on the international community but came from sources within it. International agreements were among the more important of those sources and it was fitting that by virtue of such an agreement a State might embrace the principle of diplomatic asylum and make it a principle of international law, although it had not been one before. It was therefore inappropriate to oppose diplomatic asylum entirely, since that would amount to opposing political and social changes in the international community and would be incompatible with flexibility in international law, which, after all, reflected the aspirations of the international community.

75. Acceptance of the right of diplomatic asylum on humanitarian grounds would make it possible to deal with certain well-known situations such as those arising from domestic political and social disturbances. In such situations, many persons might find themselves in danger and could safeguard their lives only by taking refuge in an embassy or consulate. The grant of asylum in such cases might save the life of an innocent person and should not be interpreted as contravening the principles of international law or the competence of appropriate courts.

76. Yet it was necessary to define the term "political offence" if the principle of diplomatic asylum was to have the desired effectiveness. The existence of a definition would prevent abuses of the right of asylum in situations which fell outside the scope of the definition. Diplomatic representatives would have the authority to determine whether the refugee's situation justified the "political offence" exception on the basis of his particular circumstances. Asylum would, of course, be terminated as soon as the refugee was no longer in danger.

77. The defence of fundamental humanitarian principles, such as that of preserving the life of innocent persons, made it appropriate for the international community to give the question of diplomatic asylum its attention. However, a decision recommending the preparation of an international instrument on the question would be premature and would not serve the goals which he had described.

78. He thanked the Secretariat for its thorough report.

79. Mr. RETIVEAU (France) said that his Government's views were stated in document A/10139, Part I. He congratulated the Secretary-General on his report, which would constitute a valuable guide for States.

80. His delegation sympathized with the humanitarian considerations which had led the Australian delegation to raise the question of diplomatic asylum at the twenty-ninth session of the General Assembly and understood that it had been guided in so doing solely by the desire to explore new ways of saving threatened lives in certain cases. However, such an undertaking was unlikely to succeed in existing circumstances.

81. Diplomatic asylum, unlike territorial asylum, was not an institution of general international law, but was in practice limited essentially to the Latin American countries. That situation was explained by the fact that, whereas territorial asylum was one of the rights which could be exercised by a State within its sphere of competence, diplomatic asylum was a derogation from the sovereignty of a State, since it withdrew an offender from the justice of his country. Moreover, even without those objections, it was clear that there would be considerable difficulty in drawing up rules on the subject within the United Nations, since State practice varied widely and there was no tradition of the practice of diplomatic asylum in many areas of the world. Consequently, his delegation believed that the question of diplomatic asylum did not lend itself to the formulation of universally applicable rules. The existence of rigid rules might even work against the humanitarian concerns on which General Assembly resolution 3321 (XXIX) was based.

82. His delegation had listened with great interest to the statements made by the representative of Australia. Member States should be requested to provide further information on diplomatic asylum. Such information would be helpful in pursuing the efforts already undertaken to ensure respect for human rights.

The meeting rose at 5.55 p.m.

1556th meeting

Tuesday, 4 November 1975, at 10.55 a.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1556

In the absence of the Chairman, Mr. Godoy (Paraguay), Vice-Chairman, took the Chair.

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General *(continued)* (A/10139, Part I and Add.1 and Part II; A/C.6/L.1018)

1. The CHAIRMAN announced that a draft resolution on the question of diplomatic asylum (A/C.6/L.1018) had been circulated.

2. Mr. YOKOTA (Japan) expressed appreciation to the Secretary-General for his excellent report (A/10139, Part II) and once again voiced gratitude to the Australian delegation, which, moved by humanitarian considerations,

had taken the initiative the previous year in proposing the inclusion of the item in the General Assembly's agenda for the twenty-ninth session. His delegation had listened with great interest to the statement by the representative of Australia (1551st meeting).

3. His delegation was convinced that more attention should be given to humanitarian problems in order to create a world order which honoured the dignity and value of human beings. However, it had some doubts about the advisability of institutionalizing diplomatic asylum on a global scale. As had been noted by other delegations and by various authorities on the question, the right of diplomatic missions to grant asylum had not been established as part of general international law. Although his delegation was aware that there had been many cases in which diplomatic missions had been used to shield persons either from an imminent threat caused by social disorder or from the jurisdiction of the territorial State, it felt that mere factual situations did not by themselves give rise to either rights or duties under the law. Customs or usages must be accompanied by well-established *opinio juris* in order to constitute a legal norm. That requirement was not met in the case of the institution of diplomatic asylum. In making that assertion, his delegation was not precluding the possible existence of a rule of customary law on diplomatic asylum in a region such as Latin America. He wished to point out in that connexion that the regional character of an institution did not change even if that institution was utilized by the diplomatic agent of a State situated outside the region concerned.

4. With regard to the desirability of institutionalizing diplomatic asylum as a form of progressive development of international law, his delegation wished to make two points. First of all, although it was true that the institution of diplomatic asylum imposed a serious limitation on the territorial jurisdiction of the State, that was not in itself undesirable. Indeed, the acceptance of limitations on territorial jurisdiction was the basis of international co-operation. What concerned his delegation was the nature and scope of the limitation. The key point was whether there should be acceptance, as a matter of general principle, of the limitation on the jurisdiction which had hitherto been exercised against political offenders. Secondly, with regard to the compatibility of the functions of the diplomatic mission and the institution of diplomatic asylum, he felt that the granting of political asylum could very well defeat the main purpose of the diplomatic mission, which was to promote friendly relations between States. Although it had been argued that the Vienna Convention on Diplomatic Relations[1] did not make an exhaustive enumeration of the functions of the diplomatic mission, the idea of utilizing diplomatic premises as a safe haven could not be justified, since inviolability was given to the diplomatic mission in order to ensure the effective performance of its activities.

5. In making those points, his delegation was not precluding the possible existence of the institution of diplomatic asylum in a particular region or denying the fact that exceptional circumstances might call for exceptional measures. However, it did not seem feasible to formulate a legal rule applicable to all such cases, precisely because they were exceptional, and they must be dealt with on an individual basis.

6. Mr. GARCIA ORTIZ (Ecuador) commended the representative of Australia on his statement and the Secretary-General on his report. Ecuador had joined in sponsoring the draft resolution presented by Australia at the twenty-ninth session and adopted by the General Assembly as resolution 3321 (XXIX) and had transmitted its views (see A/10139, Part I) to the Secretary-General pursuant to that resolution.

7. It had been argued that diplomatic asylum was humanitarian in nature but lacked any legal basis. That was precisely why it was essential to prepare a convention of universal scope which would be signed and ratified by a majority of States and become part of general international law. The fact that diplomatic asylum implied a limitation on State sovereignty did not in any way detract from its practical effectiveness. Moreover, the present-day concept of sovereignty could and must be regarded as purely relative and as limited by the supremacy of international legal order. As to the argument that diplomatic asylum was in conflict with the provisions of the Vienna Convention, that would be remedied by the adoption of a new convention on asylum.

8. Diplomatic asylum was not a Latin American invention but was of European origin. What had happened was that the institution had taken root and become highly developed in Latin America, becoming one of the pillars of American international law and helping to save the lives and freedom of many persons. That alone would be justification for preserving and universalizing it.

9. In dealing with a new institution, what must be considered was whether or not it represented a part of the progressive development of international law and whether it helped to perfect the legal order. In his opinion, there was no question that diplomatic asylum met those requirements, since it involved the application of the human rights proclaimed in the Universal Declaration of Human Rights in 1948 and in similar instruments. His delegation felt that no valid arguments could be brought against asylum and that there were, at most, technical problems which could be solved. The heart of the problem of asylum was the question of the qualification of the offence and the need to define the difference between political and common crimes, the latter of which must obviously receive no protection. The State granting asylum must have sole authority to qualify the offence.

10. He wished to reaffirm the points made by his Government in the comments it had submitted to the Secretary-General and agreed with those delegations which had urged that consideration of the item should continue, that States which had not yet submitted their views and suggestions should again be asked to do so and that the item should be included in the agenda of the thirty-first session so that the Sixth Committee could consider a draft convention which would make it possible to universalize asylum and thus promote the progressive development of international law. His country would in any event continue to maintain and practise diplomatic asylum as well as territorial asylum.

[1] United Nations, *Treaty Series*, vol. 500, No. 7310, P. 95.

11. Mr. MONTENEGRO (Nicaragua) commended the Secretary-General for his report and the Australian delegation for its constructive efforts to have the item included in the agenda of the twenty-ninth session. He felt that the question of diplomatic asylum was of great importance since it affected the interests of human beings. The present item had been widely debated and had been the subject of numerous studies relating, *inter alia,* to the qualification of the offence and the delimitation of jurisdiction. Diplomatic asylum played a part in defending the basic rights which made international peace and security possible.

12. Although diplomatic asylum was not an exclusively Latin American institution and was of European origin, it was in Latin America that it had been perfected, a consensus having been reached on the matter. His country's Constitution, for example, stated that the territory of Nicaragua was to serve as a haven for all who were persecuted for political reasons.

13. He did not believe that the institution of diplomatic asylum was a source of friction or an obstacle to friendly relations between States. Furthermore, even though it entailed a limitation of territorial jurisdiction, diplomatic asylum did not undermine either law or State sovereignty since it made a clear distinction between political and common crimes and the very fact of being a party to a convention was an act of sovereignty.

14. Nicaragua would make whatever efforts were necessary to ensure that diplomatic asylum was given a legal basis through the conclusion of a convention of universal scope. In that connexion, he supported the idea that the General Assembly should continue to consider the item and that the latter should be included in the agenda of the thirty-first session.

15. Mr. KHAN (Pakistan) said that, in his delegation's view, the right of granting diplomatic asylum was basically a matter *de lege ferenda* and not *lex lata.* Diplomatic asylum meant refuge granted in a diplomatic mission or consulate or on board a foreign ship or aircraft to avoid the jurisdictional process of the State which a person was attempting to leave. As a legal concept, asylum was based on the theory of "extraterritoriality" of a diplomatic mission or warship. In the opinion of many experts, the granting of diplomatic asylum was a notable derogation from the territorial sovereignty of the host State. His delegation was of the view that that sensitive and important subject should receive the fullest consideration before the Committee took any decision on it.

16. Diplomatic asylum should be granted only if there was an imminent danger to the life of the intending asylee, who must not be a common criminal. However, what constituted "imminent danger" should be defined clearly and unequivocally.

17. Diplomatic asylum differed from territorial asylum in that the former was of a temporary nature. The State granting asylum was bound to surrender the asylee as soon as the imminent danger had been removed and it also had a duty to ensure that during the period of asylum the asylee did not carry on any political activities detrimental to the interests of the parent State.

18. His delegation reaffirmed the views of his Government, as set forth in document A/10139, (Part I). In its opinion, future study of the subject should be based on the following principles: *(a)* diplomatic asylum should be granted in cases of political, racial and religious persecution where there was an imminent danger to life, but that right should not be extended to cover danger to liberty; *(b)* diplomatic asylum should not be converted into territorial asylum by removing the asylee to the territory of the granting State; and *(c)* when normal procedural guarantees were assured, the asylee should be handed over to the authority of the State where the offence had taken place.

19. Mr. AL-ADHAMI (Iraq) said that his delegation was convinced that there was no rule that obligated States to recognize the right of diplomatic asylum except for such States as had accepted it. The question was whether it was desirable to extend a regional institution to the international community as a whole. His delegation did not feel that that should be done. One problem was the difficulty of elaborating satisfactory texts and defining political crimes. Another was determining whether asylum was a right of the individual or of the State and what were its consequences for relations between States. Furthermore, the question of diplomatic asylum could not be studied apart from the realities of the contemporary world. Modern history, especially since the end of the Second World War, taught that certain States had used the most varied pretexts for attacking the sovereignty of other States and intervening in their internal affairs. Was it not legitimate, therefore, to ask whether diplomatic asylum might not become a weapon for attacking State sovereignty in internal affairs? While it was, of course, appropriate to bear in mind the successful experience of diplomatic asylum in Latin America, one should not lose sight of the historical, political and geographical circumstances under which the institution had developed in that area. For that reason, he was of the view that it would be premature to elaborate any instrument on the matter.

20. Mr. PRIETO (Chile) said that his Government had not submitted its views on the question of diplomatic asylum to the Secretary-General because it preferred to state them during the general debate in the hope that its advocacy of the institutionalization of diplomatic asylum at a global level would be more effective and thus contribute to the decision which the Committee would finally take on the matter.

21. Chile had valuable practical experience in the matter of diplomatic asylum and the continuous tradition in his country in that regard was linked with the history of a people firmly convinced of the fundamental importance of essential human values.

22. Chile had not only strictly complied with the various conventions it had ratified on the subject of diplomatic asylum but had even allowed, for purely humanitarian considerations, the invoking of the institution of asylum by other States which had no right whatsoever to do so. Chile had never objected to diplomatic asylum.

23. His Government was firmly convinced that the more uncertainty there was with regard to the principles applicable to diplomatic asylum, the greater would be the

adverse consequences for the friendly relations which should exist between States.

24. It was a fundamental duty of the United Nations to create basic institutions for safeguarding essential human rights. The Charter itself gave the Organization a mandate for the progressive development of international law in the most diverse fields, and that was all the more urgent in the field of diplomatic asylum.

25. Nearly all of Latin America had provided a constant example of respect for diplomatic asylum. In reply to the assertions of theoreticians who held that diplomatic asylum had been institutionalized in Latin America as a result of the upheaval which had followed upon the achievement of independence in the States of the region, it should be asked whether the same kind of upheaval might not occur in any part of the world today, for very different reasons. Mr. Yepes, in submitting a specific proposal regarding diplomatic asylum to the International Law Commission on 5 May 1949, had stated that although the Latin American States were not alone in recognizing the right of granting asylum to political refugees, they had practised that right most often and by making frequent use of the right of asylum, those countries had enabled political leaders, who would otherwise have been sacrificed to the hatred and revenge of their opponents, to render their countries valuable service.[2]

26. One of the major objections which had been raised to counter the proposal that diplomatic asylum should be institutionalized on a global basis was the assertion that diplomatic asylum would entail a derogation from the sovereignty of the territorial State. That argument was fallacious, however, since the same could be said with regard to all the emerging rules of customary international law and also with regard to any treaty which placed a specific obligation upon States. Irrespective of the terms in which it was expressed, that discussion could not be regarded as other than trivial when one considered the fact that the victims would be not the academics holding forth on the matter but rather the persons to whom such an important safeguard as diplomatic asylum was being denied.

27. Latin American States, for purely humanitarian reasons, had preferred to accept restrictions on their own sovereignty because it was human rights that were of the most fundamental importance.

28. It had been maintained that the granting of diplomatic asylum to a person under the jurisdiction of the receiving State clearly represented interference in the internal affairs of that State; on the contrary, however, it was evidence of political maturity to permit another Government to evaluate dispassionately a matter which those concerned would be judging in the heat of passion and to recognize that such an evaluation was not an unfriendly act but rather the exercise of a power recognized by international law.

29. Other delegations had said that granting diplomatic asylum was incompatible with article 41, paragraph 3, of the Vienna Convention on Diplomatic Relations and that it was not one of the functions of diplomatic missions as defined in article 3 of that Convention. However, it was essential to recall that article 3 of that Convention did not give an exhaustive list of the functions of a diplomatic mission. Accordingly, there were no sound juridical reasons for concluding that it was not possible to universalize the institution of diplomatic asylum.

30. Law was a science which should be used in the service of mankind and the Sixth Committee should adopt measures to ensure that diplomatic asylum would be made universal in due course. There were various ways to do that and Chile was prepared to support any initiative to achieve that end, which was as noble as it was essential.

31. Mr. CRUCHO DE ALMEIDA (Portugal) said that the Committee was currently debating a question of true humanitarian significance and his delegation considered it its duty to respond to the call of the Australian delegation and of others that had stimulated the debate. The United Nations, like the League of Nations, had not forgotten the plight of refugees. In that regard, he wished to mention the work of the Office of the United Nations High Commissioner for Refugees, the adoption by the General Assembly of resolution 2312 (XXII) and the adoption by the United Nations Conference of Plenipotentiaries of the Convention relating to the Status of Refugees,[3] in 1951, and the adoption of the 1967 Protocol,[4] to which Portugal was about to accede.

32. Definition of the right of diplomatic asylum was but a small part of the vast refugee question. It would be unacceptable for the Committee to take lightly the question of diplomatic asylum, which had the same roots as the general problem of refugees.

33. His delegation would discuss the question from a pragmatic, not a theoretical, point of view. The first fact to be reckoned with was the uncertainty which prevailed regarding the legal aspects of diplomatic asylum. That fact pointed to the need for further study of the question and eventually for some clarification, for instance through the formulation of recommended practices.

34. However, any further study of the matter would make it necessary to take a position at least with respect to two decisive and very delicate subjects: the distinction between a common crime and a political offence, and the question of when the granting of diplomatic asylum became a matter of urgency in the face of an internal political upheaval.

35. No one had yet been able to give a precise or satisfactory answer to the first question, while the second, by its nature, lay outside any legal framework and belonged to the realm of discretion and prudence.

36. Thus, one could understand the hesitancy of States to adopt an official position on the matter. The Latin American States, however, had taken official positions in several treaties. To understand that fact, one had to bear in mind that those countries had a strong feeling of fraternity and deeply shared common values. That common heritage

2 See *Yearbook of the International Law Commission, 1949*, 16th meeting, para. 69.

3 United Nations, *Treaty Series*, vol. 819, No. 2545. p. 137.

4 *Ibid.*, vol. 606, No. 8791, p. 267.

had proved more durable than transitory divergences. Could the same be said of the world community in the present state of affairs? If not, one should not try to imitate the legal forms of a community whose standards of international conduct one was not yet in general prepared to accept and respect consistently.

37. Another basic question was whether denial of the right of asylum affected the humanitarian outcome of the case in which it was denied. In many cases in which the right of diplomatic asylum was not recognized in general, the interested parties had agreed to it, either through tolerance of the territorial State or on the basis of *ad hoc* arrangements. In that regard, he wished to point to article 41, paragraph 3 of the Vienna Convention on Diplomatic Relations.

38. If an embassy received a refugee, although it did not have the right to grant asylum, the right of inviolability of the premises nevertheless would ensure *in extremis* the protection of the refugee until negotiations could solve the dispute between the interested parties.

39. None of the cases of denial of asylum that were mentioned in the report of the Secretary-General would qualify for the granting of asylum, even if the right of diplomatic asylum were recognized in general.

40. Those last considerations did not make it urgent to reconsider the legal aspects of diplomatic asylum, but at the same time they did not leave one with a clear conscience. As in the field of criminality, one could speak of the gloomy statistics of diplomatic asylum. Only those crimes which were reported to the police were known. He wondered in how many more cases asylum would have been requested and granted if the right of diplomatic asylum had been recognized in general.

41. In the face of several conflicting factors, his delegation was prepared to accept the opinion of the majority of the Committee but hoped that, at a minimum, States would give further consideration to the matter and would communicate their views on it to the General Assembly.

42. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that although the negative reaction of many Member States concerning the current item had been expected, it had not been thought that representatives would go to the extreme of proposing that discussion of the matter should not be continued, especially when one considered that that opinion had been expressed before representatives had learned the contents of the Secretary-General's report or heard the opinions of other States, in particular the observations of the Australian Government (see A/10139, Part I), and the statement by the representative of Australia (1551st meeting). Those who had applauded the Australian Government at the previous session for its initiative in requesting inclusion of the item should express their intellectual respect for the views and erudition displayed at both sessions. His delegation, which was proud that Latin America had long ago established, *de facto* and *de jure*, an institution aimed at protecting humanity's most cherished possessions, life and liberty, felt obliged to join Australia in its noble effort.

43. In order to dispel the doubts which had—unjustifiably, in his delegation's view—been raised about diplomatic asylum, he wished to remind the Committee that the reference by some delegations, to begin with, to lack of a legal basis for diplomatic asylum was a criticism not of diplomatic asylum as an institution, but of the attitude taken by many States which practised it without calling it by name and without having recognized it previously as a part of international law. That showed the correctness of the Australian proposal, the only purpose of which was to make the practice part of general international law.

44. In answer to the argument that diplomatic asylum lacked a basis because the theory of extraterritoriality of diplomatic premises had been abandoned, he quoted Reale, who believed that the practice was justified by considerations which were more humanitarian than legal, although it should be regulated in order to avoid abuses, and Cabral de Moncada, who had said that diplomatic asylum was a humanitarian institution based on international protection of the minimum rights of human beings. According to Accioly, diplomatic asylum, provided that it was duly regulated, restricted to political cases and used with discretion, still performed a real service and was not incompatible with the principles governing the granting of privileges and immunities. The Uruguayan writer Vieira had stated that the modern tendency was to focus not only on the State but on man as a subject of international law and to consider States as merely his servants. Hugo Gobbi, in an article entitled "Eusayo de una crítica del asilo diplomático", published in 1962 in *Revista Española de Derecho Internacional,* had written that non-surrender of an offender was made lawful solely and exclusively by the contractual or customary norm establishing asylum, and, recognizing that the doctrine of extraterritoriality did not serve in modern times as a basis for asylum, he had stated that the only legal basis for the practice was provided by the rules of asylum itself.

45. The argument that diplomatic asylum involved interference in the internal affairs of another State had lost all validity. In that connexion, he quoted Gobbi, according to whom it was evident that the existence of an international norm, whether customary or contractual, which limited the punitive capacity of a State and made possible action by another State, in the current case as the grantor of asylum, meant that there had developed a kind of lawful narrowing of the scope of the reserved domain or the domestic jurisdiction of a State. He also quoted Charles Rousseau, who, in his *Droit international public,* distinguished between lawful and unlawful interventions,[5] the latter being cases in which the intervening State acted without adequate legal authority, and stated that intervention was lawful when the State acted by virtue of a legitimate right, which occurred, among other circumstances, whenever a special treaty or an abstract norm could be invoked and in certain situations in which the State acted for the general benefit of the international community, as in the case of international police action and, in particular, intervention on humanitarian grounds, a practice aimed particularly at preventing acts of cruelty and atrocities. Those authorities demonstrated that juridical regulation of diplomatic asylum in and of itself took away the force of criticisms of the

5 Paris, Recueil Sirey, 1953, pp. 322 and 324.

practice based on the idea of limitation of sovereignty or interference in the internal affairs of another State.

46. He said that the achievement of the Latin American countries was to have established, by a sovereign act, the legal basis for the waiver of rights by invoking the cherished principles which diplomatic asylum represented and defended, as in the case of the waiver of rights provided for in the Vienna Convention on Diplomatic Relations. What was being discussed was the advisability of achieving universal legal recognition of diplomatic asylum, which would be based on two elements, namely the attitude to be seen in the actions and in the words of those who still opposed diplomatic asylum and the general recognition which had been achieved by territorial asylum. In that connexion, he drew attention to the examples referred to by the writer, Rousseau, in the work already mentioned, those referred to by the Australian delegation, the case of the Spanish Civil War, and, more recently, that of Chile, and the cases of Cardinal Mindszenty and the Hungarian Prime Minister, Imre Nagy, in Hungary in 1956. Those examples supported the nearly unanimous view that the humanitarian basis for diplomatic asylum should be recognized, although the sovereign rights of the territorial State might be seriously infringed if diplomatic asylum was practised before the rules by which its exercise was to be regulated were defined and implemented. That was the main argument in favour of the need to continue the studies on the question and try to direct them towards the universal recognition of that right.

47. The States which rejected diplomatic asylum nevertheless accepted territorial asylum, which had also been recognized in Latin America since the end of the nineteenth century. Nevertheless, his delegation did not dare make such a cut-and-dried affirmation. It was stated that the Universal Declaration of Human Rights referred only to territorial asylum, but, in that connexion, he recalled that the Bolivian delegation and his own had tried unsuccessfully to extend the provisions on territorial asylum to diplomatic asylum and that the amendments submitted by those delegations in documents A/C.3/227 and A/C.3/268 had been withdrawn at the 122nd meeting of the Third Committee in order to prevent an opposing vote from setting an inappropriate precedent and thus weakening the principle.

48. As the representative of Guatemala had stated (1553rd meeting), territorial asylum could, according to the interpretation of those who criticized diplomatic asylum, mean interference in the internal affairs of another State. The Uruguayan writer, Quintín Alfonsín, criticizing the basic assumption of the Universal Declaration of Human Rights, had said that, at first glance, he saw no reason whatever for the Declaration to recognize one type of asylum and not the other. He (Mr. Fernandez) also noted that the first Spanish- and Portuguese-American Congress of International Law had formulated a declaration providing that the right of diplomatic asylum was an inherent right of the human person.

49. Referring to the judgement of the International Court of Justice in the Haya de la Torre case,[6] he said that it was a judgement in which there was a contradiction and that the juridical basis of discussion had been the 1928 Havana Convention,[7] which had been improved upon by the 1954 Caracas Convention[8] to such an extent that, at present, if an identical case arose, there would be no reason to have recourse to the Court because what had, in fact, been discussed had been the right of qualification of the State granting asylum, which, for Colombia, had been implicitly provided for in the Havana Convention. That judgement of the International Court of Justice had given rise to a reaction in the Americas whose consequence had been the drafting and signature of the 1954 Caracas Convention, article 4 of which stated that "It shall rest with the State granting asylum to determine the nature of the offence or the motives for the persecution". Consequently, the judgement of the International Court of Justice in the Haya de la Torre case now had only historical value as a reflection of particular circumstances in the evolution of the right of asylum in the Americas, but it must be considered as a dead letter in so far as it referred to the basis and principle of diplomatic asylum.

50. With regard to terrorism, the criticism concerned only one aspect of diplomatic asylum, which it was not appropriate to analyse when the legal and humanitarian validity of its foundations and the advisability of continuing to study it were still being discussed.

51. His delegation considered that it was unrealistic to consider that Latin American practice could not serve as a basis for the work of the Committee, since diplomatic asylum had originated, evolved and acquired full legal maturity in Latin America. He also stated that he would not accept the slightest weakening of the principles it had taken so many years to elaborate and that he therefore supported the procedure proposed by the delegation of Guatemala.

52. His delegation considered that diplomatic asylum was a necessary instrument for the protection, in certain circumstances, of the human rights which had been so highly praised and, at the same time, so carelessly trampled in recent times. Of course, it was currently an imperfect solution, but it was better to have an imperfect solution than no remedy at all for the oppression to which the individual, who was the main concern of law, was subjected. At the current stage it was a matter of improving the machinery of diplomatic asylum and to that end, of using the rules of international law both to prevent any lack of due respect for the human personality by Governments and to prevent abuses committed in the exercise of diplomatic asylum.

53. Mr. PEDAUYE (Spain) thanked the Government of Australia for the initiative it had taken at the twenty-ninth session in drawing the attention of the General Assembly of the United Nations to the question of diplomatic asylum. That initiative had already produced important results, such as the statements by various delegations, the replies of 25 States and the objective, well-prepared and very valuable

6 *Haya de la Torre Case, Judgment of June 13th, 1951: I. C. J. Reports 1951*, p. 71.

7 Pan American Union, *Inter-American Treaties and Conventions on Asylum and Extradition*, Treaty Series No. 34 (OAS Official Records, OEA/Ser.X/1), p. 27.

8 *Ibid.*, p. 82.

report of the Secretary-General. Asylum was an age-old legal institution, which had been applied in Europe in the Middle Ages in holy places and had been secularized in the fifteenth and sixteenth centuries with the development of the modern State. Diplomatic asylum was an institution of international law peculiar to Spanish America which was regulated by various international treaties, whose main principles were the following: *(a)* asylum protected only persons persecuted for political reasons or crimes; *(b)* it was for the State granting asylum to qualify the offence and the urgency of the request for asylum; *(c)* the State was free to grant or refuse diplomatic asylum and *(d)* the territorial State was obligated to grant a safe-conduct whenever the State granting asylum requested it. Since the institution of asylum in Spanish America was based on treaties, the problem which had hampered its evolution on other continents, namely the presumed derogation from the principle of the territorial sovereignty of States, did not arise.

54. Nevertheless, as stated by the representative of Australia, many non-Latin American States had, on various occasions and in various cases, exercised the right of asylum, as for example, in Madrid in 1936 and, more recently, in Santiago, Chile. Everything seemed to indicate that diplomatic asylum could be effective in such cases due to the tolerance of the territorial State, which had respected the inviolability of diplomatic premises in cases where specific States granting asylum, which had formally stated and continued to state that they were not bound by the institution, had been obligated, for serious reasons, to grant refuge to certain persons. The decisive factor for the granting of refuge would, in his delegation's opinion, be that of the existence of emergency circumstances of a serious political nature requiring States to defend the human person against unjustifiable violence. In such cases, moreover, there did not seem to be any attempt to prevent the normal exercise by the territorial State of its jurisdiction when the State granting asylum went to the aid of an individual who could not be protected by the territorial State when it was not exercising control in its own territory. Consequently, the element of interference in the internal affairs of other States also seemed to be ruled out and the grant of asylum for humanitarian reasons could not be considered as an unfriendly act towards another State.

55. His delegation considered that the institution of diplomatic asylum was more complex than it seemed at first glance and that it involved highly positive elements which meant that it was exercised in specific circumstances, even by those States which had formally stated that they did not accept it. For those reasons, his delegation joined previous speakers in stressing the need to continue the study of that question and was prepared, provided that consensus existed in the Committee, to support the establishment of a group of experts which would continue to study the subject of diplomatic asylum so that its principles might be made universal. His delegation would support any initiative of that kind because it considered that it would be important for the development of international humanitarian law and, at the same time, would rule out the double standard which some States applied in that respect.

56. Mr. HAGARD (Sweden) said that there had been no change in the opinions expressed by his delegation at the twenty-ninth session (1506th meeting) and transmitted by his Government to the Secretary-General (A/10139, Part I). Thus, his delegation still held the view that, except in Latin America, diplomatic asylum was not recognized as a legal institution in itself, although it agreed that, in certain exceptional cases, humanitarian considerations and the need to protect fundamental human rights were of decisive importance. He did not think that it was immediately necessary to elaborate an international instrument in a field where humanitarian, rather than strictly legal considerations, determined the action of States.

57. He said that his delegation could support draft resolution A/C.6/L.1018 and expressed his appreciation to the Australian delegation for its interesting introduction and for the very constructive position it had adopted. Although his delegation was somewhat skeptical about the necessity or advisability of codifying the question of diplomatic asylum, it considered that the discussion in the Committee and the opinions of Governments were interesting and valuable.

58. The CHAIRMAN said that Dahomey, Ecuador and Nicaragua had become sponsors of draft resolution A/C.6/L.1018.

The meeting rose at 1 p.m.

1557th meeting

Tuesday, 4 November 1975, at 3.20 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1557

AGENDA ITEM 111

Question of diplomatic asylum: report of the Secretary-General *(continued)* (A/10139, Part I and Add.1 and Part II; A/C.6/L.1018)

1. Mr. HAFIZ (Bangladesh) congratulated the Australian delegation for having proposed that a preliminary study be made of the very delicate question of diplomatic asylum and commended the Secretary-General for his admirable report (A/10139, Part II) on the subject. A distinction must be drawn between territorial asylum, in respect of which there was some uniformity of practice, and diplomatic asylum, a controversial institution concerning which there was no uniform practice and that some Member States did not regard as part of general international law. The