

United Nations
**GENERAL
ASSEMBLY**

THIRTEENTH SESSION

Official Records



**SIXTH COMMITTEE 571st
MEETING**

Thursday, 30 October 1958,
at 10.45 a.m.

NEW YORK

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Chairman: Mr. Jorge CASTAÑEDA (Mexico).

AGENDA ITEM 56

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

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

1. Mr. ADAMIYAT (Iran) said that the International Law Commission had prepared the draft articles on diplomatic intercourse and immunities (A/3859, para. 53) on the assumption that they would form the basis for a convention. His delegation fully supported that idea, but did not consider it practicable to examine the draft in detail at the current session. It would be better to postpone discussion of the articles until the fourteenth session of the General Assembly, so that Governments would have an opportunity to study them thoroughly. There was no reason why a convention could not then be adopted by the Committee itself, but if a majority of delegations preferred to convene an international conference of plenipotentiaries for that purpose, he would not oppose such a procedure.

2. His Government supported the principle embodied in article 40 of the draft that it was the duty of all persons enjoying diplomatic privileges and immunities to respect the laws and regulations of the receiving States, as well as not to interfere in the internal affairs of that State. It supported the draft as a whole but had reservations to article 7, concerning the appointment of nationals of the receiving State, and article 37, concerning diplomatic privileges and immunities for such personnel. The experience of his Government as a receiving State in that respect had not been entirely happy, and it felt that those articles should be re-examined. It had no objection, however, if such privileges and immunities were granted to nationals of a receiving State while they were serving as officials or representatives of international organizations.

3. Whereas classic international law had dealt only with relations between States and had, therefore, granted diplomatic privileges and immunities only to the representatives of States, modern international law covered not only relations between States but also relations between States and international organizations. The growth of international organizations had

brought into being legal questions of a special nature, and here the International Law Commission could effectively contribute to the progressive development of international law. For that reason, his delegation considered the French draft resolution (A/C.6/L.427 and Corr.1) a constructive proposal and would be glad to support it.

4. Mr. PERERA (Ceylon) recalled that in its report on the ninth session the International Law Commission had stated (A/3623, para. 15) that its draft concerning diplomatic intercourse and immunities had been prepared on the provisional assumption that it would form the basis of a convention, and that at its tenth session the Commission had decided to recommend to the General Assembly that the draft articles should be recommended to Member States with a view to the conclusion of a convention (see A/3859, para. 50). Between the ninth and the tenth sessions, the Commission had received observations from twenty-one Governments (A/3859, annex), all but one of which found the earlier draft acceptable in principle. It could be fairly assumed that the Governments which had not responded to the Commission's request for observations were in substantial agreement with the draft as the basis for a future convention. There had been ample opportunity for delegations to express their views on the matter at the twelfth session of the General Assembly. In those circumstances, it could hardly be maintained that the Committee was proceeding with undue haste; on the contrary, the Committee should take some positive action at once, or else there was a danger that discussion of the draft might be deferred to the point when the General Assembly would lose interest in it altogether.

5. He could not agree with the Canadian representative, who said (570th meeting, para. 7) that the draft should be given further careful study, nor with the Turkish representative, who had said (*ibid.*, para. 53) that postponement was necessary so that Governments with special difficulties respecting translation might have time to prepare their observations. Equally invalid was the argument that the draft should not be considered separately from that on consular intercourse and immunities. The members of the Committee might be considered the residuary legatees of the men who had drafted the Regulation of Vienna in 1815 and the Protocol of Aix-la-Chapelle in 1818. The world had moved a long way since that time, and the old forms of diplomacy had been rejected in favour of a new, democratic diplomacy which was in urgent need of codification. The Committee should decide immediately either to hold a special session at which the draft articles could be discussed in detail and then embodied in a convention, or else to convene an international conference of plenipotentiaries for the same purpose. His delegation was prepared to accept the view of the majority regarding the choice of an alternative.

6. In conclusion, he said that his delegation was also prepared, in principle, to support the French draft resolution. Within the last thirty or forty years, international organizations had developed to the point where their legal relations with States could no longer be ignored.

7. Mrs. AYDA (Turkey) said that her reference at the preceding meeting (*ibid.*) to translation difficulties had been made only by way of illustration, and should not be allowed to obscure her other, more substantive, reasons for postponing discussion of the draft articles.

8. Mr. HOLMBACK (Sweden) said that since the International Law Commission's report had been published only recently, the Swedish delegation favoured the postponement of the debate on the draft articles until the fourteenth session of the General Assembly. There was no reason for haste, and, as the final draft differed from the original text in many important particulars, Governments should be given an opportunity to submit further comments.

9. With reference to the French draft resolution, he said that every reader of the relevant paragraph in the Commission's report (A/3859, para. 52) was bound to be surprised by the abrupt manner in which it ended, and by the fact that the Commission seemed to have drawn no conclusions from the facts mentioned therein. A partial answer could perhaps be found in the summary records of the Commission's ninth session,^{1/} during which the Commission had discussed the report on diplomatic intercourse and immunities submitted by its Special Rapporteur, Mr. Sandström (A/CN.4/91). He had limited himself to the question of permanent diplomatic missions between States, in the belief that the General Assembly resolution requesting the Commission to study the problem (resolution 685 (VII)) had only had such missions in view. Since, however, certain delegations had asked in the Sixth Committee whether the study might not be extended to cover also relations between States and international organizations, the Special Rapporteur had elaborated the statement appearing in paragraph 14 of the Commission's report on its ninth session (A/3623) and repeated in paragraph 52 of its last report (A/3859). But the Special Rapporteur's original text of the paragraph^{2/} had also contained a final sentence to the effect that the question whether and, if so, to what extent relations between States and international organizations should be studied by the Commission would be considered later. The statement of fact contained in paragraph 52 of the last report had thus been designed as a background to an announcement that the Commission might possibly undertake a study of the relations between States and international organizations. The Special Rapporteur had not in any way proposed that the Commission should bind itself to such a study, but the Commission had decided that even his guarded statement went too far and the proposed last sentence had accordingly been deleted.^{3/}

10. In his opinion, the Sixth Committee should know more of the reasons that had induced the International Law Commission to delete the Special Rapporteur's

last sentence. The Secretary of the Committee, who had also served as Secretary to the International Law Commission at all material times, might perhaps clarify that point further, and also give some information regarding existing conventions on relations between States and international organizations. Such information would greatly assist the Committee in deciding whether it should propose to the General Assembly any addition to the Committee's already heavy agenda.

11. Mr. LIANG (Secretary of the Committee) said that, to the best of his recollection, the Commission had decided not to include any draft provisions referring to international organizations for two basic reasons.

12. In the first place, General Assembly resolution 685 (VII) and the original Yugoslav draft resolution (A/C.6/L.250) from which it derived had referred only to "diplomatic intercourse and immunities", which—according to the traditional sense of the term "diplomatic"—seemed to limit the subject to relations between States. The question of privileges and immunities enjoyed by international organizations had seemed to the Commission to form a separate subject, and that view was indeed supported by the fact that the immunities enjoyed by or within international organizations extended only to the performance of official acts, while diplomatic agents enjoyed many immunities even in respect of their private acts.

13. The second reason for the Commission's decision, particularly stressed by Sir Gerald Fitzmaurice,^{4/} was that the various conventions governing the relations of international organizations constituted an extremely complex and intricate body of rules, which it might be dangerous to disturb. There was, for example, the General Convention on Privileges and Immunities of the United Nations, approved by General Assembly resolution 22 A (I), which in itself largely codified the subject. That instrument had been both complemented and supplemented by other agreements, such as the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. A comprehensive survey of the various special agreements concluded by the United Nations with both Member and non-member States could be found in the Repertory of Practice of United Nations Organs, volume V, ^{5/} under Articles 104 and 105 of the Charter. Similar agreements had been concluded by several specialized agencies, some of which, such as the International Monetary Fund and the United Nations Educational, Scientific and Cultural Organization, defined their relationship with the host State in their Constitution. Any attempt to codify those manifold rules in a single text might thus prove dangerous, as any new draft would have to take into account all divergencies in the existing instruments, and even a preliminary text prepared by the Commission might cause some misinterpretation of the existing positive law.

14. In conclusion, he stressed that the Commission had in no way intended to prevent a study of the practical operation of the various special agreements, but had thought that, specially in view of its original mandate, it should not itself undertake such a study in the

^{1/} See Yearbook of the International Law Commission, 1957, vol. I (United Nations publication, Sales No.: 1957.V.5, Vol.I), 383rd to 413th meetings.

^{2/} *Ibid.*, 430th meeting, para. 3.

^{3/} *Ibid.*, para. 5.

^{4/} *Ibid.*, 383rd meeting, para. 47.

^{5/} United Nations publication, Sales No.: 1955.V.2 (Vol.V).

context under discussion. A general outline of the Commission's views on the subject could be found in the summary record of its 383rd meeting.^{6/}

15. Mr. CHAUMONT (France) stressed that his delegation had never envisaged the reconsideration of existing conventions on the immunities enjoyed by organizations. Those instruments should of course be maintained, although it might be of interest to see whether they did not contain certain common principles.

16. The matter contemplated in the French draft resolution was in fact entirely different. The study proposed therein was not of the immunities enjoyed by the organizations themselves, but of questions arising in the relations between those organizations and States. One such question, for example, was the status and rights of the diplomatic missions attached to such organizations. If the Swedish representative proposed some amendment to the French draft resolution designed to make that point absolutely clear, his delegation would willingly accept it.

17. Moreover, the French delegation was not proposing that the Commission should prepare any draft. It only hoped that the Commission would study the various relevant special conventions in order to see whether they contained sufficient common features to form the basis of an organic body of rules. The draft resolution should perhaps also contain a request to the Secretary-General to submit a preliminary report for the Commission's guidance.

18. Mr. LIANG (Secretary of the Committee) recalled that he himself had said in the International Law Commission^{7/} that it might possibly be desirable for the Commission to analyse the text of Articles 104 and 105 of the United Nations Charter, the Conventions on the privileges and immunities of the United Nations and of the specialized agencies and related instruments, and to study the way in which they had worked in practice. He had stressed, however, that such an analysis would clearly be a very different task from preparing a draft on diplomatic privileges and immunities in the strict sense. In those circumstances, it seemed that his views and those of the French representative were not very different.

19. Mr. MOROZOV (Union of Soviet Socialist Republics) suggested that, as the question raised by the French draft resolution was entirely independent of the draft prepared by the Commission, the Committee might properly decide not to discuss the French proposal until it had reached some decision on the draft articles.

It was so decided.

20. Mr. ABUSHKEVICH (Byelorussian Soviet Socialist Republic) said that the International Law Commission had done very valuable work on the subject of diplomatic intercourse and immunities. There had been no general international agreement on the subject since the time of the Vienna Regulation of 1815; the rules embodied in that instrument had come to be regarded as the expression of general customary law on the subject. The time had come to undertake the

work of codification and examine the progressive development of that law, taking recent changes into account.

21. One important change was the practice which had become wide-spread of appointing ambassadors regardless of the size of States. That practice was an expression of the principle of the equality of States. As a result of those developments, the previous distinction between ambassadors and ministers was gradually disappearing; both ambassadors and ministers dealt mainly with the Ministry of Foreign Affairs and, in case of need, saw the head of State.

22. The International Law Commission had very properly maintained both ambassadors and ministers in article 13 of its draft, but had added in the commentary that it had considered the possibility of abolishing the title of minister or the difference in rank between those two classes. At the same time, the International Law Commission had made it clear in article 13, paragraph 2, that except as concerned precedence and etiquette, there should be no differentiation between heads of mission by reason of their class. The appointment of a minister instead of an ambassador could not be regarded as a sign of inequality of States. That recognition of the equality of States had coincided with the growing influence of democratic forces on the evolution of international law.

23. The privileges and immunities could be divided into two categories. The first consisted of the privileges and immunities enjoyed by the diplomatic mission itself, such as the inviolability of the mission premises, the exemption of mission premises from tax and the inviolability of the archives. The second category consisted of the privileges and immunities granted to diplomatic officers, such as personal inviolability, inviolability of residence and property, immunity from jurisdiction and exemption from taxation. Those privileges were granted to diplomatic officers in the interests of a proper discharge of their duties, and in view of their representative character. The absence of those privileges, even in respect of private acts, could handicap diplomatic officers in carrying out their duties and be detrimental to the prestige and interests of the sending State.

24. The Byelorussian delegation favoured the signing of a convention on the subject of diplomatic privileges and immunities. The general reaction of those States which had sent written observations was favourable to such a convention. It was true that in the course of the discussion some delegations, such as those of Pakistan and Australia, had urged delay, but they had not denied that the International Law Commission had done useful work. Those delegations, however, considered that the draft should be referred again to Governments for their comments and be reconsidered by the Sixth Committee at the fourteenth session of the General Assembly. The Byelorussian delegation could not support that suggestion. The Commission's earlier draft had already been submitted to Governments, their comments had been received and the International Law Commission had prepared its final draft accordingly. There was no reason for referring the draft once more to Governments; that course could only lead to further delay in dealing with an important question.

25. The Byelorussian delegation would abstain at that stage from commenting in detail on the various

^{6/} See Yearbook of the International Law Commission, 1957, vol. I (United Nations publication, Sales No.: 1957.V.5, Vol. I), 383rd meeting.

^{7/} *Ibid.*, para. 41.

articles. It supported the suggestion for the convening of an international conference of plenipotentiaries to draft a convention, using the excellent draft prepared by the International Law Commission as a basis of discussion. The convention would deal with the essential question of defining the functions of diplomatic representation, not only from the point of view of forms and methods but also from the point of view of the purpose of diplomatic activity, namely, the promoting of friendly relations between States.

26. Mr. STEWART (Union of South Africa) said that his delegation did not feel that the protection and privileges accorded to diplomatic representatives under existing law and custom were inadequate, yet it realized that there could be some advantage in clarifying and consolidating the regulations and procedures relating to diplomatic intercourse and immunities.

27. The International Law Commission's excellent draft was broadly acceptable, but there were a few articles to which his Government could not subscribe in their present form because they conflicted with the legislation or custom of his country.

28. Although the support for the Commission's draft was encouraging, almost every delegation that had spoken had reservations to some of the articles. It was clear therefore that a detailed examination of the draft was essential, and the question arose how that examination should be carried out. The task of harmonizing the different views and finding a generally acceptable text would be intricate and prolonged, in view of the difficulty of reconciling the provisions of the Commission's draft with national law or custom. It was clear that if a suitable convention was to be arrived at, most, if not all, countries would have to make some concessions or adjustments.

29. Governments might have to take legislative action in the interests of an acceptable convention. Difficulties had already been foreseen by some countries in respect of immunity from certain rates and taxes. Legislation took time, particularly when provincial and municipal authorities were involved. Before starting to draft an international convention Governments must understand the commitments they might be required to undertake so that they could consult the appropriate authorities.

30. Some Governments had taken the opportunity offered to comment on the 1957 draft and now they had to consider the effects of the new draft. In particular, each Government had to consider the new situation resulting from amendments which incorporated suggestions by other Governments.

31. There seemed to be general agreement that consideration of the convention should be referred either to the fourteenth session of the General Assembly or

to an international conference. If, however, such a course were adopted without any exchange of views on details, the prospects of reaching agreement on a suitable convention would not be improved.

32. The South African delegation felt that it would be unwise to recommend the convening of an international conference before there was a reasonable prospect of success, and success was unlikely without some further exchange of views.

33. Postponement of the matter until the fourteenth session of the General Assembly had been suggested. It seemed most unlikely that the Sixth Committee would be able, at the fourteenth session of the General Assembly, to reach agreement on the actual details of a convention without some preparatory work, yet otherwise each delegation would merely have the same material before it. Each delegation would know its own Government's views on each of the articles, but would have little knowledge of the detailed views of other Governments.

34. It was essential that each Government, when preparing for the substantive consideration of a convention, should be informed of the details to which other Governments attached importance and of the difficulties with which they might be faced. Governments might then be able to consult their national authorities and avoid taking irrevocable positions on particular matters.

35. His delegation suggested therefore that the matter should be deferred until the fourteenth session of the General Assembly, and that Governments should be invited to forward to the Secretary-General their detailed comments on the Commission's revised draft. A time limit would be fixed for the submission of those comments, and the Secretary-General would be asked to circulate them in time for Governments to take them into account in preparing for the fourteenth session of the General Assembly.

36. The comments of Governments might lead the Sixth Committee, at the fourteenth session of the General Assembly, to the conclusion that the differences in views were so fundamental as to preclude a convention, but that was unlikely. The Sixth Committee might, on the other hand, find that there was sufficient similarity of views to justify the Committee itself in preparing a draft. Lastly, the Committee might find that the best procedure would be to call an international conference. In any case, the Committee would make its decision with a clear knowledge of the views of all Governments, and that was essential in the search for a solution.

The meeting rose at 12.35 p.m.