

UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/CONF.78/C.1/SR.7  
21 January 1977

Original: ENGLISH

UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE SEVENTH MEETING

held at the Palais des Nations, Geneva,  
on Wednesday, 19 January 1977, at 3.45 p.m.

Chairman: Mr. DO NASCIMENTO E SILVA (Brazil)

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GE.77-81397

CONSIDERATION OF THE QUESTION OF TERRITORIAL ASYLUM IN ACCORDANCE WITH RESOLUTION 3456 (XXX) ADOPTED BY THE GENERAL ASSEMBLY ON 9 DECEMBER 1975 (item 11 of the agenda of the Conference) (A/10177; A/CONF.78/C.1/L.12, L.15, L.17, L.19, L.22, L.26, L.27, L.29/Rev.1, L.33, L.35, L.37, L.39 and L.47) (continued)

Article 1. Grant of asylum (A/10177, A/CONF.78/C.1/L.15) (continued)

1. The CHAIRMAN invited the Committee to continue its voting on article 1 and in particular on the text for paragraph 2 proposed by Denmark in document A/CONF.78/C.1/L.15, in favour of which the Ghanaian and Nigerian delegations had withdrawn their respective proposals. He reminded representatives that, if the additional paragraph were approved, it would be for the Drafting Committee to decide where it should be inserted in the convention.
2. Mr. PONCE (Ecuador) said that at the previous meeting his delegation had voted for draft article 1 in the consolidated text. Had it been aware that the text which had been put to the vote included the Jordanian amendment, his delegation would have abstained.
3. Under rule 39 of the rules of procedure, he proposed that a separate vote should be taken on each of the two sentences in the proposed additional paragraph.
4. Mr. ARIAS-SCHREIBER (Peru), speaking on a point of order, said that it was clear to his delegation that, in the vote which had taken place at the previous meeting, many delegations had had a mistaken impression as to the text which was being put to the vote, and the results of the vote should therefore be regarded as null and void. In the circumstances, the vote should be held again and, under rule 32 of the rules of procedure, he proposed that the proposal voted upon should be reconsidered.
5. The CHAIRMAN said that, under rule 32 of the rules of procedure, permission to speak on the motion to reconsider a proposal was accorded only to two speakers opposing the motion.
6. Mr. SADI (Jordan) said that, at the last meeting, some 45 minutes had been devoted to the subject of draft article 1, and the Chairman had read out at least 10 times the text to be voted upon. He failed to comprehend how any delegation could have failed to understand which text was being put to the vote; but if any delegation had had a mistaken impression, it had the recourse of explaining its vote. Consequently, he opposed the motion by the Peruvian representative.
7. Mr. KERLEY (United States of America) reminded the Committee that the result of the vote at the previous meeting had been 56 in favour and 2 against. Even with a liberal margin for error, the verdict of the Committee was clear. His delegation accordingly opposed the motion to reconsider the matter.
8. The motion was rejected by 18 votes to 17, with 39 abstentions.

9. Mr. de ICAZA (Mexico) said that his delegation had voted for the motion on principle, since it regarded the earlier vote as null and void, and not in the light of the substance of the matter.
10. The CHAIRMAN invited the Committee to vote on the first sentence of paragraph 2 in the Danish proposal (A/CONF.78/C.1/L.15).
11. Mr. SERUP (Denmark) said that, while he understood perfectly well why some representatives were in favour of a separate vote on each of the two sentences, he wished to point out that his delegation had submitted its proposal as an organic whole.
12. Mr. NETTEL (Austria) said that, in accordance with rule 39 of the rules of procedure, he formally requested a separate vote on each of the two sentences.
13. The request was rejected by 21 votes to 20, with 35 abstentions.
14. Mr. PONCE (Ecuador) said that, as his attempt to simplify matters had not proved acceptable, he was obliged to reintroduce his delegation's amendment (A/CONF.78/C.1/L.11).
15. The CHAIRMAN invited the Committee to vote on the text proposed in document A/CONF.78/C.1/L.15 for article 1, paragraph 2.
16. The text was adopted by 25 votes to 23, with 27 abstentions.
17. The CHAIRMAN said that, since the two paragraphs which the Committee had adopted were to be referred to the Drafting Committee for that body to decide whether they should be incorporated in the final convention as a single article or as more than one article, he suggested that the vote on article 1 as a whole be deferred until that procedure had been completed.
18. It was so decided.
19. Mr. NETTEL (Austria) said that his delegation had asked for a separate vote on each of the sentences in paragraph 2, since it was in favour of the first sentence, which benefited the asylum-seeker, but was opposed to the second sentence which was imprecisely worded and capable of being mis-used to the detriment of the refugee. Consequently his delegation had not been able to support the paragraph as a whole.
20. Mr. MARESCA (Italy), Mr. LEDUC (France) and Mr. FAJARDO-MALDONADO (Guatemala) associated their delegations with the statement by the Austrian representative.
21. Mr. LARSSON (Sweden) said that his delegation had voted for the first paragraph of article 1 - although that paragraph had been much weakened by the Jordanian amendment - since it was anxious to provide asylum-seekers with some kind of protection. It had been unable to support paragraph 2, despite its approval of the first sentence, since it felt that the provision in the second sentence endangered the grant of asylum to refugees. It fully understood the concern of some States to ease the burden on countries of first asylum, but felt that a more satisfactory provision to that effect could have been included elsewhere in the convention. In the circumstances, the Swedish Government hoped that Contracting Parties would interpret the provision in a liberal spirit.

22. Mr. de ICAZA (Mexico) said that his delegation had voted against the second paragraph as a whole, although it would have voted for the first sentence. One characteristic feature of requests for asylum was the urgency of the protection requested, and delays caused by the second sentence in paragraph 2 could result in the effective denial of such protection.

23. Mr. EVSEEV (Union of Soviet Socialist Republics) said that his delegation had abstained from voting on the first paragraph of article 1, which it regarded as insufficiently clear, and had voted against the second paragraph which made the sense of the first paragraph even less clear. It was important that legal provisions in such a convention should not be open to different interpretations, which could only produce confusion.

24. Mr. CHARRY (Colombia) said that his delegation regretted that the second paragraph had not been divided, since its second sentence weakened a provision that was all too weak already. His delegation had, consequently, abstained from voting on the second paragraph as a whole.

25. Mr. ARIAS-SCHREIBER (Peru) said that his delegation had voted for the second paragraph since it considered that the paragraph should be examined in conjunction with other articles of the convention. For example, article 4 provided that a person seeking asylum could be admitted provisionally to the territory of a Contracting State pending a determination of his request. In his opinion, the second sentence of the second paragraph did not necessarily mean that a State would refuse to grant asylum. A State could admit the asylum seeker provisionally pending the grant of permanent asylum by a State with which he had close links or a connexion. Therefore, the provision did not necessarily mean that asylum would be denied but merely that the asylum seeker could be requested to seek asylum from another State.

26. Mr. FAJARDO-MALDONADO (Guatemala) said that for the reasons already given by some other delegations, he believed that the second paragraph would give rise to some confusion not only in the text of the convention itself but also in its practical application. In accordance with his country's traditional practice in cases relating to asylum, his delegation believed that the consolidated text was the very minimum that the Conference could adopt, and it had voted accordingly.

27. Mr. KIBRIA (Bangladesh) said that he had voted against the second paragraph for two reasons. First, his delegation believed that the first sentence in the second paragraph was not fully consistent with the first paragraph of the article, as adopted by the Committee, and that it also imposed an obligation which might be subject to various interpretations. Also, the use of the word "solely" might cause some difficulty, since it was not easy to establish with certainty the grounds on which asylum was sought. Secondly, the second sentence of the paragraph was not clear and used subjective expressions such as "connexion" and "close links" which his delegation felt were inappropriate in a convention such as that which the Conference was elaborating.

28. Mr. AMLIE (Norway) said that his delegation had voted for both paragraphs. It had voted for the first paragraph, although it was not satisfied with the wording, because it had felt that a provision of that nature should be included in the convention. With regard to the second paragraph, it hoped, like the Swedish delegation, that Contracting States would interpret the provision in a liberal spirit.

29. Mr. PONCE (Ecuador) said that his delegation had voted against the second paragraph which, in its view, would considerably weaken the text of article 1 and departed from the main objective of the Conference. With regard to the second sentence in that paragraph, he said it was obvious that a person seeking asylum would request asylum in the country which he believed would offer the best guarantees.

30. Mr. KROYER (Iceland) said that his delegation had voted for the first paragraph, although it would have preferred the version in the consolidated text. It had also voted in favour of paragraph 2 of the text proposed by the Danish delegation. In his opinion, the idea contained in the second sentence of that paragraph was reasonable, but the wording of the provision should be improved by the Drafting Committee.

31. Mr. TINCA (Romania) said that his delegation had tried to adopt as positive an attitude as possible with regard to the proposals that had been voted upon both at the present and at the previous meetings. Accordingly, it had either voted in favour or had abstained. He wished it to be placed on record, however, that the votes which his delegation had cast at the present and previous meetings did not prejudice its final position with regard to the draft convention as a whole.

#### Article 2. Application

32. Mr. STOVE (Federal Republic of Germany) said that since his Government's proposal concerning article 1 had not been approved by the Committee, its proposal regarding article 2 became pointless and his delegation therefore withdrew it.

33. Mr. SALIM (Pakistan), introducing his delegation's amendments to draft article 2 in the consolidated text (A/CONF.78/C.1/L.17), said that in paragraph 1, his delegation proposed the replacement of the word "shall" by the word "may". In the discussion on article 1, his delegation had pointed out that the use of the word "shall" implied some kind of legal obligation, and it had expressed the view that such a term should be avoided in the convention.

34. His delegation's second amendment related to the word "nationality" in paragraph 1 (a). His delegation objected to the inclusion of that word and proposed that it be deleted.

35. Miss BUDIARTI (Indonesia), speaking on behalf of the delegations of Malaysia and the Philippines and of her own delegation, introduced the amendments contained in document A/CONF.78/C.1/L.12. In submitting the amendments, the sponsors had been guided by the principle underlying article 1, namely, that the granting of asylum was a sovereign right of the Contracting State. That principle should be adequately reflected throughout the provisions of the Convention. Therefore, any formulation that directly or indirectly accorded rights to the asylum-seeker was not acceptable to the sponsors. Before subscribing to an international convention which, for humanitarian reasons, gave greater protection and security to asylum-seekers, States must have adequate guarantees that their sovereign rights would not be prejudiced in any way.

36. The proposals submitted by the sponsors consisted of three amendments. The first amendment related to paragraph 1 of draft article 2, and sought to maintain conformity between the approach followed in paragraph 1 of that article and the objective of article 1 - namely, the need to make it clear that the granting of asylum was a sovereign right of the State in which an individual sought asylum.

37. The second amendment reflected the sponsors' concern at the use of the words "a serious common offence" in paragraph 2 (b). In their opinion, those words might give rise to difficulties of interpretation in the application of the provision, and should be replaced by the words "a common crime".

38. The third amendment was designed to remedy a serious omission in paragraph 2. The sponsors believed that the criteria for the non-applicability of the provisions of paragraph 1 were inadequate; and they therefore proposed the inclusion of a new paragraph stating that the provisions of paragraph 1 would not apply to persons whose presence in the territory of the Contracting State where they sought asylum would constitute a threat or danger to the security of that State. A State might have valid evidence that persons seeking asylum in its territory would engage in activities prejudicial to its security. That category of persons must be completely excluded from the scope of the convention. She recalled that the proposal was not new and that the underlying principle was to be found, inter alia, in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

39. It might be argued that the proposed new provision was unnecessary, since under article 1 the State would be free, in the exercise of its sovereign rights, not to grant asylum if it felt that security considerations were involved. The sponsors could not accept that view. The purpose of article 2 was to establish concrete criteria for determining the persons to whom article 1 would and would not apply, and thus to serve as a guideline for States in the implementation of article 1. The proposed new paragraph therefore had a valid place in article 2.

40. Mr. JELIĆ (Yugoslavia) said that draft article 2, paragraph 2 (a), in the consolidated text closely followed the wording of article 1, paragraph 2, of the Declaration on Territorial Asylum. It stated inter alia that the provisions governing the grant of asylum would not apply to persons in respect of whom there were serious reasons for considering that they had committed a crime against peace, a war crime or a crime against humanity. The reason for that provision was that a State could not grant asylum to persons committing crimes for which, in accordance with international instruments the State was obliged to prosecute or extradite them. However, since the adoption of the Declaration on Territorial Asylum, some other international instruments - for example, the Convention for the Suppression of Unlawful Seizure of Aircraft and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents - had designated other criminal acts for which the perpetrators were to be prosecuted or extradited by signatory States. Clearly, the exception to the right of asylum which had been made in respect of persons committing a crime against peace, a war crime or a crime against humanity must also be made in the case of persons who committed the criminal acts defined in more recent international instruments.

41. Consequently, his delegation was proposing (A/CONF.78/C.1/L.22) that the words "criminal acts so defined in other international instruments" should be added to paragraph 2 (a) of draft article 2 in the consolidated text. In addition, while it was true that persons who requested territorial asylum for purely economic reasons could not, under draft article 2, paragraph 1, avail themselves of the provisions of the draft convention, applications for asylum for such reasons were so frequent that it would be advisable to insert a new paragraph reading: "The provisions of paragraph 1 of this article shall also not apply to any person requesting territorial asylum for purely economic reasons". A provision to that effect had been incorporated in the Bellagio text.

42. Mr. TÜRK (Austria) said that, in general, draft article 2 in the consolidated text was satisfactory, although there was some room for improvement. For instance, membership of a certain group was sometimes considered sufficient grounds for instituting criminal proceedings, although the person concerned might not have engaged deliberately in criminal acts. Therefore, his delegation had proposed (A/CONF.78/C.1/L.26) that the word "acts" in paragraph 1 (b) of the draft be replaced by the word "reasons". In that regard, he was happy to note that the United Kingdom had made the same proposal (A/CONF.78/C.1/L.37).

43. The term "serious common offence", in paragraph 2 (b), was not appropriate either; it seemed to imply that the act in question need not be a crime, in which case a serious traffic accident might well be regarded as a serious offence within the meaning of paragraph 2 (b). It would be better to refer to "a serious common crime", since the word "crime" was also used in paragraph 2 (a). It was essential that a State should be able to refuse to extradite a person if he would run the risk, in the State requesting extradition, of suffering grave disadvantage because he belonged to a certain group, or because of the manner in which criminal proceedings were conducted and sentence was executed, or for any other reason.

44. Mr. CHARRY (Colombia), introducing his delegation's proposal (A/CONF.78/C.1/L.36), said that paragraph 2 of draft article 2 was unacceptable because it specified that the provisions of paragraph 1 of the article would not apply to any person with respect to whom there were reasons for "considering" that he had committed a particular crime or offence. It was essential to demonstrate that the person concerned had committed the crime or offence. Consequently, the Colombian proposal, which called for a change in substance and not simply a change in form, employed much more precise wording which was in keeping with the general principles of contemporary international law.

45. With regard to the new subparagraph (a) proposed for insertion in paragraph 2, he was fully aware that such a provision touched on sensitive matters. However, the sole purpose of proposing it was to ensure that the text of paragraph 2 as a whole would be comprehensive and that, in reflecting one of the aspirations of the international community, it would command the support of the majority of States.

46. Mr. BIALY (Poland) said that paragraph 2 of draft article 2, specified that the benefits of the Convention would not apply to certain categories of persons, in particular those with respect to whom there were serious reasons for considering that they had committed, or - as some speakers appeared to prefer - were still liable to punishment for, certain offences. Under the terms of paragraph 2 (b), the convention would not apply to persons who had committed a serious common offence, provided however that the laws and regulations of the State from which asylum was being sought recognized the offences as such. That formulation was undesirable, because it failed to take into account the laws and regulations of the country of nationality or habitual residence of the asylum-seeker. It must be remembered that systems of criminal law differed from country to country; and the present wording of paragraph 2 (b) might lead to a situation in which a person who had committed a serious common offence in his country of origin and was fleeing from justice would be entitled to the benefits of the convention. Moreover, it was difficult to understand why the only legal system to apply should be the system with which the asylum-seeker did not as yet have any contact. It was important that common criminals should be prevented from abusing the provisions of the convention, and it was worth noting that the Bellagio draft had not referred exclusively to the laws and regulations of the State granting asylum.

47. The delegations of Czechoslovakia and Poland were therefore proposing an amended version of paragraph 2 (b), which was contained in document A/CONF.78/C.1/L.33.

48. Mr. de ICAZA (Mexico) said that the delegations of Ecuador, Guatemala and Mexico were fully prepared to consider any suggestions regarding the wording of their proposal (A/CONF.78/C.1/L.35), since its chief purpose was to ensure the consideration of certain fundamental concepts.

49. Paragraph 1 (b) of draft article 2 spoke of prosecution or punishment for acts directly related to persecution and thus appeared to exclude acts which, while not related to persecution, might well relate to a political struggle. Hence, it would overlook what was traditionally one of the essential aspects of the right of asylum - namely, the protection of individuals persecuted for their political activities. Therefore, paragraph 1 (d) should be amended and, following the wording employed in the 1954 Caracas Convention on Territorial Asylum, should read: "Prosecution or punishment for political offences, or for common offences committed for political ends".



50. Draft article 9 in the consolidated text referred to qualification of the grounds for granting asylum or for applying the provisions of the convention. The State had the incontrovertible right at all times to qualify the grounds for granting or withholding asylum. Accordingly, it was important that a new paragraph reading: "It shall be the responsibility of the State of asylum to assess the nature of the offences or the reasons for the persecution" - a provision which differed both in form and in substance from that of draft article 9 in the consolidated text - should be inserted as a new paragraph in article 2 or as a separate article immediately after article 2. Lastly, paragraph 2 (c) should be deleted. While it was appropriate in a text such as the Declaration on Territorial Asylum, it was far too vague to be incorporated in a legal instrument.

51. Mr. TINCA (Romania) said that draft article 2 was one of the key articles of the draft convention, since it defined the category of persons eligible for the benefits of the convention and listed certain exceptions. The whole question of asylum should be regulated properly; hence, precise concepts and terms were required in order to facilitate future interpretation of the provisions of the text. Consequently, his delegation was proposing the insertion in article 2 of a new paragraph, which was set forth in document A/CONF.78/C.1/L.47.

52. Mr. TAIBI (Algeria) said that the expression "serious common offence" in paragraph 2 (b) of draft article 2 was imprecise and might be open to controversy and different interpretations, depending on the different concepts incorporated in national legislations. Indeed, the word "offence" was ambiguous because the seriousness of the offence often depended upon the seriousness of the penalty therefor. His delegation was therefore proposing (A/CONF.78/C.1/L.27) that paragraph 2 (b) should refer to: "A serious common offence punishable as a crime or misdemeanour ...". That more precise formulation would place a limit on possible interpretations of the subparagraph and bring it more closely into line with paragraph 2 of draft article 3, which spoke of "a particularly serious crime".

53. Mr. GRAHAM-HARRISON (United Kingdom) introduced the amendments submitted by his delegation (A/CONF.78/C.1/L.37). The reason for the amendment to paragraph 1 (b) had already been explained by the representative of Austria. In the case of the amendment to paragraph 2, it had been felt that the provisions of paragraph 1 should not apply when there was reason to believe that an asylum-seeker was a danger to the security of the country in which he was seeking asylum. The United Kingdom delegation would willingly consider whether its amendment to paragraph 2 could be brought into alignment with the third amendment proposed by Indonesia, Malaysia and the Philippines in document A/CONF.78/C.1/L.12.

54. The United Kingdom had also proposed a sub-amendment (A/CONF.78/C.1/L.39) to the Australian amendment contained in document A/CONF.78/C.1/L.10. The proposed term "non-political offence" would be more in line with the French term "infraction de droit commun" and with the text of the 1951 Convention. His delegation was, however, prepared to support the suggestion that the word "offence" should be replaced by the word "crime".

55. In view of the large number of amendments to draft article 2, he wondered whether the Secretariat could prepare a document grouping the amendments by paragraphs or sub-paragraphs.

56. The CHAIRMAN said that the Secretariat was already preparing such a document, which would also include suggestions for additional paragraphs. Such problems as the exact wording of paragraph 2(b) might have to be submitted to the Drafting Committee.

57. Mr. FAJARDO-MALDONADO (Guatemala) said that his delegation had submitted amendments to draft article 2 in document A/CONF.78/C.1/L.19 and, together with the delegations of Ecuador and Mexico, in document A/CONF.78/C.1/L.35. The first document contained proposals for three drafting changes: to replace the words "a person" by the words "any person" in paragraph 1, to replace the word "considering" by the word "presuming" in paragraph 2 and, in the Spanish text only, to replace the word delito by the word crima in paragraph 2(a). The proposal contained in the second document, for the deletion of paragraph 2(c), was made for the reasons already stated by the delegation of Mexico.

58. Mr. JONKER (Observer for the International Labour Organisation) said that the question of persecution for trade union activities had been raised at many meetings, particularly at sessions of the International Labour Conference. It would therefore be desirable for the report of the present Conference to refer to that problem and to state that, although trade union activities were not specifically mentioned in the draft convention, they were nevertheless covered by its provisions.

59. He wished to draw the attention of representatives to paragraph 33 of ILO Recommendation No. 151 on Migrant Workers, which laid down the minimum procedural safeguards in case of expulsion. The text of that Recommendation was available to delegations.

60. Mr. QUAAWAINE (Somalia), speaking on behalf of the sponsors of the amendment contained in document A/CONF.78/C.1/L.29/Rev.1, said that the insertion of the words "foreign occupation, alien domination and all forms of racism" in paragraph 1(a) of article 2 would be consistent with the humanitarian spirit of the draft convention and would strengthen its application to persons or peoples subjected to those forms of oppression.

61. Mr. TORREZ-BERNARDEZ (Secretary of the Committee) announced that Sudan had asked to be added to the list of sponsors of document A/CONF.78/C.1/L.29/Rev.1.

The meeting rose at 5.50 p.m.