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Draft Declaration on the Right of Asylum
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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 46

**Draft Declaration on the Right of Asylum (A/4452 and Add.1
and Add.1/Corr.1, A/4792, A/4793, A/5145, E/3335, E/
3403 and Add.1-5, A/C.3/L.1035-1039) (continued)**

PREAMBLE AND ARTICLE 1

1. The CHAIRMAN reminded the Committee of the agreement reached (1194th meeting) to proceed to a detailed consideration of the preamble and article 1 of the draft Declaration on the Right of Asylum.

2. Miss KRACHT (Chile) said that her delegation could not but be guided by the institution of asylum as it existed in Latin America; that institution had a long and honourable history. The discussion in the Committee had shown how difficult it was to reconcile the exercise of State sovereignty and the enjoyment of the right of asylum by individuals. She believed, nevertheless, that measures to strengthen the right of asylum could be taken even if the contradiction continued to exist.

3. The right of a State to grant asylum without thereby opening itself to attacks from other States also required protection, and in that connexion she drew attention to article 1 of the Convention on Territorial Asylum signed at the Tenth Inter-American Conference at Caracas in 1954,^{1/} which proclaimed the right of States to accept in their territory, in the exercise of their sovereignty, such persons as they deemed fit without thereby laying themselves open to impositions from other States.

4. The nature of the asylum dealt with in the draft Declaration should be made clear. The two basic kinds of asylum—diplomatic and territorial—were similar in their humanitarian aspects but differed in form and application. She believed that the draft Declaration as it stood related essentially to territorial asylum. Since she also considered that the reference in the last preambular paragraph to existing instruments dealing with asylum should be repeated in the articles themselves, she supported the Polish

amendments (A/C.3/L.1038); however, as an alternative wording for the third of those amendments she would suggest the following: "This Declaration shall not affect the provisions of international conventions on asylum to which States are parties."

5. While fully agreeing with the first part of article 1 as it now stood, she believed that the demand for respect by States, mentioned in the latter part, should be strengthened. It should be clearly indicated that the State granting territorial asylum was alone competent to define the grounds on which asylum was granted. The Chilean Government's views on that and other aspects of the draft Declaration had been submitted to the Secretary-General in 1960 (E/3403/Add.3).

6. Mr. GHAUS (Afghanistan) thought it highly desirable that the right of asylum, proclaimed in article 14 of the Universal Declaration of Human Rights, should be stated in greater detail in a separate declaration. The Commission on Human Rights had achieved that end admirably in elaborating a draft (E/3335, para. 147) which he hoped would, when adopted, serve as a practical guide for States. The right of asylum had both humanitarian and political implications. Individuals had a right to seek and enjoy asylum, while States were entitled to grant or refuse it. A balance between those factors must be achieved, and he believed the present text to be largely successful in that respect. His delegation would also welcome the insertion of an article on the right of asylum in the draft Covenant on Civil and Political Rights, in order to affirm the right more strongly.

7. He found the preamble of the draft Declaration acceptable and saw no need for the amendment to it proposed by the Belgian delegation (A/C.3/L.1039). He would agree with the Polish proposal to add the word "territorial" before "asylum" in article 1, if it was acceptable to the majority, but preferred that the article should be adopted as it stood.

8. Mr. BAHNEV (Bulgaria) said that an important fact to be considered was that all States in the world regarded the granting of asylum as coming within their sovereign power. Some members of the Committee, in seeking to safeguard the right of persons to enjoy asylum, had argued in favour of a balance between States rights and individual rights. Such a balance seemed to him unattainable, for there was no rule of international law which obliged States to grant asylum to persons suffering persecution: that position was confirmed by many outstanding authorities. He knew of only one case in which a country had formally undertaken to grant asylum, and then only on clearly specified conditions. Even the Convention on Territorial Asylum, mentioned by the Chilean representative, did not impose an obligation on States parties to grant asylum, but simply affirmed their prerogative in the matter.

^{1/} Organization of American States: Law and Treaty Series; *Convention on Territorial Asylum*, signed at the Tenth Inter-American Conference, Caracas, March 1-28, 1954 (Pan American Union, Washington, D.C., 1954).

9. The grounds on which States might grant asylum on the other hand, were stated in the constitutions of many countries. The Bulgarian constitution, for one, provided that foreigners enjoyed the right of asylum in Bulgaria when they were persecuted for defending democratic principles, and for struggling for national liberation, the rights of working people or the freedom of scientific and cultural activity. Similar provisions of a declarative nature were to be found in the constitution or legislation of almost every State. Oppenheim, in his famous treatise "International Law", corroborated that fact, while recognizing that the right of asylum was not yet a general principle of international law.

10. In those circumstances, the drafters of article 14 of the Universal Declaration of Human Rights had acted wisely in stating no obligations and in indicating that the right of asylum could not be enjoyed in all cases. In his view the Committee should follow their example. If an obligation was imposed, it should not, and indeed could not, be a legal obligation. In that connexion he disagreed with the Venezuelan representative's view that the draft Declaration might be considered to have binding force (1192nd meeting). It would, in fact, have the force of a General Assembly resolution and would come under the provision, in Article 10 of the Charter of the United Nations, that the General Assembly "may make recommendations to the Members of the United Nations...". It was inconceivable that a declaration of any kind could guarantee a right. At the same time, since the Committee did not seem prepared to adopt an article on asylum for inclusion in the draft International Covenants on Human Rights, it was hardly ready to prepare a full convention on the subject, as had been suggested.

11. The draft Declaration could, however, build on the provisions of national constitutions and incorporate new matters not covered by previous United Nations documents. The preamble should make it clear that asylum was in principle to be granted to persons seeking the maintenance of peace and refused to persons whose activities were opposed to that end. The expression in article 1 "entitled to invoke article 14 of the Universal Declaration of Human Rights" seemed insufficient; since the Universal Declaration was a separate document, it would be better to quote article 14 in full. More desirable still, however, would be the replacement of that expression by one which represented a step forward in relation to article 14 while conforming to its basic notion. He would accordingly propose, in line with his previous remarks, the insertion of some such form of words as: "prosecuted for struggling for national liberation, for international peace and for the maintenance of friendly relations between States"; the Committee might also wish to mention persons seeking to promote respect for human rights and fundamental freedoms. He believed furthermore that the reservation stated in article 14, paragraph 2, of the Universal Declaration of Human Rights should be introduced into article 1 of the draft Declaration.

12. Mr. BELAUNDE MOREYRA (Peru) did not agree that the draft Declaration would have no value beyond that of a recommendation or declaration of intention. Article 1, by stating that the asylum granted by a State must be respected by all other States, gave explicit expression and form to a universally recognized and applied principle of law; it could certainly not be

regarded as a mere statement of intention and, in his view, would have definite legal status.

13. Mr. PRZETACZNIK (Poland) said that his delegation attached the greatest importance to the right of asylum, a right which was guaranteed in the Polish constitution. It believed that the best method of dealing with the question would be to include in the draft International Covenants on Human Rights an article that would be legally binding on all parties. However, he did not contest the value of a declaration that set forth universally accepted principles and would have moral authority.

14. The draft Declaration now before the Committee, while an improvement on the preliminary draft (E/3335, para. 63), was not acceptable in its present form, since it offered no guarantee that generally accepted principles would be put into practice. For one thing, it did not define the right of asylum; and a definition was important, since the word asylum had different meanings. Asylum was not only the place where a refugee found safety but also the protection which that place gave to him. Similarly, the expression "right of asylum" could be used to designate both the right to grant asylum—a subjective meaning—and the body of rules governing that right—an objective meaning.

15. Moreover, the draft Declaration failed to specify the type of asylum to which it referred. Such a clarification was necessary, however, since there were different forms of asylum; territorial asylum, diplomatic asylum and the asylum accorded on warships and military aircraft. There was a basic difference between the asylum granted by a State in its own territory and the asylum which it granted outside its territory. Territorial asylum was a logical consequence of the State's territorial sovereignty, whereas diplomatic asylum represented a derogation from the territorial competence of the State on whose soil it was exercised and could thus give rise to disputes unless the latter State was under a legal obligation to recognize that the State granting diplomatic asylum had the right to do so.

16. As the representatives of Brazil, Argentina, Venezuela and Chile had pointed out, diplomatic asylum was in fact an institution characteristic of Latin America. Although it was recognized in international law, only in that one region was there a body of law on the subject. Elsewhere it had fallen into disuse, because it was no longer in keeping with current political practice and because, in the absence of any contractual commitments, it represented a derogation from territorial sovereignty.

17. Diplomatic asylum and territorial asylum called for entirely different sets of rules and it was therefore essential to define as clearly as possible the form of asylum covered by the draft Declaration. It was evident from the preparatory work that the principles set forth in the draft Declaration applied solely to territorial asylum, but for the sake of clarity that should be expressly stated in the Declaration itself. Indeed, proposals to that effect had already been put forward by the Governments of the Netherlands and Chile, in their observations on the draft Declaration (E/3403/Add.2 and Add.3), and the first two of the three amendments submitted by Poland (A/C.3/L.1038) merely gave formal effect to those proposals. At the same time the Polish delegation believed that no statement of principles on territorial asylum in the draft Decla-

ration should in any way affect or change the special agreements and practices of the American continent with regard to asylum. For that reason it had submitted its third amendment. The drafting change to that amendment suggested by the representative of Chile was, in principle, acceptable to his delegation.

18. One very important point of which the draft Declaration made no mention was the question of who was competent to decide whether or not a person seeking asylum was entitled to it. The matter was regarded in legal doctrine as belonging to the State which granted asylum, and that principle had been formulated in most treaties concluded since 1830. The principle was embodied, *inter alia*, in the convention of 14 August 1876 between France and Great Britain; in the Franco-Spanish convention of 14 December 1877; and in the treaty of 11 March 1890 between Great Britain and the United States. It had also found expression in the treaty on private international law, signed at Lima in 1879, the Bolivarian agreement on extradition of 1911, the Convention on Political Asylum of 1933 and the Treaty on Political Asylum and Refuge of 1939. That right belonged to the State which granted asylum; and rightly so, since, if it was vested in the State of origin the institution of asylum would become meaningless, as the latter State could always claim that the individual in question had committed a non-political crime. The Polish delegation therefore proposed the addition to article 1 of the draft Declaration of a new paragraph reading: "It shall be incumbent on the State granting territorial asylum to indicate its reasons for doing so."

19. Another fault of the draft Declaration was that it did not clearly specify the grounds on which asylum must be refused. The exercise of the right of asylum was, however, limited by international law, which obligated States to surrender to one another, on re-

quest, persons charged with or convicted of non-political crimes or offences, war criminals, and persons guilty of genocide or other crimes against humanity who had taken refuge in their territory. States were thus required by law not to grant asylum to the persons mentioned. The international instruments relating to the right of asylum and extradition, as well as the Moscow Declaration of 1 November 1943, the London Agreement of 8 August 1945 and the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 (III)), denied asylum to persons guilty of non-political crimes, to war criminals, and to persons guilty of crimes against peace and against humanity. Article 14 of the Universal Declaration of Human Rights, on which article 1 of the draft Declaration was based, merely stated that the right to seek and enjoy asylum could 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. It was also important, however, to state clearly that asylum could not be granted to war criminals and persons guilty of crimes against peace and humanity—crimes which, in fact, had been recognized as extraditable offences in a number of international instruments, including General Assembly resolution 3 (I) of 13 February 1946 on the extradition and punishment of war criminals and the Convention on the Prevention and Punishment of the Crime of Genocide. The Polish delegation therefore proposed the addition of a further paragraph to article 1 specifically stating that asylum could not be granted to non-political criminals, war criminals or persons guilty of crimes against peace and against humanity. It was also included to support the changes to article 1 suggested by the representative of Bulgaria.

The meeting rose at 12 noon.