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UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE NINETEENTH MEETING

held at the Palais des Nations, Geneva,
on Friday, 28 January 1977, at 11.05 a.m.

Chairman:

Mr. DO NASCIMENTO E SILVA

(Brazil)

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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) (continued)

New article to be inserted after article 2 (A/CONF.78/C.1/WP.3, A/CONF.78/C.1/L.93)
(continued)

1. The CHAIRMAN invited those delegations which wished to do so to explain their vote on the new article submitted in working paper A/CONF.78/C.1/WP.3.
2. Mr. ROSENNE (Israel) said that his doubts regarding the competence of the Conference to deal with the status of persons to whom asylum had been granted had been increased by the discussion provoked by the Ecuadorian amendment (A/CONF.78/C.1/L.93). If the question of the competence of the Committee had been put to the vote, he would have voted negatively, on the basis of paragraphs 127 to 131 of the report of the Secretary-General (A/10177*). He considered it was unnecessary to introduce into the convention an article such as that submitted to the Commission in document A/CONF.78/C.1/WP.3, because it was obvious that all persons residing on the territory of a State were subject to the law of that State so far as their rights and duties were concerned. That was why his delegation had voted in favour of the Ecuadorian amendment (A/CONF.78/C.1/L.93) and for the retention of the words in square brackets in document A/CONF.78/C.1/WP.3. On the other hand, it had voted against paragraphs 2 and 3 and against the draft article as a whole, and hoped that the draft article would not appear in the convention.
3. As to the text of the article which had been adopted, his delegation understood paragraph 1 as referring both to existing and future laws and regulations in force in the country concerned. It interpreted paragraph 2 in the same way, and reserved the right to formulate, if necessary, a formal reservation in due course. Israel was a party to the principal international instruments regulating the status, rights and duties of refugees - in particular, the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, and to the 1954 New York Convention relating to the Status of Stateless Persons - and had signed the 1961 New York Convention on the Reduction of Statelessness, which had not yet entered into force. In his opinion, those instruments were and remained the instruments that governed the question.
4. Monseigneur LUONI (Holy See) said he had voted against the new article contained in working paper A/CONF.78/C.1/WP.3 for three reasons. First, he considered that paragraph 1 of the article stated a legal truism, because it was obvious that a person enjoying asylum had not received diplomatic status granting him special privileges. In the most favourable circumstances he could, if he so requested, obtain the nationality of the State granting asylum, which meant that he became a citizen of that State and, as such, was by definition subject to its laws.
5. Secondly, he considered that paragraph 2 lacked consistency. Although the convention, which had as its legal basis the Charter of the United Nations, rightly prohibited a person who had been granted asylum from engaging in activities contrary to the purposes and principles of the United Nations as set forth in the Charter, the phrase "to the extent to which it is possible under their law" implied that certain national legislation did not make it incumbent on the States concerned to apply the provisions of the Charter which they had undertaken to respect as a sine qua non of their admission to the United Nations.

6. Lastly, his delegation noted with concern the gradual erosion of the humanitarian nature of the convention, which might eventually amount to very little.

7. Mr. LARSSON (Sweden) said he had voted against the new article contained in document A/CONF.78/C.1/WP.3, which had been adopted by a very small majority. He hoped that the decision the Commission had taken on the subject would not result in the introduction into the draft convention of a provision relating to the status of refugees.

8. Mr. EL FATTAL (Syrian Arab Republic) drew attention to the fact that the 1951 Convention relating to the Status of Refugees, to which the representative of Israel had referred, governed only problems raised by displacements of populations in Europe following the Second World War. It did not apply to persons at present receiving protection and assistance from United Nations agencies other than the Office of the United Nations High Commissioner for Refugees. Contrary to what the representative of Israel had said, therefore, that Convention was not universal in scope.

New article on family reunion to be inserted after article 2 (A/CONF.78/C.1/L.80)

9. Monseigneur LUONI (Holy See) said that the delegations of the Holy See, Colombia, Switzerland, India and Argentina had prepared a joint text on family reunion (A/CONF.78/C.1/L.80) to be inserted after article 2; it replaced the texts contained in documents A/CONF.78/C.1/L.8, L.20, L.58 and L.68. He proposed introducing the text to the Committee immediately.

10. Mr. CHAPATTE (Switzerland) supported that proposal.

11. Mr. KARTASHKIN (Union of Soviet Socialist Republics) said that, in his opinion, the Committee should continue its consideration of article 3 which it had taken up several days previously and which had already given rise to many amendments that, in an endeavour to facilitate the Committee's work, the Secretariat had recapitulated in working paper A/CONF.78/C.1/WP.2. If the Committee were now to consider the new article on family reunion, as was proposed by the representatives of the Holy See and Switzerland, it would then have to consider other new articles, and would never have time to consider the articles prepared by the Group of Experts. Yet the Conference had been convened to adopt the draft submitted by the Group of Experts, and it only had one more week in which to complete its consideration of the text. If the Committee decided to embark upon the consideration of a new article, his delegation would reserve the right to submit other articles itself. It was firmly opposed to consideration of the new article proposed in document A/CONF.78/C.1/L.80 and formally requested that the Committee should continue its consideration of article 3.

12. Mr. SALEEM (Pakistan) said that he, too, was opposed to the Committee's consideration of a new article at the current stage in its work; it was already well advanced in its examination of article 3 and, logically, should dispose of that article before going on to another.

13. Mr. ZEMLA (Czechoslovakia) and Mr. MICHEEL (German Democratic Republic) supported the USSR proposal that the Committee should continue its consideration of article 3.
14. Mr. SADI (Jordan) said that he, on the contrary, felt that, as the proposed new article was to be inserted after article 2, it should, logically, be considered after that article.
15. The CHAIRMAN invited the Committee to vote on the USSR motion to continue consideration of article 3, on the understanding that, if that motion was rejected, the Committee would immediately take up the new article on family reunion proposed in document A/CONF.78/C.1/L.80.
16. The USSR motion was rejected by 40 votes to 21, with 14 abstentions.
17. The CHAIRMAN said that, unless there was any objection, he would limit the time allowed to each speaker to five minutes.
18. It was so decided.
19. Monseigneur LUONI (Holy See) said that his delegation, together with other delegations which had sponsored provisions on family reunion, had endeavoured to prepare a consolidated text on the question. The article proposed by the Holy See, Colombia, Switzerland, India and Argentina replaced the texts contained in documents A/CONF.78/C.1/L.8, L.68 and L.58 and the last sentence of the text in document A/CONF.78/C.1/L.20. The new text had the merit of not referring to the family as such but to the admission to the territory of the contracting State concerned of the spouse and the minor or dependant children of any person to whom that State had granted the benefits of the convention. The delegations sponsoring the new article had thus avoided any reference to the concept of the family, which might be interpreted differently in various continents. Nor had they referred to other members of the family, such as ascendants or lateral branches, and left it to the States concerned to decide on the matter in good faith.
20. In the light of those considerations, his delegation hoped that the text would be acceptable to all delegations which had supported the various amendments submitted previously. In the opinion of the sponsors, there was no longer any need to discuss the question in greater detail because over 30 delegations had already spoken in favour of family reunion and the question had been considered during the discussions on the Argentine amendment (A/CONF.78/C.1/L.20) to draft article 2. His delegation proposed, therefore, that the Committee should immediately proceed to the vote on the new article.
21. In conclusion, he said that the sponsors had also agreed that the new article should be inserted between articles 2 and 3 of the draft prepared by the Group of Experts because it dealt with persons eligible for the benefits of the convention, and he recalled that, in the form in which it had been approved by the Committee, article 2 referred to persecution for reasons of "kinship".
22. Mr. KOJANEC (Italy) supported the very humanitarian provisions introduced by the delegation of the Holy See on behalf of the sponsors, and endorsed the idea that, if it was adopted by the Committee, the new article should be inserted after article 2.

23. Mr. BENITO MESTRE (Spain) said he would merely express support for the provisions contained in document A/CONF.78/C.1/L.80 so that the Committee could proceed to the vote.

24. Mr. CHARRY SAMPER (Colombia) referring to rule 26 of the rules of procedure, moved the closure of the debate on the question under discussion.

25. Mr. KARTASEVICH (Union of Soviet Socialist Republics) said that he was surprised that some delegations were prepared to proceed to the vote on a question which had not been considered at the current meeting. He added that his delegation intended to present its views on the question and to submit a written amendment. He did not think that the Chairman had informed the Committee that the time-limit for the submission of amendments on the item under consideration had expired, and wondered whether his delegation had the right to submit an amendment to the Committee; personally he was quite sure that no delegation could be deprived of that right.

26. The CHAIRMAN explained that delegations could no longer submit amendments once the Committee had voted on the text to which such amendments related.

27. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) moved the adjournment of the debate on the question under discussion and pointed out that, under paragraph (c) of rule 28 of the rules of procedure, his motion should be put to the vote before the Colombian representative's motion for the closure of the debate.

28. Mr. EVSEEV (Union of Soviet Socialist Republics), after explaining that he had been absent at the beginning of the discussion, said he was surprised that the Committee should have before it a substantive question which had no connexion with territorial asylum, and that certain delegations were trying to secure the adoption of provisions that the Committee had not examined. He protested against the improper pressure that was being exerted on his delegation and wondered what sort of rules of international conduct were being followed by certain delegations in order to impose their views on others. What was more, the convention under consideration should be acceptable to a large number of States and not merely reflect the views of one group. His delegation considered that its interest in the question under consideration was at least equal to that of the delegation of the Holy See, and felt that the Committee should not run counter to the interests of the international community. His delegation moved the adjournment of the meeting to permit consultations.

29. Mr. ZEMLA (Czechoslovakia) supported the USSR representative's motion for adjournment of the meeting.

30. The motion for the adjournment of the meeting was rejected by 34 votes to 20, with 22 abstentions.

31. Mr. KERLEY (United States of America) reminded members that the Committee had to decide on the Colombian representative's motion for the closure of the debate, and then vote on the new article proposed in document A/CONF.78/C.1/L.80.

32. Mr. KIBRIA (Bangladesh), supported by Mr. SADI (Jordan), referring to rules 27 and 28 of the rules of procedure, moved the adjournment of the meeting and suggested that the following meeting should not start before 4 p.m. in order to allow delegations to hold consultations. Several delegations of the Asian Group could not agree to closure of the debate on a question which had not been fully examined.

33. Mr. EVSEEV (Union of Soviet Socialist Republics) emphasized that the purpose of the Conference was to adopt a universal convention which would genuinely contribute to the progressive development of international law. It was important, therefore, to examine carefully every political question that arose and then to draw up legal norms couched in such terms that all States could undertake to respect them for a long time. Only in that way could international law be developed and serve as a guide for mankind. It was vital to refrain from drafting international law which would reflect the interests of a few States only. Peaceful co-operation between States was one of the main objectives of the United Nations, and his delegation was anxious to find a compromise formula which would reconcile the interests of all States irrespective of their legal systems and ideologies. It in no way wished to impede the smooth progress of the work of the Conference, but was not prepared to work under the pressure of a group of States. No State, even the smallest, could accept the idea that the norms drawn up by the Conference should not reflect the interests of all States. That was why the draft convention should be examined article by article and each delegation enabled to express its opinion, so that eventually a consensus could be reached on compromise formulas.

34. Mr. KERLEY (United States of America) reminded members that proposals relating to a provision on family reunion had been made at the very beginning of the Conference. The Soviet delegation would, therefore, have had ample time to submit a proposal had it wanted to do so. The only way out of the present impasse was not an adjournment but a vote on the Colombian motion to close the debate.

35. Mr. CHARRY SAMPER (Colombia) also noted that the question of family reunion had been submitted at the very beginning of the session. He added that at the time he had moved the closure of the debate no speaker had been listed to take the floor on that question.

36. He was prepared to withdraw his motion for the closure of the debate if the Soviet delegation really intended to submit a new proposal and if it agreed that that proposal should be examined and put to the vote at the following meeting.

37. Mr. KERLEY (United States of America) said that if the Colombian delegation withdrew its motion his delegation would immediately submit a similar motion, because it was important to vote without delay on document A/CONF.78/C.1/L.80.

The meeting rose at 1.10 p.m.