1553rd meeting

Thursday, 30 October 1975, at 3.20 p.m.

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

A/C.6/SR.1553

AGENDA ITEM 111

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

1. Mr. BUBEN (Byelorussian Soviet Socialist Republic) recalled that his delegation had already drawn attention at the twenty-ninth session (1510th meeting) to the complexities and internal contradictions which characterized the question of diplomatic asylum both from the political point of view and from that of international law, and had stated why it did not consider it timely to examine the question at that stage. The report of the Secretary-General (A/10139 (Part II)) had confirmed its opinion.

2. The principle of the extraterritoriality of diplomatic premises, on which the practice of diplomatic asylum had been based up to the middle of the nineteenth century, had been rejected as an infringement of the sovereignty of the receiving State. When the Council of the League of Nations had considered the question, the representative of the Soviet Union had observed that neither international law nor international practice permitted the conclusion that diplomatic asylum was a universally recognized institution. Nor was it by accident that neither the General Assembly of the United Nations nor the International Law Commission had taken a decision on the question. Unlike territorial asylum, diplomatic asylum constituted an infringement of the sovereignty of the State in whose territory it was practised and an interference in its internal affairs, and both the principle of State sovereignty and that of non-interference in the internal affairs of other States were embodied in the Charter of the United Nations and in several instruments adopted within the United Nations framework.

3. Some delegations favouring diplomatic asylum had used the argument of the inviolability of diplomatic premises. However, article 3 of the Vienna Convention on Diplomatic Relations,[1] which set forth the functions of those missions, in no way provided for the use of their premises for purposes of asylum. On the contrary, article 41, paragraph 3, of that Convention emphasized that the premises of the mission must not be used in any manner incompatible with the functions of the mission. In order to defend diplomatic asylum, some delegations had also invoked humanitarian considerations. Of course, such considerations were important in certain cases, but the decisive element, when it was a matter of determining whether they should be taken into account, remained the political one and agreement on that point was far from being reached.

4. In contemporary international relations, the practice of diplomatic asylum was recognized only on a limited regional basis. In seeking to make that practice universal, there was a risk of pushing States into adopting rigid positions and of jeopardizing détente and the development of friendly relations among States. His delegation therefore believed that it would be right after the discussion of this problem at the previous and current sessions of the General Assembly to drop it from the agenda.

5. Mr. ENKHSAIKHAN (Mongolia) said that the report of the Secretary-General on the question of diplomatic asylum confirmed what had already been apparent during the discussion of the item at the twenty-ninth session, namely that it was an extremely controversial question and that the majority of States that had communicated their views in accordance with General Assembly resolution 3321 (XXIX) felt that codification of the matter would be premature, at least at the current stage. Most Governments believed that an international convention would restrict the flexibility of States in determining the exceptional cases in which asylum might be granted for humanitarian reasons, and one Government had expressed concern at the problems which the grant of asylum might raise in relations with neighbouring countries. Other countries had indicated that they had not concluded any international agreements on the matter and that international judicial practice relating to the matter was virtually non-existent. Even those countries that were in favour of granting diplomatic asylum in exceptional cases for humanitarian reasons had felt that there was no need to codify the circumstances. Diplomatic asylum was essentially a regional practice which was not recognized in contractual or customary contemporary international law. Moreover, that was what the International Court of Justice had concluded in substance in 1950 with respect to the right of asylum in the Colombian-Peruvian case.[2] Asylum constituted an infringement of the sovereignty of States which were opposed to it when it was practised in their territory and interference in their internal affairs. It should also be noted that the right of asylum was not included in the rights and duties of diplomatic missions laid down in the Vienna Convention on Diplomatic Relations and was not provided for in the Vienna Convention on Consular Relations.

6. Mongolia was not opposed to the grant of territorial asylum to persons persecuted for their defence of the interests of the working people or for their participation in a national liberation struggle, as laid down in article 83 of its Constitution. While it recognized that there was a basis for the grant of asylum in diplomatic or consular premises in exceptional cases and for humanitarian purposes, that was not a right. At the current stage, the matter was not ready for codification.

7. Mr. VILLAGRAN KRAMER (Guatemala) observed that the question of diplomatic asylum was controversial

1 United Nations, *Treaty Series*, vol. 500, No. 731D, p. 95.

2 *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950*, p. 266.

not from the humanitarian point of view, but from the political one. In the field of the protection of human rights, law was constantly developing and, at the international level, States were increasingly concerned with establishing the appropriate machinery and guarantees to protect the life and dignity of the human person. That trend had even touched areas which had been traditionally within the competence of States, but it was known that currently sovereignty was not regarded as absolute, as it had been in the past.

8. Some States were concerned about the institution of diplomatic asylum because of the political issues that it raised in practice and, above all, because it could endanger their relations with other States or might affect an area coming under their internal jurisdiction. Those reservations were understandable, but it was difficult to understand, at least from the legal point of view, why certain States which did not accept that practice in their territory nevertheless granted asylum in other countries when it was requested of them.

9. Many delegations sincerely believed that asylum was a Latin American practice, but other countries had granted temporary protection to refugees in their diplomatic premises and the territorial State had respected those measures. In that connexion, he believed it was timely to point out that the purpose of the Australian delegation, supported, among others, by his own delegation, was not to generalize the Latin American practice throughout the rest of the world, but to determine to what extent and in which cases asylum could be granted and the territorial State should respect it, and to specify the rules which should be observed in order to terminate asylum without jeopardizing normal relations between States. In that sense, the Australian initiative was realistic, because it stemmed from the idea that diplomatic asylum indeed existed and that many States could find themselves obliged to grant it for humanitarian reasons, as had recently occurred in Chile and some time previously in Spain and Hungary.

10. The lack of a general conventional text made it more difficult to solve the urgent problems which arose for States obliged, for humanitarian reasons, to grant refuge, even if only temporary, to a person whose life was in danger. Thus far, outside of Latin America, precedents took the place of general legal rules. He therefore wondered whether it would not be better to anticipate those urgent cases and seek solutions which would be acceptable to the majority of countries.

11. As to the argument that diplomatic asylum would imply interference in the internal affairs of another State or would remove a person being prosecuted from its jurisdiction, attention should be drawn to the related case of territorial asylum, in which the State granting asylum had the power to qualify the offence or the nature of the proceedings. Yet, that argument had not been invoked in the latter case, a matter which was at the very least strange. In fact, in the case of territorial asylum, the person was protected under international law, while in the case of diplomatic asylum, that protection resulted from humanitarian considerations.

12. Humanitarian considerations likewise played an important role with regard to extradition, since in that case also a person who should legally be tried in one State was brought under the jurisdiction of another. Under the applicable international law, even in very specific cases a State was entitled to refuse to surrender the offender to the requesting State if it considered him to be a political offender. Moreover, the rule whereby capital punishment could not be imposed in the case of common criminals was of even greater interest, since it might constitute an infringement of the sovereignty of the State which was prevented from imposing the penalty provided for in its own legislation. Those restrictions had, however, been accepted and respected for humanitarian reasons. The notion that the grant of diplomatic asylum constituted interference in the internal affairs of a State could not therefore withstand a rigorous legal analysis.

13. He also drew attention to another point, namely that despite the lack of a general agreement on the subject, territorial States did not violate asylum granted to an individual in their territory by a foreign diplomatic mission. The question therefore arose as to what grounds might be used by countries outside Latin America in order to grant asylum in Latin America or in other regions. In his delegation's opinion, such countries were relying upon a discretionary power to which they might have recourse in cases of exceptional gravity and for humanitarian reasons. Such cases were qualified as temporary refuge or hospitality granted for as long as the emergency situation persisted, thereby justifying in the view of the diplomatic mission concerned, the grant of asylum. Once the danger had passed, the refugee could leave the mission. In fact, the problem arose when it was necessary to ensure the departure of a refugee from the country, it was rather the means of terminating asylum which were controversial, for asylum *per se* was respected and the authorities of a State did not have the right to enter a diplomatic mission forcibly in order to remove a refugee. In that connexion, he had in mind certain interesting aspects of the question, particularly with regard to the grant to refugees of safe conducts or passports enabling them to leave the country without having to do so under the flag of the State granting asylum. However, the territorial State was entitled to request the extradition of a refugee after his departure.

14. Thus, asylum played an important role, but only in exceptional situations. He made reference in that regard to the situation of the Rhodesians who were subjected to the application of special laws of a repressive nature and were denied the right to due process, as well as the right to defence. Year after year, the United Nations condemned the violations of human rights in that region of the world, and he wondered what the reaction of the international community would be if, for example, a diplomatic mission were to grant asylum in South Africa to a person seeking refuge on the grounds of an alleged violation of the above-mentioned special laws, when under the usual rules of criminal law his act would not constitute a crime. There was no doubt that asylum would be respected, but the lack of applicable rules at the time when need arose to terminate asylum would call for negotiations which would have to take into account the precedents attested in Latin America or the suggestions of the Institute of International Law or the International Law Association. The Secretary-General had mentioned the work of those bodies in his report; they had succeeded in drawing up clear and precise rules, taking

into account not only the existing restrictions imposed under international law but also the need to provide for rules to prevent abuses or excessive restrictions. There was no valid reason for halting the study of that subject and his delegation was of the view that work on the matter should be continued; it would support any efforts to that end, in particular the idea of submitting the matter to a group of experts.

15. Guatemala, which granted and respected diplomatic asylum in the context of the inter-American conventions and regional practice, was not endeavouring to extend the application of the institution but to clarify as much as possible the rules which other States observed in cases of emergency and, in particular, to clarify the juridical criteria to be applied in terminating asylum without adversely affecting the normal relations between States.

16. Mr. LEE (Malaysia) said that the practice of diplomatic asylum appeared to be well established in the Latin American countries, although it had been on the decline in Europe and elsewhere since the nineteenth century. Although the last convention on the matter, that signed at Caracas in 1954, had been signed by most of the Latin American countries, it should be noted that four of those countries had signed it subject to certain reservations. Although the practice of diplomatic asylum had been the subject of certain rules, it was the lack of uniformity as to the applicable rules that had created problems and had led to the Colombian-Peruvian case which had been brought before the International Court of Justice.

17. His delegation appreciated the generous spirit which had prompted the Australian Government to initiate preliminary studies on the humanitarian and other aspects of the question of diplomatic asylum and had listened with interest to the persuasive arguments advanced by the Australian representative (1551st meeting). Nevertheless, out of the 25 Member States which had expressed their views on the question in accordance with General Assembly resolution 3321 (XXIX), more than half had expressed doubts as to the usefulness of further discussions on the matter.

18. Having regard to the current political situation in South-East Asia, his delegation was of the view that the time was not opportune for a further consideration of the question of diplomatic asylum and that it was necessary to exercise great caution in the matter.

19. Mr. ALIHONOU (Congo) expressed appreciation for the excellent report by the Secretary-General on the question of diplomatic asylum and thanked those delegations which, pursuant to General Assembly resolution 3321 (XXIX), had communicated their views on that delicate question, as well as the Australian delegation for the efforts it had made to ensure the inclusion of the item in the agenda.

20. Those who advocated a general extension of diplomatic asylum made the point that it was essentially a humanitarian institution which should therefore enjoy the support of all freedom-loving nations and that asylum should be granted only to political refugees and only in cases of emergency. Anticipating the criticisms which might be levelled concerning the restrictions imposed by that institution on State sovereignty, they argued that the solution would be to conclude a convention, thus seeking to provide a legal foundation for such infringements of sovereignty.

21. Although his delegation supported all efforts with regard to the progressive codification of international law, it regretted to state that it was not able to join those who advocated the codification of the question of diplomatic asylum. Although the validity of the humanitarian considerations involved could be accepted straight away, caution was necessary: indeed, certain crimes against humanity had been committed under the cover of humanitarian operations. Moreover, the definition of political offences and offences under the general law varied from one country to the next. The determination of an emergency was of such a subjective nature that agreement on that issue was scarcely likely to be reached. Furthermore, the successful practice of diplomatic asylum in certain regions should not be regarded as a proper basis for its generalization to the entire international community. Unlike territorial asylum, which reaffirmed the principle of State sovereignty, diplomatic asylum constituted a grave infringement of State sovereignty and interference in the internal affairs of States. If the practice of diplomatic asylum was extended to the African region, his Government feared that it might constitute a new source of conflict and be a consolation prize awarded to imperialism. While reaffirming its dedication to the humanitarian ideals underlying the practice of diplomatic asylum and its conviction that at a time when thousands of people were being persecuted for their progressive activities or their participation in the national liberation struggle it was more urgent than ever to strengthen control over the observance of human rights, his Government was of the view that the question of diplomatic asylum should not be the subject of a convention of universal character.

22. Mr. BOOH BOOH (United Republic of Cameroon) said he appreciated the humanitarian considerations invoked by the Australian delegation, but thought the time had come to decide whether it was opportune to continue consideration of the question of diplomatic asylum. Although the concept of territorial asylum was supported by many States and could be considered an expression of contemporary public international law, such was not the case with diplomatic asylum, which aroused justifiable political controversy and could not be regarded as an institution accepted by the international community. Right at the beginning of the Secretary-General's report, it was stated in paragraph 1 that "The terminology employed in this entire field lacks uniformity.", the first proof of the uncertainty and difference in views on the subject. The Secretary-General had noted, furthermore, in paragraph 23 of the report, that that institution had served to save persons "from the threat of normal prosecution" and that there was a lack of consistency in the attitude of States, in that their official position did not necessarily coincide with their actual attitude. Diplomatic asylum could, therefore, not be considered as part of customary international law and there seemed to be consensus on the institution only in Latin America. Furthermore, the International Court of Justice had stated, with regard to the Colombian-Peruvian asylum case, that it was not possible to discern "any

constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offence".[3] States had, moreover, given different answers to the question whether diplomatic asylum was a right of the State with regard to other States or a right of the individual himself as a subject of international law.

23. In so far as the decision to grant diplomatic asylum to an individual present in the territory of a State in which he had committed an offence involved an undeniable derogation of the sovereignty of that State and intervention in matters which were exclusively within the competence of the territorial State, diplomatic asylum was a very strange institution which could only function in a regional community where there existed a sufficiently well-established common tradition. The countries of the Americas themselves quite rightly doubted that a world body could take up the matter in the same spirit as had the States of their region. His delegation doubted that it would be opportune to codify the matter at the current stage or that a measure to that effect would serve the cause of peace and friendly relations among States. Outside of Latin America, diplomatic asylum was based essentially on considerations of courtesy, convenience and political opportunity and not on law. An essentially political concept, it did not lend itself easily to hasty juridical systematization. The humanitarian considerations and urgent circumstances invoked to justify diplomatic asylum, as well as the distinction drawn between political offences and common crimes, could lead to tendentious interpretations. "Terrorists" would thus be excluded from the benefit of diplomatic asylum by some States, whereas they would be treated with dignity by others. African countries, for example, considered that their assistance to freedom fighters in Africa was a sacred duty which could not be limited by juridical rules to which they had not expressly agreed. Many States would find it difficult to accept the checking of their internal authority in the name of principles not defined by a convention or under the pretext of circumstances qualified as exceptional, which could be created artificially by a foreign Power to justify external intervention in the affairs of the territorial State. It would, furthermore, be a delicate problem to have a diplomatic mission assume tasks which were incompatible with its rights and duties and could lead to a deterioration in the friendly relations between the sending and the receiving State. For that reason, his delegation felt that the Committee should cease its study of the question of diplomatic asylum. An impassioned discussion on the question could lead to a radicalization of the positions of States and discredit an institution which could still render useful services to mankind. He did, however, feel it would be reasonable for the question to be studied extensively on the bilateral or regional level.

24. Since diplomatic asylum was designed to safeguard human rights the international community should rather seek to update the Geneva Conventions on humanitarian law and to solve the problems of hunger, disease, ignorance and natural disasters in the world.

[3] *Ibid.*, p. 277.

The meeting rose at 4.30 p.m.

1554th meeting

Friday, 31 October 1975, at 10.55 a.m.

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

A/C.6/SR.1554

AGENDA ITEM 111

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

1. Mr. MITCHELL (United States of America) expressed gratitude to the Government of Australia for the manner in which it had focused concern on issues which, since they involved human rights, needed to be thought about and must never be lightly dismissed. The statement by the representative of Australia (1551st meeting), which was lucid, comprehensive and frank, was merely the most recent example of that Government's contribution to the issue. While a number of Governments, including his own, did not believe it was productive for the Sixth Committee to debate the question of diplomatic asylum any further at the present time, all had benefited from the exchange of ideas and the information so usefully brought together in the excellent report of the Secretary-General (A/10139, Part II). In his delegation's view, it would not be useful to attempt to generalize the practice of diplomatic asylum as it had evolved over many decades in the unique circumstances of Latin America. He stated that one could not overlook the sophistication and cultural and legal homogeneity of Latin America as a critical element in the practice of diplomatic asylum. Thus even since the codification of the practice in regional conventions, its actual implementation continued to rely, in part, upon a profound and jointly shared commitment on the part of the Latin American States, a commitment which bridged the lacunae of the legal régimes on the subject. Further examination of the question might destabilize not only the Latin American institution but perhaps even the continuation of the type of *ad hoc* humanitarian assistance which the representative of Australia had so cogently summarized in his statement.

2. The position of the United States Government on the question of diplomatic asylum was well known and had most recently been set forth in his delegation's statement in the Sixth Committee at the twenty-ninth session (1510th meeting) and in the United States reply to the Secretary-