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**Chairman: Mr. Alberto HERRARTE (Guatemala),**

**AGENDA ITEM 56**

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

1. Mr. COCKE (United States of America), referring to the two texts (A/C.6/L.456 and Add.1/Corr.1 and A/C.6/L.457/Rev.1), suggested for paragraph 3 of the joint draft resolution (A/C.6/L.455 and Add.1 and 2), said that his delegation strongly favoured the first. That text was a restatement of the formula used in the past for invitations to international conferences on legal questions, such as the United Nations Conference on the Law of the Sea (General Assembly resolution 1105 (XI)), the International Conference on Statelessness (resolution 896 (IX)) and the International Technical Conference on the Conservation of the Living Resources of the Sea (resolution 900 (IX)). By contrast, an invitation addressed to all States, without other specifications (A/C.6/L.457/Rev.1), would raise serious political problems which could only complicate the convening of the conference and reduce its chances of success. Who would decide whether or not certain entities whose statehood was recognized by some Members of the United Nations and disputed by others should be invited? If they were all invited, many States might be unwilling to participate in the conference. His delegation held strong views on the question and believed it would be wise to keep to the standard formula for invitations.

2. Mr. ASRAT (Ethiopia) shared the anxiety of some delegations concerning the cost of the proposed conference. That did not mean that he wished in the least to delay or prevent the drawing up of a convention on diplomatic intercourse and immunities, as had apparently been alleged against those who had expressed the same views. He simply felt that the Sixth Committee was entirely competent to deal with the task, that it counted among its members many eminent jurists, and that it could avoid the expense of an international conference which in the end would probably be constituted in great part of the same persons. He hoped that the sponsors of the joint draft resolution would give their attention to that aspect of the question.

3. It followed from the foregoing that his delegation, although deeply appreciative of the generous Austrian

offer, would like to have the convention on diplomatic intercourse and immunities drawn up at Headquarters. As to when the conference should be held, it would undoubtedly be best to set a date in 1961 and thus to allow time for Governments which had not yet done so to submit their comments on the draft articles. He did not think it advisable to take up at the same time the consideration of consular intercourse and immunities and *ad hoc* diplomacy, because of the delay such an expansion of the subject would entail.

4. Mr. GLASER (Romania), answering the argument of the Ethiopian representative, said that he did not think it would be wise for the Sixth Committee to undertake the elaboration of a convention on diplomatic intercourse and immunities. In fact, a diplomatic conference called for that sole purpose and attended—as the Ethiopian representative himself had acknowledged—by much the same persons as the Sixth Committee, would, from a strictly technical viewpoint, be more likely to carry out the task under favourable conditions. Entrusting that task to the Sixth Committee would amount to depriving the General Assembly of one of its component parts for at least one and probably two sessions. The experience of the Third Committee, in the work of which he had taken part, showed that an international convention (in that case, the draft International Covenants on Human Rights) could be considered by an Assembly Committee only at an extremely slow pace; that being so when there were no differences of opinion on fundamentals, the pace would be even slower when such differences existed. As had been pointed out, other Committees already displayed little enough enthusiasm for referring to the Sixth Committee questions which properly belonged within its province. In devoting itself exclusively for one or two years to drawing up an international convention, the Sixth Committee would get the General Assembly accustomed to doing without its services. In the circumstances, the convening of an international conference seemed to be the sole truly feasible means of bringing about the rapid codification of a topic as basic as diplomatic intercourse and immunities.

5. As to the date of the conference, the comments of the Ethiopian representative seemed reasonable and consideration might be given to convening the participants in March–April 1961. The site should be chosen primarily on the basis of financial considerations; all things being equal, however, his delegation would prefer to have the conference meet at Vienna.

6. Next came the—to his mind essential—question of the composition of the conference. The United Kingdom representative, at the 634th meeting, and the United States representative, at the beginning of the current meeting, had declared their opposition to invitations being sent to all States without distinction, for reasons which were well known but somewhat contradictory. The United Kingdom representative had maintained that it would be difficult in practice to

determine whom the term "all States" covered, whereas the United States representative had shown by his attitude that he was fully aware of the issue involved. Then again, various precedents had been invoked, as if the real point was not to find out whether those precedents had not been mistakes which the United Nations should avoid repeating. Lastly, it had been said that "strong views" were held on the question, which, in the mind of the sponsors of a discriminatory proposal, meant that any real debate on that proposal should be resisted. The Romanian delegation also had strong views and was deeply convinced that there should be no discrimination in the matter.

7. The truth of the matter was that some States, by reason of their political, economic or social systems, were exposed to the hostility of certain great Powers, which refused to recognize them. But the argument that recognition or non-recognition had specific effects in international law was absolutely worthless. Recognitio nil dat novi. The rights of a State derived from the fact of its existence and not from the number of recognitions which it might have secured. International law did not prohibit aggression against recognized States only; nor did it prohibit interference in the domestic affairs of recognized States alone; it forbade all aggression and all interference, without distinguishing whether the State against which the illegal action was committed had or had not been recognized. It should also be recalled that even among the Members of the United Nations there were several States which did not recognize one another. In the same way, the Geneva Conference of 1954 on Indo-China had brought together States which had maintained no diplomatic relations with each other, and some of those States had not been recognized by others. The results had nevertheless been anything but bad.

8. The United Nations should be the centre for harmonizing all efforts at peaceful co-operation, but it could serve that purpose only if it attained genuine universality. That was not yet possible, because of the intransigent attitude of various Powers. Would it not be best to discontinue past errors and to begin to co-operate, at least on the occasion of the proposed conference, in the proceedings of which all States were necessarily concerned? Clearly, there could not be two laws of diplomacy, one for the States invited to the conference and the other for relations with the States not invited. The Committee should be concerned primarily with the standardization of the rules of international law. Taking the German Democratic Republic as an example, he said that all States had an interest in clarifying the legal status of the diplomats representing that Republic at Geneva or the position, in law, of an aeroplane with diplomatic mail on board which landed on its territory.

9. His delegation was for universality of international instruments and, therefore, for the universality of the international conferences convened to draft those instruments. The time of the formulation and amendment of all international law by a few Powers, at their pleasure, was past. States should now resolutely follow the path of progress and make it possible for all the countries in the world to co-operate on the basis of sovereign equality. In economic matters, Article 59 of the Charter provided that the United Nations could initiate negotiations among the States "concerned"; those who had drafted the Charter had understood that, in economic matters, political dif-

ferences should be disregarded. A fortiori, then, all the States concerned, or in other words all States, should be invited to the conference on diplomatic intercourse and immunities.

10. Those were the reasons why Romania had joined the sponsors of the proposal contained in document A/C.6/L.457/Rev.1.

11. Mr. ESCOBAR (Colombia) noted that operative paragraph 3 of the joint draft resolution had been left blank, and that two documents had been submitted at the same time as the draft resolution for the specific purpose of proposing a wording for operative paragraph 3. He asked the officers of the Committee whether the rules of procedure authorized the proposal of such a text, in the form of an amendment, purporting to be a non-existent operative paragraph of a resolution. Clearly, the Committee was faced with a parliamentary manoeuvre, the aim of which was to present a draft resolution sponsored by as large a number of delegations as possible. It remained to be seen to what extent such procedure was in accordance with the customary practices and rules of procedure of the Assembly.

12. The CHAIRMAN suggested that one of the sponsors of the draft resolution should reply to the Colombian representative's question.

13. Mr. PERERA (Ceylon) said that operative paragraph 3 had been left blank on purpose, in order to allow for the broadest possible measure of agreement. As to the question whether the amendments were in accordance with normal procedure, he believed that the last sentence of rule 131 of the rules of procedure justified an affirmative answer.

14. Mr. ESCOBAR (Colombia) took note of that statement.

15. Mr. MAURTUA (Peru) said that in those circumstances it would still have to be decided, at the time of voting, which amendment should be voted on first, as both texts were in fact additions.

16. The CHAIRMAN said that a decision would be taken at the time of voting.

17. Mr. RAO (India) said that he did not question the competence of the Sixth Committee but considered that it could not spare sufficient time to devote its attention to the preparation of a convention on diplomatic intercourse and immunities.

18. The Indian delegation supported the proposal to convene a conference of plenipotentiaries. It should not, however, be forgotten that the proposed convention was of interest not only to States Members of the United Nations but also to non-member States, for example Switzerland, and that it would have repercussions on the municipal law of many countries. It would therefore be desirable to invite all States to take part in the conference, with a view to achieving the greatest possible measure of international co-operation in accordance with the purposes of the United Nations Charter.

19. He further recalled that the Asian-African Legal Consultative Committee had in 1958 completed a provisional draft on diplomatic intercourse and immunities which was similar to the draft prepared by the International Law Commission.

20. The place at which the conference was to be held was a purely administrative and financial matter,

which was the subject of a note by the Secretary-General (A/C.6/L.458); it was a question to be decided by the General Assembly. His delegation would speak again on that matter, if necessary.

21. Mr. GAMBOA (Philippines) expressed satisfaction at the prospect of a convention being concluded in the near future; that instrument would represent another big stride forward on the road to the codification and progressive development of international law, of which the law governing diplomatic intercourse and immunities was an extremely important part. Since its municipal law was strictly embodied in codes, the Philippines looked with particular favour on any endeavour to codify any part of international law.

22. As to the body which should be made responsible for preparing the convention, operative paragraph 1 of the joint draft resolution provided for the calling of a conference of plenipotentiaries.

23. The first problem which arose in that connexion was the subject to be considered by the conference. He suggested, therefore, the insertion in operative paragraph 1, after the words "to consider the question of diplomatic intercourse and immunities", of the words "and related matters", as that would provide a compromise between the two divergent views expressed in the Committee. Without being postponed, the conference would if need arose be in a position to study, apart from the draft articles on diplomatic intercourse and immunities any other draft (on consular intercourse and immunities, *ad hoc* diplomacy or relations between States and international organizations) which the International Law Commission might have completed at the time.

24. As to the time at which the conference should be held, the spring of 1961, as proposed in operative paragraph 2 of the joint draft resolution, seemed the most favourable. Such a date would leave Governments adequate time to make preparations.

25. In deciding where the conference was to be held, two factors should be taken into account: the financial implications and the accessibility of the meeting place to the greatest number of participants. The Philippine delegation would support the majority on that question.

26. As to participation in the conference, the Philippine delegation would vote in favour of the proposal appearing in document A/C.6/L.456 and Add.1/Corr.1, as that would give the conference the best chance of success. It would vote against the proposal in document A/C.6/L.457/Rev.1, because an invitation addressed to all States would—as several representatives had already pointed out—inevitably provoke difficulties which might jeopardize the success of the conference.

27. Mr. MAURTUA (Peru) said that he wished to reaffirm the point of view which his delegation had always maintained, namely, that the fragmentary approach now proposed and nowhere envisaged in resolution 1288 (XIII) was contrary to the basic principle of unity which must underlie the codification and, consequently, the progressive development of international law.

28. Progressive development did not mean fragmentary and arbitrary development but, on the contrary, implied a gradual and continuous over-all codification based on real progress in modern legal thinking.

Jurists could not make rules of international law out of nothing and a series of partial codes without any links or unity must be avoided.

29. At the United Nations Conference on the Law of the Sea, the unity of the problems of that branch of international law had been recognized. Similarly, the proposal to establish an international criminal jurisdiction had been abandoned for lack of any uniform law on the subject or of any recognized definition of aggression. Those two examples proved the need to respect the principle of unity.

30. Some representatives had adduced arguments to show that there was a link between all branches of international law. That was true in the sense that international law was always concerned with relations between States, but there existed international legal institutions which were independent of each other and served distinct purposes. By contrast, normal diplomacy, *ad hoc* diplomacy and consular intercourse had points of similarity between them which were primarily the result of the identical nature of the rights and duties which the conclusion of a convention on the subject would confer or impose on States. There was an interdependence between the various forms of diplomacy and the privileges and immunities applicable to each.

31. The Peruvian delegation considered that undue haste should be avoided and that those representatives who, like the United Kingdom and Romanian representatives, were anxious to conclude a first convention without delay, were prompted solely by the secondary considerations of economy. The overriding consideration was to codify diplomatic law in its entirety.

32. Mr. BEST (Union of South Africa) said that at the thirteenth session of the General Assembly his delegation had voted in favour of the draft resolution which became resolution 1288 (XIII); he therefore considered that the time had now come to proceed with preparations for the formulation of the proposed convention.

33. Contrary, however, to what had sometimes been suggested, no decision had been taken by the Assembly regarding the body which should prepare the convention. Although his delegation had no objection in principle to the convening of a diplomatic conference, a solution which seemed to have the support of the majority, he thought that the Sixth Committee could just as well undertake the work itself, as very often diplomatic conferences worked no faster than Committees of the Assembly.

34. In addition, the elaboration of a convention had seldom been preceded by preparatory work as thorough as in the case under discussion. Indeed, the draft articles had already been modified several times by the International Law Commission in the light of comments by Governments, and that fact had made it possible to eliminate most of the controversial issues. In fact, with the sole exception of two draft articles and subject to a number of minor clarifications, the Government of the Union of South Africa could, for its part, accept the draft articles in their present form.

35. The Sixth Committee could therefore, if not at the current session then at least at the forthcoming one, make the preparation of a convention the first or even the only item on its agenda. In the meantime

Governments would have time to make preparations and could consider sending experts to the fifteenth session. Even if the convention could not be completed until the sixteenth session no time would have been lost, as the proposed conference was not to be called until 1961.

36. Thus, apart from the reasons of economy which militated in favour of such a solution for both the United Nations and small States with limited resources, the Sixth Committee would have the satisfaction, if it succeeded in concluding a convention, of having performed constructive and extremely useful work.

37. Mr. ANDERSEN (Iceland) said that his delegation maintained the position which it had set forth at the thirteenth session; it still thought that the Sixth Committee should not be so hesitant about giving its personal consideration to drafts submitted by the International Law Commission. Since Governments were entirely free to send representatives of their own choice to the Sixth Committee, there was no reason to believe that experts in certain branches of international law would not have the same chances of success if they worked in the Sixth Committee rather than at a special conference; moreover, it was not absolutely necessary for the convention on diplomatic intercourse and immunities to be completed at a single session: if necessary, the Sixth Committee could deal with the matter at two sessions.

38. The Sixth Committee had recently shown an unfortunate tendency to rule itself incompetent to deal with legal problems of substance. His delegation would be glad to see it reverse that tendency and draft the proposed convention itself. That solution would not only strengthen the Committee's position but would also enable it to make considerable savings. If, however, the majority of members decided in favour of calling a special conference, his delegation would support that view, but in that case it would prefer that the conference should take up the related questions of consular intercourse and immunities and ad hoc diplomacy at the same time.

39. Lastly, his delegation thought that, in choosing the place of the conference, the Committee should be guided primarily by financial considerations.

40. Mr. DE LA GUARDIA (Argentina) said that in the light of the explanations which the Secretary-General's representative had given at the 633rd meeting and of the fact that the majority seemed to be in favour of a special conference, his delegation would not insist on the views which it had expressed at the preceding session, when it had stated that it would prefer the Committee itself to draft the convention on diplomatic intercourse and immunities on the basis of the International Law Commission's draft.

41. Although there were undeniably connexions between the question of diplomatic intercourse and immunities and the questions of consular intercourse and immunities and ad hoc diplomacy, his delegation thought that it was advisable to proceed by stages and to undertake the codification of the rules governing the first of those questions immediately, since those rules were ready to be codified. That attitude was based not only on the authoritative opinion of the Chairman of the International Law Commission but also on the provisions of operative paragraph 4 of resolution 1288 (XIII).

42. With respect to the question of deciding what States to invite to the coming conference, his delegation would vote for the proposal contained in document A/C.6/L.456 and Add.1/Corr.1, which was in conformity with precedent in the matter.

43. His Government greatly appreciated the Austrian Government's offer to receive the conference at Vienna. But since it could not disregard the financial implications of that proposal, it would decide in favour of the solution which would be least costly for the United Nations.

44. Mr. BARNES (Liberia) pointed out that for small States like his own which were in the initial stages of their national development, participation in many international conferences aimed at studying questions of interest to them represented heavy financial and other burdens. For that reason, Liberia was somewhat disturbed by the tendency to call special conferences to deal with questions which the Sixth Committee was perfectly competent to consider itself. The draft articles prepared by the International Law Commission constituted an excellent working basis for drafting a convention on diplomatic intercourse and immunities and his delegation, for its part, would have liked to have seen the Sixth Committee undertake that task. Above all, as he had said at the preceding session, it would have preferred to have consular intercourse and immunities and ad hoc diplomacy considered at the same time as diplomatic intercourse and immunities. It was prepared, however, to accept the opinion of the majority, if the latter preferred to convoke a conference of plenipotentiaries for the sole purpose of drafting the articles on diplomatic intercourse and immunities.

45. With respect to the place where the conference should meet, his delegation believed that if it was decided to call the conference in the spring of 1961, as provided for in the joint draft resolution, it might perhaps be advisable to select New York, since the conference would follow shortly after the fifteenth session of the General Assembly. As to the composition of the conference, his delegation would support the proposal contained in document A/C.6/L.456 and Add.1/Corr.1.

46. Mr. CHAYET (France) said that the doubts which his delegation had expressed at the thirteenth session concerning the urgent need for concluding a convention on diplomatic intercourse and immunities had not been entirely dispelled. His delegation still thought, first, that it was not certain whether the advantages of a convention outweighed those of the established practice in the matter and, secondly, that the question might be combined with two other questions which were also going to be dealt with by the International Law Commission, namely, consular intercourse and immunities and ad hoc diplomacy. In any case, the Sixth Committee was called upon, under the terms of General Assembly resolution 1288 (XIII), to select the body to which the formulation of the convention should be entrusted.

47. His delegation shared the views of those delegations which were disturbed by the Sixth Committee's increasing tendency to divest itself of questions which normally came within its competence. The Committee's agenda was shrinking steadily, not only with respect to the number of items included in it but also with respect to their importance. It had been rightly observed, however, that if the Sixth Committee under-

took to draft the convention and failed to complete it within one or two sessions, it was to be feared that that fact would afford proof of its inability to accomplish the task entrusted to it.

48. If the majority decided in favour of calling a conference of plenipotentiaries, three questions would have to be answered: (1) Where would the conference be held? (2) When would it be held? (3) What States should participate in it?

49. With respect to the first question, he observed that the choice of Vienna as the site of the conference depended on certain agreements being reached between the Austrian Government and the United Nations Secretariat. The Committee, therefore, had the choice between New York on the one hand and Geneva—or Vienna, if the aforesaid agreements were reached—on the other. For the reasons which had been given at the preceding meeting by the United Kingdom representative, his delegation preferred Geneva.

50. As to the date of the conference, 1961 seemed preferable, since it left more latitude with respect to the length of the conference and the choice of the city where it would be held.

51. With reference to the participants in the conference, he said that the proposal contained in document A/C.6/L.456 and Add.1/Corr.1 envisaged specific States, a list of which could be drawn up immediately, whereas that contained in document A/C.6/L.457/Rev.1 would raise obvious political difficulties, as it would compel certain States, if they wished to be parties to the convention to be prepared, to enter into relations with certain political entities which they did not recognize as States, a course which might make them hesitate to take part in the conference. His delegation would vote for the first of those two proposals and against the second; since the conference would be called under United Nations auspices and paid for out of the United Nations budget, it seemed to him only logical to invite States which were directly or indirectly connected with the United Nations.

52. Mr. CHOWDHURY (Pakistan) stressed the need for codifying the practices which had become established in the matter under discussion, in order to prevent any such violation of those practices as might become a cause of dissension or international dispute.

53. His delegation wished to congratulate the International Law Commission on the draft articles which it had drawn up after very careful study. At the proper time, it would submit the changes which it thought should be made in some of those articles; but for the time being, it would limit itself to stating its views on the question whether the Sixth Committee itself should consider the draft or whether it was preferable to have it considered by a special conference.

54. It seemed that the Sixth Committee did not have the time to prepare the text of a convention on diplomatic intercourse and immunities. For that reason, a certain number of delegations—including that of Pakistan—had submitted the joint draft resolution, which proposed that a conference of plenipotentiaries should be convoked as soon as possible. That by no means meant that the Sixth Committee was incapable of completing work of that kind or that it was unwilling to do so. The authors of the draft resolution had been solely concerned with avoiding any harmful delay. They were confident that the Secretary-General would take all the necessary steps to reduce the costs involved in that conference to a minimum. It might perhaps be possible to arrange for the conference to complete its work in five or six weeks.

55. With respect to the place where the conference should be held, his delegation hoped that the Secretary-General would choose the place which would be least expensive for the United Nations. As to the question of participation in the conference, his delegation favoured the solution proposed in document A/C.6/L.456 and Add.1/Corr.1, which was in conformity with the formula adopted by the General Assembly in convening other diplomatic conferences. He agreed with the representative of the United States that to invite all States to participate in the conference would lead to complications which might compromise the success of the work. Other international conferences held under United Nations auspices had included the States which the authors of the proposal contained in document A/C.6/L.456 and Add.1/Corr.1 proposed to invite and the result of their deliberations had been very satisfactory. It was certainly desirable to give the United Nations a universal character, but the time seemed hardly promising for such a step.

The meeting rose at 1.10 p.m.