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UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 20TH MEETING

held at the Palais des Nations, Geneva,
on Friday, 28 January 1977, at 4.15 p.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)

Proposed new article on family reunification (A/CONF.78/C.1/L.30, L.95 and L.96)
(continued)

1. The CHAIRMAN invited delegations to express their views on the suggestion made by the representative of Colombia at the previous meeting regarding his motion for closure of the debate on the proposed new article on family reunification.
2. Mr. KIBRIA (Bangladesh), speaking on behalf of the Asian group, appealed to the representative of Colombia to withdraw his motion for the closure of the debate. The Committee should be in a position to consider proposed amendments in a reasonable manner and to vote on them after they had been discussed in full.
3. Mr. TOTH (Hungary), speaking on behalf of the Eastern European group, said that the work of the Conference should proceed normally and that all delegations should be given the opportunity to express their views and to submit any proposals they wished. He was grateful for the spirit of understanding displayed by the representative of Colombia and by all delegations which had expressed the wish to make a positive contribution to the orderly progress of the Conference - a wish that, he hoped, was shared by the United States delegation.
4. Mr. VANDERPUYE (Ghana), speaking on behalf of the African group, endorsed the statement made by the representative of Bangladesh and thanked the representative of Colombia for his conciliatory attitude.
5. Monsignor LUONI (Holy See) said that he had been pleased to hear the statement made by the representative of Hungary, and was glad to note that the delegation of the Union of Soviet Socialist Republics had submitted an amendment (A/CONF.78/C.1/L.95) to the proposal on family reunification, thus displaying a genuine spirit of co-operation. He had requested the delegations which had moved the closure of the debate to withdraw their motion, and he wished to pay tribute to the understanding that they had shown.
6. At the previous meeting, his own delegation had called for a vote on the proposed article on family reunification (A/CONF.78/C.1/L.30) simply because it had considered that members of the Committee had already had ample opportunity to comment on it. However, if it were now felt that the Committee should have the fullest possible discussion on the subject of family reunification, his delegation would be delighted.
7. Mr. CHARRY (Colombia) said that his delegation was withdrawing its motion for the closure of the debate, in the hope that the discussion would prove to be constructive and that no attempt would be made to conduct a filibuster.
8. Mr. KERLEY (United States of America) said that he had no intention of reintroducing the motion for the closure of the debate, but hoped that those speakers who had delayed the work of the Committee would realize that his delegation's patience was not infinite.

9. Mr. SADI (Jordan) said that the balance established in article 1 between the sovereign rights of the State and the humanitarian element should be maintained throughout the draft convention. He therefore proposed that the first paragraph of the text proposed by the Holy See, Colombia, Switzerland, India and Argentina (A/CONF.78/C.1/L.30) should be amended to read: "Any Contracting State granting territorial asylum shall endeavour, in the exercise of its sovereign rights and in the interest of family reunification and for humanitarian reasons, to admit to its territory the spouse" (remainder unchanged). An article worded in that way would, in his opinion, command the widest possible support.

10. Mr. EVSSEEV (Union of Soviet Socialist Republics) observed that the meeting had begun in a spirit of mutual courtesy and in precisely the kind of atmosphere that should reign in a diplomatic conference of plenipotentiary representatives. He could not fail to thank the Chairman and all delegations which had striven to ensure that the work of the Committee proceeded normally.

11. The amendments proposed by his delegation (A/CONF.78/C.1/L.95) were based on the belief that all persons were equal. Under the Constitution of the USSR and Soviet legislation, each citizen, regardless of sex, race, religious belief or political opinion, had equal rights. It followed that each member of the family had equal rights; and he was somewhat concerned by the formulation of the proposed new article on family reunification, which appeared to place considerable emphasis on the head of the family. Perhaps owing to the influence of Roman law and the Napoleonic Code, the proposed text embodied the concept of the principal and the ancillary. However, the draft Convention must take into account the right of each member of the family, on an equal footing, to choose his or her own way of life. In other words, it must not appear to be an invitation to create a category of asylum-seekers that did not exist. For that reason, his delegation had felt that the provision contained in the earlier proposal by Argentina (A/CONF.78/C.1/L.20) had no place in an international instrument on territorial asylum. It was essential to display wisdom and, therefore, to practice self-restraint; otherwise, a convention encompassing a vast range of topics would consist merely of a large number of incompatible concepts and norms and would be ignored by States. The wording proposed by the USSR delegation was designed to resolve the problem by ensuring that every person had his own right to act as an individual subject of law and that, in the exercise of its sovereign rights, each State would consider the question of asylum for the dependants of asylees in accordance with its laws and regulations.

12. In conclusion, he was of the opinion that a member of the family of an asylee should not enjoy more or greater rights than the asylee, i.e., than the person to whom the grant of asylum served as grounds for an application for asylum by the member of the family. The proposed new article, if amended as his delegation proposed, would read:

"Each Contracting State shall, in the exercise of its sovereign rights in each individual case, examine questions of family reunification and for humanitarian reasons facilitate the admission to its territory of the spouse and minor or dependent children of any person to whom it has granted the benefits of this Convention in accordance with its laws and regulations.

"The provisions of article 2, paragraph 2, of this Convention shall apply to members of the families of such persons."

13. Mr. DAWSON (United States of America) said that it was entirely superfluous to specify in each and every article of the draft convention that, in granting territorial asylum, the State was acting in the exercise of its sovereign rights. Article 1 already contained a clause to that effect; and it had not been considered necessary to repeat that clause in article 2. He failed to see why a reference to the sovereign rights of the State should be included in an article on family reunification.

14. The USSR proposal to insert the phrase "in accordance with its laws and regulations" was also superfluous, for it implied that the text of the proposed new article called for the reunification of families of asylees in a manner that lay outside the laws and regulations of the State granting asylum.

15. The last paragraph of the proposed new article (A/CONF.78/C.1/L.30) stated that the members of the family should, save in exceptional circumstances, be given the same benefits as the asylee. Very wisely, it did not spell out what the exceptional circumstances were or might be, but it could be reasonably inferred that they included circumstances such as those mentioned in the eligibility criteria enumerated in article 2, paragraph 2. Consequently, his Government would be strongly opposed to the replacement of the final paragraph of the article by the text which appeared in the USSR amendment. However, he would have no objection to the insertion of a reference to article 2, paragraph 2, in the formulation already contained in the excellent proposal by the Holy See, Colombia, Switzerland, India and Argentina, if the insertion of such a reference was required in order to reach a consensus.

16. Mr. ESPINO GONZALES (Panama) said that his delegation could not support the Soviet amendment, which was contrary to his country's humanitarian traditions in regard to the granting of territorial asylum, and might prove dangerous for the asylee and his family.

17. Mr. KOJANEC (Italy) wondered why it had been felt necessary in the USSR amendment to refer to national laws and regulations. All States, in the exercise of their sovereign rights, acted in accordance with their laws and regulations; and such a reference was therefore superfluous.

18. Mr. de ICAZA (Mexico) said that his delegation was prepared to support the joint text contained in document A/CONF.78/C.1/L.30, although it fell well short of Mexico's own legislative provisions.

19. The Soviet amendment was somewhat puzzling. There was no need to refer to the sovereign rights of the State, since Contracting States could be presumed to be exercising those rights even when fulfilling obligations which they had undertaken under the convention. Similarly, it could be taken for granted that questions of family reunification would be examined: what was important was not the examination itself but its results. Nor was it clear what need there was for a reference to national laws and regulations or to the application of the provisions of article 2, paragraph 2. The text contained in document A/CONF.78/C.1/L.30 was already weak, and his delegation would oppose any proposals such as the Soviet amendment which would weaken it still further.

20. Mr. AMLIE (Norway) said that he failed to see the logic of the Soviet amendment. The Committee was now endeavouring to establish binding rules on the very important humanitarian matter of family reunion; but, by introducing concepts such as sovereign rights and national laws and regulations, the amendment would enable a State to do exactly as it wished. Adoption of the Soviet amendment would make the joint text completely ineffective, and his delegation would oppose it.

21. Mr. KHAN (Pakistan) said that the differences between the joint text, the Soviet amendment and the Jordanian amendment were not as great as might at first appear. He suggested that they might be combined into the following text:

"Each Contracting State, in the exercise of its sovereign rights and in the interest of family reunification and for humanitarian reasons, shall endeavour to admit to its territory the spouse and the minor or dependent children of any person to whom it has granted the benefits of this Convention.

"These members of the family should, save in exceptional circumstances, be given the same benefits as that person. The provisions of article 2, paragraph 2 and article 2 bis of this Convention shall apply to members of the families of such persons".

22. Mr. EVSEEV (Union of Soviet Socialist Republics) said that, with a view to producing an acceptable text, his delegation was prepared to consult with other delegations which could not support its amendment.

23. Mr. GRIFFIN (Venezuela) said that it was clearly the intention of the joint text (A/CONF.78/C.1/L.80) to facilitate family reunion and ensure that the families of asylees could enjoy the same benefits as the asylee himself. The Soviet amendment, on the other hand, contained a great many conditions and prerequisites and made specific reference to cases in which the convention should not be applied to the families of persons requesting asylum. His delegation would therefore vote for the joint text and against the Soviet amendment.

24. Mr. ESPINO GONZALEZ (Panama) said that, since it was quite clear that it would be difficult to reach a consensus on the article on family reunification, he proposed that, under rule 24 of the rules of procedure, the list of speakers be closed.

25. The CHAIRMAN said that, if there were no objections, he would take it that the Panamanian proposal was accepted.

26. It was so decided.

27. The CHAIRMAN said that, if there were no objection, he would impose a time-limit of five minutes for the statements of each of the remaining speakers on his list.

28. Mr. ŽEMLA (Czechoslovakia) suggested that the sponsors of amendments be allowed to speak for ten minutes.

29. The CHAIRMAN said that, after all the remaining speakers on his list had made their statements, one sponsor of each proposal would be allowed ten minutes in which to reply to the points raised.

30. Mr. EVSEEV (Union of Soviet Socialist Republics) suggested that, in order to expedite the work, representatives making oral amendments should also distribute them in writing, in one of the languages of the Conference.

31. The CHAIRMAN thanked the USSR representative for his suggestion, and said that the amendment submitted orally by the representative of Jordan would shortly be circulated as document A/CONF.78/C.1/L.96. The compromise suggestion put forward by the representative of Pakistan could, perhaps, be distributed in writing.

32. Mr. CHATURVERDI (India), said that the joint text on family reunification (A/CONF.78/C.1/L.80), of which his delegation was a sponsor, was a well-balanced compromise text which should be acceptable to all delegations. It merely provided that a State should facilitate the admission of members of the families of asylees, and thus in no way interfered with State sovereignty. His delegation could see no need to refer, in virtually every article, to the exercise of the sovereign rights of the State.

33. On the other hand, his delegation would not object to the introduction of a reference to article 2, paragraph 2.

34. Mr. GRISHCHENKO (Ukrainian Soviet Socialist Republic) said that he could not agree with the previous speaker that the joint text was well-balanced. Article 1 contained a reference to a State "acting in the exercise of its sovereign rights" in regard to the admission of an asylum-seeker. He failed to understand why the proposed new article should not contain a reference to the State acting in the exercise of its sovereign rights in respect of members of the families of asylees as well. It was rather strange that the sponsors appeared to object to the inclusion of the phrase in the current article, although they had raised no objections to its inclusion in article 1.

35. The oral amendment suggested by the representative of Pakistan would eliminate the imbalance in the joint text, by combining it with the USSR and Jordanian amendments.

36. With respect to the second paragraph, the easiest solution might well be to replace both the proposed formulations by a simpler wording such as: "All the provisions of the present convention shall be extended to cover the members of the families of such persons."

37. Mr. VANDERPUYE (Ghana) said that his delegation welcomed the spirit of reconciliation displayed in the suggestions put forward by the representatives of Pakistan and the Ukrainian Soviet Socialist Republic. It would be useful to hear what the sponsors of the various texts thought of those suggestions.

38. Mr. KOJANEC (Italy) said that the major difference between the consolidated text on family reunification (A/CONF.78/C.1/L.80) and the text submitted by the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.95) was one of accent. In the former text, the stress was on family reunification while, in the latter, the sovereign rights of the State were emphasized, thereby introducing a repressive tone.

He wished to remind representatives of article 16, paragraph (3) of the Universal Declaration of Human Rights which stated that: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." If the State had a duty to protect the family, it was far more logical that the accent should be placed on family reunification.

39. Although the sub-amendment put forward by the representative of the Ukrainian Soviet Socialist Republic was a considerable advance on the USSR amendment, all the amendments in question appeared to be superfluous, since Articles 1 and 2 of the Convention were automatically applicable. Consequently, his delegation supported the joint text.

40. Mr. DOS SANTOS (Brazil) said that his delegation was in favour of the principle laid down in document A/CONF.78/C.1/L.80 and believed that the explicit mention of the "spouse and the minor or dependent children" of the asylee would dispel the main doubts felt by some delegations. However, it welcomed the Jordanian amendment (A/CONF.78/C.1/L.96), which was in accordance with the spirit and wording of the first two articles.

41. In the USSR amendment (A/CONF.78/C.1/L.95), the final proposal - concerning paragraph 2 of article 2 - was an acceptable addition to the Jordanian amendment, because it would make it clear that the provisions relating to the asylee would always be applicable to any person who might benefit from the asylum granted him.

42. Mr. LEDUC (France) noted that the text proposed jointly by the Holy See, Colombia, Switzerland, India and Argentina (A/CONF.78/C.1/L.80) was a compromise text resulting from lengthy negotiations. It was not altogether satisfactory in his delegation's view, because it was less favourable to families than the original draft proposed by the Holy See and Colombia (A/CONF.78/C.1/L.8) and less favourable than French practice. However, his delegation was prepared to vote for it, because it was clear and concise although not mandatory.

43. His delegation had no objection to the Jordanian amendment (A/CONF.78/C.1/L.96), because it was in keeping with his country's view of the granting of asylum. However, it did not seem to be necessary to insert the words "in the exercise of its sovereign rights" in every article and on every occasion that the expression "Each Contracting State" was used. It was pointless to repeat what was obvious and what had already been mentioned in article 1.

44. The USSR amendment (A/CONF.78/C.1/L.95) seemed to introduce an element of confusion into a clear text. For example, it was obvious that States would have to examine each individual case of requests for family reunification. The words "in accordance with its laws and regulations" reflected another self-evident fact, unless of course they were intended to qualify the words "granted the benefits of this Convention", as an imprecision in the text suggested that they might be, with the implication that the Convention would be applied only to the extent that its provisions were in conformity with the laws of the State granting asylum. His delegation was puzzled by the last paragraph of the USSR amendment, since the members of an asylee's family who applied for asylum were usually spouses and minors. Furthermore, the expression "save in exceptional circumstances" in the text in document A/CONF.78/C.1/L.80 made provision for the necessary exceptions.

45. His delegation would therefore vote for the joint text in document A/CONF.78/C.1/L.80 and against the USSR amendment (A/CONF.78/C.1/L.95).

46. Mr. CHAPATTE (Switzerland) said that the joint text (A/CONF.78/C.1/L.80), of which his delegation was a sponsor, had been submitted solely to respond to a humanitarian concern. It constituted a very minimum; and his delegation could not accept any amendments that would seriously weaken the obligation of the State granting asylum. Several amendments had been submitted orally; but his delegation was unable to state its position on texts which had not been circulated, and it reserved the right to express its views on those amendments at a later stage.

47. Mr. BRECKENRIDGE (Sri Lanka) said that a tendency seemed to be emerging in the Committee to attach greater importance to the members of the family of the asylee than to the asylee himself. In that context, the Jordanian amendment (A/CONF.78/C.1/L.96) was most acceptable to his delegation.

48. The consensus which had emerged regarding the articles governing the original asylee should be the model, or standard, for any provisions the Committee might wish to include on the subject of family reunification. The terms used regarding the grant of asylum to the original asylee must be explicitly or implicitly included in any article relating to family reunification. Therefore, his delegation failed to see why the phrase "in the exercise of its sovereign rights" should not be inserted after the words "Each Contracting State", as proposed in the USSR amendment (A/CONF.78/C.1/L.95) and the Jordanian amendment (A/CONF.78/C.1/L.96).

49. His delegation saw much merit in the use of the words "shall endeavour" in the Jordanian amendment because, in its view, the State would use its endeavours precisely in the exercise of its sovereign rights. The reference to the sovereign rights of the State, together with the reference to the interests of family reunification and to humanitarian reasons, would give any contracting State the proper legal framework in which to consider questions of family reunification.

50. The words "save in exceptional circumstances" introduced an element of ambiguity into the second paragraph of the joint text, which was open to the interpretation that members of the family of the asylee might in exceptional circumstances be accorded more extensive benefits than the asylee himself. In fact, his delegation saw no need for the inclusion of a second paragraph in the proposed new article.

51. Mr. GOLOVKO (Byelorussian Soviet Socialist Republic) said that in his delegation's view, the USSR amendment (A/CONF.78/C.1/L.95) introduced no substantially new element. It merely proposed a formulation for an additional article on family reunification that would be consistent with the principle set forth in articles 1 and 2 - namely, that asylum was not a subjective right but a right of sovereign States.

52. His delegation could not agree with the view that the USSR amendment was repressive in nature. It supported the USSR proposal, which was in keeping with the spirit of the convention.

53. The text proposed jointly by the Holy See, Colombia, Switzerland, India and Argentina (A/CONF.78/C.1/L.80) gave the impression that the members of the family of the asylee should automatically be granted asylum. However, it was essential to be realistic. Relations between States with different economic and social systems had not yet reached a stage in which the question of family reunification could be solved in that manner. It was clear that a State of nationality could not be indifferent to the fate of its own nationals; and also each member of the family of an asylee must be asked whether or not he or she wished to be reunited with the asylee, and the wishes expressed must be taken into account.

54. Since the Committee had before it a number of amendments, he thought that it should proceed as it had done in the case of the articles it had already adopted - i.e. it should set up a small working group to prepare an acceptable text on family reunification.

The meeting rose at 6.5 p.m.