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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 56

Diplomatic intercourse and immunities (A/3859 and Corr.1, A/4164 and Add.1 to 7, A/C.6/L.455 and Add.1 and 2, A/C.6/L.456 and Add.1/Corr.1, A/C.6/L.457/Rev.1 and Add.1, A/C.6/L.458, A/C.6/L.459 and Add.1) (continued)

1. The CHAIRMAN said that the President of the General Assembly had expressed the hope that the Sixth Committee would complete its work before Wednesday, 2 December 1959. The Committee must accordingly speed its discussion of the subject under consideration, and delegations wishing to submit draft resolutions on the two agenda items still outstanding should do so at the earliest opportunity.

2. Mr. CALICE (Austria) recalled that at the Committee's 633rd meeting the Argentine representative had asked a question regarding the attitude of the Austrian Government on the "additional costs" which might be involved if the proposed conference was held at Vienna. The Austrian Government believed that, if the Committee decided to hold the conference away from Headquarters, Vienna, where the Regulation concerning the relative ranks of diplomatic agents had been drawn up on 19 March 1815, would be a particularly appropriate meeting place. He had accordingly been authorized to state that, if the Committee agreed that the conference should be held at Vienna, the Austrian Government would pay the difference between the New York estimate and the Vienna estimate, as shown in the Secretary-General's note on financial implications (A/C.6/L.458). That meant that the Austrian Government would be prepared to meet additional costs up to a total of \$130,000.

3. Mr. GAMBOA (Philippines) regretted the suggestion made by certain speakers at the preceding meeting that the real purpose of the sponsors of the draft amendments (A/C.6/L.459 and Add.1) was to defer the proposed conference indefinitely. Those speakers were completely mistaken. The wish of the Philippine delegation, as of the other sponsors, was only to ensure that the work of the Sixth Committee and of the International Law Commission should be carried out as systematically and effectively as possible. The sponsors of the amendments had always favoured a conference, and still believed that the codification of the law of diplomatic intercourse and immunities was desirable. If there had been general agreement that the conference envisaged in the joint draft resolution (A/C.6/L.455 and Add.1 and 2) should deal with that

one topic alone, his delegation would have been in favour of calling it in 1961. It had become increasingly clear, however, that many Governments believed the subject-matter should be widened to cover also certain related fields such as consular intercourse and immunities and ad hoc diplomacy; and since it seemed that the Commission's draft on those related matters could be completed by 1963, the Philippine delegation had reached the conclusion that a corresponding adjustment of the draft resolution should prove satisfactory to all.

4. If the postponement proposed in the draft amendments had been indefinite, or if an unreasonably remote date had been suggested, the sincerity of the sponsors might have been questioned. But the draft amendments only proposed a postponement for two years, which was hardly a significant period in the life of the international community. Rome had not been built in a day, and Roman law also had taken several centuries to develop; even some of the modern municipal codes had required thirty to fifty years of work. Accordingly, to postpone the conference for two years, in order to achieve ultimately a better balanced and more comprehensive instrument, seemed a wiser course than to hold two or three successive conferences which would deal with the subject piecemeal. Another factor to bear in mind, in that connexion, was that a single conference would obviously be less costly than several. The greater duration of a comprehensive conference would admittedly occasion expenditure beyond the figures estimated in the Secretary-General's note (A/C.6/L.458), but the extra sum involved could not possibly be as great as the additional expense for delegations of repeated travel costs. Perhaps the wealthy countries could not appreciate that point, but it was a matter of great concern to the smaller, under-developed States.

5. In conclusion, he stressed that the draft amendments were not incompatible with the joint draft resolution. Each provided that a conference should be held and that it should deal with the question of diplomatic intercourse and immunities. The draft amendments merely sought to add two related topics to the conference's agenda and to defer the date by two years. That being so, even the sponsors of the joint draft resolution could support them without appearing inconsistent. The draft amendments, conceived in a spirit of harmony and drafted in reasonable and conciliatory terms, deserved the Committee's unanimous support.

6. Mr. Maxwell COHEN (Canada) said that Canada wished to be added to the list of sponsors of the draft amendments (A/C.6/L.459 and Add.1). He would explain the reasons for that decision at a later stage.

7. Mr. GUZMAN (Ecuador) said that the intention of the sponsors of the draft amendments had been only to reconcile the various lines of argument developed in the discussion; thus, their text reflected not merely the views of its sponsors but also the opinions voiced

by other delegations. It was accordingly unfortunate that the USSR representative, in a highly subjective statement at the 636th meeting, had accused the sponsors of the draft amendment of resorting to dilatory tactics.

8. The draft amendments paid due regard to the majority's wish that the final instrument should be drawn up by a special conference. But the question of diplomatic intercourse and immunities, as the Brazilian representative had rightly stressed at the 634th meeting, raised very few controversial issues, and a conference called to resolve solely those few points would be somewhat wasteful; that fact had to be borne in mind even after the Austrian Government's generous offer. The Ecuadorian Government would welcome the holding of the conference at Vienna; such an event would offer a fitting occasion to commemorate the Regulation of 19 March 1815, which had served as the cornerstone of diplomatic practice for over a century. But the draft amendments were based on considerations of substance: in particular, the close relationship between diplomatic intercourse and immunities and certain other subjects. The sponsors of the amendments would be the last to contend that a conference should be called only when every single related question had been adequately prepared, for there was some degree of relationship between each and every part of international law. If there was to be any truly co-ordinated progressive development of international law, however, questions which were directly and immediately linked with each other would have to be considered together. The arguments advanced by the Romanian and Colombian representatives regarding the interrelationship of all branches of the law of nations thus seemed somewhat far-fetched. The various topics referred to in the draft amendments were not merely closely linked but jointly governed by the largely adjective and distinct complex of rules known as diplomatic law.

9. Every subject of international law required certain executive organs. A State, for example, normally had a Ministry of Foreign Affairs and its dependent diplomatic and consular missions. The officers of such missions could either be permanent or temporary, and might in certain circumstances be accredited not to a State but to an international organization. In a sense, those officers were the instruments through which the State exercised its sovereignty, and they enjoyed a special status in both the national and the international context. The entire structure, therefore, was so co-ordinated that it would be impossible to prescribe rules applicable to one category of such officers independently of the others. Moreover, the unity of the subject was not merely doctrinal but also practical, for all diplomatic and consular agents were responsible to one central organization, usually the Ministry of Foreign Affairs, and subject to the same foreign service regulations. Any international legislation applicable to only one sector of the foreign service might therefore conflict with the municipal legislation of certain States. That consideration was particularly important in view of the growing tendency of States to shift the members of their foreign services freely between permanent diplomatic missions, *ad hoc* missions and consulates.

10. The USSR representative had argued that a single conference dealing with several related topics would be much more costly. That difficulty could be avoided, however, by allocating topics to committees, as had

been done at the United Nations Conference on the Law of the Sea and as was also the regular practice of the General Assembly. Nobody had ever argued, after all, that the inclusion of additional items on the agenda of the General Assembly seriously increased the cost of a session.

11. The Conference on the Law of the Sea could serve as a warning in another respect: the several conventions signed at that Conference had so far received very few ratifications, for the simple reason that States preferred to withhold their final decision until they could survey the over-all picture which would emerge after the second conference. A conference on the single subject of diplomatic intercourse and immunities would also be crowned with apparent success, but the instrument produced would be of little value until it had been widely ratified, and States would again be unwilling to give constitutional approval to a partial solution. The two-year postponement would therefore be fully justified, especially since diplomatic intercourse raised no practical difficulties. The subject was, after all, adequately covered by customary rules which had stood the test of time since the Congress of Vienna and had been duly confirmed by bilateral arrangements and by such multilateral instruments as the Havana Convention of 1928 regarding diplomatic officers. In the life of peoples, two years was but a fleeting moment.

12. In conclusion, he pointed out that the draft amendments would leave the substance of the joint draft resolution virtually intact. It would insert two additional preambular paragraphs referring to the two closely related topics and the work currently in progress on them in the International Law Commission; operative paragraph 1 would be somewhat expanded, in line with the changes made in the preamble; in operative paragraph 2, the date would be changed to 1963 and the site could definitely be stated to be Vienna; and the only other change would be the amplification of paragraph 7. Operative paragraph 3 would still depend on the Committee's final choice between the proposals contained in documents A/C.6/L.456 and Add.1/Corr.1 and A/C.6/L.457/Rev.1 and Add.1. In that connexion, the Ecuadorian delegation hoped that the Committee would approve the former, for however desirable universality might be as a goal—and pending possible changes on the international scene before 1963—practical difficulties of interpretation should be avoided.

13. In those circumstances, the argument that the draft amendments were designed to frustrate the joint draft resolution had no substance. The sponsors of the former had retained all the sound elements of the latter, seeking only to co-ordinate the various opinions expressed.

14. Mr. BELKHODJA (Tunisia) said that his delegation could not support any proposal which would delay the conclusion of a convention on diplomatic intercourse and immunities. Thanks to the efforts of the International Law Commission, that was already within reach, and it only remained to consider, in the words of General Assembly resolution 1288 (XIII), to what body the formulation of the convention should be entrusted. It had been suggested that the Sixth Committee could form itself into a conference for that purpose, but as the Secretary-General's representative had stated at the 633rd meeting, that procedure had not proved entirely satisfactory when it had been

adopted for the Convention on Genocide. It had also been suggested that the conference should be postponed until the subject of consular intercourse and immunities could be taken up in conjunction with that of diplomatic intercourse and immunities; but as the Secretary-General's representative had again stated at the same meeting, such a course was hardly feasible, for the draft articles on consular intercourse and immunities would probably not be ready for six to seven years. The same view had been expressed by the United Kingdom representative, who had in addition suggested, at the 634th meeting, that the early conclusion of a convention on diplomatic intercourse and immunities would serve to hasten and promote the conclusion of conventions on consular intercourse and immunities and on *ad hoc* diplomacy, and that a separate conference on the subject of diplomatic intercourse and immunities alone would be able to deal with the matter more objectively than a committee of the General Assembly. A further objection to the holding of a joint conference on both diplomatic and consular intercourse and immunities was that in many countries the two services in question were regulated by different legislative provisions. For those reasons, his delegation would be unable to support the draft amendments (A/C.6/L.459 and Add.1).

15. His delegation wished to add its name to the list of sponsors of the joint draft resolution (A/C.6/L.455 and Add.1 and 2). It would also support the proposal made in document A/C.6/L.456 and Add.1/Corr.1, while abstaining from voting on the one submitted in document A/C.6/L.457/Rev.1 and Add.1; although firmly devoted to the idea of universality, it felt that the former proposal would avoid the difficulties which would inevitably arise if all countries, without specification, were invited to attend the conference. Lastly, he thanked the Austrian representative for his Government's generous offer to receive the conference at Vienna and to defray part of the costs.

16. Mr. CHAMANDY (Yemen) said that his delegation would vote in favour of the joint draft resolution because it felt that codification of the law of diplomatic intercourse and immunities would help greatly to put relations between States on a sound and healthy basis and to improve the diplomatic atmosphere.

17. He did not support the idea that the Sixth Committee should itself carry out the task of codification; that was not practical in view of the time and work involved, the complexity of the subject and the large number of representatives and experts who would be needed in each delegation.

18. With respect to the meeting place of the conference, he thanked the Austrian representative for his Government's generous offer, but felt that the question should be left to the discretion of the Secretariat, which was undoubtedly best qualified to select whatever place would be financially most suitable.

19. His delegation would vote in favour of the proposal appearing in document A/C.6/L.457/Rev.1 and Add.1, under which all States would be invited to participate in the conference. The subject of diplomatic intercourse and immunities was one which concerned every State in the world and, in accordance with the principle of universality which was one of the pillars of the United Nations, all States should be given an opportunity to take part in its codification.

20. As for the draft amendments submitted in document A/C.6/L.459 and Add.1, his delegation supported

the view expressed by the representative of the United Arab Republic at the 633rd meeting, that the relationship between diplomatic intercourse and immunities and consular intercourse and immunities was not of such an organic nature that it was essential to consider them together. It would therefore vote against those amendments.

21. Mr. DOUC RASY (Cambodia) recalled that at the 634th meeting his delegation, although it was one of the sponsors of the joint draft resolution, had declared itself willing to modify its original position, provided that proof was given of the indivisibility of the subjects of diplomatic intercourse and immunities, consular intercourse and immunities and *ad hoc* diplomacy. Particular attention, it had argued, must be given to the question what influence each of those subjects exerted on the other; for if conventional diplomacy was in no way dependent on *ad hoc* diplomacy or consular intercourse, there would be no point in postponing the formulation of rules on the first subject on the ground that the time was not yet ripe to draft rules on the others. In proposing a conference on all three topics for 1963, the authors of the draft amendments presumably had an exact idea of the connexion between them. He would be interested to know how they envisaged the organization of the conference's work in the event of the adoption of their amendments. If they proposed to allocate the subjects of diplomatic intercourse and immunities, consular intercourse and immunities and *ad hoc* diplomacy to three separate committees, it was difficult to see what advantage would have been gained by dealing with them at one and the same conference.

22. With respect to the proposal contained in document A/C.6/L.457/Rev.1 and Add.1, the problem was to determine what the authors meant by "all States". When that question had been raised at the 634th meeting by the representative of Burma, the Secretary-General's representative had admitted that there was no sure guide as to what States were covered by the expression. If General Assembly resolutions were to be open to varied and contradictory interpretations, however, representatives would be unable to give reliable information to their Governments and the latter would run the risk of being confronted with embarrassing "*faits accomplis*". His delegation, therefore, would be unable to support the proposal in question.

23. Mr. LACHS (Poland) said the opponents of the proposal contained in document A/C.6/L.457/Rev.1 and Add.1 had asserted that the term "all States" might create doubts or complications and that many Member States might be unwilling to participate in a conference with political entities which they did not recognize. It was, however, a matter of long-established practice, backed by legal theory, that recognition or non-recognition did not affect participation in international conferences or even membership in international organizations. An early example was offered by the Fourth International Conference of American States of 1910, which had included amongst its participants two States of which one had not recognized the existence of the other. A similar situation had arisen at the Bolivar Congress of 1926, when one delegation had found itself sitting together with the delegations of two Governments which its own did not recognize. In a broader context, mention might be made of the Congress of the Universal Postal Union at Stockholm in 1924, the European Conference on the

Measurement of Vessels in Paris, 1925, and the meetings in 1927 and 1928 of the Preparatory Commission for the Disarmament Conference. Since it was so obvious that recognition did not determine admission to a conference in which many States took part, no serious practical difficulties need be anticipated in connexion with the proposed conference on diplomatic intercourse and immunities, provided that the proper formula was applied.

24. Turning to the wider issue presented by the conference itself, he said that the draft amendments (A/C.6/L.459 and Add.1) seemed attractive at first sight, and it had been suggested that their adoption would save time and expense by making a single conference responsible for work that would otherwise have to be carried out in stages. So far as the matter of expense was concerned, however, the Austrian representative's statement had clarified the situation. He wished to express his delegation's sincere appreciation of the Austrian Government's offer.

25. As to the element of time, reference had first to be made to General Assembly resolution 1288 (XIII), by the adoption of which the Assembly had declared its support for "the early conclusion of a convention on diplomatic intercourse and immunities". It was now being proposed in the draft amendments that the conference necessary to draft the convention should be postponed until the law of diplomatic intercourse and immunities could be dealt with together with the other related subjects. But by resolution 1288 (XIII) the Assembly had agreed to separate the subject of diplomatic intercourse and immunities from those of consular intercourse and *ad hoc* diplomacy, even though it had been thought at that time that the report on consular intercourse and immunities would be presented earlier than now seemed possible. It would now not be ready for at least two years, and even if the conference was postponed until 1963, as recommended in the draft amendments, there was some doubt whether the report on consular intercourse and immunities and that on the other related subject would be ready even then.

26. The Australian representative had argued (636th meeting) that more time should be allowed for comments to be received from Governments on the draft articles on diplomatic intercourse and immunities (A/3859 and Corr.1, para. 53). But Governments had already been requested twice to submit their comments, and some twenty-five had already submitted them. At the time the United Nations Conference on the Law of the Sea had been called, only twenty-one Governments had sent in comments on the text to be discussed; yet that had not prevented the Conference from being held although its subject had been more complex than the one at present under discussion. Governments which were interested in submitting their comments on the present draft articles had probably all already done so.

27. The proposed amendment to operative paragraph 2 of the joint draft resolution would involve the General Assembly at a future session in a discussion of the place of meeting of the conference. The General Assembly would then be discussing the item for the third time—which would in itself involve extra expenditure, for it could not be contended that debates in the Sixth Committee cost nothing at all. It was thus obvious that the draft amendments would save neither time nor expenditure, as their sponsors seemed to believe.

28. Some delegations had maintained that, in view of the links between the two subjects, it was essential for the law of diplomatic intercourse and immunities to be discussed together with that of consular intercourse and immunities. But the International Law Commission had dealt with diplomatic intercourse and immunities separately, and the General Assembly had treated the subject as an independent item. Thus, experience showed that the two subjects could in fact be separated.

29. Moreover, the draft amendments called for simultaneous consideration of those topics at a time when members, although they were well acquainted with the draft articles on diplomatic intercourse and immunities, had no idea what form the draft on consular intercourse and immunities would take. The General Assembly could not commit itself to holding a special conference to deal with an item on which no actual draft had yet been submitted. That would be a decision without the necessary knowledge of facts. It might not prove necessary to codify the law of consular intercourse and immunities in the form of a multilateral convention. In that respect there was a fundamental difference between diplomatic intercourse and immunities and consular intercourse and immunities. Diplomatic matters and consular matters, though related to each other, had always been considered as distinct, and many States had separate regulations and legislation for each. In the past, diplomatic intercourse and immunities had been regulated by a variety of means including multilateral conventions and bilateral treaties. Experience in connexion with consular intercourse and immunities had been entirely different: nearly all agreements had been reached bilaterally. Accordingly, the codification of the law of diplomatic intercourse and immunities would take place against a background entirely different from that of consular intercourse and immunities. Thus, the International Law Commission's draft articles on consular intercourse and immunities might finally take the form of a code rather than a convention—a possibility which had been recognized by the Commission in chapter III, paragraph 37, of its report on the work of its eleventh session (A/4169). Furthermore, the Special Rapporteur on consular intercourse and immunities had recognized that particular attention should be paid to the need for respecting existing bilateral conventions. No such need arose with respect to diplomatic intercourse and immunities.

30. For all the reasons he had outlined, the Committee should take no decision at the present early stage which might affect the matter of consular intercourse. The only document before it was the draft on diplomatic intercourse and immunities. That draft was ready for further action, and if any importance was attached to the International Law Commission's work, action should be taken without delay. Indeed, the only reason for delaying the matter until 1961 was that a second United Nations conference on the law of the sea would be held in 1960.

31. Mr. NISOT (Belgium) said that the Committee was concerned with three questions: diplomatic intercourse and immunities, consular intercourse and immunities, and *ad hoc* diplomacy. There was less likelihood of reaching agreement on consular intercourse than on diplomatic intercourse and prompt agreement on *ad hoc* diplomacy was even less likely. To refer the three questions to a single conference

would therefore be to risk undue delay or even failure in settling the question of diplomatic intercourse and immunities. In particular, the solution of the latter question would be impeded by associating it with the difficulties which the discussions on the other two questions, or even on one of them, might bring to light.

32. Furthermore, agreements on consular intercourse and immunities and *ad hoc* diplomacy would rest on firmer foundations if they were drafted in the light of the experience gained in the formulation and conclusion of the convention on diplomatic intercourse and immunities. For those reasons, his delegation would be unable to vote in favour of the draft amendments, which it considered unlikely to contribute to the success of the work of codification which the Committee had initiated.

33. He said that in view of Austria's generous offer, he would vote for Vienna as the meeting place of the conference.

34. Mr. JEAN-LOUIS (Haiti) said that the joint draft resolution had been distributed to members before debate on the item in question had started in the Committee. That practice, as the representative of Israel had pointed out (636th meeting), was dangerous, because it tended to confine discussion from the outset to channels that reflected the wishes of the sponsors of the resolution. For example, the joint draft resolution took it for granted that the convention would be elaborated by an international conference of plenipotentiaries, whereas resolution 1288 (XIII) provided that the Assembly should consider at its fourteenth session to what body the formulation of the convention should be entrusted. He agreed with those delegations which felt that the convention should be formulated by the Sixth Committee, a body which would probably be able to do the work more satisfactorily than the proposed conference. Moreover, if the conclusion of the convention was not a matter of urgency—and nobody had maintained that it was—then the Sixth Committee had a definite advantage over a conference which would sit for only six or eight weeks.

35. However, no actual proposal had been made that the convention should be formulated by any body other than a conference of plenipotentiaries and his delegation would not present a formal proposal to that effect. Accordingly, it would support the joint draft resolution with the draft amendments.

36. Mr. ZEPOS (Greece) said that the draft amendments contained in document A/C.6/L.459 and Add.1 amounted to the postponement of a question whose successful settlement would promote and facilitate friendly relations and co-operation between States. The sole reasons advanced by the advocates of postponement were those of uniformity and economy.

37. As to uniformity, the existence of a close relationship between diplomatic intercourse and immunities

and consular intercourse and immunities did not render consideration of the two subjects at a single conference in any way indispensable. The only valid reason for postponement would be that the topic which would not be ready for consideration until a later date decisively influenced the topic which was now ready for consideration. That was not, however, the case. Indeed, it was the first subject—diplomatic intercourse and immunities—which was decisive. Furthermore, if a convention on consular intercourse and immunities was prepared at a later date, the body responsible for the work would have at its disposal for study the convention, which would then have been concluded, on diplomatic intercourse and immunities; and the draft articles on consular intercourse and immunities would in any event have been co-ordinated with the convention on diplomatic intercourse and immunities by the International Law Commission before they were submitted to the General Assembly. The argument for postponement for reasons of uniformity therefore fell to the ground. As to economy, some representatives had already suggested that the final work on consular intercourse and immunities and on *ad hoc* diplomacy could very well be done by the Sixth Committee itself. He fully agreed with that view, particularly as those subjects were of a secondary nature. If the work was organized in that way, no special conference would be required to deal with the two remaining topics, and costs would be reduced rather than increased. On the other hand, if the proposed conference had to deal with three subjects instead of one, expenditure would undoubtedly increase as a result of the more complicated organization which would be necessitated.

38. For those reasons, his delegation could not agree to a postponement of the conference for the preparation of a convention on diplomatic intercourse and immunities, and urged the Committee to delay no further in approving an appropriate resolution.

39. As to the place and time of the conference, he greatly appreciated the Austrian representative's generous offer, and provided that no technical difficulties were involved his delegation would with pleasure vote for acceptance of the Austrian Government's invitation.

40. So far as concerned the question of participation in the conference, it was clear that the adoption of the proposal contained in document A/C.6/L.457/Rev.1 and Add.1 would raise political and technical problems. For that reason, the joint draft resolution (A/C.6/L.455 and Add.1 and 2) should be adopted as amended by document A/C.6/L.456 and Add.1/Corr.1.

41. Mr. ESCOBAR (Colombia) moved the adjournment of the meeting.

The Colombian motion was adopted by 39 votes to 24, with 5 abstentions.

The meeting rose at 5.50 p.m.