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UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 23RD MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 1 February 1977, at 3.40 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)

Article 3 (A/10177; A/CONF.78/7; A/CONF.78/C.1/L.2, L.10, L.17, L.28, 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 and L.102; A/CONF.78/C.1/WP.2) (continued)

1. The CHAIRMAN reminded the Committee that it had decided not to consider the question of extradition in connexion with article 3. He said that a new joint amendment to paragraph 1 of draft article 3, sponsored by the delegations of Australia, the Federal Republic of Germany, Nigeria and the United States of America (A/CONF.78/C.1/L.102), was now available in all languages of the Conference. Consequently, the amendments to paragraph 1 in documents A/CONF.78/7 and A/CONF.78/C.1/L.2, L.10 and L.44 had been withdrawn; and the United Kingdom sub-amendment (A/CONF.78/C.1/L.39) to the Australian amendment thus became a sub-amendment to the new joint amendment. If there was no objection, he would impose a time-limit on statements - perhaps a time-limit of five minutes.
2. Mr. KERLEY (United States of America) asked whether the time-limit would apply also to statements by sponsors of amendments.
3. Mr. LEDUC (France) said that, since article 3 was absolutely fundamental to the Convention, his delegation wished to make its position quite clear with respect both to the consolidated text (A/10177, appendix) and to the various amendments. It was thus opposed to any time-limit, especially one of five minutes.
4. Mr. van der KLAUW (Netherlands) endorsed the views of the French delegation.
5. Mr. EVSEEV (Union of Soviet Socialist Republics) said that the Conference was entering its conclusive phase and was now being conducted in a friendly spirit. In the circumstances, his delegation was unhappy that there should be constant references to time-limits. The various representatives had come together to do a good job and to hear one another's views.
6. He suggested that the Chairman appeal to speakers to be brief, but without imposing any rigid time-limit.
7. The CHAIRMAN said he believed that the difficulties which had hampered the work of the Conference were now settled and that the atmosphere was much improved. Consequently, he would simply appeal to representatives to keep to the point and make their interventions as short as possible.
8. Mr. VANDERPUYE (Ghana) said that it would be recalled that his delegation had been the original sponsor of the draft resolution which subsequently became resolution 3456 (XXX) of the General Assembly. Consequently, there could be no doubt as to its interest in the right of asylum.
9. As long ago as 1951, the Convention on the Status of Refugees had stated the principle of non-refoulement in absolute terms. The question had subsequently been raised as to whether the principle applied to asylum-seekers other than those who

were already in the territory of a Contracting State. The present Conference had not been convened purely to restate an accepted principle but to go a step further, and that would mean unequivocally extending the principle of non-refoulement to an asylum-seeker at the frontier of a Contracting State.

10. The Group of Experts had, in an excess of academic zeal, managed to draw a distinction between a person within the territory of a Contracting State and an asylum-seeker at its frontier, thus departing from the Bellagio draft. Fortunately, however, a number of delegations were still inspired by the spirit of Bellagio and had submitted a joint text (A/CONF.78/C.1/L.102), which his delegation was happy to support.

11. The United Kingdom sub-amendment (A/CONF.78/C.1/L.39) to the joint text would materially improve it and his delegation supported that sub-amendment also. If the joint text with the sub-amendment was accepted, the Conference would have produced a satisfactory article 3 which should win general acceptance.

12. The other amendments submitted either ignored the subject of rejection at the border or adopted the same approach as the Group of Experts. The first approach constituted no progress whatsoever and would render the Conference pointless. The second approach represented some progress; but that progress was, in his delegation's view, inadequate.

13. The Turkish amendment (A/CONF.78/C.1/L.55) to insert the word "legally" before the words "in the territory of a Contracting State" in paragraph 1 would not only weaken the provision in question but would, in fact, constitute a retrograde step by comparison with the 1951 Convention.

14. The USSR amendment (A/CONF.78/C.1/L.69), to delete the second sentence of paragraph 1, was rather mean. It would remove even the weak provision in the consolidated text, so that the asylum-seeker at the frontier would have no protection whatsoever.

15. Mrs. LIDDY (Ireland) said that her delegation welcomed all those amendments to draft article 3 which were designed to remove the distinction created in the consolidated text between asylum-seekers at the frontier of a State and asylum-seekers already in the territory of a State.

16. There were various considerations which compelled her delegation to support the removal of that distinction. In the first place, by creating less favourable benefits for asylum-seekers at the frontier, the Experts' text might encourage illegal entry of asylum-seekers into the territory of a State. More importantly, the less favourable benefits granted to asylum-seekers at the frontier in accordance with the second sentence of paragraph 1 represented a step backwards from the position that had been unanimously adopted by the General Assembly in 1967 in article 3, paragraph 1, of the Declaration on Territorial Asylum. It would be disastrous if, 10 years later, States which had hitherto treated asylum-seekers at their frontiers as favourably as persons already in their territories should be led to change their practice. Such a change would be to the detriment of the individual and would lessen the existing protection of human rights.

17. The various amendments designed to remove that invidious distinction had now been withdrawn in favour of the joint amendment in document A/CONF.78/C.1/L.102, which her delegation wholeheartedly supported. It also welcomed the United Kingdom sub-amendment (A/CONF.78/C.1/L.39) which would extend the principle of non-refoulement to any person seeking asylum, whether or not he was eligible for the benefits of the Convention.

18. Since her delegation supported the joint amendment to paragraph 1, it would not comment on any of the proposed amendments to the second sentence of that paragraph.

19. Paragraph 2 in the Experts' text was not acceptable to her delegation. The provision that a person could be refused non-refoulement because criminal proceedings were pending against him was rather alarming, since the proceedings in question might constitute the very grounds for a grant of asylum under article 2. The Committee had already adopted an amendment to article 2, paragraph 2, in order to ensure that persons who had already paid the penalties of their crimes would not be refused asylum. Very different considerations applied in the case of article 3, which should protect persons that had not yet been convicted by a court from having to return to a country in which they had a well-founded fear of persecution.

20. In general, her delegation felt that the exceptions to the humanitarian principle of non-refoulement should be kept to the minimum.

21. Mr. DESY (Belgium) said that article 3 was the first article in the draft Convention - and possibly the only one - which imposed a general obligation on States with respect to asylees.

22. Without that provision, there would be no point in having the convention at all, unless for the purpose of affirming the sovereign rights of States. In fact, the convention was designed precisely to establish, by common agreement and on a basis of reciprocity, certain limits to State sovereignty.

23. His Government had regarded the consolidated text of articles (A/10177, appendix) as acceptable, not because it regarded it as a model of liberalism but because, in a spirit of realism, it was possible to hope that the text would be endorsed by the States whose experts had taken part in its preparation.

24. Nevertheless, his delegation regarded draft articles 3 and 4 in that text as unsatisfactory. Draft article 3 was unsatisfactory on account of the distinction it made between persons seeking asylum within the territory of a country and those seeking asylum at its frontier. Draft article 4 was unsatisfactory in view of the fact that its provisions contradicted those of article 3.

25. The Belgian authorities believed that asylum-seekers should be accorded the same treatment whether they were at the frontier or were legally or illegally within the territory of a State. In both cases, they were persons fleeing from unjust persecution and there could be no question of returning them to the persecuting country.

26. The case of each individual applicant would of course have to be examined on its merits in order to prevent any abuse, but the basic principle of non-refoulement should not be affected by that procedural aspect.

27. What his delegation expected was that the convention should give effect to article 3 of the Declaration on Territorial Asylum, adopted by the General Assembly in 1967 by providing that no asylum-seeker should, in any manner whatsoever, be returned to the country in which he had been persecuted. It was not necessary, however, to include an absolute prohibition of refoulement in all circumstances, as envisaged by the Cuban amendment (A/CONF.78/C.1/L.51). That was excessive.

28. On the other hand, the joint amendment (A/CONF.78/C.1/L.102) would, in his delegation's view, provide a satisfactory and equitable solution to the situation of asylum-seekers, and his delegation consequently supported it.

29. The sub-amendment submitted by the United Kingdom (A/CONF.78/C.1/L.39), which would enlarge the application of article 3 by extending it to all persons seeking asylum, whether or not a decision concerning their eligibility for the benefits of the Convention had been reached, appeared very generous and acceptable within the context of article 2.

30. Mr. COLES (Australia) said that the joint amendment (A/CONF.78/C.1/L.102) to paragraph 1 of article 3, of which his delegation was a sponsor, had been tabled not only to facilitate the Committee's work but also to manifest the sponsors' joint view of the crucial importance of that provision in the convention.

31. The 1951 Convention on the Status of Refugees contained an article (article 33) prohibiting the expulsion or return of refugees. The inadequacy of that provision, which did not cover the question of the admission of refugees, had led to the statement in the 1967 Declaration on Territorial Asylum that no person referred to in its article 1 should be subjected to measures such as rejection at the frontier. The Organization of African Unity had included a similar provision in the first multilateral convention to be drawn up subsequent to the Declaration.

32. His delegation took the view that the standard set in the 1967 Declaration, which had been adopted unanimously, was the minimum standard acceptable at the present Conference. It was unfortunate that the Group of Experts had barely failed to obtain a majority for an unqualified statement of non-rejection at the frontier. Indeed, concern regarding the final form of article 3 in the Experts' draft had led to the introduction of significant changes in article 4 of the Bellagio text, in order to soften the blow.

33. It should be realized that the joint amendment went by no means as far as some delegations would wish. It included a qualification concerning the persons entitled to the benefits of the provision; and some delegations felt that the qualification was both unrealistic and undesirable since, when people crossed the frontier, it was almost always impossible to institute an enquiry to determine whether or not they were eligible for the benefits of the Convention.

34. It was his delegation's understanding that such enquiries into eligibility would normally take place after the person concerned had been allowed to enter the territory of the State, and that only in exceptional circumstances would there be sufficient time to make admission contingent upon a satisfactory outcome

of the enquiry. It would be most unfortunate if the provision were construed in any way that would endanger the safety of asylum-seekers at a frontier.

35. In commending the joint amendment to the Committee, his delegation wished it to be understood that the satisfactory nature of the article as a whole would be contingent upon the adoption of paragraphs 2 and 3 in the Experts' text.

36. Mr. LEDUC (France) said that article 3 was one of the fundamental articles of the convention because there could be no question of returning a refugee, a person who had obtained asylum or even a person who sought asylum at the frontier, to the country from which he had fled.

37. Paragraph 1 of draft article 3 in the consolidated text dealt with two situations. The first was the situation of a person who, fearing persecution, had entered a country legally or illegally and had requested asylum and who, on examination of his request, had been shown to be entitled to the benefits of the convention for one of the reasons listed in article 2. Such a person could not be expelled or returned to the country from which he had come. The wording proposed to cover situations of that kind was acceptable, but not altogether satisfactory because it seemed to be unlikely that the determination of the person's eligibility or non-eligibility for the benefits of the convention could in all cases be made so quickly; and the United Kingdom delegation had in that connexion proposed that paragraph 1 should rather begin with the words "No person seeking asylum".

38. The second situation was that of a person who, fearing persecution, arrived at the frontier. Such a person should not be refused admission to the territory of the neighbouring State or the State in which he sought asylum. In such cases, there was often no question of determining whether or not the person fulfilled the requirements for benefiting from the convention. If he was pursued and if he was fired upon - as unfortunately happened in certain States which preferred to kill their own nationals rather than let them leave the country freely, he must first be granted asylum. It would be possible later to determine whether or not he fulfilled the requirements for the grant of asylum.

39. His delegation was therefore in agreement, with one reservation, with the draft article in the consolidated text; and it was not in favour of the merger of the two sentences dealing with two different situations, as proposed by the amendments submitted by Australia, the Federal Republic of Germany and the United States of America. His delegation wished to propose only one change in the Experts' text; at the beginning of the second sentence of paragraph 1, it was not enough to say that the State should use its best endeavours when a person's life was in danger. It was necessary to save the person's life. Therefore, his delegation could accept the Pakistani amendment in that regard (A/CONF.78/C.1/L.17), if the purpose of that amendment was indeed as indicated in the French text. Otherwise, his delegation would formally propose that the beginning of the second sentence of paragraph 1 should be replaced by the following text: "Moreover, no person seeking asylum shall be rejected ...". With regard to paragraphs 2 and 3, his delegation agreed with the United Kingdom amendment

to paragraph 3 (document A/CONF.78/C.1/L.38), since there was no question of returning a person to the country from which he had fled and he must be given an opportunity to go to another State. In his delegation's view, the draft in the Experts' text, with the changes he had indicated, was the one most likely to be accepted by the greatest number of countries in different regions and different situations.

40. The joint amendment submitted by the delegations of Australia, the Federal Republic of Germany, Nigeria and the United States of America (A/CONF.78/C.1/L.102) gave rise to the same objections as the individual amendments submitted by those delegations, since if a person who was in danger arrived at the frontier of a State, the State should admit him first, without seeking to determine whether or not he fulfilled the conditions for eligibility for the benefits of the convention.

41. Referring to the amendment to paragraph 1 proposed by the delegation of Turkey (A/CONF.78/C.1/L.55), he said that his delegation could not accept the insertion of the word "legally" in the first sentence.

42. With regard to the Turkish amendment to paragraph 2 (A/CONF.78/C.1/L.28), he recalled that a case of a massive influx of persons had occurred in Europe and that the State in question had unreservedly welcomed the group of persons. The problem merited consideration, however, and he would welcome further clarification from the Turkish delegation since the question might be of greater urgency in Asia, the Middle East and Africa than it was in Europe.

43. The amendments by the delegations of the USSR and the German Democratic Republic had one feature in common, in that both delegations sought to delete the second sentence of paragraph 1; and he was unable to accept those amendments.

44. In his delegation's opinion, article 3 could not be considered in isolation from article 4, which complemented it. Article 3 was negative in that it stated what was not to be done, whereas article 4 was positive in that it stated what would happen to the asylum-seeker pending a determination of his request. If the person had already entered the country, he would be permitted to remain pending the determination. If he was at the frontier, he would be admitted provisionally. In France, that meant that in both cases the asylum-seeker would receive a temporary residence permit marked "Has requested asylum", which would enable him to undertake the necessary steps to obtain asylum and to seek employment. His delegation was aware that many countries could not go so far as that, or did not have the necessary administrative machinery. It was also aware that his country was obliged to deal only with individual cases, whereas other countries had to deal with massive influxes of persons arriving at their frontier, which might raise special problems. His delegation reserved the right to revert to the matter when the Committee took up article 4.

45. Mr. SCHURCH (Switzerland) said that the principle of non-refoulement was one of the key elements in the draft convention. Included for the first time in article 33 of the 1951 Convention relating to the Status of Refugees, the principle was now regarded as a rule of international law, and his country entirely supported it.

46. His delegation was therefore in a position to accept any proposal affirming the principle that no person could be compelled, in any manner whatsoever, to return to a country where his life or freedom would be threatened for any of the reasons listed in article 2, paragraph 1. It considered that the principle of non-refoulement should be applied in such a way as to prevent both the refusal of admission of a person seeking asylum at the frontier and the return or expulsion of a person who had already been admitted to the territory of the State in which he sought asylum. That would be in keeping with article 3, paragraph 1, of the 1967 Declaration on Territorial Asylum.

47. His delegation therefore supported the substance of the proposals by the delegations of the Federal Republic of Germany (A/CONF.78/7), Australia (A/CONF.78/C.1/L.10) and the United States (A/CONF.78/C.1/L.44), all of which sought to expand the scope of the principle of non-refoulement as set forth in the Experts' text. It also supported the United Kingdom amendments in documents A/CONF.78/L.38 and L.39, which improved the text of draft article 3. In addition, his delegation supported the joint amendment by the delegations of Australia, the Federal Republic of Germany, Nigeria and the United States of America (A/CONF.78/C.1/L.102) and the proposal made orally by the French representative.

48. On the other hand, it was unable to accept the amendments which were designed to limit the scope of application of the principle of non-refoulement, namely the proposals by Indonesia, Malaysia and Philippines (A/CONF.78/C.1/L.60/Rev.1), the German Democratic Republic (A/CONF.78/C.1/L.64) and Argentina (A/CONF.78/C.1/L.65). If the Conference adopted those amendments, it would have demonstrated the inability of the international community to make any progress beyond the situation created by the 1951 Convention. Those amendments might even be regarded as constituting a step backwards.

49. His delegation had considered with sympathy the suggestion by the delegation of Ecuador to delete paragraphs 2 and 3 of article 3 (A/CONF.78/C.1/L.70). However, he was unfortunately unable to support the proposal because he thought that a derogation might have to be made from the principle of non-refoulement in cases where there were serious reasons for believing that a person constituted a danger to the security of the State or that, having committed particularly serious criminal acts, he represented a threat to the community of the country in which he sought asylum.

50. Mr. LARSSON (Sweden) said that his delegation was not satisfied with draft article 3 in the consolidated text of articles. The very important principle of non-refoulement should, in his delegation's opinion, be formulated in non-restrictive terms.

51. With respect to article 3, the Bellagio text appeared to be more satisfactory than the basic text before the Committee. Article 2 in the Bellagio text contained a clear prohibition of measures such as rejection at the frontier, return or expulsion, which would compel a person to return to or remain in a territory where he might be persecuted. However, draft article 3 in the consolidated text made a distinction between measures such as return and expulsion, on the one hand, and rejection at the frontier on the other. The prohibition was absolute only with regard to return or expulsion, while a Contracting State was not required to do more than to use its best endeavours to ensure that a person was not rejected at its frontier when there were reasons to believe that he might be subjected to persecution as a result of such rejection. In his delegation's opinion, the

protection afforded against measures such as return or expulsion should be afforded also against rejection at the frontier. It might be asked why a prospective asylee who had entered a country illegally should be afforded greater protection than one who had presented himself at the frontier control.

52. Some of the original amendments submitted to article 3 had met the concerns of his delegation. With regard to the joint amendment in document A/CONF.78/C.1/L.102, he said that it seemed at first glance to establish in a satisfactory manner the principle of equal protection against return or expulsion and against rejection at the frontier. However, as a result of recent developments in the Committee, his delegation considered that the basic text would, even with such an improvement, still be inadequate. The Committee had approved an article 2 which, in his delegation's view was very weak. The emphasis was now being placed on the right of a State to grant asylum and not on its duty to do so. Any reference in article 3 to the fact that its provisions were applicable to persons entitled to the benefits of the convention would weaken the principle of non-refoulement and should be avoided. His delegation therefore welcomed the United Kingdom amendment to replace the words "No person entitled to the benefits of this Convention" by the words "No person seeking asylum" (A/CONF.78/C.1/L.39), which would improve the convention and guarantee the prospective asylee the protection he should be able to count on by virtue of article 14 of the United Nations Declaration of Human Rights.

53. His delegation noted with satisfaction the proposal in the joint amendment (A/CONF.78/C.1/L.102) to use the words "a territory with respect to which he has a well-founded fear of persecution, prosecution or punishment for any of the reasons stated in Article 2", since it considered that the original text of the first sentence of paragraph 1 had given the concept of persecution too narrow the meaning. With regard to paragraph 2, his delegation found the amendment by the United Kingdom delegation (A/CONF.78/C.1/L.38) to be of particular interest, but would be unable to support some of the other proposed amendments.

54. Mr. EL FATTAL (Syrian Arab Republic) said his delegation fully agreed that the provision relating to non-refoulement constituted the cardinal article of the convention on territorial asylum. It represented the quintessence of international endeavours in the progressive codification of the law concerning territorial asylum.

55. His delegation believed that the draft contained in the Experts' text was the best suited for the purposes of article 3, because it struck a balance between the principle of State sovereignty, as reflected in articles 1 and 2, and considerations of a humanitarian nature.

56. The Group of Experts had wisely discerned the difference between two situations - namely, non-refoulement of a person already within the territory of the Contracting State and non-refoulement of a person at its frontier. While in the first instance it was recognized that the individual had a right and the State a duty, in the second instance the question of admitting a person at the frontier was left to the discretion of the State, which was required - in line with the wording used in article 1 - to use its best endeavours to ensure that no such person was rejected.

57. His delegation was open-minded regarding certain amendments that sought to improve the Experts' text. The amendments it would accept were those which differentiated between the status of an asylum seeker at the frontier and the status of asylees within the territory of the State. It was inclined, in principle, to accept the amendments by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1). The three-Power amendments to paragraph 1 were similar to the Pakistani amendment to the same paragraph (A/CONF.78/C.1/L.17), and the two proposals could perhaps be merged.

58. His delegation was not opposed to the Indian amendment (A/CONF.78/C.1/L.66/Rev.1), which it regarded as a drafting and not a substantive amendment. It was categorically opposed to the United Kingdom sub-amendment (A/CONF.78/C.1/L.39), which could be interpreted in a manner contrary to the general philosophy of articles 1 and 2. The Romanian amendment (A/CONF.78/C.1/L.48) would improve the original text, since it was in keeping with article 2.

59. His delegation saw merit in the Argentine amendment (A/CONF.78/C.1/L.65) because it accorded to the State the capacity to judge whether a person constituted a danger to its security. He would welcome clarification from the Turkish delegation regarding the political implications of the Turkish amendment (A/CONF.78/C.1/L.28/Rev.1).

60. His delegation could not accept amendments which sought to delete entire phrases or parts of the article in the consolidated text. In any attempt to improve the article, due account must be taken of the need to ensure the general equilibrium of the convention.

61. With regard to the joint amendment by Australia, the Federal Republic of Germany, Nigeria and the United States of America (A/CONF.78/C.1/L.102), reference had been made to the 1951 Convention relating to the Status of Refugees. He urged delegations to read carefully the definition of refugees contained in that Convention. It must be remembered that the 1951 Convention was tailored to suit the problem of European refugees who had been rendered homeless as a result of World War II. That Convention covered the situation of refugees as conceived by policy makers in the 1950s, and had nothing to do with asylees. Progressive States should try to remove the causes of refugee situations and should not seek to perpetuate the status of refugees through rehabilitation and resettlement.

62. Mr. JAY (Canada) said that his delegation had come to the Conference, full of optimism that the obvious sovereign right of a State to grant asylum could be reconciled with the need for greater protection of those unfortunate individuals who were driven to seek refuge in an alien land. It had been plain that the sovereign right of States would need to be reflected in the draft convention. However, he had come to appreciate that many countries, some for quite legitimate reasons, others for less humanitarian reasons, felt much more strongly than Canada did that the sovereignty of the State should be repeatedly emphasized. Some States were clearly guided by security and other considerations quite different from anything that troubled Canada in its search to secure increased protection for asylum seekers. Consequently, his delegation had agreed that the text should reflect the reasonable and legitimate concerns of other States, and that had now been accomplished, although with a regrettable degree of exaggeration in article 2.

63. Article 3, on non-refoulement, afforded an opportunity to redress the balance in favour of those persons in desperate circumstances who were the central concern of the Conference. The joint proposal contained in document A/CONF.78/C.1/L.102 was a great improvement on the draft in the consolidated text, which had some inherent weaknesses despite its humanitarian approach. Like the representative of Ghana, he nevertheless felt that the words "No person seeking asylum" proposed by the United Kingdom (A/CONF.78/C.1/L.39) should be incorporated in the joint proposal instead of the words "No person entitled to the benefits of this Convention". If that form of words was not acceptable to the sponsors of the joint proposal, perhaps they would agree to insert the words "who may be" after the words "No person".

64. His delegation could also agree to the proposal by Turkey (A/CONF.78/C.1/L.28/Rev.1) relating to a massive influx of asylum-seekers; but it could not endorse the idea, as proposed by India in document A/CONF.78/C.1/L.66/Rev.1, of any differentiation in the treatment accorded to asylum seekers within a country and those arriving at the frontier. It was unable also to accept the deletion of any reference to persons arriving at the frontier as suggested by the German Democratic Republic and the USSR.

65. Mr. van der KLAUW (Netherlands) said that article 3, embodying the principle of non-refoulement, was of the utmost importance. The granting of asylum should imply absolute respect for the status of asylum; otherwise, a person who had been considered by a receiving State as entitled to the status of an asylee or refugee could nevertheless be returned to the State from which he had fled. In other words, an individual whose entitlement to asylum or refugee status had been recognized had a right vis-a-vis the recognizing State to feel secure as regards his life, liberty, property and the like. That general principle of international law was enunciated in article 33 of the 1951 Convention relating to the Status of Refugees, which established that no contracting State should expel or return a refugee "in any manner whatsoever". The same principle was also embodied in the United Nations Declaration on Territorial Asylum, in the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and, in the case of his own country, in the 1967 Act on Extradition.

66. It was difficult to adopt a firm position with regard to draft article 3 at the present juncture, since it was so closely related both to article 2 and to article 4. Article 2, as adopted by the Committee, did not impose any really strict obligation on Contracting States, because it employed the phrase "... Each Contracting State may grant the benefits of this Convention ...". Draft article 3 in the consolidated text referred to persons entitled to the "benefits" of the Convention, but it was not clearly specified what the benefits of the Convention were. A State might therefore consider that the principle of non-refoulement constituted one of those benefits, so that the principle would be brought within the State's discretionary powers under article 2. If a State could decide whether or not it was opportune to return an asylee, article 3, whatever final form it might take, would still fall short of the standards set by the 1951 Convention Relating to the Status of Refugees, and it would thus be a retrograde step in respect of a principle of law that had hitherto been considered to be the subject of widespread consensus. His delegation had voted against article 2 for the same reasons. It would certainly collaborate in the search for the most satisfactory wording for article 3; but it could not overlook the close relationship between article 3 and the present formulation of the article on qualification.

67. In addition, two different situations were involved: first, that of persons seeking asylum and, secondly, that of persons whose valid claim to asylum had been established. It would seem that article 4 was concerned with the first situation, and article 3 with the second. On that point, draft article 3 in the consolidated text was not entirely clear, and needed to be improved. The amendments proposed by the United States of America to article 3 (A/CONF.78/C.1/L.44) and article 4 (A/CONF.78/C.1/L.45) seemed to clarify the point and were in principle acceptable to his delegation, it being understood that both in fact and in law the situations covered by article 4 preceded those covered by article 3. The best course might be for the Drafting Committee to consider that matter.

68. In the circumstances, he reserved his delegation's position with regard to article 3 until there was more clarity on article 4. If, however, the draft convention were to distinguish clearly between persons who sought asylum at the frontier or in the territory of a Contracting State, and persons whose valid claim to asylum had been established either at the frontier or within the territory of the State, he could support a formulation in which no distinction was made, in respect of non-refoulement, between those who were in the territory and those who were at the frontier of the State. That being said, he could support the joint proposal contained in document A/CONF.78/C.1/L.102 concerning paragraph 1 of draft article 3. On the other hand, he could not agree to the proposals by the United Kingdom (A/CONF.78/C.1/L.39) and Argentina (A/CONF.78/C.1/L.65). Similarly, the additional paragraphs proposed by the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.69) and Japan (A/CONF.78/C.1/L.54) were not acceptable.

69. Mr. NAVARRETE (El Salvador) said that his delegation attached special importance to the consideration of article 3. That article and article 4 were the two articles without which a convention on territorial asylum would be a mutilated or truncated document since, in the absence of articles dealing with non-refoulement and provisional stay, the convention would be left with loopholes that would permit the use of procedures which would negate the essentially humanitarian nature of territorial asylum. Consequently, article 3 could not be discussed in isolation from article 4.

70. Draft articles 3 and 4 in the consolidated text were in fact inconsistent, in that paragraph 1 of draft article 3 stipulated that a Contracting State "shall use its best endeavours to ensure" that no person was rejected at its frontiers, while draft article 4 provided that a person seeking asylum at the frontier or in the territory of a Contracting State "shall be admitted provisionally". In other words, draft article 4 implied that persons requesting asylum had a right to be admitted provisionally, while paragraph 1 of draft article 3 imposed serious restrictions on the principle of provisional admission of the applicant for asylum. The new formulation proposed for paragraph 1 (A/CONF.78/C.1/L.102), appeared to deal satisfactorily with the matter; and, in principle, he was in a position to endorse that formulation, pending a more detailed analysis of the language employed.

71. He was opposed to the proposal by Turkey (A/CONF.78/C.1/L.55) to insert the word "legally" before the words "in the territory of a Contracting State" in the first sentence of paragraph 1; and he would have some difficulty in supporting the proposal by Japan (A/CONF.78/C.1/L.54) and the amendments proposed by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1). On the other hand, he welcomed the reference to the "personal integrity" of the asylum seeker, as proposed in the amendment by Argentina (A/CONF.78/C.1/L.65).

72. While he appreciated the reasoning of delegations which proposed the deletion of paragraphs 2 and 3, he believed that the paragraphs in question might, with some improvements, gain the support of a majority of delegations. For that reason, he endorsed the United Kingdom amendment (A/CONF.78/C.1/L.38) and also the amendment by Argentina (A/CONF.78/C.1/L.65), which considerably improved the text by employing the formulation: "The present provision shall not apply to a person whom there are, in the opinion of the State granting asylum or in which asylum is sought, reasons for regarding...."

73. Mr. MARESCA (Italy) expressed the hope that the Secretariat would prepare a working paper to facilitate the Committee's discussion of article 4 and the amendments thereto.

74. His delegation had considered with great interest and some concern draft article 3 on the principle of non-refoulement, since it was a very crucial part of the draft convention. The provisions of articles 1 and 2 would serve no useful purpose if, in the exercise of its sovereignty, the State granted asylum and then proceeded to expel the asylee - an act which would make mockery of the right of asylum.

75. The numerous proposals concerning draft article 3 reflected three major lines of thinking: first, that the scope of the right of asylum should be restricted by introducing radical changes in the draft in the consolidated text; second, that the rights of the asylee should be considerably amplified and that the right of State should, to some extent, be sacrificed; third, that the text should be retained, with certain necessary improvements.

76. The time had undoubtedly come to affirm unambiguously the right to asylum which was already embodied in numerous international instruments - for example, in article 14 of the Universal Declaration of Human Rights, in the 1951 Convention relating to the Status of Refugees and in the Declaration on Territorial Asylum. Moreover, that right was also incorporated in domestic legislation. For instance, article 10 of the Italian Constitution of 1947 specified that any person who did not, in his own country, enjoy the freedom provided for under the Italian Constitution had the right to seek asylum in Italy. It was essential that asylum should be available to a person who, in tragic circumstances, was requesting it at the frontier of the country in which he showed his confidence.

77. The changes adopted in connexion with articles 1 and 2 had undermined the rights of the asylum-seeker and had strengthened the discretionary powers of the State. It would be wrong to adopt a similar course with regard to article 3,

solely in an effort to secure harmony with the preceding articles. Article 3 did not deal with the theory of the right of asylum, but with the precarious and tragic situation of persons actually suffering from persecution and, in dangerous circumstances, seeking refuge in another State.

78. Article 3 should set forth the principle of non-refoulement clearly and comprehensively. It would be entirely contrary to the spirit and the letter of the article to consider the principle of non-refoulement merely as the principle of non-expulsion; non-expulsion and non-rejection at the frontier were two entirely different matters. Like all other representatives at the Conference, he was fully aware of the important nature of the security requirements of the host State; but considerations of security should not be elevated to the level of absolute dogma, thus nullifying the right of asylum.

79. Accordingly, his delegation supported all proposals which were designed to strengthen and clarify the text and make the right of asylum more secure. The proposal contained in document A/CONF.78/C.1/L.102 was wholly acceptable, for it dealt appropriately with the two facets of paragraph 1 in the consolidated text, namely, non-expulsion and non-rejection at the frontier. However, the words "person eligible for the benefits of this Convention" should be replaced by the words "person seeking asylum", as proposed by the United Kingdom (A/CONF.78/C.1/L.39), since it was not possible to examine in detail the eligibility of the asylum-seeker when he was making his request at the frontier. Similarly, he welcomed the reference to the threat to the personal integrity of the asylum-seeker contained in the proposal by Argentina (A/CONF.78/C.1/L.65).

80. He fully appreciated the reasons for the amendment proposed by Turkey (A/CONF.78/C.1/L.28/Rev.1), which referred to a massive influx of persons, but thought that the amendment should rather be included in article 5.

81. He could not endorse the proposal by the Union of Soviet Socialist Republics (A/CONF.78/C.1/L.69), since it sought to delete the second sentence of paragraph 1, which dealt precisely with the most important problem requiring a solution. Again, he could not agree to the proposal by Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60/Rev.1), since the words "shall endeavour" were inadequate. In conclusion, he wished to point out that the rules to be expressed in article 3 were not merely legal rules. They were moral rules, and legal language was perhaps inadequate to express fully the concept and scope of the article, which was concerned with persons whose lives were in danger.

82. Mr. DIENG (Senegal) said that article 3, on non-refoulement, was the very cornerstone of the draft Convention. He agreed with the distinction drawn, in the Experts' text, between applicants for asylum at the frontier and those already within the territory of State. Such a distinction was entirely appropriate, if only from the methodological standpoint. However, the consolidated text also established more favourable treatment for those already within the State. Such an approach was not acceptable, for the same treatment should be accorded to all asylum-seekers. The proposal contained in document A/CONF.78/C.1/L.102, which was in keeping with the terms of the Declaration on Territorial Asylum and with article II, paragraph 3, of the OAU Convention Governing the Specific Problems on Refugee Problems in Africa, did seek to provide the same treatment for asylum

seekers, regardless of whether they were within the State or at its frontier. Therefore, he fully supported the proposal in that respect, but felt that it too should distinguish, for the purposes of clarity, between the situation of applicants at the frontier and applicants within the State, without specifying more favourable treatment for applicants in either category. Like other speakers, he also felt that the proposal would be considerably improved if the words "eligible for the benefits of this Convention" were replaced by the words "seeking asylum", as proposed by the United Kingdom (A/CONF.78/C.1/L.39).

83. His delegation could not support the amendments proposed by Uruguay (A/CONF.78/C.1/L.49), Japan (A/CONF.78/C.1/L.59) and Indonesia, Malaysia and the Philippines (A/CONF.78/C.1/L.60) because they made a distinction between the treatment of persons at the frontier seeking asylum and the treatment of persons in the territory of a Contracting State.

84. With regard to the amendment proposed by Turkey (A/CONF.78/C.1/L.55) to insert the word "legally" before the words "in the territory of a Contracting State" in the first sentence of paragraph 1, his delegation was of the opinion that, in view of the situation in many African countries, where refugees had no problems in entering large cities, it would be unrealistic to make the principle of non-refoulement conditional upon the requirement that a person should be legally in the territory of a Contracting State. His delegation was unable also to support the Indian amendment contained in document A/CONF.78/C.1/L.66/Rev.1, because it had the same defects as the Experts' text. Moreover, the amendment proposed by Ecuador (A/CONF.78/C.1/L.70) to delete paragraphs 2 and 3 was excessive. A Contracting State could not be expected to allow anyone to enter its territory, since certain persons might endanger its security.

85. Lastly, he said that his delegation supported the inclusion of the words "personal integrity" as proposed by Argentina (A/CONF.78/C.1/L.65) because those words were in keeping with the provision of article III, paragraph 3 of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

86. Mr. TURK (Austria) said his delegation fully agreed with other delegations which had pointed out that article 3 was the core of a convention on territorial asylum. The text of article 3 proposed by the Group of Experts was, however, unsatisfactory because, in paragraph 1, it made a distinction between a person in the territory of a Contracting State and a person requesting asylum at the frontier of a Contracting State. In the case of the person who was in the territory of the Contracting State, the principle of non-refoulement was expressed in absolute terms; but, in the case of the person at the frontier, Contracting States would merely be required to use their best endeavours to ensure observance of the principle of non-refoulement. If such a distinction was maintained in article 3, the Conference would have failed to achieve one of the convention's main objectives, namely, the strengthening of the law relating to asylum through the adoption of a legally binding instrument embodying the principle of non-refoulement. Also, an instrument embodying that principle would be in keeping with article 3 of the 1957 Declaration on Territorial Asylum, article II, paragraph 3 of the 1969 OAU Convention and article 33, paragraph 1, of the 1951 Convention relating to the Status of Refugees which all expressed the principle as an obligation that was legally binding on States.

87. In that connexion, his delegation welcomed the amendment proposed in document A/CONF.78/C.1/L.102, which represented a step forward compared to the draft in the consolidated text. It was, however, of the opinion that the words "No person eligible for the benefits of this Convention who is at the frontier" might create serious difficulties since the authorities at the frontier would not know whether a person seeking asylum was actually eligible for the benefits of the Convention. His eligibility could be determined only after the competent authorities had thoroughly examined the case. The Conference might be able to overcome those difficulties by adopting the wording proposed by the United Kingdom in document A/CONF.78/C.1/L.39. If no agreement could be reached on that amendment, his delegation suggested that the wording of document A/CONF.78/C.1/L.102 should be improved by adding the words "according to article 2, paragraph 1 (a) and (b)" after the words "of this Convention", thus creating a link between article 3 and article 2.

88. With regard to the amendments proposed by Pakistan (A/CONF.78/C.1/L.17), his delegation considered that the proposal to replace the word "shall" by the word "may" was merely a drafting amendment and that, in English, there did not seem to be much difference between the use of the word "shall" and the word "may" in the negative. On the other hand, his delegation welcomed Pakistan's proposal that, in paragraph 1, the words "use its best endeavours" should be deleted. The deletion of those words would obviously strengthen the text of article 3.

89. His delegation understood the reasons ~~underlying~~ the amendment proposed by Turkey (A/CONF.78/C.1/L.28/Rev.1) and sympathized with them, but it could not accept the inclusion of such a sweeping statement in a convention on territorial asylum.

90. His delegation was of the opinion that the amendments to paragraphs 2 and 3 proposed by the United Kingdom in document A/CONF.78/C.1/L.38 would certainly improve the text of those paragraphs. It could, however, also support Ecuador's proposal (A/CONF.78/C.1/L.70) to delete paragraphs 2 and 3, even though it was not realistic to think that the majority of delegations would support such a proposal.

91. His delegation welcomed the Cuban amendment (A/CONF.78/C.1/L.51), which constituted a definite improvement on the Experts' text. If the text of document A/CONF.78/C.1/L.102 was not accepted by the Committee, his delegation would vote for the Cuban amendment.

92. It could not accept the amendment proposed by Turkey (A/CONF.78/C.1/L.55) for the reasons already explained by other delegations. It could not agree, either, to the amendments contained in documents A/CONF.78/C.1/L.60 and Corr.1 and L.64 because they would weaken the draft in the consolidated text.

93. With regard to the amendment proposed by Argentina (A/CONF.78/C.1/L.65), his delegation fully supported the words "No person seeking asylum" at the beginning of paragraph 1. It was also in favour of the Argentine proposal to include the words "personal integrity" in the text of paragraph 1 because those words referred implicitly to the use of torture, which was to be condemned.

94. His delegation could not support the amendments proposed by Uruguay, Japan and the Soviet Union in documents A/CONF.78/C.1/L.49, L.54 and L.69 because they all referred to extradition, a subject of great importance which should be dealt with in a separate article of the convention, not in article 3.

95. Lastly, his delegation fully agreed with the Australian view that, if a judgement was made concerning the usefulness of the Conference's work, that judgement would largely be based on the deliberations relating to article 3. If the Conference failed to meet expectations regarding non-refoulement, it would have failed in its effort to elaborate a useful convention on territorial asylum which would do more than just state the obvious and actually benefit persons seeking asylum. His delegation would do anything possible to avoid such a failure.

96. Mr. SALAS (Cuba) said that, in the light of the discussion of the various amendments to draft article 3, his delegation had decided to replace the text of its amendment (A/CONF.78/C.1/L.51) by the following revised text:

"1. The Contracting States shall under no circumstances adopt measures to return a person referred to in article 2, paragraph 1, of this Convention.

"2. If a Contracting State has well-founded reasons for expelling from its territory a person referred to in article 2, paragraph 1, of this Convention, it shall in no circumstances expel that person to a territory where his safety would be in imminent danger on account of the reason which gave rise to his asylum or request for asylum".

97. His delegation had given the matter careful consideration and has reached the conclusion that, since conditions for the admission of a person into the territory of a Contracting State were embodied in articles 1 and 2 of the draft Convention, article 3 should relate exclusively to non-refoulement and to the expulsion of a person only to a territory where his safety would not be in imminent danger on account of the reason which gave rise to his asylum or request for asylum. The revised amendment was thus designed to provide the best possible protection for the person referred to in article 2, paragraph 1; and it also took account of the difficult situation in which a Contracting State might find itself when it had well-founded reasons for expelling a person covered by article 2, paragraph 1, to whom it had granted asylum or who had entered its territory in other circumstances. The revised paragraph 2 thus gave a Contracting State the possibility of taking a measure which it considered necessary for reasons of public order or internal domestic security. That paragraph nevertheless required the Contracting State not to expel a person covered by article 2, paragraph 1, to a territory where his safety would be in imminent danger on account of the reason which gave rise to his asylum or request for asylum. The word "danger" had been qualified by the phrase "on account of the reason which gave rise to his asylum or request for asylum" because the reason which had given rise to a person's asylum or request for asylum would be the principal factor in determining that the person should not be expelled to a territory where his safety would be in danger.

98. He also noted that the revised paragraph 1 did not specify whether or not the person in question had actually been granted asylum. It meant that the Contracting State could not return any person - be he an asylee, a provisional asylee, or a person awaiting the grant of asylum, and irrespective of the circumstances in which he had entered or was entering the territory of the Contracting State - if the reason for his asylum or request for asylum was one of those listed in article 2, paragraph 1. The Cuban delegation was of the opinion that that was the best way of embodying the principle of non-refoulement in the draft convention.

99. For the same reasons, the revised paragraph 2 also did not contain any qualifications in regard to the situation of a person whom a Contracting State might wish to expel - i.e. it did not refer specifically to a person who had been granted asylum, or a person to whom asylum was to be granted or a person in any other situation. It was designed to apply, regardless of their particular situations, to all persons covered by article 2, paragraph 1, whom a Contracting State might wish to expel for well-founded reasons.

100. His delegation considered that, although the drafting might still be improved, the revised amendment contained the main ideas which draft article 3 in the Experts' text was intended to express.

The meeting rose at 6.10 p.m.