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Chairman: Mr. Vratislav PĚCHOTA
 (Czechoslovakia).

AGENDA ITEM 88

Progressive development of the law of international trade (*continued*) (A/6396 and Corr.1 and 2 and Add.1 and 2, A/C.6/L.613/Rev.1 and Add.1 and 2, A/C.6/L.615)

1. Mr. HERRAN MEDINA (Colombia), speaking on behalf of the sponsors of the draft resolution in document A/C.6/L.613/Rev.1 and Add.1 and 2, said that they had held several meetings with a view to improving and supplementing their text. As a result, the following changes had so far been agreed on: first, the second preambular paragraph would include some words of appreciation to the Secretary-General for his report; second, at the Bulgarian delegation's suggestion, a new preambular paragraph would be added, stating that co-operation between States in matters of trade law was an important factor in promoting friendly relations between States, thus contributing to the maintenance of international peace and security; third, certain phrases in the fifth preambular paragraph would be transferred to operative paragraph 8, concerning the proposed commission's functions; fourth, with regard to a proposal that had been made to include a reference in the draft resolution to the International Institute for the Unification of Private Law and The Hague Conference on Private International Law the Rapporteur would be asked, in his report to the General Assembly, to express the Sixth Committee's thanks for the collaboration of those two organizations. In conclusion, he noted that the sponsors were still engaged in negotiations with delegations representing the main geographic areas of the world, with a view to determining what the membership of the proposed United Nations commission on international trade law and its future site should be.

2. The CHAIRMAN thanked the representative of Colombia for his statement and said that further consideration of agenda item 88 would be deferred until

the sponsors of the draft resolution (A/C.6/L.613/Rev.1 and Add.1 and 2) had produced a second revised text.

AGENDA ITEM 85

Draft Declaration on the Right of Asylum (*concluded*)* (A/6367 and Add.1 and 2, A/C.6/L.374, A/C.6/L.587, A/C.6/L.588 and Corr.1 and Add.1, A/C.6/L.589, A/C.6/L.590, A/C.6/L.593 and Add.1-3, A/C.6/L.599, A/C.6/L.604-606, A/C.6/L.614 and Corr.1, A/C.6/L.616 and Add.1 and 2)

3. Mr. SEATON (United Republic of Tanzania), Chairman of the Working Group on the draft Declaration on the Right of Asylum, introduced the Working Group's report (A/C.6/L.614 and Corr.1). The Working Group had approached its task with the understanding that it was not preparing legal norms but was merely laying down humanitarian principles that States might rely upon in seeking to unify their practices relating to asylum. It had felt that a declaration of the kind in question, in order to be of maximum effect, should be of a broad and general nature and couched in simple terms. It had therefore largely confined itself to the texts of articles 2-5 of the draft Declaration prepared by the Commission on Human Rights (see A/6367, annex II) and of the preamble and article 1 adopted by the Third Committee (*ibid.*, annex III), together with the various formal proposals and amendments submitted concerning those texts. The Working Group had not considered it desirable to enter into technical matters, such as the definition of asylum and its link to extradition and refugee questions, or into matters of detail, such as the many and varied ways in which asylum might be granted or might come to an end. Those issues could probably be dealt with more effectively when the International Law Commission took up the legal task of developing and codifying the law relating to asylum.

4. Speaking as the representative of the United Republic of Tanzania, he drew the Committee's attention to the draft resolution contained in document A/C.6/L.616 and Add.1 and 2, sponsored by his delegation and those of Iraq and Mali. The draft resolution was of a purely procedural nature and was based on the premise that Governments would want more time in which to reflect on the Working Group's report before the Declaration was finally adopted. He was confident that at the twenty-second session of the General Assembly it would be possible to proclaim the Declaration on Territorial Asylum as another of the milestones reached by the United Nations in its efforts to promote and encourage

* Resumed from the 926th meeting.

human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

5. Mr. ROSENNE (Israel) said that his delegation had reluctantly reached the conclusion that it would be preferable to defer final action on the draft Declaration until the twenty-second session of the General Assembly. In the meantime, his Government would study very carefully the text proposed by the Working Group (A/C.6/L.614 and Corr.1). His delegation was not yet fully satisfied that that text adequately met the points made by the delegation of Italy in its comment (A/C.6/L.606) on article 1 of the draft Declaration. It therefore welcomed the draft resolution contained in document A/C.6/L.616 and in principle supported it.

6. In his statement at the 935th meeting with reference to principles of international law concerning friendly relations and co-operation among States he had drawn attention to the ambiguity of the expression "declaration" in United Nations practice and had referred to the memorandum of the Office of Legal Affairs on the use of the terms "declaration" and "recommendation" as particularly relevant.^{1/} On that occasion, he had suggested that the Working Group on the draft Declaration on the Right of Asylum should also consider the implications of the Declaration that it was drafting from that point of view.

7. In paragraph 13 of its report, the Working Group had indicated that the operative articles of the draft Declaration would not be "of a binding character", but paragraph 70 referred to the views of some representatives concerning the "obligations" that might be imposed on States as a result of the draft Declaration. In order to facilitate consideration of the text, there must be absolute clarity on the question whether the draft Declaration was or was not intended to be legally binding upon States; he would accordingly welcome any clarification that the Chairman-Rapporteur of the Working Group could furnish.

8. In his delegation's view, it was not essential, and might even be disadvantageous, to solicit further written comments from Governments. A decision by the General Assembly at the current session to place the report of the Working Group on the provisional agenda of the twenty-second session would, in his opinion, be sufficient to ensure that delegations would be adequately prepared at that session to take final action on that very important agenda item.

9. He regretted that the Sixth Committee's excellent report on the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/6547) had been distributed so late that his delegation had had no time to study it before its discussion at the 1488th plenary meeting of the General Assembly. He reserved his right to refer to that matter again in plenary.

10. Mr. STAVROPOULOS (Legal Counsel) apologized for the delay in the distribution of document A/6547, which had been unavoidable owing to the very heavy

burden on the Secretariat at the current stage of the General Assembly's work.

11. Mr. SANMUGANATHAN (Ceylon) said that it was a sad commentary on the concern of the United Nations for fundamental human rights that it had been unable, in the nearly twenty years since the adoption of the Universal Declaration of Human Rights, to agree on positive principles that would protect and promote the right to seek and to enjoy asylum, proclaimed in article 14 of that Declaration. In the past thirty years, disturbances and racial, religious or political persecution had caused millions to leave their homes. As long as man continued to be intolerant of his fellow man, flight would remain the only alternative of the persecuted.

12. The legal status of a person deprived of national protection was anomalous. The absence of nationality or of protection by the Government of the State of nationality created legal difficulties, for laws affecting aliens were made with the normal protected alien in mind. Moreover, refugees often lacked the documents or were unable to comply with the formalities that were required of aliens for the enjoyment of certain rights. The frequent uncertainty concerning their nationality and even their domicile was bound to create additional legal problems. Serious disabilities and unintentional discrimination by the normal operation of the law were frequently the consequence. Social and psychological factors aggravated the situation. Refugees were often destitute, lived in difficult physical and psychological conditions and were open to that suspicion which was often the fate of the poor and the unprotected.

13. The practices of individual States had done much to mitigate the disabilities of refugees, including the sometimes harsh conditions regulating their admission; but many of those practices were so diverse that they could not be considered as a reflection of the common consent of States. Thus, even if its belief in the importance of article 14 of the Universal Declaration of Human Rights could not at the moment be translated into a legally binding document, it was imperative that the United Nations should formulate, as soon as possible for the guidance of States, at least a declaration that would express positive principles that would promote and protect the right to seek and to enjoy asylum.

14. In doing so, however, the United Nations must be careful not to mislead the vast multitude of persons who sought asylum, by giving the impression that a document entailing legal commitments for sovereign States was intended. The Universal Declaration of Human Rights itself was not a legally binding instrument but simply a proclamation of a common standard of achievement for all peoples. The specific task of codifying the relevant principles and rules of international law had been allotted by the General Assembly to the International Law Commission. The Sixth Committee's task, much as some of the members would like it to be otherwise, was not one of codification but of preparing a text based on genuinely humanitarian considerations. In undertaking that task, the Committee should strive to ensure that whatever it produced had secure legal foundations, being careful, for instance, to use language of appeal rather than of

^{1/} See document E/CN.4/L.610, mimeographed.

command wherever possible. The forthcoming Declaration would lose much of its practical value if it was couched in the language of the law and, because of that, reflected only the lowest common denominator of State practice. To produce such a document would weaken—not strengthen—respect for the right to seek and to enjoy asylum. That did not necessarily mean, however, that the principles embodied in the Declaration should be stated without qualification, as had been suggested by some on the mistaken premise that the elaboration of every exception to the principles would weaken the Declaration by making the exceptions appear more important than the principles themselves.

15. His delegation preferred to reserve its position on the draft Declaration submitted by the Working Group in its report (A/C.6/L.614 and Corr.1) until it had had more time for reflection. The few observations he would make on the report, therefore, should not be regarded as representing his delegation's final and considered views. It welcomed the Working Group's decision to limit expressly the scope of the application of the draft Declaration. To have left its non-applicability to diplomatic asylum to be inferred from a reference to "other countries" in article 14 of the Universal Declaration of Human Rights would have been dangerous and unrealistic. Whatever the merits on humanitarian grounds of acceptance of a right of diplomatic asylum, that acceptance must occur, if at all, only after the most careful consideration of all factors involved, including State practice throughout the world. Practices observed in one region of the world alone should not be elevated into rules of universal conduct. Neither the practice of States nor international law—whether customary or treaty law—had sanctioned the principle of unrestricted exercise of asylum in foreign legations and consulates. Moreover, there was no independent principle of law which, for humanitarian considerations, made lawful even limited infringements of State sovereignty, such as would obviously be involved in diplomatic asylum, inasmuch as the granting of asylum in a State's territory limited that State's jurisdiction over the individuals on its territory.

16. Any satisfactory general regulation of the right or practice of asylum must be matched by an adequate system of extradition to ensure that genuine cases of asylum would not be confused with what had been termed "mere criminality"; his delegation hoped that even now it would still be possible to include that point in the draft Declaration. It was, of course, aware of the difficulties often encountered in defining the notion of political crimes, a category for which extradition was not normally granted and a satisfactory definition of which was indispensable for the success of any arrangements concerning extradition. The growing emphasis on the political reasons for flight had led to tendency to diminish the importance of the illegality of acts that the person seeking asylum might have committed in his country of origin; that development might well result in the gradual widening of the scope of asylum, which might be desirable if it served genuine humanitarian causes but would be unfortunate if it enabled common criminals to flee from justice.

17. Article 3 of the draft Declaration submitted by the Working Group (*ibid.*, para. 62) was somewhat vague and uncertain in scope. In the text adopted by the Commission on Human Rights, it had not been clear whether the exception for "safeguarding of the population" referred to matters of health, employment or over-population or to some other factor; some delegations had thought that that vague phrase might be used by some countries as an excuse to refuse asylum or might be employed to limit the undoubted sovereign right of countries to grant asylum in individual cases on grounds which seemed to them well founded. He was not at all certain that the addition, in the Working Group's text, of the words "as in the case of a mass influx of persons" added clarity, inasmuch as it was merely a single example of the basic idea.

18. His delegation would like to have inserted in the draft Declaration provisions concerning the alien who abused the hospitality of the community to which he had been admitted. It questioned whether article 4 of the Working Group's text (*ibid.*, para. 72) would be of any practical value when applied to individuals, inasmuch as the purposes and principles of the United Nations regulated only the action of States *inter se*.

19. Once the person seeking asylum had been admitted to the country of refuge, he was entitled to treatment in accordance with the rule of law and to the benefits of the "minimum standard of treatment" rule; he might not be treated as an outlaw or confined in disregard of the law. However, he could not claim rights not otherwise granted by legislation to foreigners, and he had to submit to the rules governing aliens. It was not clear to what extent refugees, who were *de facto* stateless persons, could claim benefits under bilateral treaties concerning the treatment of foreigners, or what their political rights in their country of residence were. Those and other questions might be studied and perhaps dealt with in the draft Declaration.

20. He hoped that Governments, to which the Working Group's report would be circulated, would submit their comments promptly, so that a declaration could be adopted by the General Assembly at its twenty-second session.

21. Mr. BUCETA (Argentina) said that Latin American positive law offered a wealth of treaties recognizing the right of asylum. The development of the right of asylum and the organization of peace represented the most effective forms of protection of freedom, inasmuch as they tended to preserve human life, the basis of all freedoms.

22. In Latin America, the right of asylum had been traditionally applied and observed. The rules and principles established by customary law and international agreements governing the right of asylum had been almost unanimously accepted, ever since the Latin American countries had attained independence. The first Latin American treaty on the right of asylum had been signed at Montevideo as early as 1889. The subject had been taken up again at the Havana Conference of 1928, the Montevideo Conference of 1933 and the Bogotá Conference of 1948, where the right of asylum had been confirmed in article 27 of the American Declaration of the Rights

and Duties of Man.^{2/} Conventions concluded at Caracas in 1954 had perfected the main features of that humanitarian institution.

23. His country was proud that it had at all times followed, in theory and in practice, a generous policy of territorial asylum. Because of the repercussions of the civil war in Spain, Mr. Carlos Saavedra Lamas, the Argentine Minister for Foreign Affairs at that time, had prepared a draft convention on the right of asylum for consideration by the inter-American meeting at Lima in 1938. The principles of that draft convention had been incorporated in the Convention on Political Asylum adopted at Montevideo in 1939. Similarly, it had been the book Derecho internacional teórico y práctico, published in 1861 by the renowned Argentine international lawyer, Carlos Calvo, that had paved the way for the right of diplomatic asylum, which the American peoples had so badly needed because of frequent political disturbances. Moreover, his country had sheltered thousands of people seeking protection in its territory.

24. Without prejudice to the observations that his Government would make in due course on the draft Declaration submitted by the Working Group (A/C.6/L.614 and Corr.1), he wished to suggest that some expression such as "or other activities contrary to national security" should be added to article 4 of the draft. His delegation considered the draft resolution in document A/C.6/L.616 acceptable and would vote for it.

25. Mr. DARWIN (United Kingdom) said that although he could not express all his delegation's views on the draft Declaration submitted by the Working Group in the short time available, he wished to make a number of observations. First, his delegation supported the alternative formulation for the ending of article 3, paragraph 1, which read: "which could result in compelling him to return to or remain in a State, if there is a well-founded fear of persecution, endangering his life, physical integrity, or liberty in that State" (see A/C.6/L.614, para. 55). That would cover the case of a person who was returned to a State other than the State from which he had fled, which might return him to that State. Under that alternative formulation, there must be a real and not merely an imagined risk that his life would be endangered. That formulation had been adopted in other instruments not only in Europe but in other regions, including Africa. It was a well-trying wording and should not be lightly abandoned.

26. Secondly, his delegation opposed the text of article 4 adopted by the Working Group, because it might seem to require for its fulfilment that States should legislate to restrict the liberties of persons enjoying asylum. Moreover, the purposes and principles of the United Nations related to activities of States, not persons. His delegation could not support such an unclear and uncertain formulation.

27. Regarding the word "obligations" in paragraph 70 of the report to which the Israel representative had referred, it followed from the form of the instru-

ment being drafted that the word "obligations" in that paragraph could refer only to moral or humanitarian obligations. However, even such obligations should not be expressed in an uncertain or inexact way.

28. He hoped that at its next session the General Assembly would be able to agree on a declaration which would command general assent. The draft resolution in document A/C.6/L.616 seemed to suggest the appropriate action to be taken by the General Assembly at the current session, and his delegation would vote for it.

29. Mr. HARGROVE (United States of America) said that his delegation would support the draft resolution in document A/C.6/L.616. He would not comment in detail on the draft Declaration submitted by the Working Group (see A/C.6/L.614 and Corr.1), inasmuch as the draft resolution did not envisage substantive action.

30. His delegation was gratified that the Working Group had decided to retain article 2, paragraph 2 (*ibid.*, para. 47), which his delegation considered an important part of the text. In the English version of article 3, paragraph 1, the inclusion of a comma after the word "expulsion" was probably a typing error. In the deliberations of the Working Group (*ibid.*, paras. 48-62), there had been a time when the text had not included the phrase "where he may be subjected to persecution". The legal and logical effect of the paragraph at that time had been to prohibit expulsion *per se*. With the addition of the final phrase, it had become unnecessary to include a blanket prohibition of expulsion, and, accordingly, as his delegation understood it, in the current text both "expulsion" and "compulsory return" were governed by the phrase "to any State where he may be subjected to persecution". The addition of the last phrase in article 3, paragraph 2, meant, according to his delegation's understanding, that an exception might be made in cases other than a mass influx of persons, only if those cases were comparable in seriousness to a mass influx. His delegation supported the text of article 4 (*ibid.*, para. 72). The fact that article 4 did not mention the obligation of persons enjoying asylum to observe the laws of the country in which they enjoyed asylum did not imply that that obligation did not exist. On the contrary, that obligation had been regarded as legally self-evident, so that it would have been superfluous to mention it. Conversely, the inclusion of article 4 in its current form did not imply that States had a greater responsibility for the actions of persons enjoying asylum which were contrary to the purposes and principles of the United Nations than they had for similar actions by their own nationals.

31. Mr. RYBAKOV (Union of Soviet Socialist Republics) noted that the Working Group had been unable to complete its work for lack of time and other practical considerations. In the circumstances, the most appropriate procedure was that provided for in the draft resolution in document A/C.6/L.616, which his delegation supported. It also supported the preliminary text of the draft Declaration as a whole, although it would have certain comments to make at a later stage.

^{2/} See Novena Conferencia Internacional Americana: actas y documentos, vol. VI, Conclusiones (Bogotá, Ministerio de Relaciones Exteriores, 1953), p. 297.

32. Mr. RENOARD (France) regretted the fact that the draft Declaration, which was supposed to be purely humanitarian, contained a political element that might affect the interpretation of article 14 of the Universal Declaration of Human Rights. Some articles in the draft Declaration could be much improved in both substance and form. In particular, the expression "a crime against the peace" in article 1, paragraph 2, should be clarified. His delegation supported the draft resolution (A/C.6/L.616).

33. Mr. KOITA (Mali) said that the fact that lack of time had prevented the Working Group from finishing had led his delegation to co-sponsor the draft resolution. In its view, it was essential that the final text should retain the reference to persons struggling against colonialism that appeared in article 1, paragraph 1, of the draft Declaration.

34. Mr. PAYSSE REYES (Uruguay) said that since the sponsors of the draft resolution were in effect proposing that discussion of the Working Group's text be deferred, it would not be appropriate to comment on it at the current stage.

35. Mr. BAL (Belgium) said that he had no detailed comments to make on the draft Declaration but wished to note that among his Government's major concerns was the desire to ensure that the proposed Declaration would not be such as to encourage a restrictive interpretation of existing rules in that field—rules that were contained more particularly in instruments of positive law. In that regard, the wording of article 3 was open to criticism. Belgium supported the draft resolution.

36. Mr. MOLINA (Venezuela) said that he supported the procedural proposal made in the draft resolution and therefore would not comment on the draft Declaration. His silence, however, should not be taken to mean approval of everything in the text. Many Latin American countries felt that the wording did not correspond to their experience and would have to enter reservations at a later stage.

37. Mr. SEATON (United Republic of Tanzania), replying to the representative of Israel, said that a declaration of the kind under debate would generally have the binding value that any recommendation of the General Assembly had. Regarding the alleged discrepancy between paragraphs 13 and 70 (see A/C.6/L.614 and Corr.1), he observed that the Declaration was a humanitarian one. To a State, the granting of asylum was a right. To the person granted asylum, it was a benefit. To international society, it was an obligation of a humanitarian character, which, if generally accepted, could do much to bring about a true community of nations.

38. Mr. ROSENNE (Israel) asked for the substance of the exchange between the Tanzanian representative and himself to be included in the report.

39. The CHAIRMAN put the draft resolution contained in document A/C.6/L.616 and Add.1 and 2 to the vote.

The draft resolution was adopted unanimously.

The meeting rose at 10.45 p.m.