

1507th meeting

Wednesday, 27 November 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1507

In the absence of the Chairman, Mr. Broms (Finland), Vice-Chairman, took the Chair.

AGENDA ITEM 105

Diplomatic asylum (*continued*) (A/9704, A/C.6/L.992, L.998)

1. Mr. BRENNAN (Australia), introducing draft resolution A/C.6/L.998 on behalf of the sponsors, said that his delegation had consulted widely with others in preparing the draft resolution and had done its utmost to accommodate views which differed from its own. As a result, a number of changes had been made in the text originally proposed by his delegation in its working paper on diplomatic asylum (A/C.6/L.992). The draft currently before the Committee made no mention of previous resolutions relating to the right of asylum or of the work already done in the General Assembly in relation to territorial asylum. Certain phrases used in the earlier draft had likewise been deleted, and the Secretary-General was not requested to ask Member States to forward information concerning their laws and practice with regard to diplomatic asylum. The preambular part of draft resolution A/C.6/L.998 referred to the practice of States and existing conventions on the subject and affirmed the desirability of initiating preliminary studies. Operative paragraph 1 offered Member States an opportunity to express their views on the question of diplomatic asylum if they wished to do so. Paragraph 2 requested the Secretary-General to make a survey of existing public materials on the question without, however, analysing the views submitted by Member States, as had been requested in the earlier text. He understood—having confirmed the point with the Legal Counsel—that the views provided by Governments would be reproduced in the same volume as the Secretary-General's report. Paragraph 3 would have the effect of including in the provisional agenda of the thirtieth session of the General Assembly an item entitled "Report of the Secretary-General on the Question of Diplomatic Asylum". The modifications that had been made in the current draft as compared with the earlier text had been accepted by the sponsors as not affecting the essence of the objectives they were seeking to achieve. The sponsors were firmly opposed, however, to the idea of deferring discussion of the item to the thirty-first session of the General Assembly, as two or three delegations had informally suggested. The fact that the inclusion of the item in the provisional agenda for the next session was requested did not necessarily mean that it would have to be discussed at that time, but that option would be left open. He expressed appreciation to the representatives who had spoken on the item in the current debate and expressed the hope that the draft resolution would be adopted by consensus.

2. Miss OLIVEROS (Argentina) welcomed the initiative taken by the representative of Australia in proposing the item on diplomatic asylum and expressed the hope that the objectives mentioned by that representative would be successfully achieved. As preceding speakers had pointed out, diplomatic asylum was a time-hallowed institution of a humanitarian nature whose primary purpose was to protect persons who were being irrationally persecuted in times of intra-State turmoil. The institution had developed basically in Latin America and had been formulated juridically from the end of the nineteenth century onwards. In the present century a number of Latin American conventions had helped to delineate the legal limits within which such asylum was applied. If diplomatic asylum had not been formally embodied in legal instruments in other parts of the world, that was not because it was irrelevant or unnecessary. On the contrary, many tragic events could have been avoided if diplomatic asylum had been recognized as a legal institution in other continents. It should be emphasized that diplomatic asylum was a humanitarian institution, which had been recognized in international law and could therefore be adopted to a greater or lesser extent at the world level. The studies to be carried out should take into account the humanitarian aspect of asylum and, on that basis, consider whether it would be desirable for the United Nations, with the participation of all interested States, to elaborate rules of universal application on the subject. A United Nations study would be welcome, as it might serve to bring asylum into line with current needs and set forth rules which could represent a minimum common denominator for all countries. It would be of particular interest to study the practical functioning of diplomatic asylum rather than focus on a purely academic description of its characteristics. The formal aspects of the institution were not as important as recognition of the need for asylum and of the fact that its advantages clearly outweighed the possible technical shortcomings which might be noted. It would be entirely appropriate to undertake a study of diplomatic asylum as a humanitarian institution which had already been embodied in major legal instruments. Since the aim was to achieve a universal formulation of the rules governing diplomatic asylum, it would be fitting to consider the subject in the Sixth Committee.

3. Her country recognized diplomatic asylum and practised it with a generous spirit. Argentina was a party to the Montevideo Treaty of 1889 and a signatory of the Havana, Montevideo and Caracas Conventions on diplomatic asylum. In accordance with the provisions of those instruments, the right to grant asylum rested with the State granting it, which also had the power to qualify the act in respect of which asylum was sought. She recalled that her country's Minister for Foreign Affairs had expressed his satisfaction with the Australian proposal during the general debate at the current session of the General Assembly (2240th plenary meeting).

4. Mr. SARCEÑO MORGAN (Guatemala) said that the Latin American countries' long tradition of diplomatic asylum would enable them to make a valuable contribution to the debate on the item. His country recognized the institution of diplomatic asylum in its Constitution and was a party to the Havana Convention of 1928 and the Montevideo Convention of 1933, and it applied the Caracas Convention of 1954, which incorporated the content of the first two. The transformation of those inter-American instruments into a universal convention which would develop and perfect the principles of diplomatic asylum would provide an effective means for the protection of human rights.

5. Some delegations feared that if diplomatic asylum was established as a universal institution it would be abused and would lead to an increase in common crimes. Latin American experience with diplomatic asylum showed that that would not be the case because, in the first place, the State granting asylum had to decide whether there was justification for doing so; logically, no State would voluntarily give shelter to persons who came within the category of common criminals in other States. In the second place, before granting a safe-conduct, States requested information from the courts as to whether the person seeking asylum had committed common crimes. It should be noted that if in the view of a State granting asylum a person was persecuted because of his political ideas, the State was required to grant him a safe-conduct, which served the purpose of a passport. It would be worth while to consider the possibility of ensuring multilateral recognition of such safe-conducts, in order to enable the holder to travel more freely.

6. The foregoing considerations touched on the substance of the problem, whereas the draft resolution before the Committee was aimed merely at opening the way for its consideration. If the draft resolution was adopted, the information that would be supplied by Governments would be most important for the examination and understanding of the institution. The development of diplomatic asylum was being carefully studied in his country, and he had noted with satisfaction that the Australian and Uruguayan delegations had mentioned the work done by the Guatemalan jurist Francisco Villagrán Kramer. He expressed his appreciation to the Australian delegation for showing interest in the subject and for introducing the draft resolution, which his delegation enthusiastically supported.

7. Mr. KUSSBACH (Austria) said that, at the current stage, it seemed impossible to comment in depth on the masterly introductory statement made by the Australian representative at the 1505th meeting; however, he wished to make some preliminary remarks on the position of his Government.

8. In the first place, he wished to recall his country's political tradition in the field of territorial asylum. For purely humanitarian reasons, Austria had never hesitated to grant territorial asylum to refugees, in strict conformity with the general rules of international law. In that spirit, his delegation took note with satisfaction of the Australian proposal on diplomatic asylum; it shared without reserva-

tion the humanitarian concerns that had prompted that proposal. Nevertheless, he wished to stress that diplomatic asylum was essentially different from territorial asylum. Territorial asylum was a well-established institution and was universally recognized in customary international law, whereas diplomatic asylum was not. The noble tradition of the Latin American countries had not gained general acceptance outside that continent. There was only one exception where international law had sanctioned the custom of granting diplomatic asylum, namely in exceptional and rare cases where a person was exposed to an immediate and serious threat.

9. That being the current legal situation, which had been confirmed by the International Court of Justice, he could only interpret the Australian proposal as a suggestion *de lege ferenda*. If it was agreed that in the absence of a conventional or customary rule, the exercise of the right of diplomatic asylum constituted a violation of the sovereignty of the State in whose territory the right was assumed, the only solution to the problem would be the elaboration of a multilateral convention. However, before that task was undertaken, Governments should be given the opportunity to study in greater depth the question whether such a convention would be necessary or useful. It would also be necessary to consider whether diplomatic asylum was compatible with the principles and purposes of the Vienna Convention on Diplomatic Relations. He said that his delegation would be prepared to support any draft resolution that took the foregoing considerations into account.

10. Mr. GÜNEY (Turkey) congratulated the Australian delegation on having requested the inclusion in the agenda of the item on diplomatic asylum and thanked the Australian representative for his introductory statement. A preliminary examination of the humanitarian, legal and other aspects of the question would, in particular, represent a just acknowledgement of the remarkable Latin American tradition of diplomatic asylum. His own country also had some experience in that regard. There was no doubt that neither common criminals nor terrorists could benefit from such a right.

11. Although they were not complementary, territorial asylum and diplomatic asylum pursued the same aims. Outside Latin America, however, the practice of diplomatic asylum was limited and sporadic. The Committee should therefore begin by asking Governments for their views on the humanitarian aspects of the institution and for information on their practice in that regard. Extreme caution should be exercised in any subsequent action on the question, which was highly sensitive and complex. His delegation therefore reserved its position on any future action on the subject. It would be premature at the current stage to comment on the codification of rules concerning diplomatic asylum, although that institution should remain available for anyone who might need it for humanitarian reasons. His delegation had no objection to a procedural resolution, which should request the Secretariat to reproduce and distribute to members of the Sixth Committee, at future sessions, the texts of the Montevideo and Caracas Conventions.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session (*continued*)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979, L.996, L.997)

12. Mr. STARČEVIĆ (Yugoslavia), introducing draft resolution A/C.6/L.996 on behalf of the sponsors, said it was the result of lengthy consultations; he wished to thank all delegations that had taken part in those consultations for the spirit of understanding and mutual accommodation which had made it possible to reach agreement on the text.

13. The first two preambular paragraphs required no comment, as they followed the traditional form used in General Assembly resolution 3071 (XXVIII) on the same item. The third preambular paragraph contained the usual expression of appreciation of the fact that the International Law Commission had completed the second reading of the draft articles on succession of States in respect of treaties; the fourth paragraph stated that the Assembly took note of the draft articles on State responsibility and on treaties concluded between States and international organizations or between international organizations and the fifth paragraph welcomed the fact that the Commission had commenced its work on the law of non-navigational uses of international watercourses. The sixth paragraph reflected the views of many members regarding the achievements of the Commission during its 26 sessions. In that connexion, a minor correction should be made in the second line of the paragraph, where the words "twenty-sixth session" should be replaced by the words "twenty-six sessions". In other words, the paragraph referred to all 26 sessions of the Commission and not only to its most recent one.

14. In section I of the operative part of the draft resolution, paragraphs 1, 2 and 3 were customary and required no comment. Paragraph 4 contained recommendations concerning the work to be done by the Commission at its next session and was in accord with the programme of work outlined in the Commission's report (A/9610 and Add.1-3). Paragraph 4 (*a*) was a follow-up to paragraph 3 (*b*) of the previous year's resolution. The priority assigned to the question of State responsibility had been placed one notch higher, since the Commission had completed its second reading of the draft articles. The paragraph also recommended that the Commission should take up the question of international liability for injurious consequences arising out of acts not prohibited by international law. Paragraph 4 (*b*) assigned priority to the draft articles on succession of States in respect of matters other than

treaties and paragraph 4, subparagraphs (*c*), (*d*) and (*e*), dealt with other items on the Commission's agenda. In connexion with paragraph 4 (*e*), he pointed out that the delegations that had taken part in consultations on the draft resolution had not found it necessary to invite States to submit their comments, since that invitation would be sent by the Commission through the Secretary-General.

15. There had been some discussion on the text of paragraph 5, the final form of which represented a compromise. It had been felt that the recommendation that the Commission should have a 12-week session was appropriate because of the importance of its work programme and the need for it to achieve the speedy results the General Assembly expected of it. The experience of the twenty-sixth session of the Commission had showed that the two additional weeks available to it had enabled it to complete the draft articles on the succession of States in respect of treaties and to make further progress on other items that would not otherwise have been possible. An overwhelming majority of members of the Sixth Committee had supported the recommendations contained in paragraph 5. At the same time, the paragraph took into account the view of some delegations concerning the right of the General Assembly to review the duration of the Commission's sessions whenever necessary.

16. There had also been some discussion on paragraph 6, which had been agreed upon by consensus. That paragraph reflected the satisfactory manner in which the sponsors felt the Commission had worked. Paragraphs 7, 8 and 9 were self-explanatory.

17. Section II of the operative part of the draft resolution dealt exclusively with the draft articles on succession of States in respect of treaties. In addition to expressing appreciation to the Commission for its work on the question, it invited Member States to submit to the Secretary-General their written comments and observations on the draft articles, including comments and observations on proposals referred to in paragraph 75 of the Commission's report, which dealt with the settlement of disputes and multilateral treaties of a universal character. Any further steps to be taken would be discussed on the basis of the comments received and the question would be included in the provisional agenda of the thirtieth session under a separate item.

18. He announced that the delegations of Cyprus, Finland, Jamaica, Nigeria and Zaire had asked to be included among the sponsors of the draft resolution.

* Resumed from the 1496th meeting.

The meeting rose at 12 noon.