment of Colombia, which related to the placing of the phrase "without prejudice to the sovereignty of States or to the purposes and principles of the United Nations" at the end, and not in the middle of the paragraph, was explained as a desirable stylistic change in the Spanish text. It was consequently adopted in that text.

37. On the basis of the foregoing, the Working Group submits the following text of paragraph 1 of article 2 to the Sixth Committee for its consideration:

"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."

(ii) Paragraph 2

38. Article 2, paragraph 2, of the draft Declaration adopted by the Commission on Human Rights reads as follows:

"Where a country finds difficulty in continuing to grant asylum, States individually or jointly or through the United Nations should consider in a spirit of international solidarity appropriate measures to lighten the burden on the country granting asylum." (A/6367, annex II)

39. Amendments to this paragraph were submitted to the Sixth Committee by Costa Rica, Norway and Togo (A/C.6/L.588 and Add.1), by Poland (A/C.6/L.589), by Uruguay (A/C.6/L.604) and by Brazil (A/C.6/L.605). In the course of the Working Group's consideration of this paragraph, formal amendments were submitted by Colombia and by Sudan.

40. The foregoing amendments were to the following effect:

(a) Costa Rica, Norway and Togo

"(i) Insert the words 'granting or' between the words 'in' and 'continuing' so that the phrase reads: 'Where a country finds difficulty in granting or continuing to grant asylum';

"(ii) Change 'should consider in a spirit of international solidarity' to read 'shall consider in a spirit of international solidarity'." (A/C.6/L.588 and Add.1)

(b) Poland:

"Insert the word 'territorial' before the word 'asylum'." (A/C.6/L.589)

(c) Uruguay:

"Add the words 'or regional bodies' after the reference to the United Nations." (A/C.6/L.604)

(d) Brazil:

"Delete paragraph 2." (A/C.6/L.605)

(e) Colombia:

"(i) After the first word 'Where', insert the words 'the Government of';

"(ii) Insert between the words 'to grant' and asylum' the word 'territorial'; and

"(iii) Replace the words 'should consider' by the words 'shall at its request consider'."

(f) Sudan:

"Add the words 'at its request' at the end of the paragraph."

41. Some delegations favoured the amendment by Brazil to delete paragraph 2, while others felt that it should be retained. Those who favoured the retention of the paragraph pointed out that it was complementary to paragraph 1 of article 2 and that it made provision for what was often a serious situation in which a State might find itself if faced by a mass influx of persons seeking asylum. Furthermore, the paragraph reflected provisions contained in the Convention relating to the Status of Refugees of 1951, which should also be reflected in the Declaration under consideration. States, with paragraph 2 in mind, might be prepared to admit persons seeking asylum who might otherwise be rejected, thus broadening the humanitarian impact of the Declaration. Furthermore, paragraph 2 did not in any way impinge on the sovereignty of States, as this matter was expressly reserved in the first paragraph of the article.

42. Other representatives were of the view that paragraph 2 was vague and unnecessarily complicated what should be a simple and direct text. It was merely an elaboration of what was stated in paragraph 1. Furthermore, it went beyond the scope of the Declaration under consideration. That Declaration was meant to deal with questions of asylum, not of international assistance. In addition, as drafted, the paragraph might be interpreted to permit an infringement upon the sovereignty of States and interference in their internal affairs, as it did not lay down that assistance should only be considered and rendered by other States at the request of the State in difficulty.

43. A number of representatives favoured amendments along the lines of those of Colombia and of Sudan, which were explained to be intended to make it clear that assistance would only be rendered at the request of the State in difficulty. However, these amendments were not pressed, in view of the continued objections of some representatives to the text of the paragraph as a whole.

44. Those representatives favouring the retention of the text of paragraph 2 were generally agreed that it would be improved and widened in its humanitarian purposes by adopting the amendment of Costa Rica, Norway and Togo to insert the words "granting or" between the words "in" and "continuing". It was therefore included, together with a consequential drafting change at the end of the paragraph.

45. In view of the decisions of the Working Group recorded earlier in this report about the use of the word "territorial" before the word "asylum" (see para. 12 above), and the words "should" and "shall" (see para. 13 above), it was not necessary to consider in detail the amendments to this effect to paragraph 2 by Costa Rica, Norway and Togo, by Poland and by Colombia.

46. The amendment by Uruguay, to add a reference to "regional bodies" after the reference to the United Nations, was considered by some representatives, who supported the retention of paragraph 2, to be of utility, as regional organizations might be in a particularly advantageous position to render assistance in the circumstances contemplated. However, as other representatives were of the view that the addition would unnecessarily complicate the text, and that the point was already covered by the reference in the paragraph to States acting "jointly", the amendment was not included in the text.

47. On the basis of the foregoing, and subject to the view of some delegations that paragraph 2 of article 2 should be deleted, the Working Group submits that paragraph to the Sixth Committee in the following form:

"Article 2

"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."

4. Article 3

48. Article 3, paragraphs 1 and 2, of the draft Declaration adopted by the Commission on Human Rights reads as follows:

> "No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should, except for overriding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which could result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity, or liberty in that territory.
>
> "In cases where a State decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the persons thus endangered to seek asylum in another country" (A/6367, annex II).

49. Amendments to these paragraphs were submitted to the Sixth Committee by Costa Rica, Norway and Togo (A/C.6/L.588 and Add.1), by Poland (A/C.6/L.589), and by Uruguay (A/C.6/L.604). A sub-amendment to the first of these amendments was submitted by Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, the United Arab Republic and the United Republic of Tanzania (A/C.6/L.593 and Add.1 to 3). In the course of the Working Group's consideration of this article, formal amendments were submitted by the United States of America, by Nigeria, by the United Kingdom of Great Britain and Northern Ireland, by Colombia, by France, and jointly by Norway and the United Kingdom of Great Britain and Northern Ireland. The amendment of Nigeria was subsequently revised and a sub-amendment to that revised amendment submitted by Sudan.

50. The foregoing amendments and sub-amendments may, for purposes of convenience, be divided into (i) textual changes and (ii) reformulations. These two categories are considered separately below.

(i) Textual changes

51. (a) Costa Rica, Norway and Togo

> "(i) In paragraph 1, replace 'No one seeking or enjoying asylum in accordance with' by 'No one entitled to invoke article 14 of...'.
>
> "(ii) In the English text of paragraph 1, replace the word 'should' by 'shall'" (A/C.6/L.588 and Add.1).

(b) Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, United Arab Republic and United Republic of Tanzania

"Sub-amendment to the first of the amendments by Costa Rica, Norway and Togo to add after the words 'article 14 of the Universal Declaration of Human Rights' the words 'or persecuted as the result of colonial oppression'" (A/C.6/L.593 and Add.1 and 2).

(c) Poland

"Insert the word 'territorial' before the word 'asylum'" (A/C.6/L.589).

(d) United States of America

"In article 3, paragraph 1, replace the words 'No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights' by the words 'No person referred to in paragraph 1 of article 1, seeking or enjoying asylum,'."

52. In view of the decision taken by the Working Group, in principle, in favour of a standard reference along the lines proposed by the United States amendment to the persons covered by the Declaration (see paragraph 32 above), it was unnecessary to consider the amendment of Costa Rica, Norway and Togo just set out, and the sub-amendment thereto by Algeria, Congo (Brazzaville), Guinea, Iraq, Mali, Mauritania, Morocco, Syria, United Arab Republic and United Republic of Tanzania. Likewise the textual amendment of Poland was covered by the Working Group's decision regarding references to "territorial asylum" (see paragraph 12 above).

(ii) Reformulations

53. (a) Costa Rica, Norway and Togo

"(i) Delete in paragraph 1 the words 'except for overriding reasons of national security or safeguarding the population' (A/C.6/L.588 and Corr.1)

(ii) Insert a new paragraph to read as follows: 'This provision may not be invoked in the case of an individual who constitutes a danger to national security nor in the case of a mass influx which endangers the safety of the nation.'

(iii) Second paragraph of article 3 to become third paragraph, reading as follows: 'In cases where a State decides to base its action on the preceding paragraph of this article, it shall consider, under such conditions as it may deem appropriate, allowing the persons concerned a reasonable period and all the necessary facilities to enable them to seek asylum in another country'" (A/C.6/L.588 and Add.1).

(b) Uruguay

"Replace article 3, paragraphs 1 and 2, by the following:

'Any person enjoying asylum shall be subject exclusively to the laws of the host country during such time as he remains in that country.

'No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return or to remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

'However, asylum may be terminated for overriding reasons relating to national security or acts contrary to the legal order of the country granting asylum, by reason of acts or activities on the part of the person enjoying asylum which are directed towards the use of force or violence against the State from which he came or its government, or by reason of activities contrary to the purposes and principles of the United Nations'" (A/C.6/L.604).

(c) Nigeria

"Delete the whole article and substitute the following: 'No person referred to in article 1, paragraph 1, who seeks or enjoys asylum shall be rejected at the frontier or having entered the territory of asylum be expelled therefrom or returned to the country of flight save on the grounds of national security or public order. However, before being returned to the State of flight or expelled from the State of refuge such person shall be given ample opportunity to seek asylum in another country'."

(d) Sub-amendment by Sudan to the amendment of Nigeria

"After the words 'public order' add the words 'or absence of well-founded fear for flight'."

(e) United Kingdom of Great Britain and Northern Ireland

"In article 3, paragraph 2:

"(i) Delete: 'In cases where a State decides to apply'

Insert: 'If, nevertheless, in any case to which the preceding paragraph relates, a State finds it necessary, for such overriding reasons, and despite such well-founded fear, to take'.

(ii) Delete: 'of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the persons thus endangered to seek asylum in another country'

Insert: 'of allowing the person who would be thus endangered the opportunity, under such conditions as it may deem appropriate, of going to some other country'."

(f) Colombia

"Article 3, paragraph 1. Redraft as follows:

'Except for reasons of the national security or public safety of a State, no person referred to in article 1, paragraph 1, who is seeking or enjoying territorial asylum may be rejected at the frontier or expelled from the territory or expelled from the country in which he is seeking asylum, or returned to the country from which he has fled, it being understood that before returning such a person to the territory whence he came or expelling him from the State in which he is seeking asylum he shall be granted provisional asylum so that he may be afforded ample opportunity to seek asylum in another country.'

"If this amendment is approved, article 3, paragraph 2, will be deleted."

(g) France

"Reformulate article 3 as follows:

'No person referred to in article 1 seeking or enjoying asylum shall be rejected at the frontier or, having entered the territory of asylum, be expelled therefrom or returned to the country whence he fled, unless he constitutes a threat to national security or there is a mass influx of people threatening the safety of the nation.

'However, before being returned to the State whence he fled or being expelled from the State of refuge he shall be given, under such conditions as may be deemed appropriate, a reasonable period of time and ample opportunity to seek asylum in another country.'"

(h) Norway and the United Kingdom of Great Britain and Northern Ireland

"1. In article 3, paragraph 1, delete the words 'except for overriding reasons of national security or safeguarding of the population'.

"2. Insert a new paragraph 2, reading as follows:

'Exceptions to the preceding paragraph may be made for overriding reasons of national security and, in the case of a mass influx, the safeguarding of the population.'"

(i) United States of America

"Reformulate article 3 as follows:

'1. No person referred to in article 1, paragraph 1, should 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 the country of flight.

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

'3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it should 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.'"

54. In the course of its discussions on article 3, which members of the Working Group considered to be the most important article before it, the Group devoted its attention to the most appropriate way of formulating the principle of non-refoulement, the grounds for exceptions to it, and the possible alternatives to such exceptions. After examining whether these three matters were best dealt with in one or more sentences or paragraphs, the Group decided that the humanitarian purposes of a declaration of this nature would best be served by stating the principle itself in one paragraph, followed by another paragraph containing the grounds for exceptions and by a final paragraph referring to the possibility of according provisional asylum or other opportunity for persons who might be subject to expulsion or return to find other alternatives.

55. The various formulations of the principle of non-refoulement as such, which the Working Group had before it, were found to have much in common and the Group eventually agreed to base itself upon the statement of the principle contained in the reformulation put forward by the United States, which had been submitted towards the end of the Group's deliberations, in the light of the other formulations and of the discussions in the Group. The Working Group also discussed, in this connexion, whether the formulation of the principle should refer only to compulsory return to the State of flight, or also such return to any other State where the

person concerned might be in danger of persecution or from which he might be compelled to return to the country of flight. The Working Group, in principle favoured the latter approach. In this respect, a number of alternative formulations were put forward, including "or compulsory return to any State where he may be subjected to persecution" and "which could result in compelling him to return to or remain in a State, if there is a well-founded fear of persecution, endangering his life, physical integrity, or liberty in that State." While some representatives continued to prefer the latter formulation, the Working Group decided, as a compromise, to include the former in the text. In addition to the foregoing, one representative suggested that the words "or, if he has already entered the territory in which he seeks asylum," were unnecessary and confusing in the text of paragraph 1 and might therefore be deleted when the text is finalized.

56. As regards the possible exceptions to the principle of non-refoulement, the Group devoted its attention to determining elements for inclusion in it which could command general support. The Working Group agreed that considerations of national security should be included, as proposed by the Commission on Human Rights. Initially, some differing views were expressed as to whether "safeguarding of the population", as suggested by the Commission on Human Rights, should be stated, with or without qualification, as one of the grounds for exception. Some representatives, who felt that this exception was too wide, suggested that these words should be replaced (as proposed by Costa Rica, Norway and Togo and by France) by a reference to "a mass influx of people threatening the safety of the nation". Others suggested that the reference to safeguarding the population should be retained, possibly qualified by the words "in the case of a mass influx" (as suggested in the reformulation of Norway and the United Kingdom and of the United States), or by the words "including a mass influx". In the debate on these alternatives, certain representatives thought that the use of the words "in the case of a mass influx" would be too restrictive, as other considerations relating to the safeguarding of the population, such as public health, must be taken into account. Other representatives, however, felt that the alternative of "including a mass influx" still left the exception relating to the safeguarding of the population too wide and vague. Eventually the Group

agreed to accept the following compromise phrase "or in order to safeguard the population, as in the case of a mass influx of persons". It was felt that this phrase, while not unduly restricting the exception concerned, indicated that it was to be invoked only in matters of serious import.

57. The Working Group considered whether (as suggested by Uruguay and by Nigeria) "public order" should be specified as one of the grounds, possibly in place of the reference to "safeguarding of the population", on which a person seeking or enjoying asylum might be rejected at the frontier or expelled. A number of representatives initially favoured mention of "public order". Others, however, were of the view that this would introduce an exception to the principle here concerned which was both dangerously wide and vague. It was also pointed out that the term "public order" had very different meanings in common law and civil law countries and that it was therefore desirable to omit reference to it in documents of this nature. In order to arrive at a generally agreed text it was therefore decided not to enumerate "public order" in the list of exceptions.

58. The Working Group was also not in favour of the inclusion of various elements contained in the third paragraph of the Uruguay amendment, such as activities directed to the use of force or violence against the State of origin, as grounds for rejection at the frontier or for expulsion. Those elements were considered as more appropriate for consideration in connexion with other articles of which they were in part repetitive, and as departing too far from the text of the Commission on Human Rights which was serving as the basis for the work of the Group on article 3.

59. The suggestion of Sudan to add "absence of well-founded fear for flight" was maintained by Sudan for later consideration in the Sixth Committee. It was pointed out, with respect to this suggestion, that persons in such a situation were not persons entitled to invoke article 14 of the Universal Declaration of Human Rights.

60. As regards the possible alternatives, where a person seeking or enjoying asylum might otherwise be rejected or expelled by a particular State, the Working Group decided that their formulation should refer not only to the possibility of the grant of "provisional asylum" but also to "an opportunity to go to another State" (as suggested by the United Kingdom amendment and the United States amendment). This alternative was added as it was explained that the concept of

"provisional asylum" is not provided for in certain legal systems. Furthermore, it was explained that it would be more appropriate to employ the phrase "to go to another State", rather than "seek asylum in another State", as there might be cases where the person concerned was legally entitled to enter another State or might be admitted on grounds other than the grant of asylum.

61. The Working Group was not in favour of including in this article a reference, such as that proposed by Uruguay, to the fact that a person enjoying asylum "was exclusively subject to the laws of the host country". It was generally considered that this would not be appropriate in the present context. It was furthermore pointed out that, inter alia, the personal status, nationality, etc., of a person granted asylum might have to be determined in accordance with rules of law other than those of the host country.

62. On the basis of the foregoing, the Working Group submits the following text of article 3 to the Sixth Committee for its consideration:

"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."

5. Article 4

63. Article 4 of the draft Declaration adopted by the Commission on Human Rights reads as follows:

"Persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations" (A/6367, annex II).

64. Amendments to this article were submitted to the Sixth Committee by Brazil (A/C.6/L.587), by Costa Rica, Norway and Togo (A/C.6/L.588 and Add.1), by Poland (A/C.6/L.589), by the Union of Soviet Socialist Republics (A/C.6/L.590) and by Uruguay (A/C.6/L.604). In the course of the consideration of this article by the Working Group, a formal sub-amendment to the amendment of Brazil was proposed by Colombia.

65. The foregoing amendments and sub-amendment were to the following effect:

(a) Brazil:

"Replace the present text of article 4 by the following: 'On the request of the interested State, the State granting asylum should, by means established in its legislation and in accordance with agreements in force, prevent the person enjoying asylum from engaging in activities involving the use of force or violence against the State of origin, as well as from engaging in activities in violation of the purposes and principles of the United Nations'" (A/C.6/L.587).

(b) Colombia:

"Sub-amendment to the amendment proposed by Brazil: Replace the word 'established' by the word 'provided', and delete the final phrase 'as well as from engaging in activities in violation of the purposes and principles of the United Nations', replacing the preceding comma by a period."

(c) Costa Rica, Norway and Togo:

"Replace the word 'should' by 'shall'" (A/C.6/L.588 and Add.1).

(d) Poland:

"Insert the word 'territorial' before the word 'asylum'" (A/C.6/L.589).

(e) Union of Soviet Socialist Republics:

"Insert the following new paragraph at the end of article 4: 'States granting asylum should not permit or encourage persons who have received asylum to be used for purposes of espionage, subversion or sabotage against other States'" (A/C.6/L.590).

(f) Uruguay:

"Delete article 4" (A/C.6/L.604).

66. It was unnecessary for the Working Group to consider the amendments of Costa Rica, Norway and Togo and of Poland to article 4, in view of its decisions in principle regarding references to "territorial asylum" (see paragraph 12 above) and to the use of "should" and "shall" (see paragraph 13 above).

67. The Working Group considered the amendment of Uruguay to delete article 4. Some members were of the view that it was useful to retain the article, particularly as the principle it contained appeared in article 14 of the Universal Declaration of Human Rights. Furthermore, States had not always lived up to that principle in the past, and had permitted persons enjoying asylum to engage in activities which could involve the international responsibility of the host State.

68. Other representatives considered that the article should be deleted, as they found it difficult to understand how the purposes and principles of the United Nations, which were addressed to States, could be in any way binding on individuals.

69. If the article were to have any meaning, in the opinion of some representatives, it should refer to the question of seeking to prevent individuals enjoying asylum from engaging in the use of force or violence against the State of origin. In this respect, there was support from a number of representatives for the amendments of Brazil and the Union of Soviet Socialist Republics.

70. Other representatives, however, considered that these latter amendments went too far in the obligations which they might be considered to lay on States to legislate against certain activities, and in the restrictions which they might be deemed to imposed upon the liberty of individuals. These representatives felt that, if the text of the article were retained, it should be along the lines of that prepared by the Commission on Human Rights.

71. It was suggested that some of the difficulties which members of the Working Group had expressed about article 4 might arise from the fact that, unlike the other articles which were addressed to States, this article was addressed to individuals in its present form. One representative therefore orally proposed a reformulation to the effect that States should not permit persons who had received asylum to engage in activities contrary to the purposes and principles of the United Nations. This reformulation was accepted by the Working Group as a compromise suggestion, some representatives reserving the position of their delegations pending further study.

72. On the basis of the foregoing, and subject to the reservation just mentioned, the Working Group submits article 4 to the Sixth Committee in the following form:

"Article 4

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

6. Article 5

73. Article 5 of the draft Declaration adopted by the Commission on Human Rights reads as follows:

> "Nothing in this Declaration shall be interpreted to prejudice the right of everyone to return to his country as stated in article 13, paragraph 2, of the Universal Declaration of Human Rights" (A/6367, annex II).

74. Uruguay proposed to the Sixth Committee (A/C.6/L.604), in the light of its amendment to delete article 4, that this article should be renumbered as article 4.

75. The Working Group, however, as already seen, was generally in favour of retaining article 4. Discussions in the Working Group on article 5 centred on the question of whether or not it was necessary to retain the article. It was felt by many representatives that the article was unnecessary, as it dealt with a matter too obvious to require repeating, and as it was not directly relevant in the context of asylum. The right of any person to return to his own country covered a field much wider than that of asylum. Furthermore, as article 13 of the Universal Declaration of Human Rights was already quoted verbatim in the preamble it was repetitive to recall it once more in the operative articles.

76. On the other hand, some representatives felt that there might be some benefit in retaining article 5, as its reaffirmation might make States more prepared to grant asylum initially and it might be for the benefit of refugees who hoped one day to return to their own countries. It was also argued that, if article 5 were deleted, reference to article 13 of the Universal Declaration should be removed from the preamble in its present form, or reformulated. Otherwise the failure to reaffirm it in the operative articles might be interpreted to mean that the Declaration in some way derogated from the right of return.

77. In the outcome, the Group agreed to delete article 5, subject to reservations by some members pending the review of the preamble. In the course of the review of the preamble no new proposals were made with respect to article 5, or to the reference in the preamble to article 13 of the Universal Declaration of Human Rights.

78. On the basis of the foregoing, the Working Group recommends that article 5 be omitted from the text of the draft Declaration.

7. Proposed new article

79. Poland (A/C.6/L.589) and Uruguay (A/C.6/L.604) proposed to the Sixth Committee the addition of a new article. These proposals were as follows:

(a) Poland: "Add a new article 6 reading as follows: 'Nothing in this Declaration shall affect the provisions of international conventions relating to asylum'" (A/C.6/L.589).

(b) Uruguay: "Add a new article 5 reading as follows: 'Nothing in this Declaration shall affect international agreements relating to either territorial or diplomatic asylum'" (A/C.6/L.604).

80. The Working Group, when considering the above proposals, noted that the recommendatory paragraph of the text adopted by the Third Committee already stated that the Declaration was without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons. The members of the Group considered that it was obvious that a declaration of this nature would not affect existing legal obligations. A statement to this effect in the preamble was considered to be sufficient. It was also pointed out that the statement in the preamble was more widely drawn than the proposed new article, as it referred not only to asylum but also to refugees and to stateless persons. The Working Group was therefore of the opinion that it was unnecessary to add an article on this subject and decided so to recommend to the Sixth Committee.
