

United Nations
**GENERAL
ASSEMBLY**

THIRTEENTH SESSION

Official Records



**SIXTH COMMITTEE 573rd
MEETING**

Monday, 3 November 1958,
at 10.50 a.m.

NEW YORK

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Chairman: Mr. Jorge CASTAÑEDA (Mexico).

AGENDA ITEM 56

Report of the International Law Commission on the work of its tenth session (A/3859) (continued)

CONSIDERATION OF CHAPTER III: DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/C.6/L.427 AND CORR.1) (continued)

1. Mr. JOHNSON (Liberia) pointed out that as his delegation had no authority to commit the Liberian Government with regard to the draft articles on diplomatic intercourse and immunities submitted by the International Law Commission (A/3859, para. 53), it could do no more than express the hope that the debate on the subject would be successful.

2. It was questionable whether it was advisable at the current session to recommend the conclusion of a convention when the majority of States had not yet made their observations. No one knew whether the view that would ultimately prevail in the Sixth Committee would be that of a strong minority or of a large majority considered to be dilatory. On the other hand, it should not be forgotten that it had taken five years to prepare the present draft and transmit it to Governments; it might thus be many years before Governments could study it and submit their observations. The Committee was thus faced with a dilemma.

3. His delegation considered that the draft was of great value and could serve as a basis for a convention. However, without going into detail, he would point out that certain articles seemed open to criticisms. In particular, a comparison between the original text and the new text of article 1 revealed a certain inconsistency and ambiguity which were also to be found in other articles. Governments should therefore be given time to study the draft more closely so that the greatest possible majority of States could adopt a convention of universal value.

4. The draft articles were incomplete in that they made no mention of "ad hoc diplomacy". Furthermore, the question of consular intercourse and immunities was closely linked with that of diplomatic intercourse and immunities, and the two subjects should be examined together. It seemed doubtful whether Governments would have time to submit comments by 1961 and whether the International Law Commission, contrary

to what it appeared to think (*ibid.*, para. 61), would be able to present a final draft on consular intercourse and immunities that would take those comments into account.

5. His delegation was in favour of solving the problem by postponing the discussion on diplomatic intercourse and immunities until the fourteenth session of the General Assembly so as to enable States to make their observations at least two months before the beginning of the session.

6. With regard to the French draft resolution (A/C.6/L.427 and Corr.1), he said he would await instructions from his Government before dealing with it. He reserved the right to speak again later on the question as a whole.

7. Mr. TABIBI (Afghanistan) considered that the draft, which dealt with a subject regulated by well-established customary law, could be accepted universally, subject, of course, to the necessary adjustments. Admittedly, it did not exhaust the subject, since, as the French representative had pointed out, diplomatic relations were conducted in modern times to a large extent by non-permanent missions, particularly by special envoys and diplomatic conferences. It had the advantage, however, of being clear and consistent with the law already in force. His delegation was therefore in favour of adopting it as soon as possible. Some delegations felt that it was better to wait until the question of consular intercourse and immunities had been codified, but that would delay for years the conclusion of an extremely useful convention, the need for which was felt continuously.

8. As a large number of delegations had already pointed out, it was not practicable to examine the draft in detail. The present draft (A/3859, para. 53) was different from the former one (A/3623, para. 16) and should be studied in detail by Governments, but that fact should not prevent a positive decision from being taken by the General Assembly current session, since Governments would have time to study the draft and arrive at a final decision by the fourteenth session of the Assembly or by the time of the special conference.

9. There was no doubt that the draft, like the one which the Commission had prepared on the law of the sea (A/3159, para. 33), was an excellent basis for discussion for the task of codification. His delegation would be in favour of all provisions based on the principle of reciprocity. It considered, moreover, that the acceptance of the compulsory jurisdiction of the International Court of Justice with regard to the application and interpretation of the convention should form the subject of a separate protocol: that would enable a large number of countries to sign the convention.

10. The Sixth Committee should not postpone its decision. The codification of the principles of that branch of international law would certainly help to improve

diplomatic intercourse and so serve the cause of peace and friendship between nations. The Committee ought to take a positive decision at the current session. While it was neither desirable nor practical to discuss each article of the draft separately at the current session, it would be better to determine the method of work now and fix the time and place for taking final action on the draft, so that Governments would have ample time to study it and issue instructions to their representatives. As to the question which organ would be instructed to prepare the convention, his delegation would support the majority opinion. But it was clear that the question of diplomatic intercourse and immunities was a subject by itself for which there should be a separate convention.

11. Ad hoc diplomacy was a very important question which should be carefully studied. His delegation agreed with the Secretary of the Sixth Committee that the privileges and immunities of international organizations and their representatives, and also of permanent missions accredited to those organizations, had not yet been sufficiently developed and that international custom had not yet made an appreciable contribution to the subject. It therefore supported the French draft resolution. The Office of Legal Affairs would naturally have to study the question first and prepare a working paper as a basis for the International Law Commission's work on the subject.

12. Mr. EUSTATHIADES (Greece) congratulated the International Law Commission and paid a tribute to Mr. Sandström, its Special Rapporteur. He shared the general opinion that the draft could serve as a basis for an international convention, and the discussion had shown that the makings of a general agreement on the draft already existed. He saw no objection, however, to resuming the debate at the fourteenth session if that was the wish of the majority. It was possible that Governments had not had sufficient time for a thorough study of the draft and of the legislative changes its adoption would involve. But most of the representatives who had advanced that argument had indicated that they approved of the broad outline of the draft, so that the further study they requested would deal with points of detail. His own view was that the draft had been carefully prepared and that the subject was ripe for action.

13. Regarding the main feature of immunities, the paramount concern was, as it had been since the institution of diplomatic relations, that the proper functioning of diplomatic missions should not be hampered, which explained why the diplomatic agent could not, in principle, be summoned before a local court. Diplomatic privileges and immunities were governed by a customary law which had sprung up in the very earliest times and had gradually developed, and it now seemed both possible and desirable to codify the subject in an international convention. Those who denied the usefulness of such a convention could have said that the matter was not urgent and that the application of custom gave good results; however, they pointed to the diversity of practice, which was not a convincing argument, since, while such diversity existed, it was limited to certain points which were not fundamental and it could be eliminated altogether or allowed for in the convention.

14. As he shared the views of most delegations that the Sixth Committee could not undertake a debate on

each article separately, he would confine himself to a few comments.

15. Fault had been found with certain provisions of the draft, particularly articles 36 and 45, on which his delegation also reserved its position. Nevertheless, the International Law Commission had succeeded by a highly commendable effort in submitting on most of the points a text which had the advantage of either reconciling differing practices or not compelling their renunciation. The draft also had the advantage of taking recent developments into account, for example in article 13 which concerned classes of heads of mission.

16. He agreed with the Italian delegation's statement (572nd meeting, para. 28) that it would be desirable to include in the convention an article on the diplomatic corps, which was an institution to be maintained, since in certain circumstances it made it possible for peaceful relations between States to be strengthened. Furthermore, the question of reservations had rightly been raised by the representative of Israel (*ibid.*, para. 4).

17. The draft seemed to deal only with times of peace, although the problem of diplomatic immunity also arose in wartime and even assumed a special aspect in regard to relations with neutral States. It would perhaps be appropriate to study this aspect of the problem with a view to the adoption of a rule.

18. Turning to other forms of diplomatic relations not dealt with in the International Law Commission's draft, he said that, although the question of diplomatic relations and immunity and that of consular relations and immunity were of course related, there was no reason why the former should not be studied first and independently. On that point he shared the views put forward by the United Kingdom delegation (570th meeting, para. 21).

19. The Greek delegation had already had occasion to emphasize that, despite its considerable interest, the question of relations between States and international organizations dealt with in the French draft resolution was not of particular urgency. It could perhaps be submitted for preliminary study by the Secretariat, which had already prepared a document on the question. The previous work should be brought up to date, and the study presented in a systematic form to facilitate its consultation.

20. The question of ad hoc diplomacy warranted careful study, and the International Law Commission had been right to ask the Special Rapporteur to make such a study (A/3859, para. 51). No time limit had been set for that study, however, and it would perhaps be well to draw the International Law Commission's attention to the desirability of completing it in time for the final phase of the discussion of the draft on the diplomatic relations and immunity of permanent missions; thus, the two questions could if necessary be examined side by side, at least from the point of view of procedure. That did not mean that the discussion of ordinary diplomatic relations should be delayed, but it would be advisable to seek a procedure which would allow the inclusion of such an important aspect of diplomatic relations as ad hoc diplomacy.

21. The diplomatic relations conducted by ambassadors at large or by envoys entrusted with special missions were specific forms of diplomacy, differing from

ordinary diplomatic relations only in duration and scope, and they therefore had important features in common with permanent diplomatic missions. On the other hand, diplomatic conferences could more easily be made the subject of a separate study.

22. Like many other representatives, he believed that the best way to deal with the International Law Commission's draft would be to call a diplomatic conference for the conclusion of an international convention. Apart from the many arguments which had been adduced against the study of the draft by the Sixth Committee, it was worth pointing out that the preparatory work for such a conference would greatly facilitate the application of the future convention, and would help to eliminate divergencies in interpretation. The comments of the International Law Commission accompanying the draft could not be regarded as adequate in that respect and had not been intended for that purpose. Moreover, many articles in the draft raised minor issues which could be settled more easily at a conference than in the Sixth Committee.

23. He did not oppose the resumption of the discussion at the fourteenth session if that was the wish of the majority. It should, however, be understood that the purpose of a fresh debate would not be to make negative criticisms, but to prepare for an international conference and to formulate directives for it. He had been surprised by the United States Government's comment that the adoption of the convention by some Governments and not others would result in disagreement and confusion with respect to the treatment of diplomatic personnel of adhering States in the territory of non-adhering States and *vice versa* (A/3859, annex, section 20). The procedure adopted should therefore be such as to ensure the signature of the convention by the greatest possible number of States. The Sixth Committee could at its current session reach agreement in principle on the usefulness of an international conference, and proceed with preparations for such a conference at the fourteenth session. The most effective means of ensuring the success of the conference would be to invite Governments, including those which had already submitted comments, to make any remarks they considered useful.

24. Mr. DE LA GUARDIA (Argentina) associated himself with the unanimous tribute paid to the International Law Commission for its valuable contribution to the codification of the subject. He believed that the draft, with certain modifications, would provide an excellent basis for a convention.

25. Whatever solution was adopted—the convening of a special conference or the examination of the question by the Sixth Committee at the fourteenth session—all the delegations were agreed that the draft, some of whose articles differed widely from those of the 1957 draft (A/3623, para. 16), required a more thorough study by the States concerned and could not therefore be examined in detail at the current session. It was indeed important that the projected convention be ratified by the large majority of States if it were not to remain a theoretical abstraction but be given practical application. In that connexion it should be recognized that the International Law Commission had taken account of the comments submitted by Governments to a greater extent than it had done in the case of the draft on arbitral procedure.

26. Confining himself for the moment to the method to be adopted, he expressed the opinion that it was not essential to call an international conference, and that the Sixth Committee was quite competent to make a final study of the draft at the fourteenth session after all the Governments had made their views known.

27. If, however, it was decided to refer the matter to a special conference, such a conference had better be called immediately.

28. Mr. GUERREIRO (Brazil) subscribed to the general opinion that the draft constituted an excellent basis for a convention; it should of course be carefully studied, but there was every reason to hope that agreement would be reached without difficulty.

29. The problem as to when and by whom the study should be carried out was a purely practical one. While not regarding the matter as urgent, the Brazilian delegation believed that the study should not be postponed, and in particular was not in favour of waiting for the International Law Commission to prepare a draft on consular relations and immunity. Diplomatic functions and consular functions were of an essentially different nature and, although the two subjects had features in common, there was no reason why they should be dealt with simultaneously.

30. The majority of the members of the Sixth Committee believed it necessary to postpone the examination of the matter for one year to enable Governments to make their comments, but had pointed out that the Sixth Committee usually had too large an agenda to embark on a study of the draft article by article. In 1959, however, the agenda would, in all probability, be a small one, and the Sixth Committee would be able to devote as much time to the matter as a special conference. The argument that States which were not Members of the United Nations could not take part in the conclusion of a convention did not carry conviction; in any case, it was on the intrinsic merit of the text that States would base their decision to ratify or not. Lastly, it should be remembered that a multiplicity of international conferences placed an extremely heavy burden on the budgets and personnel resources of small countries.

31. In conclusion, the Brazilian delegation emphasized that it had no objection in principle to either of the suggested methods and, in view of the fact that so many delegations preferred a special conference, it thought that a decision on the method could be postponed until the fourteenth session. It was unlikely that an international conference could be held before 1960 or 1961. In these circumstances, the best solution would perhaps be to refer the matter to the fourteenth session, and request Governments meanwhile to submit their comments and indicate the course they preferred.

32. Mr. MATSUDAIRA (Japan) regarded the draft as well constructed as a whole and as a suitable basis for a discussion on the conclusion of a convention. In his opinion its discussion should not be delayed further, in order that the convention might be adopted as soon as possible.

The meeting rose at 12.10 p.m.