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CONTENTS

Chairman: Mr. Vratislav PĚCHOTA (Czechoslovakia).

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (continued) (A/6367 and Add.1 and 2, A/C.6/L.587, A/C.6/L.588 and Corr.1, A/C.6/L.589-L.591, A/C.6/L.593 and Add.1, A/C.6/L.599, A/C.6/L.604)

1. Mr. MANNER (Finland) said that his delegation attached great importance to the draft Declaration on the Right of Asylum (see A/6367) and would support all efforts to complete it. The spirit of the draft Declaration and the principles set forth in it were reflected in existing Finnish legislation: for example, the 1958 Aliens Decree provided that if an alien applied for political asylum shortly after arriving in Finland it could be granted by the Ministry of the Interior, after consultation with the Ministry of Foreign Affairs, provided that the alien had a well-founded fear of being persecuted in his own country because of his race, religion, nationality or membership in a certain social or political group, or that he had not been granted asylum in another country. According to the 1922 Extradition Act, a person could not be extradited for a political crime, unless the crime was particularly brutal or comprised a non-political crime and could not be deemed primarily political in nature. Monetary offences and murder or attempted murder that had not taken place in open conflict could in no case be considered political crimes. The right of asylum was also touched upon in the 1960 Act concerning extradition between Finland and the other Nordic countries. In certain respects Finnish law also recognized the principle that a person who had committed a war crime had forfeited his right to asylum.

2. His delegation felt that the Committee should consider the text of the draft Declaration as a whole. A certain distinction should, of course, be drawn between the preamble and article 1 on the one hand and articles 2, 3, 4 and 5 on the other, but his delegation would have no objection to the submission of amendments to the preamble and article 1, even though they had already been adopted by the Third Committee.

3. The Working Group established by the Sixth Committee at the twentieth session had considered that the Committee should prepare the draft Declaration independently of the codification of the related rules of international law by the International Law Commission, and it had pointed out that the future declaration would, in fact, constitute only one of the elements available to the Commission in carrying out that task. [1] That view was confirmed by the fact that other bodies, such as the International Law Association, were dealing with the same problem. That being the case, his delegation believed that the draft Declaration should not be a detailed, practical codification of all the rules relating to the right of asylum; its main purpose should be to develop and clarify the principles contained in article 14 of the Universal Declaration of Human Rights. It should deal principally with the obligations of States and should not lay down the rules governing the conduct of persons enjoying asylum, which in most cases were established by national legislation.

4. In view of the universal nature of the proposed Declaration, his delegation felt that it would be preferable not to single out "persons struggling against colonialism" from among the many groups entitled to invoke article 14 of the Universal Declaration, and it would therefore vote against proposals to insert that phrase into articles 2 and 3 of the Commission's draft (see A/6367, annex II).

5. Article 2 of that draft should be revised so as to clarify the question of the measures to be taken by other States to ease the burden on a country that found it difficult to continue to grant asylum. His delegation was willing to accept the principle that a State could refuse to grant asylum when faced with economic or other material difficulties caused, for example, by a mass influx of refugees; but article 2 must be carefully worded in order to prevent States from using it as a pretext for exerting political pressure.

6. With regard to procedure, his delegation was in favour of setting up a new working group to prepare a revised draft, based on the documents before the Committee and the statements made during the general debate.

7. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the Committee was not starting its work on the present item with a clean slate. On the one hand, the preamble and article 1 of the draft Declaration on the Right of Asylum had been adopted by the Third Committee (see A/6367, annex III), and that action had been noted by the General Assembly. On the other hand, the Sixth Committee had before it articles 2-5 of the draft Declaration adopted by the Commission on Human Rights (ibid., annex II). Some delegations had suggested that the Sixth Committee

[1] See Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 63, document A/C.6/L.581.

could discard the texts adopted by the Third Committee and start afresh. In his delegation's opinion that would not only be impractical but inconsistent with the explicit recommendations of the Working Group on the draft Declaration, which had been approved by the General Assembly.[2] The Committee was thus obliged to implement the General Assembly's decision and proceed to elaborate the text of articles 2-5 of the Commission's draft Declaration.

8. Articles 2-5 should develop further the statements in the preamble and article 1 of the Third Committee's draft, which expressed the fundamental principles of contemporary international law concerning the right of asylum. Thus, the inclusion in article 1 in the latter draft of the reference to the granting of territorial asylum to "persons struggling against colonialism" had been supported by the majority of the Asian, African and Latin American countries, as well as by the USSR delegation. Although in recent years the cause of national liberation had made substantial strides and almost all of Asia and Africa had thrown off the colonial yoke, there were still countries in the world where imperialists sought to maintain colonial rule by force of arms. The struggle against foreign oppressors continued in Angola, Mozambique, Portuguese Guinea and South Arabia; the resistance of the masses to the racist régimes in South Africa and Southern Rhodesia was spreading. In view of the Declaration on the Granting of Independence to Colonial Countries and Peoples of General Assembly resolution 2105 (XX), stressing that the continuation of colonial rule and the practice of apartheid as well as all forms of racial discrimination threatened international peace and security and constituted a crime against humanity, it was clear that all States were obliged to help bring colonialism to an end as quickly as possible. As applied to the draft Declaration on the Right of Asylum, that meant that all States should respect the grant of territorial asylum to persons struggling against colonialism. The inclusion of the reference in question would also reflect the legislation of many countries: for example, article 129 of the Constitution of the USSR, article 46 of the Constitution of the Republic of Guinea and article 21 of the Constitution of Algeria. His delegation, therefore, wholeheartedly supported the Iraqi and Algerian amendments (A/C.6/L.593 and Add.1), which would insert special references to colonialism in articles 2 and 3 of the Commission's draft.

9. Another important principle, namely, that the right to seek and to enjoy asylum might not be invoked by any person who had committed a crime against peace, a war crime or a crime against humanity, had been included in article 1 of the Third Committee's draft Declaration as a statement of contemporary international law. International law contained both general principles and special norms concerning international responsibility for crimes against humanity. The Charter of the International Military Tribunal, signed by the four Powers of the anti-Hitler coalition and acceded to by nineteen other States, the Charter of the International Military Tribunal for the Far East, and a number of General Assembly resolutions, particularly resolution 95 (I), set out these principles and norms. The fact that the principle of punishing war criminals was currently generally accepted was also evidenced by a number of multilateral agreements to which the great majority of States were parties, in particular the 1948 Convention on the Prevention and Punishment of Genocide and the Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War. Thus, by virtue of principles that had received full recognition in contemporary international law, all States had a general obligation to prosecute crimes against humanity, if the criminals were within their jurisdiction.

10. The preamble (see A/6367) correctly noted that the draft Declaration was concerned with questions arising in connexion with the granting of asylum to persons supporting and fighting for the progressive purposes and principles proclaimed in the Charter of the United Nations and not with events arising in connexion with the simple movement of persons from one country to another. As several representatives had described their national legislation governing the entry and sojourn of aliens, he wished to take the opportunity to stress that it would be entirely incorrect if the draft Declaration were to be aimed at the protection of persons who travelled from one country to another for reasons unrelated to the struggle for the purposes and principles of the Charter. It should be concerned with persons seeking asylum because they were being persecuted for acts in support of the purposes and principles of the United Nations, i.e., fighting for peace, progress or national liberation from colonial domination. Unfortunately, in practice some States had frequently granted asylum to corrupt, reckless elements, persons who had obviously not suffered political persecution in their own country and who were usually very willing to undertake any kind of dirty work for those who paid them. Because there was a fairly widespread practice in some States of granting such persons asylum and using them for improper purposes, his delegation had proposed the amendment in document A/C.6/L.590.

11. Inasmuch as the first paragraph of the preamble referred to the purposes proclaimed in the Charter, articles 2-5 should include propositions that would promote the development of friendly relations among States and the maintenance of international peace.

12. His delegation had no objection to the establishment of a working group to complete the work on the remaining articles of the draft Declaration. The composition of the working group should afford representation to the various regions of the world and the groups of countries interested in the question. The socialist countries, which had a definite interest in the matter, would like to have broader representation in the new working group than they had had in the previous one.

13. Mr. SEATON (United Republic of Tanzania) said that the draft Declaration (see A/6367), which when adopted would form part of the series of important international instruments in the field of human rights adopted since the end of the Second World War, deserved the most careful consideration, for the plight of those compelled to abandon their countries for a life of exile had too long been a subject of mis-

2/ Ibid., para. 11.

understanding, if not indifference. It was true that the 1951 Convention on the Status of Refugees represented a marked improvement over the 1933 Convention, but the fate of most persons seeking asylum nevertheless continued to depend on unilateral national policies. Yet, as the United Nations High Commissioner for Refugees had observed in his statement to the Third Committee in November 1962, for the persons affected, the granting of asylum was "a condition for the enjoyment of all other human rights".[3]

14. In his country, the right of asylum was associated with traditions of the greatest antiquity, and his Government had tried to align its present attitudes and practices in that regard with international norms and standards. It had acceded to the 1951 Convention and had laid down its own principles and policies in the 1966 Refugees (Control) Act. It did not agree with those who considered asylum as merely the obverse of extradition. In Tanzanian law and practice there was no right of extradition or asylum, exceptas created by an affirmative, voluntary act of the State; thus, rights of extradition had been created in favour of certain States with which his Government had concluded extradition treaties, and rights of asylum had been created in favour of certain individuals falling within the category of refugees covered by the 1951 Convention or article 3 of the Refugees (Control) Act. In his Government's view, the right of asylum was wider than the right of extradition; the latter might limit or create an exception to the former. That view was consistent with the spirit and letter of article 14 of the Universal Declaration of Human Rights. His Government understood that some Member States might be facing certain problems with regard to asylum, but it felt that unique problems should not be allowed to distort principles that were generally sound.

15. It was clear, of course, that the international norms relating to asylum were not so clearly defined and universally accepted as would be ideally desirable. It was for that reason that his Government had approved the proposals of the Colloquium on Legal Aspects of Refugee Problems, held at Bellagio, Italy, in 1965, which were designed to secure international agreement for a modification of the 1951 Convention, and had participated in the work of the Commission on Refugees of the Organization of African Unity, which was attempting to draft a convention laying down rules for the treatment of refugees in Africa. For the same reason, his Government considered it appropriate for the General Assembly to try to resolve the existing differences in State practice by adopting a declaration on the right of asylum that would have the same force as the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty.

16. The international community was deeply indebted to the French delegation for having submitted the original proposal for a draft Declaration.[4] Such a declaration would be of great benefit to persons seeking asylum, for, as the Argentine representative had rightly observed during the discussion in the Third Committee, "The State granting asylum would become an agent of the international community, in that it would be responsible for assuring to the individual safeguards which met the wishes of the international community".[5]

17. His delegation shared the Venezuelan representative's view that the Committee, if it wished, could include provisions relating to diplomatic asylum in the draft Declaration. It might, however, be preferable to conclude a declaration on territorial asylum first and then, if it was considered necessary, begin work on a new study on diplomatic asylum, bearing in mind that the latter topic could be considered under the heading of diplomatic privileges and immunities, as well as under that of human rights, and, too, that the matter of diplomatic asylum would eventually be taken up by the International Law Commission in connexion with its general work on the right of asylum.

18. He did not intend to discuss the substance of the draft Declaration in detail on the present occasion, but he wished to express support for the Iraqi-Algerian amendment to articles 2 and 3 (A/C.6/L.593 and Add.1); the proposed reference to "persons struggling against colonialism" would bring those articles into line with article 1, paragraph 1, of the draft (see A/6367, annex III) and would encourage the heroic peoples fighting against colonial domination.

19. Owing to a variety of geographical and political circumstances, his country, for years, had been host to numerous refugees of different nationalities many of whom had on arrival been suffering from the poverty and fear characteristic of the typical refugee. Faced with the problems occasioned by a mass influx of persons seeking asylum, the most benevolent Government might find itself torn between its sympathetic impulses and the need to maintain legal and social control. His delegation considered that the draft Declaration made a valiant attempt to deal with the various problems involved in the granting of asylum. As the preamble recognized, those problems often had economic, social and cultural aspects, as well as a humanitarian aspect. The draft Declaration should be subjected to detailed study in the light of that fact, taking into account the comments submitted by Governments and the statements made during the general debate. In his delegation's view, such a study could best be carried out by a working group, which would make recommendations to the Sixth Committee before the end of the session. The size and membership of the group should be determined by reference to certain well-established criteria, and the principle of equitable geographical distribution should be respected. Subsequent work on the draft Declaration might be facilitated if Governments were invited to submit comments on the draft adopted by the Committee, so that those could be taken into consideration at the next session of the General Assembly.

20. Mr. SETTE CAMARA (Brazil) expressed his delegation's appreciation for the support given by

[3] Ibid., Seventeenth Session, Third Committee, 1192nd meeting, para. 3.

[4] See Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 4, para. 208.

[5] See Official Records of the General Assembly, Seventeenth Session, Third Committee, 1193rd meeting, para. 22.

the representative of Ghana to the Brazilian proposal (see A/6367) to delete the second paragraph of article 2 of the Commission's draft Declaration (see A/6367, annex II). His delegation's amendment contained in document A/C.6/L.587 related to article 4 of the draft Declaration; although it retained the essence of the original text, it clarified and made more precise the limitations that should be placed on the activities of persons enjoying territorial asylum.

21. With respect to the amendments submitted by Poland (A/C.6/L.589), his delegation agreed with the first two proposals, but because the third one envisaged the addition of a sixth and final article, he reserved his position pending consideration of the results achieved by the new working group. He found much merit in the joint amendment submitted by Norway and Togo (A/C.6/L.588) to the first paragraph of article 2, and he noted with satisfaction that their views were shared by the Government of Argentina as reflected in its observations in document A/6367/Add.1. He would not, however, consider their proposed amendments to the second paragraph of article 2, inasmuch as his own delegation had proposed the deletion of that whole paragraph. The views of several delegations on article 3 were at variance, and considerable efforts would be needed on the part of the new working group if a compromise text was to be produced.

22. Concerning the composition of the new working group, his delegation would welcome the re-establishment of the Working Group set up by the Sixth Committee at the twentieth session of the General Assembly, perhaps with a slightly enlarged membership. The original members had represented a well-balanced choice of States, and he was in favour of entrusting them with the responsibility of studying the matter further and reporting back to the Committee.

23. Mr. YANKOV (Bulgaria) said that the draft Declaration (see A/6367) deserved the most careful consideration, for it dealt with a topic relating to the protection of human rights that was of great importance to the international community. It should, however, be viewed as a transitory instrument of a moral and political nature that would stimulate the future development and codification of the relevant rules of international law. It would be for the International Law Commission to carry out that codification; consequently, the Committee should not deal with the legal rules in detail but should draw up a declaration stating general moral and political principles.

24. In his delegation's view, the draft should deal only with territorial asylum, inasmuch as the various forms of extraterritorial asylum were not of universal concern. It therefore supported the Polish amendments to the title and to articles 2, 3 and 4 (A/C.6/L.589) and the Uruguayan amendment to the fourth preambular paragraph (A/C.6/L.604).

25. The draft Declaration should be based on the concept that the granting of asylum was the exclusive sovereign right of every State, performed within the framework of its legal system and in compliance with its international obligations. Although it was true that the State's right was closely related to the human and moral right of the individual to seek and enjoy protection from persecution through asylum, the legal basis of the institution was the right of the State to grant, not the right of the individual to receive, asylum. There was no rule of positive international law making it mandatory for a State to grant asylum. That basic concept had important implications with regard to the establishment and functioning of the institution of asylum: it meant, first, that the State granting asylum was competent to determine the requirements for granting or refusing asylum and the relationship between the granting of asylum and the character of the political offence, and, second, that the admitted fugitive was placed under the jurisdiction of the receiving State and must obey its laws. The draft Declaration fully reflected those fundamental principles.

26. Another very important aspect of the draft Declaration was the fact that the fourth preambular paragraph qualified the granting of asylum as a "peaceful and humanitarian act" (see A/6367, annex III). That helped to define the scope of the offences that could be invoked, for it meant that asylum could not be granted to persons charged with non-political offences, war crimes or crimes against peace and humanity. That view, which was upheld in the International Law Association's report of its Fifty-first Conference, held in Tokyo in 1964, was also reflected in article 1, paragraph 2, of the draft Declaration.

27. His delegation believed that the draft Declaration should refer specifically to "persons struggling against colonialism", who should be allowed to invoke that struggle as a moral and legal basis for receiving asylum. It therefore supported the amendments proposed by Iraq and Algeria (A/C.6/L.593 and Add.1).

28. The draft Declaration could prove to be an important instrument for the promotion of international co-operation with regard to asylum and for the encouragement of national legislation on that subject; to include a specific provision to that end in the draft would, in his delegation's view, be both feasible and useful. According to the Legal Adviser of the United Nations High Commissioner for Refugees, about thirty-six countries now had specific constitutional provisions relating to refugees. Bulgaria was one of those countries. Article 84 of its Constitution provided that foreigners residing in Bulgaria enjoyed the right of sanctuary when they were persecuted for upholding democratic principles or for struggling for their national independence and freedom, for the people's rights or for scientific and cultural freedom. Those provisions were the legal basis for specific laws dealing with asylum and non-extradition. In Bulgaria, persons enjoying asylum had the same rights as other aliens, which differed from those of nationals only with respect to certain political rights.

29. With regard to the text of the draft Declaration, his delegation thought that the preamble and article 1 should be regarded as adopted and that the Committee should confine its attention to the other articles. Article 3 (see A/6367, annex III) introduced the notion of provisional territorial asylum, which his delegation regarded as an important contribution to the develop-

ment of the institution of asylum and its adaptation to international realities and State practice. His delegation would support the amendments to that article submitted by Norway and Togo (A/C.6/L.588) and the amendments submitted by Iraq and Algeria (A/C.6/L.593 and Add.1).

30. A number of amendments to article 4 had been submitted, designed to ensure that persons enjoying asylum would not engage in activities detrimental to the host State (Greece, A/C.6/L.591), their State of origin (Brazil, A/C.6/L.587) or other States (USSR, A/C.6/L.590). All those amendments should be carefully considered, for the institution of asylum must not be used as a means of interfering in the internal affairs of States through espionage, subversion or other hostile and violent acts.

31. With regard to procedure, his delegation considered that the proposed working group should be established as soon as possible, with the principal legal systems of the world and the various geographical and political groups within the United Nations equitably represented. In view of the importance of the draft Declaration, it might be necessary for the text adopted by the Committee to be studied by Governments before being submitted to the next session of the General Assembly.

32. Mr. DE LUNA (Spain) said that in order to take refuge in an asylum—which in Greek meant an inviolable place—it had been sufficient for individuals to touch the chains surrounding the terraces and cemeteries of the medieval European churches. Following an age-old custom practised by the Egyptians in the Temple of Memphis, by the Jews in the six cities of the Old Testament, and generally by the people of the East in their great sanctuaries, Christianity had given its churches the privilege of providing immunity to a criminal against the authority administering justice or against blood vengeance. That right of asylum had persisted in Italy until the Act of 9 April 1850 had abolished it. It was not surprising, therefore, that the Hispanic community should still keep alive the right of diplomatic asylum. Hispanic man so loved freedom that he had been not only the first to construct a theory of the right of tyrannicide but the last to abolish that right of asylum which Judge Badawi had rightly called the usage and custom of the humanization of revolution.

33. The United Nations had started to consider the right of asylum for humanitarian reasons. The Universal Declaration of Human Rights had been proclaimed, and in an early moment of euphoria, the United Nations had set out to transform declarations of principles into compulsory legal norms by means of a single covenant. However, in its resolution 543 (VI) of 5 February 1952, the United Nations had had to renounce that utopia, because abstract words would not build an effective system of safeguards for the real man, whose specific rights—not the abstract rights of a phantom citizen—it was obliged to protect.

34. When, therefore, the United Nations adopted measures backed not just by words but by effective guarantees, it was advancing in the direction marked out for it by the Universal Declaration of Human Rights. Consequently, his delegation had enthusiastically welcomed the possibility of transforming articles 13 and 14 of the Universal Declaration from words into deeds. Clearly, even when it adopted the draft Declaration on the Right of Asylum, the United Nations would be going only half the way, because there were still frontiers between rich and poor States that kept the principles of justice current within the territory of a State from being applied beyond its borders, and because there was still much selfish nationalism and racial discrimination concealed behind empty words.

35. The draft Declaration (see A/6367) represented another step towards making article 14 specific; it was realistic, however, in recognizing that the State retained an absolute right to determine who would be admitted to its territory. The right of territorial asylum was indeed recognized in many Constitutions, but only as a discretionary power of the territorial State, and the individual had no defence against a denial of asylum.

36. Regarding the specific proposals before the Committee, his delegation supported the first two Polish amendments in document A/C.6/L.589, because diplomatic asylum should not be confused with territorial asylum, which long ago had been connected with extradition.

37. It also supported the joint amendments of Norway and Togo (A/C.6/L.588 and Corr.1), which proposed the use of the expression "persons entitled to invoke article 14 of the Universal Declaration of Human Rights". Although persons struggling against colonialism certainly deserved to be granted asylum, they did not have to be specifically mentioned. When, in the near future, the paleo- and neo-colonialisms were relegated to the museum of history, nationalism unfortunately would continue to be a crime against the human race, a crime that must be extirpated if human rights were truly to be applied in a just social structure. It was essential to be realistic, however; and currently the struggle against colonialism was very important. Therefore, although his delegation, for reasons of elegantia juris, would prefer not to include special mention of any political practice, it had no objection to the Iraqi-Algerian amendments (A/C.6/L.593 and Add.1).

38. His delegation also supported the USSR amendment (A/C.6/L.590), which it preferred to the less comprehensive Brazilian amendment (A/C.6/L.587). In its view the USSR amendment was extraordinarily important, since in the immediate future the crimes it enumerated would be much more frequent and more dangerous for world peace than thermonuclear weapons.

39. Although it approved the spirit of the Greek amendment (A/C.6/L.591), his delegation did not think it was necessary. The obvious fact that a State exercised territorial supremacy over all persons within its borders—nationals or aliens—excluded the possibility of foreign States exercising jurisdiction over their nationals in the territory of another State. The only rules of international law that would apply would be those governing the position of aliens: the subject of a given State should receive the treatment that internationally it was usual for aliens to receive.

40. Nor did his delegation consider it necessary to add article 2, paragraph 2, of the resolution of the meeting of the Institute of International Law, at Bath in September 1950, which said that the State which granted asylum to a person in its territory did not on that account incur any international responsibility other than that arising from the activity of any other alien living on its territory, and that the rule applied whether the State could expel the person receiving asylum or whether expulsion was impossible because other States refused to receive him. The rules of State responsibility did not distinguish between a State's jurisdiction over activities on its territory by subjects and its jurisdiction over activities by aliens, exiles or non-exiles.

41. His delegation accepted the Polish proposal for a new article 6 (A/C.6/L.589), as it had a similar provision in the 1963 Convention on Consular Relations. However, there were many extradition treaties requiring States to hand over non-political offenders but excluding political offenders, and there were a number of mixed offences. Under article 1, paragraph 3, of the draft Declaration (see A/6367, annex III), it rested with the State granting asylum to evaluate the grounds for the grant of asylum; but under the extradition treaties the State might be bound to accept other methods of evaluation. His delegation thought, therefore, that the words "and extradition" should be added to the new paragraph proposed by Poland.

42. Mr. PAYSSE REYES (Uruguay) said that his country, as a Latin American State, had had long and varied experience in the theoretical development and practical application of the institution of asylum. Inasmuch as that experience might be of value to the Committee in preparing the draft Declaration, he wished to offer the following chronological list of the leading Latin American treaties and conferences on the subject:

(a) Article 17 of the 1889 Treaty of Penal Law of Montevideo, a document already referred to by the representatives of Venezuela and Chile, had granted asylum to persons persecuted because of "political crimes"; but it had denied that right to the "perpetrators of common crimes".

(b) The International Commission of American Jurists (Rio de Janeiro, 1927), in article 2 of its draft Convention No. 10, had stated that asylum should be recognized and should be granted to persons accused or convicted of political crimes.

(c) The Convention on Asylum, signed at Havana on 20 February 1928, had provided in article 2 that asylum would be granted only to "political offenders" to the extent in which allowed, as a right and through humanitarian toleration, by the usages, the conventions or the laws of the country in which it was granted.

(d) The Convention on Diplomatic Officers of 1928 had laid down rules respecting diplomatic asylum that might also be usefully applied in the case of territorial asylum.

(e) The Convention on Political Asylum of Montevideo (1933) had reproduced and supported the principles of the Havana Convention.

(f) The Argentine draft Convention on the Right of Asylum was enunciated in 1937. Various political events, in particular the experience gained during the Spanish Civil War (1936-1939), had revealed the narrowness of the current rules governing the granting of asylum, and the Argentine Government had taken the initiative in broadening the traditional concept of asylum. At that time, Carlos Saavedra Lamas had proposed to add to the category of "persons accused or convicted of political crimes" the category of "persons persecuted because of political crimes or for political reasons".

(g) The Argentine draft of 1939 had followed the main criteria laid down in the Saavedra Lamas draft and retained the reference to "persons persecuted for political reasons". In particular, it denied asylum to "terrorists" and to "deserters", unless the desertion was of a political nature.

(h) The Uruguayan draft of 1939 had enlarged the traditional concepts to include common crimes having related political aspects, unless in the opinion of the judge the offence partook so much of the nature of a common crime that its political aspects were completely obscured.

(i) The Treaty on Political Asylum and Refuge (Montevideo, 1939) for the first time had confirmed in American conventional law the Argentine doctrine relating to persons persecuted for political reasons or because of political crimes or common crimes committed primarily in political circumstances, a doctrine accepted by the Institute of International Law in 1950.

(j) Because of its direct connexion with American conventional law, reference should also be made to the judgement of the International Court of Justice of 20 November 1950. In considering that historic judgement, which had been rejected by Latin American juridical thinkers, mention should be made of the work by the Mexican jurist, Francisco A. Ursúa, El asilo diplomático (1952).

(k) Reference should also be made to the First Hispano-Luso-American Congress of International Law, held at Madrid in 1951, at which the principle that when asylum was granted it was because the Government granting it regarded the applicant as a person persecuted for political reasons had been stated.

(l) The Inter-American Juridical Committee, meeting in Rio de Janeiro in 1952, as a consequence of the judgement of the International Court of Justice already referred to, had studied the problem of "urgency" as a condition for granting asylum and had outlined rules on that subject in articles 5, 6 and 7 of its draft.

(m) The Inter-American Council of Jurists, meeting in Buenos Aires in 1953, had prepared a new draft convention to be submitted to the Tenth Inter-American Conference at Caracas. That draft had confirmed the concept of "persons persecuted for political reasons or because of political crimes" and had left the evaluation of the facts entirely within the discretion of the State granting asylum.

(n) The Tenth Inter-American Conference at Caracas in 1954, in its Convention on Diplomatic

Asylum, had limited the existing law on asylum in Latin America to "persons being sought for political reasons or for political offenses" and had left it to the State granting asylum to determine the nature of the crimes or the reasons for the persecution (the first paragraph of article 1 and article 4). Likewise, in articles 5, 6 and 7 of the Convention it had introduced into positive conventional law clear rules concerning the determination of "urgency" as a matter left exclusively to the judgement of the State granting asylum.

(o) At Santiago, Chile, in 1959, the Inter-American Council of Jurists, in the draft of its additional protocol to the Inter-American Conventions on Diplomatic Asylum, had made the most recent contribution to the work of codification in article 4, which read as follows: "The State granting asylum has the right to define the nature of the crime or the reasons for persecution. It also has the right to determine whether or not the case is an urgent one".

(p) In 1960, the Government of Uruguay had laid down the following rules concerning the procedure to be followed in granting asylum: (i) those rules of conventional law that had been formally accepted by Uruguay must be scrupulously respected; (ii) there must be the strictest objectivity and neutrality in granting asylum to all persons, without any discrimination in respect of ideology, race, sex or religion; (iii) all persons persecuted for political reasons were entitled to seek and obtain asylum; (iv) even if the applicant had not committed any crime, the fact that he had been persecuted by the public authorities, elements of the population or organized associations was sufficient reason for granting him asylum, if the persecution had been motivated by political, social, religious, trade union or racial reasons; (v) serious threats and covert persecution motivated by the same reasons were also grounds for granting asylum; (vi) each case must be considered in the light of its specific circumstances by the competent authority.

43. With those precedents in mind, his delegation had the following comments to make on the draft Declaration:

(a) It was its understanding that the competence of the Sixth Committee was in no way limited by the preamble and article 1 prepared by the Third Committee (see A/6367, annex III).

(b) His delegation was concerned lest a declaration on territorial asylum should be interpreted in such a way as to detract from the importance of diplomatic asylum, which had been granted by many States during the Spanish Civil War. The text should include some saving clause, therefore, possibly in the form of a supplement to the article proposed by Poland (see A/C.6/L.589).

(c) Although the Declaration should emphatically affirm the institution of territorial asylum, it should be as sparing as possible in the statement of concrete provisions, leaving the progressive development of the principle to the International Law Commission.

(d) Much confusion and discussion could be avoided by replacing the expression "declaration on the right of asylum" by the words "declaration on territorial asylum".

(e) The preamble should state that asylum could be claimed by any person suffering persecution by reasons of race, sex, language or religion, or because of his philosophical, political or social convictions.

(f) The addition of the phrase "persons struggling against colonialism" in article 1 would be unnecessary and inappropriate, because it merely referred to one form of political activity, and its inclusion would weaken the general force of the principle to be stated.

(g) In the Spanish text of article 1, paragraph 3, of the Third Committee's draft, the word "compete" should be substituted for "corresponderá", which might imply obligation.

(h) In article 2 of the Commission's draft (see A/6367, annex II), the word "forced" should be replaced by "impelled", because "force" implied an outside power, with the necessary authority to impose it; but "impelled" implied a subjective resolution, motivated by "persecution" or "well-founded fear".

(i) In view of the special system of diplomatic asylum recognized in Latin America, the words "or regional bodies" should be added after the reference to the United Nations in article 2.

(j) In accordance with the principle of universality, it would be advisable to refer in the preamble only to "States" and not to the United Nations or the specialized agencies.

(k) Article 3 should be replaced by the text proposed in the Uruguayan amendment (A/C.6/L.604), which would take into account the comments of the delegations of Ghana, Greece and the USSR.

(l) Article 4 could be deleted, inasmuch as its contents would be included in article 3.

(m) The current article 5 would become article 4, and the new article 5, proposed in the Uruguayan draft resolution, would also take into account the Polish proposal.

44. In conclusion, he drew attention to a mistake in the French translation of his amendments (A/C.6/L.604). He had proposed that the title "Declaration on the Right of Asylum" should be replaced by "Declaration on Territorial Asylum", but the word "right" had been retained in the French text.

The meeting rose at 1.15 p.m.

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