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UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 22ND MEETING

held at the Palais des Nations, Geneva,
on Monday, 31 January 1977, at 3.35 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)

New article on family reunification (A/CONF.78/DC.4; A/CONF.78/C.1/L.80, L.95,
L.96, L.97) (continued)

1. The CHAIRMAN invited members to explain their votes on the text for a new article on family reunification which the Committee had adopted at its previous meeting.

2. Mr. KHAN (Pakistan) said that his delegation had voted for the Jordanian amendment (A/CONF.78/C.1/L.96) with respect to the first part of the proposed new article, and for the USSR amendment (A/CONF.78/C.1/L.95) with respect to the second part. It had voted against both parts of the text in document A/CONF.78/C.1/L.80 and had abstained when that text as a whole had been put to the vote. He recalled that at an earlier meeting he had said that the various texts proposed were not incompatible and that it should be possible to find a formulation which would meet with a broad consensus. While he had not been under instructions from his government to promote or to sponsor any amendment on family reunification, he had been under strict instructions to work for the adoption of a balanced, workable and as far as possible comprehensive convention. It had been his conviction that the most workable convention would be one which commanded as wide a consensus as possible.

3. His delegation had heard with regret the repeated statements to the effect that a reference to the exercise of the sovereign rights of the State would weaken the convention, and that delegations which favoured the inclusion of such a reference were seeking to render the convention sterile. He stressed the need to be realistic. Of course, his delegation hoped that States would be guided by humanitarian motives in their decisions on the granting of asylum; but it believed that the humanitarian spirit was best displayed when it was displayed voluntarily and not under compulsion. The Jordanian amendment contained nothing to prevent the display of humanitarianism. His delegation regarded that amendment as a practical compromise and had voted for it.

4. With regard to the second paragraph in the joint text (A/CONF.78/C.1/L.80), the USSR amendment thereto (A/CONF.78/C.1/L.95) was very precise. His delegation thought that the words "save in exceptional circumstances" in the joint text were vague to say the least, and, in any case, the convention did not define the benefits which the asylee was to be given. His delegation had felt that the USSR proposal for the second paragraph specifically sought to apply the régime of asylees, as adopted by the Committee, to the members of the family of the asylee. His delegation had never intended to under-emphasize humanitarian considerations; it had merely tried to achieve a formulation which would command the widest support.

5. Mr. GEBREKIDAN (Ethiopia) said that at the previous meeting his delegation had abstained in the vote on all the texts for the proposed new article.
6. It understood the text in document A/CONF.78/C.1/L.80 to mean that if members of the family of the asylee were able to leave the asylee's country of origin, the country granting asylum to the asylee should facilitate their admission to its territory. It did not understand the text to mean that efforts should be made to facilitate the departure of the family members from the country of origin.
7. In the light of the provision in the proposed new article in the consolidated text (A/10177, annex, p.41), his delegation considered that the discussion on the text in document A/CONF.78/C.1/L.80 and on the amendments thereto had been almost futile.
8. Mr. MARESCA (Italy) said that from the outset his delegation had supported the proposal by the Holy See to include in the convention a provision on family reunification. In so doing, it had been convinced that it was following a well established tradition in humanitarian law. He regretted that his delegation had been unable to support the amendments to the joint text (A/CONF.78/C.1/L.80). It had been unable to accept a provision whereby States would be obliged to consider questions of family reunification on a case-by-case basis, since such a procedure would conflict with legal standards. Furthermore, it had considered the provision relating to the laws and regulations of a State to be superfluous.
9. His delegation had supported the text in document A/CONF.78/C.1/L.80 which embodied the essential concept of the duty of the State to facilitate family reunification. It welcomed the Committee's adoption of the text, which was well balanced and would constitute a significant achievement by the Conference.
10. Mr. GRIFFIN (Venezuela) recalled that at an earlier meeting his delegation had said that it would support the text in document A/CONF.78/C.1/L.80 and had given its reasons for rejecting the other proposals.
11. However, in the vote on the second paragraph of the joint text, his delegation had abstained, since it felt that the words "save in exceptional circumstances" might be used as a pretext for not granting the benefits of the convention to the members of the family.
12. Mr. SADI (Jordan) said that his delegation had not supported the text in document A/CONF.78/C.1/L.80. It did indeed appreciate the spirit and motivations underlying that text, but would have preferred a formulation that would have enabled the convention to command the widest possible support. The value of the convention would be determined by the number of States that ratified it; and, the greater the number of ratifications, the more effectively the interests of children and spouses of asylees would be protected. His delegation hoped therefore that it would have the opportunity at a future stage to draft, in co-operation with other delegations, a text that would command wider support.

13. Mr. MICHEEL (German Democratic Republic) said that his delegation had voted for the USSR proposal (A/CONF.78/C.1/L.95) and the Jordanian amendment (A/CONF.78/C.1/L.96). It had voted against the text contained in document A/CONF.78/C.1/L.80.

14. His delegation's basic position was that the question referred to in the new article should not be dealt with in the convention at all. At the very outset of the Conference, it had been agreed that the consolidated text should be taken as a basis for the future convention. However, the consolidated text made no mention of problems of family reunification, for the obvious reason that such problems were particularly complex and were not directly related to the right of asylum. For legal reasons, the grant of asylum to one person could not entail its automatic extension to other persons.

15. Any deviation from that principle would be contrary to the sovereign right of States to decide on the grant of asylum in every specific case. However, in the interest of furthering the work of the Conference and in a spirit of compromise, his delegation had agreed to the proposals submitted by the USSR and by Jordan. In its views, those proposals were acceptable because they reconciled in a well-balanced manner the sovereign rights of States on the one hand and the interests of asylees with regard to family reunification on the other.

16. Mr. KARTASHIN (Union of Soviet Socialist Republics) said that his delegation had always advocated the strengthening of family links. However, it considered that the question of family reunification should be dealt with on the basis of the laws and regulations of individual countries and in accordance with the sovereign rights of each State. His Government was not opposed to family reunion, but believed that the matter should be discussed and resolved in suitable international forums and not at the present Conference, which was concerned with questions directly related to territorial asylum.

17. However, as some delegations had advocated the inclusion of a provision on family reunification in the convention at present under discussion, his delegation had introduced the amendment in document A/CONF.78/C.1/L.95. It had voted for the Jordanian amendment (A/CONF.78/C.1/L.96), but against the article in its present wording, since it believed that the provisions contained therein had been discussed hastily and did not reflect the view of the majority of the Committee's members.

18. The discussions in connexion with the elaboration of the International Covenants on Human Rights had shown clearly that a solution that was satisfactory not only to one group of States but to the majority of States would be achieved only after a serious and detailed consideration of the issues involved.

19. Mr. SALAS (Cuba) said that his delegation had voted against the proposal for a new article contained in document A/CONF.78/C.1/L.80, because it had felt that the proposal dealt with a question that was totally alien to the convention which the Committee was elaborating. In the interest of family reunion and for humanitarian reasons, each Contracting State might be required conversely to endeavour to collaborate with a view to putting an end to the situation which constituted the grounds for asylum, and thus enabling the asylee to return to his country of origin or habitual residence in order to be reunited with his family; but such a provision would be equally alien to the convention on territorial asylum.

20. Moreover, his delegation considered that the wording of the proposal in document A/CONF.78/C.1/L.80 was too broad and might lead to interference in the internal affairs of States. However, as some delegations were in favour of an article on family reunification, his delegation had voted for the amendments which took its views into account, namely the USSR amendment (A/CONF.78/C.1/L.95) and that of Jordan (A/CONF.78/C.1/L.96).

21. Mr. EL FATTAL (Syrian Arab Republic) said that his delegation had voted against the proposal in document A/CONF.78/C.1/L.80 because it felt that the issue of territorial asylum involved political and legal as well as humanitarian considerations. That principle had long been recognized in his society. There was no guarantee that the text which had obtained the majority of votes would not play into the hands of aggressors and occupiers or, to use a more realistic term, settler colonialists.

22. His delegation wondered what had been gained by the vote. He believed that the Jordanian amendment (A/CONF.78/C.1/L.96) would have assuaged many fears which were based on experience and fact.

23. Mr. IBRASHI (Egypt) recalled his delegation's statement at the beginning of the Conference that it supported the principle of family reunification. It expressed its gratitude to all delegations which had advocated the inclusion of that principle in the convention. His delegation had also stressed the need for a text that struck a balance between the sovereignty of States and the humanitarian aspects of the question.

24. However, the proposal in document A/CONF.78/C.1/L.80 had stressed only the humanitarian aspects and had made no mention of State sovereignty, with the result that the text might be difficult to apply. Furthermore, his delegation did not wish the convention to be involved directly or indirectly with political issues which might create additional problems. History had shown that the principle of family reunification had been exploited in the Middle East for the purpose of achieving political goals, and its exploitation had resulted in expansionism, the creation of more refugees and the displacement of the original inhabitants of territories.

25. Accordingly, his delegation had not supported the proposal in document A/CONF.78/C.1/L.80 but had voted for all the other amendments. It would be prepared to accept the new article when there were sufficient guarantees that it would not have direct political implications.

Article 3 (A/10177 and Corr.1; A/CONF.78/7; A/CONF.78/C.1/L.2 (article 4), L.10, L.17, L.28/Rev.1, L.38, L.39, L.44, L.48, L.51, L.54, L.55, L.60/Rev.1, L.64, L.65, L.66/Rev.1, L.69, L.70) (continued)

26. Mr. DADZIE (Representative of the United Nations High Commissioner for Refugees) said that article 3, concerning non-refoulement, was one of the fundamental articles in the consolidated text. No convention on territorial asylum could be complete or meaningful without an article setting forth in clear and unambiguous terms the principle that no asylee should be returned by a Contracting State from its territory, or from its frontiers, to a country in which he had reason to fear persecution. That principle of non-refoulement constituted the very basis of the institution of asylum and an essential guarantee for the asylee that he would receive the protection defined in article 14 of the Universal Declaration of Human Rights; in some cases, it was tantamount to an asylee's right to life.

27. The principle had already found legal expression in a number of international instruments. Article 33, paragraph 1, of the 1951 Convention relating to the Status of Refugees provided that no Contracting State should expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Article II of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa provided that no person should be subjected by a Member State of OAU to measures such as rejection at the frontier, return or expulsion which would compel him to return to a territory where his life, physical integrity or liberty would be threatened for the reasons mentioned above. Again, article 22 of the Inter-American Human Rights Convention provided that in no case might an alien be deported or returned to a country if, in that country, his right to life or personal freedom was in danger of being violated for those same reasons. The principle of non-refoulement was also enunciated in similar terms in the Principles concerning Treatment of Refugees, as adopted by the Asian-African Legal Consultative Committee at its eighth session held at Bangkok in 1966; and article 3, paragraph 1, of the Declaration on Territorial Asylum stipulated that no person entitled to seek and to enjoy asylum should be subjected to measures such as rejection at the frontier or, if he had already entered the territory in which he was seeking asylum, expulsion or compulsory return to any State where he might be subjected to persecution.

28. He felt it was appropriate at the present state to draw attention to the significance, from the humanitarian point of view, of the draft article now under consideration. He expressed the hope that the Committee's deliberations would lead to the adoption of a provision expressed in terms which were as generous as possible from the standpoint of the tragic situation of the individual for whose protection the convention on territorial asylum was conceived and, in any event, in terms not less favourable than those set forth in the various instruments to which he had referred and which commanded the support of the majority of States both in individual regions and throughout the world.

29. The CHAIRMAN reminded the Committee that it had already decided (A/CONF.78/C.1/SR.14, paras. 41 and 42) that the question of non-extradition would be considered separately from the question of non-refoulement. He invited delegations to introduce amendments to draft article 3 in the consolidated text.

30. Mr. SALIM (Pakistan) said that the first of the amendments proposed by his delegation to draft article 3 (A/CONF.78/C.1/L.17), i.e. to replace the words "entitled to" by "eligible for", was designed simply to bring the formulation of article 3, paragraph 1, into line with the text of article 1. The original purpose of the second amendment, namely, to replace the word "shall" by "may", had been to emphasize that the granting of asylum was an act of sovereignty by the Contracting State. The Committee had accepted that principle in the formulation of article 2, and he would not therefore press for its inclusion in article 3. At the same time, although his delegation did not in any way wish to detract from the humanitarian purposes of the draft convention nor, indeed, to weaken the protection that the draft convention sought to afford the individual, it was nevertheless his belief that the convention should be realistic rather than idealistic in its goals and should command the widest possible acceptance, a belief that motivated all of his delegation's proposed amendments.

31. Again, he would not insist on the deletion of the ambiguous phrase "use its best endeavours to" if the Committee agreed that it would be preferable to use the more precise wording "shall endeavour", which had been accepted in the formulation of article 1. Lastly, his country was proposing the deletion of the words "well-founded", since they were imprecise and could well lead to subjective interpretations of the terms of the article.

32. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that, in examining the text of draft article 3, his delegation was guided by the consideration that the draft must not contain repetitions, ambiguities or contradictory provisions. Article 3 was closely linked to the terms of articles 1 and 2; and any attempt to incorporate in article 3 provisions that would infringe upon the sovereignty of States, or could be used as a pretext for interference in their internal affairs, was inadmissible.

33. The first of his delegation's proposals (A/CONF.78/C.1/L.69) was to delete the second sentence of paragraph 1, since that sentence paraphrased provisions of the International Covenant on Civil and Political Rights and could also be construed as an attempt to establish, on a multilateral basis, a special régime for the crossing of frontiers by a particular category of aliens. Such a provision was not in keeping with realities. Soviet penal law established penalties for the illegal crossing of the State frontier of the USSR; and the USSR had also concluded with neighbouring countries frontier treaties which governed, inter alia, the question of the crossing of frontiers. Accordingly, a provision such as that contained in the second sentence of paragraph 1 had no place in the convention.

34. Another important problem raised in the USSR amendments was the relationship between a number of international arguments on the same subject-matter between the same States. It was clear that paragraph 2 of draft article 3 repeated the terms of article 33, paragraph 2, of the 1951 Convention relating to the Status of Refugees, and that paragraph 3 of draft article 3 repeated the wording of article 3, paragraph 3, of the 1967 Declaration on Territorial Asylum. For each paragraph, therefore, there were two texts - one of them in an international legal instrument which had entered into force and was binding, and the other in a draft convention which was being prepared for signature by States. What would be the relationship between the two texts, and which of them would in fact be applied? Draft article 3 in the consolidated text also failed to take into account the existence of a whole series of bilateral and multilateral agreements on extradition. In the event of a conflict between the provisions of those agreements and the provisions of the future convention, which of the obligations assumed by States would prevail? The question of the application of successive treaties on the same subject-matter had been resolved in the 1969 Vienna Convention on the Law of Treaties, article 30, paragraph 2 of which stated that when a treaty specified that it was subject to, or that it was not to be considered as incompatible with, an earlier or later treaty, the provisions of that treaty prevailed. Unless a similar provision was incorporated in the draft convention on territorial asylum, States would not know which convention or treaty was to apply. Consequently, his delegation was also proposing the insertion of a new paragraph 4, reading: "Nothing in this article shall affect any bilateral or multilateral agreement on the extradition of criminals to which any Contracting State is a party".

35. Mr. ABBAS (Malaysia) said that the purpose of the amendments proposed by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1) was to ensure that article 3 would be consistent with the principles already embodied in articles 1 and 2. For that reason, the sponsors had now decided that, rather than replace the words "entitled to" in paragraph 1 by the word "granted", it would be preferable to use the words "eligible for", as proposed by the representative of Pakistan (A/CONF.78/C.1/L.17) and as already agreed upon in connexion with article 1. Similarly, replacement of the words "shall use its best endeavours" by the words "shall endeavour" would also bring the text into line with the wording employed in article 1.

36. In paragraph 2 of the draft in the consolidated text, it would be advisable to replace the words "claimed by" by the words "granted to". The sponsors also considered that an exception should be made not only in the case of persons who had been convicted of a crime by a final judgement but also in the case of persons who were still liable to prosecution or punishment for a crime. Consequently, the words "still liable to prosecution or punishment for" should be inserted between

the word "who" and the words "having been convicted ..." in the third line. That formulation had earlier been proposed by Australia for article 2, paragraph 2, and had been adopted. However, a proposal for the deletion of the word "serious" as a qualification of the crimes enumerated in article 2 had been rejected. Therefore, the delegations of Indonesia, Malaysia and the Philippines would not press for the deletion of the words "particularly serious" in paragraph 2 of the draft article.

37. Mr. MICHEEL (German Democratic Republic) said that, in order to save time, he would refrain from repeating the amendments proposed by his delegation (A/CONF.78/C.1/L.64) and would simply substantiate them.

38. His delegation believed that it was of crucial importance that the draft convention should safeguard the sovereignty of States as well as the generally accepted principles and rules of international law; and that view certainly applied in the case of article 3, which was to regulate certain aspects of the extremely complex problems of the law on asylum.

39. His delegation was accordingly proposing that paragraphs 1 and 2 of draft article 3 be re-worded. The new text which it was proposing for paragraph 1 would be more specific than the original draft because it contained a reference to article 2, paragraph 1 - a reference which made it clear the provisions of article 3 must apply exclusively to persons eligible for the grant of asylum.

40. The second sentence of paragraph 1 in the draft in the consolidated text should be omitted. As other speakers had pointed out, it was not advisable to make a distinction between territory and frontier; a person applying for asylum at frontier crossing points was already in the territory of the State to which the application for asylum was made.

41. The purpose of the new paragraph 4 proposed by his delegation was to clarify the relationship between the provisions of article 3 of the draft convention and similar provisions in other bilateral and multilateral agreements. The wording of the paragraph was in keeping with general practice and also with article 30 of the 1969 Vienna Convention on the Law of Treaties.

42. Lastly, he shared the view of the representative of France concerning the translation into French of the term "a particularly serious crime", a matter which could best be referred to the Drafting Committee.

43. Mr. SALAS (Cuba) said that, in his delegation's amendment (A/CONF.78/C.1/L.51), paragraphs 2 and 3 of draft article 3 in the consolidated text were deleted, because the provisions of paragraph 2 might be invoked quite arbitrarily and might thus actually prevent the persons referred to in article 2, paragraph 1, from obtaining asylum. For instance, a State might reply to a request for asylum by saying quite simply that the applicant represented a danger to the security of the country in which asylum was being requested or the country in which the applicant was at the time of the request. Deletion of paragraph 2 would necessarily entail the deletion of paragraph 3.

44. Paragraph 1 of the draft in the consolidated text should be divided into two quite distinct paragraphs, the first unambiguously affirming the principle of non-refoulement, without imposing any conditions which would make the principle a dead letter. The second paragraph, in the version proposed by his delegation, reproduced the content of the second sentence of paragraph 1 in the consolidated text but employed a more direct form of language.

45. Mrs. THAKORE (India) said that the amendments proposed by her delegation (A/CONF.78/C.1/L.66/Rev.1) were designed primarily to improve and clarify the wording of article 3, which incorporated the most important provisions of the entire draft convention.

46. Paragraph 1 in the consolidated text should be divided into two separate paragraphs, for it dealt with different situations - namely, the treatment to be accorded to persons already within the territory of a Contracting State, and the treatment to be accorded to persons requesting asylum at the frontier. In addition, the order of the two new paragraphs thus formed should be reversed, since the provision concerning non-rejection at the frontiers should precede that concerning non-expulsion. The words "who, having been convicted by a final judgement of a particularly serious crime" would impose too strict a criterion and should be replaced by the words "against whom criminal proceedings are pending regarding a particularly serious crime".

47. She reserved her delegation's position with regard to article 3, for it appeared that informal consultations were now in progress on the desirability of adopting the corresponding provision of the Bellagio draft. However, if the Committee decided to adopt the "single treatment" formula, she could support the amendments proposed by the United States of America (A/CONF.78/C.1/L.44) - which reflected the provisions of article 3 of the Declaration on Territorial Asylum - with the insertion of an exception to the principle of non-refoulement in order to safeguard the population, as in the case of a mass influx of persons. Similarly, she viewed with sympathy the proposal by Turkey (A/CONF.78/L.28/Rev.1) and could also endorse the amendment proposed by the United Kingdom (A/CONF.78/C.1/L.38) relating to article 3, paragraph 2, and the proposal by Romania (A/CONF.78/C.1/L.48), which improved the drafting.

48. Mr. POMBAR (Argentina) said that his delegation's amendment (A/CONF.78/C.1/L.65) sought to introduce three changes into the draft in the consolidated text. His delegation believed that, in the first sentence of paragraph 1, the concept of personal integrity should be mentioned in addition to the concepts of life and freedom and that, in the second sentence of paragraph 1 the words "shall use its best endeavours" should be replaced by the words "shall do all in its power", in order to bring the text into line with the wording adopted for article 1. The text of the second paragraph should also be brought into line with that of article 1.

49. The reference to article 2 at the end of paragraph 1 should be interpreted as a reference to paragraph 1 of that article.

50. The Argentine amendment was intended merely to protect the asylee and did not change the substance of article 3.

51. Mr. SERUP (Denmark) said that his delegation attached great importance to the principle of non-refoulement and considered that draft article 3 in the consolidated text provided the best basis for alleviating the tragic plight of so-called "refugees in orbit".

52. The first paragraph of draft article 3 embodied two concepts: the non-expulsion of a person already in the territory of a Contracting State, and the non-rejection of persons seeking asylum at the frontier. Both concepts raised three problems: which group of persons was to be protected, what degree of protection should be given, and against which fears a person should be protected? In the case of non-expulsion, the Danish delegation agreed with the solutions proposed in the consolidated text for the first two problems, but preferred the solution proposed by Japan in document A/CONF.78/C.1/L.54 with regard to the fears against which persons should be protected. The Japanese solution was wider in scope and fulfilled the requirement of uniform wording in the Convention. In the case of non-rejection at the frontier, his delegation supported the wording in the consolidated text with regard to the persons to be protected and the fears to be protected against. It could also support the words "use its best endeavours" with regard to the degree of protection, but would be prepared to accept a stronger text. If the majority of delegations were in favour of stricter obligations not to reject persons seeking asylum at the frontier, the Danish delegation could support such a strengthening of the text, on the condition that the benefits of such a provision could not be claimed by a group of persons whose massive presence would constitute a serious problem for a Contracting State. Article 3, paragraph 2 of the 1967 Declaration of Territorial Asylum provided such an exception in order to safeguard the population in case of a mass influx of persons.

53. His delegation supported the Indian proposal (A/CONF.78/C.1/L.66/Rev.1) to divide paragraph 1 into two separate paragraphs and to reverse the order of the provisions concerning non-rejection and non-expulsion. It considered that the exception in case of danger to the security of the Contracting State, as provided for in paragraphs 2 and 3 of the consolidated text, was a necessary complement to the principles as set out in paragraph 1; and it could support the existing text of paragraphs 2 and 3.

54. Mr. SADI (Jordan) said that the first sentence of draft article 3 in the consolidated text of article 3 was imprecise, since it was not clear whether the words "person entitled to the benefits of this Convention" referred to a person eligible for asylum under article 2 or to a person who had already been granted asylum. It might therefore be better to replace those words by the words "asylee or person eligible for the benefits of this Convention".

55. His delegation supported the amendment proposed by Indonesia, Malaysia and the Philippines in document A/CONF.78/C.1/L.60/Rev.1, which was in line with the views which it had expressed in the discussion on articles 1 and 2.

56. Ms. FUENTES (Mexico) said that, in her delegation's view, the distinction made in paragraph 1 of draft article 3, in the consolidated text between an asylum-seeker already in the territory of a Contracting State and a person seeking asylum at its frontier was somewhat arbitrary. In either case, the Contracting State would have the duty not to return the person in question to a territory where his life or freedom would be threatened.

57. The principle of non-refoulement should be as strict as possible and, consequently, her delegation was opposed to the exceptions listed in paragraph 2 of the consolidated text. If, however, the majority of delegations were to decide in favour of the retention of paragraph 2, it would then be essential to retain paragraph 3 in the form in which it appeared in the consolidated text.

58. In that connexion, she wished to recall that, when the Group of Experts had discussed the article on non-refoulement, the experts from Latin America - including the Mexican expert - had abstained in the final vote on the text, since they considered that the inclusion of paragraphs 2 and 3 seriously weakened the principle of non-refoulement.

59. With respect to the Cuban amendment (A/CONF.78/C.1/L.51), she was glad that the Cuban delegation had proposed that the exceptions to the principle of non-refoulement contained in paragraphs 2 and 3 in the consolidated text should be eliminated. She was less enthusiastic concerning the distinction made between persons seeking asylum at the frontier and those already in the territory of the Contracting State. In addition, the wording "shall adopt the necessary measures" was not as strong as it might be.

60. Of the various amendments to paragraph 1 as a whole, the most acceptable to her delegation were those proposed by the Federal Republic of Germany (A/CONF.78/7), Nigeria (A/CONF.78/C.1/L.2), Australia (A/CONF.78/C.1/L.10) and the United States of America (A/CONF.78/C.1/L.44), because they did not differentiate between persons already within the territory of the Contracting State and those seeking asylum at its frontier.

61. On the whole, her delegation preferred the Australian amendment, apart from the fact that it reintroduced the subjective element of the "well-founded fear". It would be preferable to retain the words "where his life or freedom would be threatened", which appeared in the consolidated text.

62. Her delegation was unable to support the Indian amendment (A/CONF.78/C.1/L.66/Rev.1), since it could not accept the distinction between persons in the territory of a State and those applying for asylum at the frontier.

63. The Pakistani amendment to the first sentence of paragraph 1 (A/CONF.78/C.1/L.17) was unacceptable to her delegation, since the replacement of the word "shall" by the word "may" would weaken the text still further. For the same reasons, it was unable to support the Turkish amendment (A/CONF.78/C.1/L.55).

64. On the other hand, it wholeheartedly endorsed the proposals by Indonesia and two other States (A/CONF.78/C.1/L.60) and by Argentina (A/CONF.78/C.1/L.65), since it was attracted by the idea that the principle of non-refoulement should be extended even to persons who, under the provisions of article 2, paragraph 2, were unable to benefit from asylum.

65. The amendments proposed to the second sentence of paragraph 1 all appeared to be purely drafting amendments, which should be submitted to the Drafting Committee.

66. Her delegation, for the reasons it had already given, strongly supported the proposal by Ecuador (A/CONF.78/C.1/L.70) to delete paragraphs 2 and 3 of the draft in the consolidated text.

67. The amendments to paragraph 2 submitted by the German Democratic Republic (A/CONF.78/C.1/L.64), India (A/CONF.78/C.1/L.66/Rev.1), and Romania (A/CONF.78/C.1/L.48) were all unacceptable to her delegation, since they would all impose too broad a criterion for refusing the benefits of the provision on non-refoulement.

68. Mr. PONCE (Ecuador) said that his delegation had submitted a proposal (A/CONF.78/C.1/L.70) to delete paragraphs 2 and 3 of article 3 because it saw no reason to provide for any exclusions from the right of non-refoulement. It was difficult to understand how a person who had been unjustly persecuted for political reasons could constitute a threat to a security of a State; and in any event article 2 clearly established the categories of persons eligible for the benefits of the Convention, as well as those who should be excluded from them. The incorporation of similar exclusions in article 3 was therefore superfluous. State sovereignty was adequately protected by articles 1 and 2: moreover, article 32 of the 1951 Convention on the Status of Refugees granted States the power to expel refugees for reasons of national security.

69. Mr. GÖRÖG (Hungary) said that there was widespread agreement on the principle contained in the first sentence of paragraph 1, relating to a person already in the territory of a Contracting State. However, the provision concerning non-rejection at the frontier appeared to be superfluous in view of the principles concerning the rights and duties of States already set forth in articles 1 and 2. In most cases, a State would in fact probably admit a person seeking asylum at the frontier; but the obligation to do so should not be imposed upon States, because it would be practically impossible to ascertain whether the person seeking asylum was or was not eligible for the benefits of the convention without verifying the truth of that

person's statements. Indiscriminate admission of persons seeking asylum could have undesirable results and give rise to serious difficulties. The Hungarian delegation therefore supported the proposals by the German Democratic Republic (A/CONF.78/C.1/L.64) and the USSR (A/CONF.78/C.1/L.69) for the deletion of the second sentence of paragraph 1.

70. Mr. GOLOVKO (Byelorussian Soviet Socialist Republic) said that, in his delegation's view, the provisions of article 3 should give concrete expression to the general principles set out in articles 1 and 2. Neither the form nor the content of draft article 3 in the consolidated text was satisfactory. Paragraph 1 was very complex and its second sentence contained nothing positive and was superfluous. No account had been taken of the fact that the legal regime concerning frontier areas varied from country to country: in the Byelorussian SSR, for example, it was an offence to cross the frontier without authorization. Moreover, frontier questions were frequently regulated by international agreements containing binding rules. His delegation therefore supported the USSR proposal (A/CONF.78/C.1/L.69) to delete the second sentence of paragraph 1.

71. Paragraph 2 was not in line with the provisions of article 2, paragraph 2 (b), and was not well drafted. It should therefore be reworded in accordance with the amendments submitted by Cuba (A/CONF.78/C.1/L.51) and by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60). The Byelorussian delegation also supported the amendments proposed by the German Democratic Republic (A/CONF.78/C.1/L.64) and Argentina (A/CONF.78/C.1/L.65).

72. The provisions of paragraph 3 were also inconsistent with article 2, paragraph 2 (b). Was it logical that a State which refused to grant asylum to a person should allow that person to cross its territory in order to go to another State?

73. The Byelorussian delegation supported the proposals by the USSR (A/CONF.78/C.1/L.69) and Japan (A/CONF.78/C.1/L.54) to insert a new paragraph stipulating that the provisions of article 3 would not affect extradition agreements. Extradition of criminals was a very important factor in crime control: as L.H. Shearer had pointed out in his work entitled Extradition in International Law, more than 1,500 bilateral extradition agreements had now been signed. Moreover, under international law, States should not conclude agreements which conflicted with earlier instruments.

74. Mr. BENITO MESTRE (Spain) said that, to all intents and purposes, the Committee was at present discussing two important articles, articles 3 and 4, since the questions of non-refoulement and provisional stay were closely linked.

75. Of all the drafts proposed for article 3, the least satisfactory was probably that contained in the consolidated text, considered both on its own and in connexion with article 4. It also included the expression "shall use its best endeavours", the Spanish translation of which was far from satisfactory.

76. Another major difficulty in the consolidated text was the distinction made between an asylee already in the territory of a State and an asylum-seeker at the frontier. There was also the difficulty of possible illegal entry into a State. The draft required both clarification and strengthening; and it would be difficult to clarify and strengthen it by making partial changes here and there. Consequently, as a matter of general principle and irrespective of content, his delegation preferred those amendments which had an internal unity.

77. In the circumstances, he would consider only the amendments submitted by Australia (A/CONF.78/C.1/L.10); the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.69), the Federal Republic of Germany (A/CONF.78/7), Nigeria (A/CONF.78/C.1/L.2) and Turkey (A/CONF.78/C.1/L.28/Rev.1).

78. The Australian amendment was certainly a positive one, but was inadequately precise and might raise problems of interpretation.

79. The amendment by the Union of Soviet Socialist Republics, for the deletion of paragraph 2, was also a step in the right direction, although its relationship with article 4 was not clear.

80. The amendments by the Federal Republic of Germany and Nigeria also constituted positive contributions but, on the whole, his delegation preferred the amendment by the United States of America, as being the clearest, most precise and most complete. Consequently, his delegation would support that amendment, both on account of its intrinsic merit and because of its relations with article 4.

81. His delegation also supported the Turkish proposal for the addition of a phrase at the end of paragraph 2 to cover the situation when a massive influx of asylum-seekers endangered the security of a Contracting State.

82. Mr. BRECKENRIDGE (Sri Lanka) said that his delegation's thinking with respect to article 3 was quite simple: it had one approach to those persons to whom asylum had been granted, and who were already within the territory of a State, and another approach to asylum-seekers at the frontiers. It thus thought that draft article 3 in the consolidated text was probably the best solution with a view to obtaining agreement.

83. It felt strongly that the tendency to go back to the Bellagio draft was unfortunate in that it would take the Conference still further away from its objective of achieving a wide consensus on asylum. Various arguments had been put forward concerning the need to use the same language both in regard to the asylee and in respect of the frontier asylum-seeker; but his delegation found those arguments unconvincing. In the text already adopted for article 1, it was stated that States "shall endeavour ... to grant asylum". It was not possible to use a stronger term in article 3 with regard to persons seeking asylum at the frontier.

84. In the circumstances, his delegation had no difficulty in supporting paragraph 1 in the consolidated text, although the wording could be further refined. While it was not satisfied with the wording of paragraphs 2 and 3, it was sure that an appropriate formulation could be found to safeguard the interests of the Contracting States.

85. Mr. NAKAGAWA (Japan) said that he noted that some delegations had proposed that the second sentence of paragraph 1 should be deleted, so that the principle of non-refoulement would apply only to asylees who were already in the territory of a State and not to persons who sought asylum at the frontier. His delegation could not support that proposal, since it believed that the principle of non-refoulement should also apply to frontier asylum-seekers under the terms specified in the consolidated text.

86. In the United Kingdom amendment (A/CONF.78/C.1/L.39), it was proposed that the principle should apply to all persons seeking asylum. His delegation felt that that proposal was too wide in scope, and that the principle should apply only to persons eligible for the benefits of the Convention.

87. On the other hand, the Turkish delegation proposed (A/CONF.78/C.1/L.55) that the application of the article should be restricted to persons who were legally in the territory of a State. That was too narrow an approach.

88. Incidentally, his delegation understood the expression "person at its frontiers" in paragraph 1 to include persons on board a ship anchored in a port, or held in detention quarters at a port or airport, and awaiting permission to enter a country.

89. The United Kingdom proposal (A/CONF.78/C.1/L.38) to insert the words "seeking asylum" after the words "in which he is" in paragraph 1 was an acceptable one which improved the text.

90. His delegation looked with sympathy on the Turkish proposal (A/CONF.78/C.1/L.28/Rev.1) that wording be included in paragraph 2 to cover the exceptional case of a massive influx of asylum-seekers, which might endanger the security of a Contracting State.

91. With respect to paragraph 2 in the consolidated text, his delegation wondered whether it had not become redundant as a result of the Committee's decision to add to article 2 a new paragraph 3 containing the same disqualifying provision. As a similar provision was contained also in a number of the amendments, the best solution might be to refer the matter to the Drafting Committee.

92. The CHAIRMAN declared, in accordance with rule 24 of the rules of procedure, that the list of speakers on article 3 was now closed.

The meeting rose at 6.5 p.m.