

GENERAL ASSEMBLY

FOURTEENTH SESSION

Official Records

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SIXTH COMMITTEE, 632nd MEETING

 Thursday, 12 November 1959,
at 3.25 p.m.

NEW YORK

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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 6, A/C.6/L.455, 456, 457/Rev.1) (*continued*)

1. Mr. NISOT (Belgium), speaking on a point of order, said that the Committee was not called upon to take a decision on the substance of the draft articles adopted by the International Law Commission (A/3859 and Corr.1, para. 53); they were to be examined by the diplomatic conference.

2. Mr. TUNCEL (Turkey) wished to state his delegation's position on General Assembly resolution 1288 (XIII), particularly on operative paragraphs 4 and 5.

3. With regard to the organ which should prepare an international instrument on diplomatic intercourse and immunities, his delegation favoured the convening of a diplomatic conference with the task of preparing, if possible, a convention, as envisaged in the resolution.

4. The instrument to be adopted, however, should take the form of a convention only on two conditions. The first was that the convention should contain a clause similar to article 45 of the International Law Commission's draft (A/3859, para. 53) which made provision in the last resort for the compulsory jurisdiction of the International Court of Justice in the case of any dispute concerning the interpretation and application of the convention. Should such jurisdiction be only optional, as certain Governments had advocated in their comments (A/4164 and Add.1 to 6), there would be nothing to guarantee respect for the obligations undertaken by the parties. The second condition was that the final clauses to be worked out by the conference of plenipotentiaries should include a clause allowing for the possibility of reservations. If those two conditions could not be met, it would be advisable for the future conference to adopt an instrument other than a convention. In that respect, any support the Turkish delegation might give, at the current session, to a draft resolution should not be considered as prejudging Turkey's ultimate position on the form of the instrument to be adopted.

5. As for the terms of reference of the future conference, resolution 1288 (XIII) stated clearly that it would have the task of studying the draft articles of the International Law Commission on diplomatic

intercourse and immunities with a view to the conclusion of a convention. The Turkish delegation had always recommended the convening of a single conference which would examine simultaneously drafts relating to the three fields of modern diplomatic law, namely, diplomatic intercourse and immunities, consular intercourse and immunities, and *ad hoc* diplomacy, a procedure which would present advantages both from the theoretical and doctrinal standpoint and from the practical and budgetary standpoint. Such a conference might be convened in 1962, since the International Law Commission's drafts on consular intercourse and immunities and *ad hoc* diplomacy were to be submitted to the General Assembly in 1961. The question of diplomatic intercourse and immunities was in no way urgent and the procedure he suggested would make it unnecessary to convene a new conference at a later stage.

6. Mr. CACHO ZABALZA (Spain) said he would confine himself strictly to the specific question before the Committee, without examining the substance of the draft articles of the International Law Commission. That draft, however, would deserve careful study, since the Commission had not merely recapitulated the accepted rules of customary international law but had also drafted new rules on all points not covered by positive international law. The difficulty, of course, was to secure the adhesion of States to those new rules.

7. On the question of what body the formulation of a convention should be entrusted—the Sixth Committee, the General Assembly or a special conference—the proposals before the Committee (A/C.6/L.455, 456 and 457/Rev.1) revealed a general preference for a conference of plenipotentiaries which, indeed, appeared to be the best solution in view of the divergence of views between States. It was essential, however, that all States which, directly or indirectly, had relations with the United Nations should be invited to the conference.

8. With that reservation, the Spanish delegation would support the joint draft resolution (A/C.6/L.455) recommending the convening of a conference in New York, Geneva or Vienna at the end of 1961, provided that paragraph 3 of that draft was the one contained in document A/C.6/L.456.

9. Mr. HU Ching-yu (China) expressed regret that the Committee was taking up so late in the session the question of diplomatic intercourse and immunities, which was the most important item on its agenda.

10. The joint draft resolution was obviously based on the provisions of General Assembly resolution 1228 (XIII) but a close look at the latter showed that it did not preclude the Committee from itself elaborating the desired convention. The Chinese delegation felt that that was the course the Committee should follow.

11. It was important to arrest the tendency which the Committee had shown in recent years to confine itself to procedural questions or the procedural aspects of substantive matters submitted to it. The Committee was perfectly competent to draft international instruments fit for signature, as it had done in the case of the Convention on Genocide in 1948, especially as in the present case the International Law Commission had sufficiently prepared the ground.

12. Furthermore, most of the members of the Sixth Committee were already familiar with the question, which had been examined at the thirteenth session of the General Assembly, and the members of the International Law Commission, particularly its Chairman, who were present in the Sixth Committee were in an excellent position to give it all the necessary explanations.

13. Lastly, what need was there for recourse to the luxury of a new conference which would represent a heavy burden, in many respects, for the participating States? He reminded the Committee that, at the thirteenth session, the representative of Costa Rica had stated, at the 570th meeting of the Sixth Committee, that financial considerations might prevent his country from participating in a conference of plenipotentiaries. Participation in that conference should be as broad as possible and other States might find themselves in the same difficulties as Costa Rica.

14. For those reasons, the Chinese delegation hesitated to support the joint draft resolution. However, it was ready to go along with the opinion of the majority if it favoured the adoption of that text, since it raised purely procedural questions. In that event, his delegation would recommend that the proposed conference should take place at United Nations Headquarters; that would facilitate the task of the Secretariat, reduce costs and enable Member States to use the services of their permanent missions.

15. Mr. ALONSO LIMA (Guatemala) said he wished first to emphasize, as his delegation had already done during the thirteenth session—at the 574th meeting of the Sixth Committee—that article 35 on "Acquisition of nationality" and article 45 on "Settlement of disputes" of the draft articles of the International Law Commission (A/3859, para. 53) were drafted in terms incompatible with the Constitution of his country and that Guatemala would accordingly make reservations concerning them in due course.

16. With regard to the question to what body the formulation of a convention should be entrusted, experience showed that the Sixth Committee would be unable to undertake that task itself, in view of the limited time it had at each session to examine a number of important questions.

17. His delegation thought that a conference of plenipotentiaries should not be convened until such time as it would be in a position to draft not only a convention on diplomatic intercourse and immunities, but also conventions on ad hoc diplomacy and consular intercourse and immunities, particularly in view of the connexion between conventional and ad hoc diplomacy and the analogies between diplomatic and consular intercourse.

18. However, in its desire to promote the progressive development and codification of international law, in accordance with the purposes and principles of the

Charter, his delegation was prepared to conform to the opinion of the majority, if that majority was in favour of a conference of plenipotentiaries to formulate a convention on diplomatic intercourse and immunities.

19. Mr. PERERA (Ceylon), on behalf of the sponsors, presented the joint draft resolution (A/C.6/L.455).

20. He reminded the Committee that the question was purely one of procedure. Resolution 1288 (XIII) was definitive and the draft before the Committee was the logical conclusion of the previous debates in the General Assembly.

21. At its tenth session, the International Law Commission had, under article 23, paragraph 1 (c) of its Statute, recommended to the General Assembly (A/3859 and Corr.1, para. 50) that the draft articles should be recommended to Member States, and must accordingly have considered them to be a final draft. Under operative paragraph 5 of Assembly resolution 1288 (XIII) the Sixth Committee merely had to decide to what body the formulation of the convention should be entrusted, without going into the substance of the question.

22. It was the general opinion that the forty-five draft articles could not be considered during a regular session of the General Assembly. The sponsors of the joint draft resolution had accordingly provided in paragraph 1 for the convening of a conference of plenipotentiaries. With regard to the place where that conference should be held, to which paragraph 2 referred, various arguments could be presented in favour of New York, Geneva or Vienna, the Austrian delegation having issued an invitation to hold the conference in the last-named city. Before making a choice it would doubtless be appropriate to study the financial implications of all three possibilities.

23. When it had adopted resolution 1288 (XIII), the General Assembly had clearly indicated that it had abandoned all hope of being able to examine the draft articles on consular intercourse and immunities and those on ad hoc diplomacy at the same time as the draft articles on diplomatic intercourse and immunities. The study of the last-named draft should not be deferred under the pretext that the International Law Commission would submit the other two drafts at a later date. On the contrary, it was the General Assembly's duty to see that an international convention on diplomatic intercourse and immunities was formulated as soon as possible.

24. Lastly, he pointed out that in accordance with the precedents established by the General Assembly, for example in the case of the United Nations Conference on the Law of the Sea, the sponsors of the joint draft resolution had provided in paragraph 7 that chapter III of the report of the International Law Commission (A/3859 and Corr.1) was to constitute the basis for the work of the conference. He also explained that the sixteen sponsors had wanted to submit their draft resolution jointly in order to bring out the extent of the agreement on the principle of convening a conference, but that they had had to leave operative paragraph 3 blank, because they were not all agreed as to the membership of the conference. It must be recognized, however, that despite that partial disagreement, great progress had been made towards universality.

25. He would comment later on certain points of detail.

26. Mr. MOROZOV (Union of Soviet Socialist Republics) noted with satisfaction that the recommendation made by the International Law Commission with a view to the conclusion of an international convention on diplomatic intercourse and immunities was winning increased support among Members. The fact that sixteen Governments had agreed jointly to submit the draft resolution (A/C.6/L.455) made it permissible to predict that the resolution adopted at the current session would receive unanimous support in the General Assembly.

27. In article 3 (e) of its draft (A/3859 and Corr.1, para. 53), the International Law Commission proposed for the first time the insertion in the enumeration of the functions of a diplomatic mission, of a provision indicating that one of those functions consisted of "promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations". The idea expressed in that provision, which was in conformity with the purposes and principles of the United Nations as defined in the Charter, should govern all measures taken for the progressive development of international law in order to facilitate a satisfactory settlement of existing international problems. He wished to pay a tribute to the Czechoslovak Government, at whose initiative that provision had been adopted.

28. The very complete draft prepared by the International Law Commission was consistent with the generally accepted principles of international law and international practice. His delegation was gratified to note that many other delegations agreed with it that the draft articles could be adopted as the working basis for the formulation of an international convention. The conclusion of such a convention would be an important step forward in the field of the progressive development of international law and its codification. His delegation had already had the opportunity to state its view that the conclusion by Governments of multilateral treaties prescribing their legal obligations was the best means of ensuring that progressive development. By endeavouring to conclude international conventions based on the results of the work of the International Law Commission or of other United Nations organs and by scrupulously complying with their provisions, Members would help to achieve the purposes and principles of the Charter.

29. The Turkish representative, in arguing that the question of diplomatic intercourse and immunities was not one of any special urgency, had declared that it should be considered at the same time as other questions relating to the same branch of international law. He could not accept that view. Even disregarding the political advantage to be gained by strengthening friendly relations between States by means of an international convention on the subject, clearly the method proposed would hardly be practical. The simultaneous examination of several International Law Commission drafts by a conference consisting of a hundred or so States would require a great deal of time and effort. Furthermore, with the formulation of a convention on diplomatic intercourse and immunities, it would become possible to settle a number of important problems, and that would inevitably facilitate the study of *ad hoc* diplomacy and of the relations between States and international organizations. His

delegation would go even further and maintain that consideration of the question of consular intercourse and immunities would be more fruitful and constructive if undertaken separately, after the conclusion of a convention on diplomatic intercourse and immunities, as it would then be possible to give the special aspects of that question all the attention they deserved and to find the solution that the common interest demanded.

30. The Turkish delegation's forecast of the date on which the other International Law Commission's drafts would be ready seemed over-optimistic. The Soviet delegation, for its part, having regard to what the Commission's Chairman had said at the 601st meeting, did not think that they would be completed for four or five years. Even if the Commission were to work exclusively on those drafts, it would not be in a position to submit them in time for a conference to be held in 1962.

31. Recalling that in many cases in the past the Sixth Committee had refused to invest International Law Commission drafts with the authority of the United Nations, whenever it considered that they did not meet requirements of the progressive development of international law, and that it had sometimes preferred to take a procedural decision rather than pass on the text submitted to it, he pointed out that the present position was entirely different. The Committee had before it a document of very great international significance which was likely to promote friendly relations between States and which could readily be put into shape, with such additions or amendments as States might propose, for embodiment in an international convention. It was the Committee's duty not to delay the preparation of that convention indefinitely and the USSR delegation, for its part, strongly supported the joint draft resolution. It considered it preferable to entrust the formulation of the convention to a diplomatic conference, which could easily split up into committees and obtain the assistance of experts who could not always take part in the Assembly's work, rather than to the Sixth Committee, which did not have the necessary time and which had other questions on its agenda.

32. With regard to the date of the conference, the USSR delegation considered that it should be held not later than the spring of 1961; so far as the meeting-place was concerned, it was willing to study any proposals which might be made in the matter, including the possibility of holding the conference at Vienna, if the Austrian Government repeated its invitation; it would be desirable, however, to ascertain beforehand the financial implications of the various solutions envisaged in the joint draft resolution. According to informal estimates, it appeared that the cost would be three times as great if the conference was held at Geneva rather than at New York. He would be glad if the representative of the Secretary-General would inform the Committee of the financial implications of the decision it would have to take in the matter.

33. Lastly, with regard to the membership of the conference, he recalled that his delegation had always maintained that no State should be deprived of the right to participate in international conferences of the kind now under consideration. In the present case the subject of discussion was one of particular importance and all States which wished to do so should be allowed to take part in the conference in order to

give it every chance of success. Any attempt to prevent their participation would be contrary to both the letter and the spirit of the Charter. The Soviet Union delegation could not agree to the proposal contained in document A/C.6/L.456, which established a policy of discrimination against certain States and which the United Nations could not tolerate if it wished to retain its international authority. His delegation supported the proposal contained in document A/C.6/L.457/Rev.1 since it considered that an invitation to all States to participate in the conference would promote international co-operation and contribute to the solution of the problems with which the conference was to deal.

34. Mr. Maxwell COHEN (Canada) agreed with the USSR representative that it would facilitate and certainly shorten the discussion, if the Secretary-General could provide some details of the financial implications of the various possible solutions. The estimate should indicate not only what the cost would be in each case of holding the conference in New York, Geneva and Vienna, but also what it would be if, in addition to the question of diplomatic intercourse and immunities, the conference were to examine the related questions mentioned during the debate. The Secretary-General might also indicate what would be the cost of separate conferences on each of those questions.

35. Mr. STAVROPOULOS (Legal Counsel) said that a draft report had been prepared but that he would prefer to study it in detail with the Office of the Controller before giving the Committee the necessary information, which would, in any event, have to meet the Canadian representative's request for additional data. He expected to be able to provide the information at the 633rd meeting.

36. Mr. NINCIC (Yugoslavia) said that the work at the thirteenth session had led to broad agreement on a number of points. First, it had been more or less generally agreed that the question of diplomatic intercourse and immunities was admirably suited for codification and that an international instrument on the subject would provide the precision and clarity which had sometimes been lacking in the past. In other words, in spite of the doubts which had been expressed by a few delegations, and many of which had subsequently been removed in any case, the general sentiment was favourable to the drafting of a convention on diplomatic intercourse and immunities. Secondly, the draft prepared by the International Law Commission had been considered an excellent basic document, which took into account the practice of States, the traditional rules of international law and the new elements which the conditions of the modern world had introduced. The comments by Governments confirmed that there was almost general agreement on that point, in spite of the reservations which some Governments had regarding different articles of the draft. Lastly, the General Assembly, considering that the necessary preparatory work had been completed, had declared itself in favour of the early conclusion of a convention and had adopted resolution 1288 (XIII) to that effect.

37. As those important preliminary questions had been settled, all that now remained was to decide on the procedure to be followed for the formulation of the convention. The Yugoslav delegation, having weighed the respective advantages and disadvantages of the

question's being considered by the Sixth Committee and by a conference of plenipotentiaries, had reached the conclusion that the latter solution would be the more practical and effective, in view of the fact that a diplomatic conference convened solely for the purpose of formulating the convention would naturally be better able to devote the necessary time and effort to the work than the Sixth Committee, which had many other tasks. The experience of the first United Nations Conference on the Law of the Sea was, moreover, encouraging in that regard.

38. In conclusion, he expressed the hope that the Committee would propose the convening of an international conference on diplomatic intercourse and immunities at an early date and that it would, therefore, adopt the joint draft resolution, of which Yugoslavia was a co-sponsor. He was confident that that text would have the support of the vast majority of the Committee members and that the convention on diplomatic intercourse and immunities would constitute a milestone in the development of international law.

39. Mr. MARSCHIK (Austria) said that the joint draft resolution showed that, in the view of many delegations, the time had come for a codification of the rules relating to diplomatic intercourse and immunities and that a conference of plenipotentiaries should be convened for the purpose at an early date. He recalled that at the 577th meeting of the Sixth Committee, the Austrian representative had, on behalf of his Government, invited the conference to meet at Vienna. He wished to renew that invitation. Austria would be particularly honoured if the conference could take place in its capital and would consider that a particularly happy way of commemorating the Congress of Vienna of 1815.

40. Mr. TUNCEL (Turkey), replying to the representatives of the USSR and Ceylon, said that he had not had any desire to have the conference postponed indefinitely and that his comments had been prompted mainly by considerations of economy and expediency. In its work, the International Law Commission had endorsed the traditional distinction between diplomatic privileges and immunities and those extended to consular agents. The consular function had, of course, a separate origin, but in the modern world consuls were being chosen increasingly from among government officials and they enjoyed privileges and immunities which were very similar to diplomatic privileges and immunities. The situation had therefore changed considerably; not only was the International Law Commission studying those two categories of privileges and immunities separately, but in 1958, it had added a third field—that of *ad hoc* diplomacy—and, in 1959, at the request of the General Assembly (resolution 1289 (XIII)), it had added another related item to its programme of work, namely, relations between States and inter-governmental organizations. It was clear, therefore, that the International Law Commission endorsed the traditional doctrine on which all manuals of diplomatic law were based. As representatives of their Governments, the members of the Sixth Committee were not obliged to adopt the same attitude; they could be influenced by considerations of expediency as well as by technical considerations; they were free, if they saw fit, to decide that different questions which were obviously inter-related should be considered together.

41. The USSR representative had been somewhat pessimistic about the time it would take the International Law Commission to finish its work on consular intercourse and immunities and on ad hoc diplomacy. He himself wished to emphasize that he had based his previous remarks on the report of the International Law Commission covering the work of its eleventh session (A/4169, paras. 30 and 44) and on the statement made by its Chairman at the beginning of the present session. Although it was true that the General Assembly would have the relevant reports of the International Law Commission by 1961, there was really no reason not to wait one more year before convening the conference of plenipotentiaries, in 1962.

42. Sir Gerald FITZMAURICE (United Kingdom) said that the International Law Commission hoped to complete the first draft on consular intercourse and

immunities by 1960. It had allowed one year instead of two for Governments to comment on that text so that the final report might be submitted to the General Assembly in the normal way at its sixteenth session. It was more doubtful that the draft on ad hoc diplomacy could be ready within the period envisaged by the Turkish representative. Of course, it would not be at all impossible for a single conference to examine several questions at the same time, as had been the case for the first United Nations Conference on the Law of the Sea, but, as the General Assembly had declared itself in favour of the early conclusion of a convention on diplomatic intercourse and immunities, it would seem more appropriate to convene the conference which was to draft it at an early date.

The meeting rose at 5.25 p.m.