

# GENERAL ASSEMBLY

## SEVENTH SESSION

### Official Records



# SIXTH COMMITTEE, 315th

## MEETING

Thursday, 30 October 1952, at 3 p.m.

Headquarters, New York

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*Chairman: Prince WAN WAITHAYAKON (Thailand).*

**Giving priority to the codification of the topic "Diplomatic intercourse and immunities" in accordance with article 18 of the statute of the International Law Commission (A/2144, A/2144/Add.1) (*continued*)**  
[Item 58]\*

1. Mr. VLAHOVIC (Yugoslavia) said that as a result of the informal meeting held on the previous evening, his delegation was now submitting a revised text of its draft resolution (A/C.6/L.250 and Corr.1) incorporating the various amendments moved during the previous meeting of the Committee.

2. Mr. GREEN (United States of America) said that United States diplomats and citizens had also suffered at the hands of the Cominform régimes, maltreatment similar to that described at the previous meeting by the Yugoslav delegation. Such treatment infringed the basic precepts underlying the Charter and threatened the maintenance of peace. A diplomat accredited to a foreign State fulfilled four functions. He represented his government in important affairs of state; he served as an official observer of developments and events which might affect relations between the two countries; he protected the persons and property of his country's nationals in the foreign State; and he helped to transmit information between the two countries so as to promote mutual understanding. The treatment of foreign diplomats was therefore not merely a matter of common courtesy, for diplomats were not only human beings but, in the last analysis, also living symbols of the countries they represented.

3. In the countries behind the "iron curtain" foreign diplomats were practically the only foreigners who could speak for the nations and peoples they represented. The restriction of their movements and the difficulties placed in their way therefore appeared as part of a systematic and deliberate effort to impair relations between peoples and to increase the existing international tension. Totalitarian governments had never

been known to permit their citizens to have easy and friendly intercourse with the citizens of other countries, and the Soviet régime was no exception to that rule.

4. It was particularly alarming to note the growth of Soviet isolationism since the end of the war, at which time, ironically enough, the USSR had become a Member of the United Nations. That attitude was seriously affecting the work of diplomatic officials. In January 1952 the Government of the Soviet Union had issued a decree which had in effect converted 80 per cent of the country into a forbidden zone. Incidentally that zone included Kiev and Minsk, the capital cities of the Ukrainian SSR and the Byelorussian SSR. In addition the State Secrets Act of 1947 had drastically limited spoken or written communication between Soviet citizens and foreign diplomats. Those restrictions had greatly increased the tragedy of some 2,000 persons in the Soviet Union who were known or presumed to be United States nationals. In the early years after the war many of those persons had communicated with the Embassy in Moscow announcing their desire to return to the United States. Subsequently, however, the Embassy had lost touch with them, and they were afraid to communicate with it.

5. Unfortunately the same situation prevailed in all the countries of Eastern Europe under the control of the USSR. He recalled some of the events which accounted in part for the troubled and unsatisfactory relations of the United States with the countries of Eastern Europe. In 1950, the United States Government had been led to break off diplomatic relations with Bulgaria and to recall its envoy, Mr. Donald Heath, because of the Bulgarian Government's refusal to retract its prefabricated and unsubstantiated charges of subversion against Mr. Heath. Shortly afterwards the world had been given a clear picture of the way in which such charges were invented by the case of Michael Shipkov, a Bulgarian national who had worked for the United States legation in Sofia, and had been arrested and tortured by the Bulgarian Secret Police, so that in the end he had confessed to every offence his torturers could invent. He had then been sent back to the United States legation to serve as a spy, whereupon he had

\* Indicates the item number on the agenda of the General Assembly.

sworn an affidavit describing the tortures he had suffered and retracting the confessions the police had wrung from him. Unfortunately he had been arrested and tortured again and then imprisoned after one of the most tragic judicial farces of the modern era. However, the affidavit given threw a pitiless light on Communist justice and on the atmosphere in which foreign diplomats had to live and work behind the "iron curtain".

6. The trial in 1951 of four United States airmen who when flying a C-47 plane had inadvertently crossed the Hungarian frontier, and the trial of William Oatis in Czechoslovakia on a charge of espionage, had both been a complete mockery of justice and the prisoners had been held *incommunicado* in spite of repeated requests by the United States representatives to be allowed to see them. Such cases were constantly recurring in the countries of Eastern Europe and all followed the same pattern. Well-rehearsed witnesses recited their set pieces, which invariably implicated United States diplomats in imaginary tales of espionage or subversion. Nobody took those accusations seriously, but the underlying assumption that all foreign diplomats were spies and saboteurs was extremely serious. In such circumstances the proper conduct of international relations became practically impossible. The reason for that attitude was clear enough. The Communist governments wished to prevent foreign representatives from finding out about local conditions, and to prevent their own people from learning of better conditions elsewhere.

7. The Sixth Committee should do its best to remedy that situation. To encourage agreement on the rules and practice governing the treatment of diplomatic and consular officials was obviously a step in the right direction. Accepted formulations would be particularly helpful if they regulated such matters as personal privileges and immunities, asylum, protection of premises and archives, and selection and recall of staff. They should also recognize that diplomatic and consular officials were entitled to all the freedoms necessary to the performance of their generally-accepted duties—for example, freedom of access to their own nationals and to all parts of the country except such small areas as were closed off for reasons of vital national security.

8. His Government was therefore prepared to support the Yugoslav proposal. He suggested, however, that the draft resolution should be broadened so as to refer to consular as well as to diplomatic privileges and immunities. Those subjects were so closely related that it seemed desirable and practical to have them treated together. He also suggested that the Assembly should ask the International Law Commission to consider the advisability of giving the item priority instead of directly requesting it to do so. The Commission already had a list of priority items, and any request requiring a change in their order might seriously interfere with its work.

9. The work of the Commission could not, of course, be expected by itself to alter the long-standing practices of the Cominform régimes. Nevertheless a formulation of the accepted rules and practices would serve as a standard by which to judge the actions of all civilized governments, and it might even help to improve the formal relations between States and thus contribute to the cause of peace.

10. Mr. MOROZOV (Union of Soviet Socialist Republics) remarked that the Committee's discussion had

gone far beyond the scope of the item on the agenda. The question before the Committee concerned only the priority to be given to a certain topic, and there was no justification whatever for discussing the substance of that topic. If the delegation which had submitted the item had wished to discuss the substance, it should have had the courage to say so and to draft the title accordingly. Clearly, however, the item had been introduced simply as a propaganda manoeuvre. There was no real need to recommend that the topic "Diplomatic intercourse and immunities" should be treated as a priority topic by the International Law Commission, because it was already included in the Commission's programme of work, which contained only priority topics. Consequently the Yugoslav proposal could only be of value if there were evidence that the International Law Commission had refused to carry out the Assembly's earlier request, and there was in fact no such evidence.

11. The original draft of the Yugoslav draft resolution (A/C.6/L.248) had provided that the topic should be given absolute priority over all other topics. That request had been based on article 18 of the Commission's statute, which did not apply, since it concerned only new topics referred to the Commission. The original proposal had been altered to meet perfectly justified criticism by several representatives and according to the new text (A/C.6/L.250 and Corr.1), the topic was to be given only relative priority. Significantly enough, the reference to article 18 of the statute remained though now totally irrelevant. In fact, the whole proposal in its new form was quite superfluous, since it did not in any way alter the existing position.

12. The question had obviously been brought up only as a pretext to draw the Committee into a discussion on the substance of the topic. Indeed, the preamble to the Yugoslav draft resolution was so drafted as to encourage such a discussion. Other representatives had already pointed out the inconsistency between the text of the preamble and the title of the agenda item. Had the agenda item been differently worded, his delegation would have agreed with much of its substance. The USSR had constantly emphasized the need to observe the recognized principles of international law, including the provisions governing diplomatic immunities. However, the question of substance was not on the agenda.

13. In his introductory statement the Yugoslav representative had referred to the arrest and conviction of Momir Seferovic by the People's Court of Bulgaria. That case had been the subject of direct consultation between the Bulgarian and Yugoslav authorities. Seferovic had not been arrested in the Yugoslav Embassy and had been lawfully convicted by the Bulgarian court of activities affecting the security of Bulgaria. Mr. Morozov quoted a note from the Bulgarian Government to the Yugoslav Government showing that Seferovic's case was one among many and was merely a part of the diversionist and espionage activities which the Yugoslav Government attempted to carry out through its diplomatic representatives in Bulgaria. In bringing the matter before the Assembly the Yugoslav Government was clearly trying to divert attention from those abuses of diplomatic privilege.

14. He could have ended his statement there had it not been for the speech just made by the United States representative, which disclosed the real authors of the proposal and showed that the Yugoslav delegation had

simply been acting as the obedient tool of the United States. The United States representative had of course spoken with authority on the question of diplomatic privileges, since he represented those who had passed the bill appropriating \$100 million for the organization of subversive activities designed to undermine and overthrow the established governments in the people's democracies. Naturally the United States monopolists who financed those activities were annoyed at the measures taken against their espionage agents.

15. As the substance of the question was not before the Committee Mr. Morozov would not refute in detail the utterly ludicrous charges made by the United States representative. He would merely point out that the USSR had no desire whatever to isolate itself from the rest of the world. Large delegations from America, Western Europe, Asia and the Far East were constantly visiting the USSR and were given every opportunity to see how the people lived. It was therefore quite absurd to say that the USSR was afraid of foreigners. The United States, on the other hand, had displayed its fear of allowing its nationals to see the truth for themselves by refusing to grant visas to those who had wished to attend the Peace Conference in the USSR. The Oatis case had been discussed time and time again, and the United States was obviously just bringing up the same old propaganda. Oatis had admitted in a public hearing before a Czechoslovak court that he was guilty of espionage, as had also Michael Shipkov before a Bulgarian court. The C-47 plane's arrival in Hungary had been proved not to be inadvertent, since it had been equipped with field radio stations and maps of the territory over which it was not supposed to be intending to fly. In the circumstances the treatment of the airmen had been perfectly proper, and similar future attempts would be dealt with in the same way.

16. The course of the discussion had shown quite clearly that the item had been artificially created by the Governments of the United States and Yugoslavia. The topic of "Diplomatic intercourse and immunities" was already before the International Law Commission with priority, and the Yugoslav draft resolution was therefore quite superfluous.

17. Mr. EL-TANAMLI (Egypt) stated that his delegation would support the revised draft resolution, in the conviction that codification of the topic "Diplomatic intercourse and immunities" would help to consolidate the present rules and principles. His comments were in no way intended as criticism of the draft resolution but merely as suggestions for simplifying the formula to be used; he would not move them as formal amendments. The International Law Commission would undoubtedly understand from the last paragraph of the draft resolution that the General Assembly had no intention of obliging it to disturb its present programme of work but simply wanted the topic placed on the priority list. He wondered, therefore, whether it would not be more appropriate to adopt the same wording used in resolution 374 (IV), in which the General Assembly had recommended that the Commission should include the topic of the régime of territorial waters in its list of priorities.

18. The penultimate paragraph could, he thought, be deleted. The Commission would presumably respect article 18 of its own statute.

19. Mr. JUMELLE (Haiti) declared his delegation's support of the revised draft resolution but hoped that its sponsors would accept an amendment changing "requests" to "recommends" in the operative paragraph.

20. Mr. TARAZI (Syria) completely agreed with the Egyptian representative's comments on the last two paragraphs of the draft resolution.

21. Mr. SHEBEA (Lebanon) supported the draft resolution and associated his delegation with the United States delegation's suggestion that it should be broadened to include consular privileges and immunities. Many States no longer distinguished between consular and diplomatic representatives, who had equally important tasks. To avoid any ambiguity which would allow States in bad faith to evade their obligations towards consular representatives, it would be well to add the words "and consular" between the words "diplomatic" and "representatives" in the second paragraph.

22. Mr. PETRZELKA (Czechoslovakia) declared that the United States representative had referred to matters far removed from the question before the Committee. His delegation would reply to the outrageous accusations made by that representative.

23. Mr. NISOT (Belgium), referring to the Haitian representative's suggestion that the word "requests" in the operative paragraph should be replaced by the word "recommends", pointed out that the word "requests" was more imperative than "recommends" and appeared in article 18 of the statute of the International Law Commission.

24. Miss RUSAD (Indonesia) stated that her delegation had no objection in principle to priority being given by the International Law Commission to the topic "Diplomatic intercourse and immunities", since that topic was already on the Commission's agenda. The common observance of the rules and principles of diplomatic intercourse and immunities by all governments could not fail to foster good relations between States.

25. The draft resolution should, however, be strictly confined to the substance of the proposal, to avoid the possibility of misinterpretation based on political bias. To that end the first paragraph of the preamble should be deleted, the words "for this purpose" in the second paragraph should be deleted consequently, and the word "general" should be inserted before the word "observance" in that paragraph. The Egyptian suggestion that the penultimate paragraph should be deleted was also acceptable.

26. Mr. HENAO Y HENAO (Colombia) fully supported the revised draft resolution, together with the United States and Lebanese proposal that it should be extended to include consular privileges and immunities. The American countries, well knowing that respect for diplomatic immunities was highly important to the maintenance of good international relations, had adopted at the Sixth International Conference of American States held in Havana in 1928, a convention<sup>1</sup> on the rights and duties of diplomatic officials, the fourth part of which

<sup>1</sup> See *The International Conferences of American States, 1889-1928*, (Publications of the Carnegie Endowment for International Peace, Division of International Law, Washington), Oxford University Press, New York, 1931.

dealt with immunities and prerogatives of diplomatic officers. The Convention had been ratified by a majority of the American countries. The same Conference had also approved a convention on asylum, a subject manifestly connected with diplomatic immunities. The Colombian delegation was therefore submitting an amendment (A/C.6/L.251) to the revised draft resolution to add the topic "Right of Asylum" to the other topic for which priority was requested.

27. The history of the topic "Right of asylum" was similar to that of "Diplomatic intercourse and immunities". The International Law Commission had placed it on the agenda in 1949 and had requested the Colombian representative to prepare a working paper on it.<sup>2</sup> Colombia and Peru had later decided to submit the question of asylum to the International Court of Justice; once the Court had begun to study the question, the Colombian representative had asked that the Commission should defer consideration of the item until the Court had pronounced judgment. With the same motive of refraining from any action that might be regarded as an attempt to influence the judgment of the Court, the Colombian Government had voted in the Council of the Organization of American States<sup>3</sup> against the proposal of the Central American States that a special meeting should be held on the subject of asylum with a view to placing it on the agenda of the Fourth Meeting of Consultation of Ministers of Foreign Affairs. The Court had now given its decision and there was no longer any reason why the International Law Commission should not take up the topic "Right of Asylum".

28. The efforts of the American countries and the many jurists of all nations who had contributed to the defence of the human right of asylum clearly indicated that the time was ripe for the codification of the topic and that present circumstances justified the proposal that the International Law Commission should be asked to place it on its list of priorities.

29. The CHAIRMAN pointed out that the item on the agenda of the General Assembly clearly referred only to the topic "Diplomatic intercourse and immunities", "Right of asylum" being a separate topic on the agenda of the International Law Commission. The Committee could therefore deal only with the former. The Colombian representative's proposal could not properly be regarded as an amendment to the Yugoslav draft resolution, and he would ask that representative to reconsider it.

30. Mr. HERRERA BAEZ (Dominican Republic) said his delegation was taking part in the discussion because of the great interest of the subject under consideration from the point of view of the progressive codification of international law. The interest in the subject displayed by the American nations was understandable in view of the fact that those nations had done a large amount of work on the codification of international law on the subject of the rights and duties of diplomatic officers, as witness the Convention on Diplomatic Officers approved at the Sixth International Conference of American States at Havana in 1928. No

one could deny the importance of the subject from the point of view of the maintenance of peaceful relations between States. Codification of the material was generally regarded as necessary and opportune, for it was required both by the political and economic changes that had taken place in the relations between modern States and by the fact that the subject was ripe for the purpose. The new, revised Yugoslav draft resolution seemed to be more in accordance with the objective considerations on which the Dominican delegation had based its remarks on the subject during the discussion. With regard to the amendment submitted by the delegations of Colombia and Lebanon, the Dominican delegation reserved the right to express its views at a later stage.

31. Mr. MAURTUA (Peru) considered that the Colombian proposal could not be regarded as an amendment to the draft resolution but was in fact a fresh item. The question of asylum was regarded by the Latin-American States as a political subject.

33. Mr. EL-TANAMLI (Egypt) agreed with the clared that he appreciated the motives of the Colombian representative but agreed with the Chairman. Although the topic "Right of asylum" was admittedly closely related in some respects to the topic "Diplomatic intercourse and immunities", it was in fact a separate topic and had always been so regarded by the International Law Commission. The Colombian delegation would be better advised to propose the addition of that item to the agenda of the General Assembly, so that it could go through the normal procedure and come before the Committee as a separate item. He had no instructions from his Government with regard to priority for the topic "Right of asylum"; he would not oppose the amendment but must abstain from voting upon it.

33. Mr. EL TANAMLI (Egypt) agreed with the United Kingdom representative.

34. Mr. DE SALAMANCA (Bolivia) maintained that codification of the topic "Right of asylum" should be given priority by the International Law Commission. It was of grave concern to the Latin-American countries, which were anxious to settle the doubts raised by the judgment of the International Court of Justice.

35. Mr. GUERREIRO (Brazil) supported the revised draft resolution but not the proposal to add a further topic. One of the doubts which the Yugoslav draft resolution had raised was that it might disrupt the work programme of the International Law Commission. The Commission had been established on the understanding that it would have a certain degree of autonomy and not be subject to constant supervision by the General Assembly. It had been authorized to make a general survey of the various fields of international law and to select topics for codification. After careful study it had selected for priority a number of topics, of which three had later been given even higher priority. Work on one of those three topics, "Arbitral procedure", was nearing completion, while the study of the others was still in the preliminary stage. If the General Assembly sent fresh topics for priority each year the Commission would be transformed into a kind of *ad hoc* committee working upon

<sup>2</sup> See *Official Records of the General Assembly, Fourth Session, Supplement No. 10*, paras. 14 and 23.

<sup>3</sup> See *Organization of American States. Handbook*, Pan American Union, Washington, D.C., 1951.

specific decisions of the General Assembly and unable to give adequate attention to the many items before it. Its records showed that the decisions not to include the topic "Diplomatic intercourse and immunities" among the first three priority topics had been taken by a small majority. It might, therefore, be reasonably asked at the present stage to give that topic priority, but the addition of one further topic might well disturb its programme of work.

36. He agreed with the United Kingdom representative that, since the item on the agenda concerned only the topic "Diplomatic intercourse and immunity", no further topic could be added. When the Commission discussed diplomatic immunity it would undoubtedly touch upon diplomatic asylum, but if the right of asylum were referred to as a specific item, it would have to consider every aspect of asylum and would in effect be studying an entirely separate topic. The Brazilian delegation could not therefore support either the proposal to add the topic "Right of asylum", or the proposal to include consular immunity in the scope of the draft resolution.

37. Mr. MENDEZ (Philippines) noted that the Yugoslav draft resolution related to diplomatic immunities, a matter of normal diplomatic relations between States. It was admittedly urgent and should be given priority by the International Law Commission, but asylum was essentially a separate question requiring separate consideration. The status of a diplomat seeking asylum was comparable to that of a private individual. He therefore could not accept the Colombian amendment but would support the Yugoslav draft resolution (A/C.6/L.250 and Corr.1).

38. Mr. PATHAK (India) agreed that, although asylum was in a sense related to diplomatic intercourse and immunities, the two questions were essentially separate. In his opinion a new subject could not be introduced as an amendment.

39. Mr. NISOT (Belgium) suggested that the representative of Colombia might withdraw his amendment if the importance attached to asylum by certain delegations were mentioned in the Rapporteur's report.

40. Mr. HENAO Y HENAO (Colombia) said that the Colombian delegation's support of the Yugoslav draft resolution did not depend on the acceptance of the Colombian amendment. The Spanish word *asilo* meant only diplomatic asylum. The question of diplomatic immunities was closely linked to that of diplomatic asylum, as the International Law Commission had already recognized. The Organization of American States had recognized at its Havana Conference in 1948 that the two questions must be discussed together, although a separate convention on each had later been found desirable. The inclusion of diplomatic asylum would not place a new item on the agenda of the International Law Commission but would encourage it to use material already at its disposal.

41. Mr. TUNCEL (Turkey) noted that multilateral conventions on diplomatic asylum had been concluded among the American States but in Europe the concept of diplomatic immunities was generally considered to cover inviolability of the person and residence of a diplomat. The point raised by the Colombian delegation might be met by amending the operative part

of the Yugoslav draft resolution to include a reference to inviolability of diplomatic residence.

42. Mr. CORTINA (Cuba) said that a narrow interpretation of the scope of the item before the Committee would necessarily exclude diplomatic asylum and consular immunities. The former was more closely linked than the latter to diplomatic immunities and was in a sense an attribute of them. A flexible formula covering both additional topics could surely be found.

43. Mr. GUERREIRO (Brazil) noted that, even if the Committee made no reference to diplomatic asylum, the International Law Commission would certainly consider it within the context of diplomatic intercourse and immunities. The Brazilian delegation would not oppose its inclusion, but considered that a reference to consular immunities was not in place. The International Law Commission could study diplomatic and consular immunities together if it saw fit, without a mandatory recommendation.

44. Mr. FITZMAURICE (United Kingdom) said that the English "asylum" was much broader than the Spanish "*asilo*". If the Colombian representative agreed to refer in his text to "diplomatic asylum" or to accept an amendment along the lines suggested by the representative of Brazil, the United Kingdom delegation would support his proposal.

45. Mr. HENAO Y HENAO (Colombia) agreed to alter point 2 of his amendment by inserting the words "including diplomatic asylum" after the word "immunities" in the operative paragraph.

46. Mr. MENDEZ (Philippines) requested a definition of "diplomatic asylum". It might, he suggested, relate to the immunity of the embassy compound and the right to admit political refugees, and possibly also to the right of a diplomat to seek asylum in the country to which he was accredited.

47. Mr. SERRANO GARCIA (El Salvador) supported the Colombian amendment. He added that, as consular privileges were exceptional only, the expression could not appropriately be used. Consular courtesies were accorded in ordinary practice.

48. Mr. FERRER VIEYRA (Argentina) supported the Colombian amendment and expressed assurance that the International Law Commission would have no difficulty in interpreting the meaning intended by the Sixth Committee.

49. Mr. EL-TANAMLI (Egypt) said that the item on the Committee's agenda was restricted to a specific question. The Committee was not preparing a detailed plan of work for the International Law Commission. It should refrain from any interference with the Commission's work on diplomatic immunities and should leave the Commission itself to decide what topics to include. The Egyptian delegation would therefore oppose the Colombian amendment.

50. Mr. NISOT (Belgium) said that the Belgian delegation accepted the Colombian amendment, as it referred to "diplomatic asylum" and not to the "right of diplomatic asylum".



51. Mr. MAURTUA (Peru) expressed the view that diplomatic asylum represented a very special and unusual concept which could not properly be treated in a convention dealing with diplomatic immunities, a part of normal diplomatic relations between States.

52. Mr. SHEBEA (Lebanon) noted that the Lebanese amendment related only to the second paragraph of the preamble and called for the addition of the words "and consular" before the word "representa-

tives". Most countries customarily accorded the same courtesies and almost the same privileges to both diplomatic and consular representatives of foreign States.

53. The CHAIRMAN said that the Secretariat would issue a document setting out the amendments to the various parts of the Yugoslav draft resolution, for consideration at the next meeting.

The meeting rose at 5.40 p.m.