



Seventeenth session
Agenda item 46

DRAFT DECLARATION ON THE RIGHT OF ASYLUM

Report of the Third Committee

Rapporteur: Mrs. Marie Sivomey (Togo)

INTRODUCTION

1. At its 1129th meeting, on 24 September 1962, the General Assembly allocated to the Third Committee, for consideration and report, item 46 of the agenda, entitled: "Draft Declaration on the Right of Asylum".
2. The draft Declaration on the Right of Asylum, prepared by the Commission on Human Rights,^{1/} was transmitted to the General Assembly by Economic and Social Council resolution 772 E (XXX) of 25 July 1960, together with the summary records of the Council's discussion of this subject, the summary records of earlier discussions in the Commission on Human Rights, and the comments of Governments on the draft Declaration at its various stages. The item was placed on the agenda of the fifteenth and sixteenth sessions of the General Assembly and allocated each time to the Third Committee; but for lack of time at its disposal, the Third Committee each time was able to hold only a procedural discussion concerning the action to be taken on the draft Declaration and to recommend to the General Assembly that the item be taken up at the following session. The General Assembly, accepting these recommendations, adopted resolutions 1571 (XV) of 18 December 1960 and 1682 (XVI) of 18 December 1961; by the latter it decided to take up the item as soon as possible at its seventeenth session and at that session to devote the necessary number of meetings to the consideration of the item.

1/ Official Records of the Economic and Social Council, Thirtieth Session, Supplement No. 8 (E/3335), chapter VI.

3. At the seventeenth session, the Committee had before it the following documents: a note by the Secretary-General on the stage of the work, containing the text of the draft Declaration on the Right of Asylum as drawn up by the Commission on Human Rights (A/5145); the comments on the draft Declaration submitted by Governments to the thirtieth session of the Economic and Social Council (E/3403 and Add.1-5) and to the fifteenth and sixteenth sessions of the General Assembly (A/4452/Add.1 and Add.1/Corr.1, A/4793); and a note by the Secretary-General containing background information, prepared for the sixteenth session of the General Assembly (A/4792^{2/}).
4. The Committee considered the draft Declaration at its 1192nd to 1202nd meetings, held between 26 November and 5 December 1962. At its 1192nd meeting it heard a statement by the United Nations High Commissioner for Refugees.
5. After a general debate on the draft Declaration, the Committee concentrated primarily on the preamble and article 1 of the draft Declaration. It adopted texts of the preamble and article 1 as well as a procedural resolution relating to the further consideration of the draft Declaration (see para. 36 and annex). The views expressed by the members of the Committee are set out in the summary records of the corresponding meetings (A/C.3/SR.1192 to A/C.3/SR.1202).

TEXT OF THE DRAFT DECLARATION DRAWN UP BY
THE COMMISSION ON HUMAN RIGHTS

6. The draft Declaration as drawn up by the Commission on Human Rights consisted of a preamble and five articles, reading as follows:

"The General Assembly,

"Recalling that among the purposes of the United Nations is the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

2/ Official Records of the General Assembly, Sixteenth Session, Annexes,
agenda item 38.

"Mindful of the Universal Declaration of Human Rights which declares in article 14 that '(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations',

"Recalling also paragraph 2 of article 13 of the Universal Declaration of Human Rights which states that 'Everyone has the right to leave any country, including his own, and to return to his country',

"Recommends that, without prejudice to existing instruments dealing with asylum, States Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles:

Article 1

"Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights shall be respected by all other States.

Article 2

"The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

"Where a country finds difficulty in continuing to grant asylum, States individually or jointly or through the United Nations should consider, in a spirit of international solidarity, appropriate measures to lighten the burden on the country granting asylum.

Article 3

"No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should, except for overriding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

"In cases where a State decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article 4

"Persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

Article 5

"Nothing in this Declaration shall be interpreted to prejudice the right of everyone to return to his country as stated in article 13, paragraph 2, of the Universal Declaration of Human Rights."

AMENDMENTS

7. Costa Rica, Norway and Togo submitted amendments to articles 2, 3 and 4 (A/C.3/L.1035 and Add.1); a sub-amendment, concerning articles 2 and 3, was submitted by Algeria, Guinea, Iraq, Mali, Morocco and the United Arab Republic (A/C.3/L.1045). Brazil submitted an amendment to article 4 (A/C.3/L.1036); Greece to articles 2 and 4 (A/C.3/L.1037); Poland submitted amendments to the title of the draft Declaration and to articles 1, 2, 3 and 4 as well as a proposal for a new, sixth article (A/C.3/L.1038, A/C.3/L.1040 and Rev.1). Belgium submitted amendments to the preamble and articles 1 and 3 (A/C.3/L.1039 and Rev.1 to 3); a sub-amendment to document A/C.3/L.1039/Rev.3, concerning article 1, was submitted by Poland (A/C.3/L.1050). Bulgaria submitted an amendment to article 1 (A/C.3/L.1041 and Rev.1); Feru to the preamble (A/C.3/L.1042, A/C.3/L.1042/Rev.1 and Rev.1/Corr.1); and the Union of Soviet Socialist Republics to the preamble and article 4 (A/C.3/L.1043 and Rev.1); Algeria, Cameroon, Guinea, Iraq, Mali, Morocco, Tunisia and the United Arab Republic to article 1 (A/C.3/L.1044 and Add.1, A/C.3/L.1044/Rev.1); a sub-amendment to this was submitted by the United States of America (A/C.3/L.1049).^{3/}

^{3/} Amendments other than to the preamble and article 1 will be published in Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 46.

PREAMBLE

Amendments to the preamble

8. The amendment of the Union of Soviet Socialist Republics (A/C.3/L.1043) was to insert the following as the first paragraph of the preamble:

"Noting that the chief purposes proclaimed in the Charter of the United Nations are to maintain international peace and security and to develop friendly relations among all States,".

This was subsequently revised as follows (A/C.3/L.1043/Rev.1):

"Replace the first paragraph of the preamble by the following text:

'Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all States, and to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion',".

9. The amendment of Peru in its revised form (A/C.3/L.1042/Rev.1 and Rev.1/Corr.1) was to insert between the third and fourth paragraphs of the preamble a new paragraph reading:

"Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State".

10. The amendment of Belgium (A/C.3/L.1039 and Rev.1) was to delete from the fourth paragraph of the preamble the words "without prejudice to existing instruments dealing with asylum"; and to insert in article 1 (see below, para. 36) a saving clause concerning existing instruments dealing with asylum, in particular, the 1951 and 1954 Conventions relating to the status of refugees and of stateless persons. This amendment was subsequently revised (A/C.3/L.1039/Rev.2) to add instead, in the fourth paragraph of the preamble as drafted by the Commission on Human Rights, after the words "dealing with", the words "the status of refugees and stateless persons and with"; and after "with asylum", the words "in particular, with diplomatic asylum". At the 1198th meeting, the representative of Belgium orally withdrew the reference to diplomatic asylum

and inverted the order of enumeration so as to list "asylum" before "status of refugees and stateless persons"; thus making his revised amendment read:

"Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles:".

Voting on the preamble

11. At the 1198th meeting, the Committee voted on the text of the preamble as submitted by the Commission on Human Rights and the amendments thereto.

(a) New fourth paragraph:

12. Upon a motion of the representative of Saudi Arabia, seconded by the Union of Soviet Socialist Republics, the Committee decided to vote first on the amendment of Peru (A/C.3/L.1042/Rev.1 and Rev.1/Corr.1) to insert a new paragraph between the third and fourth paragraphs of the preamble. The Peruvian amendment was adopted by 82 votes to none with 2 abstentions.

(b) First paragraph:

13. The amendment of the USSR to the first paragraph (A/C.3/L.1043/Rev.1) was adopted by 45 votes to 21, with 19 abstentions.

(c) Fifth (formerly fourth) paragraph:

14. The Belgian amendment to this paragraph (A/C.3/L.1039/Rev.2, as orally revised) was adopted by 40 votes to 16, with 27 abstentions.

15. The representative of the Ukrainian Soviet Socialist Republic requested a separate vote on the following words of the paragraph as amended: "States Members of the United Nations and members of the specialized agencies". The words were retained by 59 votes to 8, with 15 abstentions.

16. The paragraph, as amended, was adopted by 66 votes to none, with 18 abstentions.

(d) Preamble as a whole, as amended:

17. The preamble as a whole, as amended, was adopted by 82 votes to none, with 2 abstentions (see Annex I).

ARTICLE 1

Amendments to article 1

18. The amendment of Poland (A/C.3/L.1038, point 2) was to insert the word "territorial" before "asylum".

19. The amendment of Algeria, Cameroon, Guinea, Iraq, Mali, Morocco, Tunisia and the United Arab Republic (A/C.3/L.1044 and Add.1) was to insert after "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" the words "and persons struggling against colonialism". At the 1200th meeting the sponsors accepted a sub-amendment of the United States of America (A/C.3/L.1049) to replace the word "and" by "including", thus making the amendment read: "including persons struggling against colonialism" (A/C.3/L.1044/Rev.1).

20. The amendment of Bulgaria (A/C.3/L.1041) was to replace "persons entitled to invoke article 14 of the Universal Declaration of Human Rights" by the following:

"persons persecuted for striving for national independence, for striving to maintain peace and to develop peaceful and friendly relations between peoples and States, for fostering and developing respect for human rights and fundamental freedoms, or for any other activity, except in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations".

The words "or for any other activity" in this amendment were subsequently changed to read "or for any other reason" (A/C.3/L.1041/Rev.1).

21. The amendment of Belgium (A/C.3/L.1039/Rev.1) was to add to article 1 a second paragraph reading:

"This Declaration shall be without prejudice to existing instruments dealing with asylum, in particular, to the Convention of 1951 relating to refugees and the Convention of 1954 relating to stateless persons."

Upon revising his amendment to the original fourth paragraph of the preamble (see above, para. 10), the representative of Belgium also revised his amendment (A/C.3/L.1039/Rev.2) for a second paragraph to article 1. In its final form (A/C.3/L.1039/Rev.3, point 1), this amendment read:

"The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes."

22. The sub-amendment of Poland (A/C.3/L.1050) to the Belgian revised amendment (A/C.3/L.1039/Rev.3) was to replace the words "The right to seek and to enjoy asylum may not be invoked by any person..." by the words "It shall not be permitted to give territorial asylum to a person..."

23. The amendments of Poland to article 1 (A/C.3/L.1040) were (1) to add after "article 14" the words "paragraph 1" and (2) to add the following paragraphs to article 1:

"It shall rest with the State granting territorial asylum to evaluate the grounds for the grant of asylum.

"It shall not be permissible to grant territorial asylum to ordinary-law criminals, war criminals or persons guilty of crimes against peace or against humanity."

Subsequently, Poland submitted a revised amendment (A/C.3/L.1040/Rev.1) reading:

"Add the following paragraph to article 1:

"It shall rest with the State granting territorial asylum to evaluate the grounds for the grant of asylum."

At the 1201st meeting, the representative of Poland withdrew this amendment (A/C.3/L.1040/Rev.1). It was re-introduced, omitting the word "territorial", by the representative of Chile, on behalf of Argentina, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama and Venezuela.

Voting on article 1

24. At the 1201st meeting, the Committee voted on the text of article 1 as submitted by the Commission on Human Rights and amendments thereto.

(a) Text proposed by the Commission on Human Rights:

25. The amendment of Poland (A/C.3/L.1038) was adopted by 33 votes to 11, with 32 abstentions.

26. The representative of Bulgaria withdrew his amendment (A/C.3/L.1041/Rev.1) in favour of the eight-Power amendment (A/C.3/L.1044/Rev.1).

27. At the request of the representative of Algeria, a roll-call vote was taken on the amendment of Algeria, Cameroon, Guinea, Iraq, Mali, Morocco, Tunisia and the United Arab Republic (A/C.3/L.1044/Rev.1). The amendment was adopted by 70 votes to none, with 14 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Algeria, Argentina, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Chile, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dominican Republic, Ecuador, Ethiopia, Federation of Malaya, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, India, Indonesia, Iran, Iraq, Israel, Italy, Ivory Coast, Jordan, Lebanon, Liberia, Madagascar, Mali, Mauritania, Mexico, Mongolia, Nepal, Niger, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Sudan, Syria, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Upper Volta, Uruguay, Venezuela, Yugoslavia.

Against: None.

Abstaining: Australia, Canada, China, Denmark, Finland, France, Ireland, Japan, Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

28. The representatives of Tanganyika and the United Arab Republic stated that they wished to have it recorded that had they been present at the time of voting they would have voted in favour of the eight-Power amendment.

29. The text of article 1 proposed by the Commission on Human Rights, as amended, was adopted by 85 votes to none, with 1 abstention.

(b) New paragraph 2:

30. The sub-amendment of Poland (A/C.3/L.1050) to the amendment of Belgium (A/C.3/L.1039/Rev.3) was rejected by 28 votes to 15, with 44 abstentions.

31. The representative of Niger requested a separate vote on the following words in the Belgian amendment (A/C.3/L.1039/Rev.3): "with respect to whom there are serious reasons for considering that". In reply to a question by a member of the Committee, the Chairman stated that if these words were deleted, the word "he" immediately following them would have to be changed to "who". Twenty votes having been cast in favour and 20 votes against, with 45 abstentions, the Chairman declared that, in accordance with rule 134 of the rules of procedure, the words in question were retained. The Belgian amendment as a whole was adopted by 38 votes to 7, with 40 abstentions.

(c) New paragraph 3:

32. At the request of the representative of Chile, a roll-call vote was taken on the former amendment of Poland (A/C.3/L.1040/Rev.1) as re-introduced by Argentina, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama and Venezuela (see above, para. 23). The nine-Power amendment was adopted by 59 votes to 4, with 24 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Argentina, Austria, Belgium, Brazil, Bulgaria, Burma, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Costa Rica, Cyprus, Dominican Republic, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Gabon, Guatemala, Guinea, Haiti, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jordan, Lebanon, Liberia, Madagascar, Mali, Mauritania, Mexico, Mongolia, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Peru, Poland, Rwanda, Saudi Arabia, Sudan, Syria, Tanganyika, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Yugoslavia.

Against: Denmark, Finland, Netherlands, New Zealand.

Abstaining: Albania, Australia, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Canada, Cuba, Czechoslovakia, France, Ghana, Greece, Hungary, Ireland, Italy, Japan, Norway, Philippines, Romania, Spain, Sweden, Togo, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

The representative of the United Arab Republic stated that if he had been present during the voting he would have voted for the nine-Power amendment.

(d) Article 1, as amended, as a whole:

33. Before the Committee proceeded to vote on article 1 as a whole, a number of representatives questioned the effect of the tie vote referred to in paragraph 31 above. The representative of the Union of Soviet Socialist Republics requested that the following statement be included in the report of the Committee: "The representative of the USSR said that the part of the Belgian amendment voted on separately had been rejected under rule 134 of the rules of procedure, and this was not the first case of a violation of the rules of procedure by the Chairman."

34. Article 1, as amended, as a whole, was adopted by 85 votes to none, with 4 abstentions (see Annex I).

PROCEDURAL DRAFT RESOLUTION

35. At its 1202nd meeting the Committee unanimously adopted a draft resolution of Saudi Arabia (A/C.3/L.1047), as orally revised to include the words "and article 1" after the word "Preamble", concerning future consideration of the draft Declaration. At its 1209th meeting, the Committee decided, without objection, to amend the first paragraph of the preamble to read: "Noting that the Third Committee has adopted the preamble and article 1 of the draft Declaration on the Right of Asylum," and to delete the word "however" in the second paragraph of the preamble (see para. 36 below).

RECOMMENDATION OF THE THIRD COMMITTEE

36. Accordingly, the Third Committee recommends to the General Assembly the adoption of the following draft resolution:

Draft Declaration on the Right of Asylum

"The General Assembly,

"Noting that the Third Committee has adopted the preamble and article 1 of the draft Declaration on the Right of Asylum,

"Not having been able to complete consideration of the draft Declaration,

"Decides to take up the item entitled 'Draft Declaration on the Right of Asylum' as soon as possible at its eighteenth session and at that session to devote the necessary number of meetings to the completion of that item."

ANNEX

Text of Preamble and article 1 of the draft Declaration
on the Right of Asylum as adopted by the Third Committee
at the seventeenth session of the General Assembly

The General Assembly,

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all States, and to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

Mindful of the Universal Declaration of Human Rights which declares in article 14 that "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

Recalling also paragraph 2 of article 13 of the Universal Declaration of Human Rights which states that "Everyone has the right to leave any country, including his own, and to return to his country",

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State,

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles:

Article 1

1. Territorial asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any persons with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.
