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QUESTION OF DIPLOMATIC PRIVILEGES AND IMMUNITIES

Report of the Sixth Committee

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I. INTRODUCTION

1. At its 1592nd plenary meeting, held on 25 October 1967, the General Assembly decided to include the following item in the agenda of its twenty-second session:

"Question of diplomatic privileges and immunities:

"(a) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;

"(b) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations."

2. At the same meeting the General Assembly allocated the item to the Sixth Committee for consideration and report. The Sixth Committee examined the item at its 1010th to 1017th meetings, held between 29 November and 7 December 1967.

3. In a note dated 20 September 1967 (A/6832) the Secretary-General requested the inclusion in the agenda of an item entitled "The situation which has arisen between Guinea and the Ivory Coast involving section 11 of the Convention on the Privileges and Immunities of the United Nations". The situation referred to had previously been the subject of a report by the Secretary-General to the Security Council (S/8120 and Add.1 and 2) and to the general membership (ST/SG/REP/1 and Add.1 and 2). In a note issued on 27 September 1967 (A/6832/Rev.1) the Secretary-General requested the inclusion of an item entitled "Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations". In the explanatory memorandum attached to his note, the Secretary-General stated that in the light of recent developments he considered that the immediate practical issue had been resolved and expressed the hope it would now be possible for the two Governments concerned to renew close and friendly ties. Nevertheless, he felt that an immediate question of principle had arisen concerning the privileges and immunities specified in Article 105 of the Charter of the United Nations and section 11 of the Convention on the Privileges and Immunities of the United Nations. The Assembly might therefore

consider it timely to reaffirm those principles and to call upon all Member States to ensure that their representatives to United Nations organs and to conferences convened by the United Nations enjoyed immunity from arrest or detention during their journeys to and from the meetings. The Secretary-General declared that he regarded the item as now having a purely legal and formal character, which the Assembly might wish to consider only as a matter of general principle within a legal and formal framework.

4. The General Committee considered the Secretary-General's request at its 170th, 171st and 172nd meetings, on 29 September, 5 October and 18 October 1967. Following the 171st meeting the United States representative sent a letter to the President of the General Assembly (A/6837), repeating a request which had been made in the General Committee that the topic to be considered by the General Assembly should be widened by the inclusion in the agenda of an additional item entitled

"Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations as well as the obligations of States concerning the protection of diplomatic personnel and property."

He also stated that it was the intention of the United States to renew in the General Committee a proposal that this item, together with that of the Secretary-General, should be included in the agenda as separate sub-headings of an item entitled "Question of diplomatic privileges and immunities". The combined agenda item would read as follows:

"Question of diplomatic privileges and immunities:

"(a) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations;

"(b) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations as well as the obligations of States concerning the protection of diplomatic personnel and property."

5. At the 172nd meeting of the General Committee, on 18 October 1967, the representative of Jordan proposed to amend the item submitted by the United States by the insertion of the phrase "and the privileges and immunities of the staff and of the Organization itself" after the words "convened by the United Nations". The amendment was accepted by the representative of the United States. An amendment put forward by the representative of Dahomey, reversing the order of sub-items (a) and (b) as proposed by the United States, was accepted by the General Committee. The agenda item, as so revised, was then adopted by the General Committee and, subsequently, by the General Assembly (see paragraph 1 above).
6. Besides the documents referred to above, reference was also made during the Sixth Committee's discussions to a Secretariat study "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities" (A/CN.4/L.118 and Add.1 and Add.2).

II. PROPOSALS

7. A draft resolution proposed by Algeria, Burundi, Congo (Brazzaville), Mauritania, Somalia, Sudan, Uganda, United Arab Republic, United Republic of Tanzania and Zambia (A/C.6/L.633) was circulated on 29 November 1967. The draft resolution read as follows:

"The General Assembly,

"Having considered agenda item 98 (b) entitled "Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations", which was inscribed on the proposal of the Secretary-General,

"Recalling the provisions of Article 105 of the Charter of the United Nations and, in particular, paragraph 2, which, inter alia, accords to representatives of the States Members of the United Nations such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

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"Recalling further section 11 of the Convention on the Privileges and Immunities of the United Nations and, in particular, the specific immunity from personal arrest or detention accorded by the Convention to representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations during their journey to and from the place of meeting,

"1. Reaffirms the provisions of Article 105 of the Charter of the United Nations and section 11 of the Convention on the Privileges and Immunities of the United Nations;

"2. Urgently requests all Member States to ensure that representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations enjoy, during their journey to and from the place of meeting, the privileges and immunities to which they are entitled."

8. A draft resolution which was circulated on 1 December 1967, sponsored by Dahomey, Madagascar, Niger and Rwanda (A/C.6/L.634), later joined by Cameroon, Central African Republic and Chad (A/C.6/L.634/Add.1) and, subsequently, by Togo (A/C.6/L.634/Add.2), provided as follows:

"The General Assembly,

"Having considered the question of diplomatic privileges and immunities,

"Recalling Article 105 of the Charter of the United Nations,

"Recalling its resolution 22 (I) of 13 February 1946 relating to the General Convention on the Privileges and Immunities of the United Nations, and its resolution 179 (II) of 21 November 1947 relating to the Convention on the Privileges and Immunities of the Specialized Agencies,

"Recalling also the Vienna Convention on Diplomatic Relations, which came into force on 24 April 1964,

"Convinced that the purpose of these conventions will be fully achieved only if all States accede to them and respect their provisions,

"1. Reaffirms the provisions of Article 105 of the Charter of the United Nations and the provisions of the above-mentioned conventions;

"2. Further reaffirms the obligations on States arising from these conventions, especially as regards the protection of diplomatic staff and property;

"3. Requests the Member States which are not parties to these conventions to accede to them as soon as possible and, pending such accession, to grant the benefits of the privileges and immunities provided for in the said conventions;

"4. Appeals to the States parties to these conventions to ensure that the privileges and immunities specified in them are respected and to take all action necessary to ensure the application of the said conventions;

"5. Reaffirms the procedure provided for in these conventions for the settlement of disputes arising out of the interpretation or application thereof, and in particular the procedure provided for in section 30 of the Convention on the Privileges and Immunities of the United Nations in so far as that Convention is concerned."

9. A draft resolution was submitted on 4 December 1967 by Austria, Chile, Dominican Republic, Guatemala, Honduras, India, Mexico, Sweden, Uruguay and Yugoslavia (A/C.6/L.635). At the 1015th meeting of the Sixth Committee the representative of India, on behalf of the sponsors, revised the draft resolution so as to include in the preamble, immediately after the words "The General Assembly", a paragraph beginning "Having considered the item entitled:", followed by the title of the item (A/C.6/L.635/Rev.1). The sponsors listed above were joined by Finland, Indonesia and Nigeria (A/C.6/L.635/Rev.1) and by Belgium, Denmark and Norway (A/C.6/L.635/Rev.1/Add.1). The draft resolution, as revised, was identical with that adopted and proposed by the Sixth Committee (see paragraph 25 below).

III. DEBATE

A. General observations

10. There was widespread agreement on the importance of diplomatic privileges and immunities for the maintenance of friendly relations between States and for the effective conduct of international organizations. As many speakers noted, it had been recognized since the earliest times that the representatives sent on behalf of one State to another should enjoy a special status so as to enable them to perform their functions under conditions of adequate security and without being subject to pressures or constraint on the part of transit or receiving States. The same considerations applied, mutatis mutandis, in the

case of representatives of Member States to the United Nations and with respect to the Organization itself and its staff. The development of international organizations since 1945, the availability of rapid means of transport and the increase in the number of independent States had, indeed, all served to emphasize the significance of the relevant international rules and agreements.

11. As one representative observed, privileges and immunities were not a favour which was granted but a prerequisite for the fulfilment of diplomatic functions, and they were designed to ensure the maintenance of official contacts at all times. Because the recognized principles and practices of diplomatic privileges and immunities were essential for the meaningful conduct of international affairs, it was said that a failure to observe those principles and practices constituted not merely a threat to the relations between the States immediately involved, but was of concern to the international community as a whole. Having regard to this fact and to the central position of the United Nations in present-day international relations, all speakers endorsed the suggestion that the General Assembly should take the opportunity to reaffirm unequivocally the importance of scrupulous respect for privileges and immunities. While representatives and States were under an obligation for their part not to abuse the privileges and immunities which were granted, it was felt that an appeal should be made to States to take all proper measures to secure the implementation of the rules concerned. By so doing, it was said the General Assembly would help to reverse the apparent trend to disregard the privileges and immunities owed to official missions and their staff.

12. The rules governing privileges and immunities were stated to have acquired the status of norms of international law, major steps in this process being the adoption in 1946 of the Convention on the Privileges and Immunities of the United Nations and in 1961 of the Vienna Convention on Diplomatic Relations, both prepared under United Nations auspices. As one representative pointed out, the topic under discussion did not involve a difficulty with regard to the content of the law, which from a juridical standpoint was clear and well-developed, but ensuring that the provisions in question were invariably respected. As a means towards that end many speakers expressed the hope that States which had not yet done so would become parties to the 1946 Convention and to the Vienna Convention on Diplomatic Relations. It was stated by one of the sponsors of draft

resolution A/C.6/L.635 that the appeal which was made in that proposal, that States which had not yet done so should become parties to those Conventions, was without prejudice to the constitutional and administrative procedures required in various countries.

13. During the debate reference was made to a number of specific incidents and disputes involving the application of privileges and immunities, in particular to the situation referred to in the Secretary-General's report contained in document S/8120 and Add.1 and 2 and ST/SG/REP/1 and Add.1 and 2. Many representatives expressed their appreciation of the efforts of the Secretary-General which had contributed to the practical resolution of that situation.

B. Observations relating particularly to the privileges and immunities of the representatives of Member States to the United Nations, and of the Organization and its staff

14. The need for the representatives of Member States to the United Nations, the Organization and its staff, to enjoy appropriate privileges and immunities was recognized by all speakers. It was emphasized that if Member States wished the work of the Organization to be properly carried out, they must be prepared to observe strictly the immunities designed to secure the free and successful performance of its functions. It was generally agreed that the Organization itself had an interest in the enjoyment by the representatives of Member States of the privileges and immunities necessary to enable them to carry out their tasks and that the Secretary-General should maintain his efforts to ensure that the privileges and immunities concerned were respected.

15. As regards the content of those privileges and immunities, reference was made to the provisions of Article 105 of the Charter of the United Nations and to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly in 1946 in order to determine the details of the application of paragraphs 1 and 2 of that Article. The view was expressed that the contents of the 1946 Convention now formed part of general international law between the Organization and its Members and were accordingly binding on States even in the absence of an express act of accession. Attention was also drawn to the obligations imposed on Member States under Article 105 of the Charter,

irrespective of their specific accession to the Convention. In the light of the appeal in paragraph 2 of the draft resolution contained in document A/C.6/L.635/Rev.1, that Member States which had not yet done so should accede to the 1946 Convention, two representatives explained that, despite the statement by one of the sponsors of that draft resolution that the request was without prejudice to internal constitutional and administrative procedures, their delegations would be obliged to abstain in a separate vote on that provision. One of the two representatives also abstained in the vote on the draft resolution.

16. As regards the position at United Nations Headquarters, reference was made to the fact that the Host State was not yet a party to the Convention on the Privileges and Immunities of the United Nations. It was stated that it was anomalous that although the Headquarters Agreement between the United Nations and the United States and the 1946 Convention were said in the former instrument to be complementary, the United States had nevertheless not acceded to the general agreement. The hope was expressed that the United States would in fact take the necessary steps to become a party to the 1946 Convention and so regularize the situation. Some representatives drew attention to what they considered were other unsatisfactory features of the present arrangements. Besides references to specific incidents which had occurred, the application by the Host State of the principle of reciprocity in determining the treatment to be given to the representatives of individual Member States was criticized on the ground that this principle was inappropriate outside the framework of bilateral relations. One representative declared that the practice whereby permanent observer status was given only to the representatives of States which, although not members of the United Nations, were members of one or more of the specialized agencies and were generally recognized by Members of the United Nations, was arbitrary and discriminatory.

17. In replying to the criticisms made regarding the position at United Nations Headquarters, the representative of the United States declared that his country had made, and was making, every effort to solve problems as they arose and to discharge its responsibilities under the Charter and other governing legal instruments, in good faith and to the best of its ability. He denied that his Government had in any way created difficulties hampering the legitimate functioning of any Member State. While there were, of course, unavoidable

inconveniences and even injuries, which occurred despite the best efforts of governmental authorities to prevent them, these should be sharply distinguished from incidents involving the tacit or deliberate participation of Governments, which constituted the main threat to the viability of the system of privileges and immunities.

18. At the close of the Committee's discussion of the item on 6 December 1967, the Legal Counsel, speaking as the representative of the Secretary-General, made a statement (A/C.6/385) at the 1016th meeting of the Sixth Committee. In his statement the Legal Counsel expressed the view that the obligations of Member States under the 1966 Convention, including those affecting representatives of other Members, were obligations to the Organization and that the Secretary-General had an interest and a role in their protection and observance. Secondly, he declared that the privileges and immunities under discussion were obligatory for all Members, whether or not they had acceded to the Convention, by virtue of the obligations contained in Article 105 of the Charter. Article 105 created a direct obligation on all Members to accept the privileges and immunities necessary for the fulfilment of the purposes of the Organization and the exercise of functions of representatives and officials. Certain of the privileges and immunities which the General Assembly deemed to be necessary in all Member States were defined in the Convention whose standards and principles had been so widely accepted as to have become a part of general international law governing the relations between States and the United Nations.

19. At the conclusion of the Legal Counsel's statement the Chairman proposed that the Committee should not discuss the statement but that this action should not be taken to imply that the Sixth Committee had adopted any position with regard to it. On this understanding it was unanimously decided that the entire statement should be circulated as a Committee document (A/C.6/385).

IV. VOTING

20. At its 1016th meeting on 6 December 1967 the Sixth Committee decided to vote first on draft resolution A/C.6/L.635/Rev.1 and Add.1. The representative of Algeria announced that the sponsors of draft resolution A/C.6/L.633 would not insist that it be put to the vote. The representative of Dahomey announced that the sponsors of draft resolution A/C.6/L.634 and Add.1 and 2 would not

insist that it be put to the vote if draft resolution A/C.6/L.635/Rev.1 and Add.1 was adopted. The Committee then proceeded to vote on draft resolution A/C.6/L.635/Rev.1 and Add.1.

21. At the request of the representative of Venezuela a separate vote was taken by roll-call on paragraph 2 of the draft resolution which was adopted by 84 votes to none, with 4 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Chad, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Syria, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Yugoslavia, Zambia.

Against: None.

Abstaining: Botswana, Colombia, Portugal, Venezuela.

22. In a separate vote, requested by the representative of France, paragraph 3 of the draft resolution was adopted by 83 votes to 2, with 2 abstentions.

23. In a roll-call vote requested by the representative of Guinea, the draft resolution as a whole was adopted by 88 votes to none with 1 abstention.

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Chad, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Kuwait, Lesotho, Liberia, Libya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Syria, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Venezuela, Yugoslavia, Zambia.

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Against: None.

Abstaining: Colombia.

At the 1017th meeting of the Committee the representative of Cameroon stated that by an error his delegation had not been present during the voting but that if it had been present it would have voted for paragraphs 2 and 3 and for the draft resolution as a whole.

24. Statements in explanation of vote were made before the vote at the 1016th meeting by the representatives of Syria, Australia, the United Arab Republic, Iran, Spain and Venezuela and, following the vote, by the representatives of Guinea, the Ivory Coast and France. At the 1017th meeting of the Committee, on 7 December 1967, a statement in explanation of vote was made by the representative of Colombia. The representative of Venezuela also made a statement at that meeting regarding the voting procedure followed by the Sixth Committee with respect to the draft resolution.

V. RECOMMENDATION OF THE SIXTH COMMITTEE

25. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Question of diplomatic privileges and immunities

The General Assembly,

Having considered the item entitled:

"Question of diplomatic privileges and immunities:

- (a) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;
- (b) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations",

Recognizing the importance of the work of the organs of the United Nations and of conferences convened by it as well as of the contribution of the Organization itself and its officials to the maintenance of peaceful relations and co-operation between States,

Conscious that the unimpeded functioning of the diplomatic channels for communication and consultation between Governments is vital to avoid dangerous misunderstanding and friction,

Recognizing that for the independent exercise of their functions, it is essential that representatives of Member States, the United Nations itself and its officials, as well as diplomatic agents, shall enjoy the necessary privileges and immunities,

Recalling that Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

Recalling further that the Convention of 1946 on the Privileges and Immunities of the United Nations confirms and specifies the provisions of Article 105 of the Charter and lays down rules, inter alia, regarding immunity of the property and inviolability of the premises of the Organization, regarding facilities for its official communications, regarding privileges and immunities of representatives of Members to organs of the United Nations and conferences convened by it, while exercising their functions and during their journey to and from the place of meeting,

Recalling that the rules of international law governing diplomatic relations as embodied in the Vienna Convention of 1961 aim at protecting diplomatic missions and diplomatic representatives and otherwise facilitating their functions,

Conscious of its duty to strengthen by every means peaceful relations and co-operation among States,

1. Deplores all departures from the rules of international law governing diplomatic privileges and immunities and privileges and immunities of the Organization;

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2. Urges States Members of the United Nations which have not yet done so to accede to the Convention on Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;

3. Urges States Members of the United Nations whether or not they have acceded to the Convention on Privileges and Immunities of the United Nations, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter to the Organization, to the representatives of Members and to the officials of the Organization;

4. Urges States which have not yet done so to ratify or accede to the Vienna Convention on Diplomatic Relations of 18 April 1961;

5. Urges States, whether or not parties to the Vienna Convention on Diplomatic Relations, to take every measure necessary to secure the implementation of the rules of international law governing diplomatic relations and, in particular, to protect diplomatic missions and to enable diplomatic agents to fulfil their tasks in conformity with international law.
