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CONTENTS

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, A/C.6/L.456 and Add.1, A/C.6/L.457/Rev.1, A/C.6/L.458) (continued)

1. Mr. STAVROPOULOS (Legal Counsel), introducing the note by the Secretary-General (A/C.6/L.458), drew the attention of the Committee to paragraphs 2, 3 and 4, in which details were given of the periods in 1960 and 1961 when a conference, convened in accordance with operative paragraph 1 of the joint draft resolution (A/C.6/L.455 and Add.1), could be held in New York, Geneva or Vienna. It would not be desirable, however, to hold the conference in Vienna in 1960, as in that case it would have to be limited, owing to proposed structural alterations to the conference building, to the unduly short period 23 July to 27 August.

2. The cost figures appearing in paragraphs 5, 6 and 7 were only given by way of indication, and would subsequently be scrutinized, after the Sixth Committee had decided where the conference should be held, by the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee, which might well reduce the estimates to some extent.

3. At the 632nd meeting, the Canadian representative had asked for information on the organization of the conference. While the answer to a number of his questions would be found in the note by the Secretary-General, various other points he had raised were not dealt with in that document. So far as concerned one of them, the question of representation at the conference, two proposals had already been presented (A/C.6/L.456 and Add.1 and A/C.6/L.457/Rev.1). Another suggestion might be that the Sixth Committee should form itself into a conference. That procedure had been adopted for the Convention on Genocide. It had not, however, proved entirely satisfactory: fifty meetings had been required to adopt a convention comprising nineteen articles, only nine of which were of a substantive nature. In the proposed convention on diplomatic intercourse and immunities there would be as many as forty-five substantive articles; and at that rate, even if the maximum of six meetings a week were held, it would take more than one General Assembly session to complete the work. Clearly, that was quite unsatisfactory.

4. It had also been suggested that the conference should be postponed until the subject of consular intercourse and immunities could be taken up in conjunction with that of diplomatic intercourse and immunities. Such a course was feasible. But the draft articles on consular intercourse and immunities might not be ready for six to seven years. Moreover, very little would be gained by dealing with both subjects at the same time, and the cost would be very little less, since the conference would have to be larger, and would require larger delegations and more staff to service it.

5. The suggestion had been made that the conference should deal not only with those two subjects but also with the right of asylum and ad hoc diplomacy. He could not agree, for work on the latter two subjects was still at such an early stage that it was impossible to know what approach to them would finally be desirable.

6. Mr. Maxwell COHEN (Canada) felt that the representative of the Secretary-General underestimated the doctrinal unity underlying the four subjects in question. Nevertheless, he was prepared to agree to the conference dealing only with the question of diplomatic intercourse and immunities.

7. Mr. EL-ERIAN (United Arab Republic) said that in commenting on the statement just made by the representative of the Secretary-General he would confine his remarks to that part of it dealing with the relationship between diplomatic intercourse and immunities on the one hand, and consular intercourse and immunities, the right of asylum, and ad hoc diplomacy, on the other. The matter had already been exhaustively discussed both by the Sixth Committee at the thirteenth session of the General Assembly and by the International Law Commission, and the outcome had been a recommendation to the General Assembly that separate action should be taken as regards diplomatic intercourse and immunities.

8. While there was clearly some relationship between diplomatic intercourse and immunities and consular intercourse and immunities, it was not a relationship of an organic type, as had been the case with the various subjects discussed at the United Nations Conference on the Law of the Sea. The subject of consular intercourse and immunities could well be delayed until a convention on diplomatic intercourse and immunities had been adopted; the reverse was not true. Moreover, if the suggested subjects were added to the agenda of the conference, it would be five or six years before the work could be started.

9. A further reason for starting work on a convention on diplomatic intercourse and immunities as early as possible was that such a convention would involve no insurmountable difficulties, as a considerable amount of case law already existed on the subject.

10. Mr. PECHOTA (Czechoslovakia) said that it had been clear from the discussions held at the General

Assembly's thirteenth session that the majority of Member States were in favour of the codification of diplomatic law by the conclusion of a multilateral convention on the subject. At the current session almost all Members seemed to have come round to that view, a fact which must be regarded as a significant advance towards full co-operation between States in the important field referred to in Article 13, paragraph 1 (a) of the Charter. The Czechoslovak delegation attached great importance to the subject, for the creation of new States and the changes which had taken place in the composition of the international community made it necessary for relations between States to be provided with a solid legal basis.

11. His delegation believed that the time was ripe for specific action to be taken with a view to the codification of diplomatic law. All the preliminary work had been completed, and the International Law Commission had prepared a draft which was generally recognized to offer a good basis for negotiation leading to the conclusion of an international convention. In addition, many Governments had sent in their comments (A/4164 and Add.1 to 7) on the International Law Commission's draft articles, to which they would constitute a valuable supplement.

12. He wished to take the opportunity of congratulating the Asian-African Legal Consultative Committee on the report on diplomatic immunities prepared at its second session, held at Cairo in October 1958. That report not only indicated the profound interest of the African and Asian countries in the development of international law, but would also offer valuable background material for the codification of diplomatic intercourse and immunities on a universal basis.

13. As to the question what body should be given the task of preparing the convention on diplomatic intercourse and immunities, there were two possible alternatives. The first was that the Sixth Committee should form itself into a conference; the other was that a special conference of plenipotentiaries should be called for the purpose. The first alternative was hardly practicable, for the task was a complex one, and could not be carried out by the Sixth Committee without detriment to its other work. Indeed, codification was not primarily a task of the Sixth Committee. Accordingly, the second alternative was to be preferred; and it was for that reason that his delegation had co-sponsored the joint draft resolution (A/C.6/L.455 and Add.1).

14. The date proposed for the conference in the draft resolution was in accordance with General Assembly resolution 1288 (XIII). As to the place at which the conference should be held, his delegation's final decision would depend on the financial implications; considerable extra cost might arise if the conference was held away from Headquarters. However, his delegation would reserve its position on the matter for the time being.

15. As the codification of the law of diplomatic intercourse and immunities was of interest to all States of the world, it was essential to ensure that States outside the United Nations should have an equal opportunity with Member States to share in the preparation of the proposed draft convention. No other procedure would ensure the universality of the convention. Accordingly, his delegation had co-sponsored the proposal contained in document A/C.6/L.457/Rev.1. He was sure that the need for the broadest possible participation in the conference would be recognized by the majority of the Committee.

16. Mr. de la GUARDIA (Argentina) pointed out that resolution 1202 (XII), which was referred to in paragraph 4 of the Secretary-General's note on financial implications (A/C.6/L.458), laid down, in paragraph 2 (e), that a meeting could be held away from established headquarters where the Government issuing the invitation for the meeting to be held within its territory had agreed to defray, after consultation with the Secretary-General as to their nature and possible extent, the additional costs involved. Perhaps the Legal Counsel could tell the Committee whether, in the event of the conference being held in Vienna, those "additional costs involved" would represent the difference between the costs estimated for Vienna and those estimated for New York, or only the difference between the Vienna figure and the Geneva figure. Furthermore, although the request might seem premature, he would welcome some information from the Austrian representative regarding the possible attitude of the Austrian Government in the matter.

17. Mr. STAVROPOULOS (Legal Counsel) said that in his personal view what was meant by the passage in resolution 1202 (XII) referred to by the Argentine representative was that if, for example, the General Assembly decided to hold the conference at Headquarters and the Austrian Government subsequently invited it to Vienna, the additional costs in question would be the difference between the Vienna estimate and the New York estimate. On the other hand, if the Assembly decided, before receiving an Austrian invitation, to hold the conference at Geneva, the additional costs would be only the difference between the figures applicable, respectively, to Vienna and to Geneva. The Secretary-General's financial advisers might, however, place a different construction on resolution 1202 (XII).

18. Mr. MAURTUA (Peru) said that he could not accept the USSR representative's contention, at the preceding meeting, that the early holding of a conference was necessitated by considerations of time. It had been suggested, in particular, that an early conference would be justified because the International Law Commission's work on the related topics of consular intercourse and immunities and ad hoc diplomacy would take several years to complete. The Peruvian delegation could not agree that the desire to avoid a temporary delay of that kind could ever justify a total disregard of the unity of the subject matter. A hasty attempt to codify the law applicable to permanent diplomatic missions alone would amount to separating off one section of an essentially indivisible structure.

19. Some representatives had argued that the subject with which the proposed conference would deal would lay a foundation, and that the conclusion of a convention would facilitate the Commission's future work. But, in fact, the adoption of the joint draft resolution would preclude a balanced determination of the relationship between the various aspects of the subject as a whole. Nobody could contend, after all, that there was not a prima facie link between permanent diplomatic missions, consular activities and ad hoc diplomacy. Accordingly, the proposal in paragraph 7 of the joint draft resolution that the conference should concentrate solely on diplomatic intercourse and im-

munities was far too restrictive. In many States, the diplomatic and consular services were merged, and experience had shown that the rules normally applied to permanent diplomatic agents and to diplomats engaged on ad hoc missions were not vastly different. Diplomatic officers of all the various types involved enjoyed very similar privileges in such matters as transit, exemption from civil and criminal jurisdiction and the like. Any conference, therefore, to be truly useful would have to take into account not merely chapter III of the Commission's report on the work of its tenth session (A/3859 and Corr.1), but also all the other drafts which the Commission had been asked to prepare on related subjects.

20. If the purpose referred to in the second preambular paragraph of the joint draft resolution was to be served, the eventual convention would have to reflect the relationship between all the related aspects of the subject. The Peruvian delegation therefore believed that the General Assembly should, before convening a conference, await the results of the International Law Commission's work and some clarification of the outstanding issues. Those issues were not highly controversial, and conflicts connected with them had always been peacefully settled. The adoption of the joint draft resolution, however, could have serious detrimental effects. In the first place, it might be construed by the International Law Commission as a suggestion that it should accelerate its work, even if that meant sacrificing quality; and secondly, it would set an unfortunate precedent, by encouraging partial solutions in the process of codification of international law. If codification was to serve its true purpose, the methods employed in carrying it through had to be carefully considered and weighed.

21. Lastly, the Committee should consider whether the calling of a special conference would genuinely assist the development of United Nations legislation. The Sixth Committee had at its disposal the same experts and the same material as would be available to a conference; that fact had been amply demonstrated during the drafting of the Genocide Convention. A special conference, therefore, apart from the additional expenditure which it would involve, might also weaken the General Assembly's prestige, for it could be construed as a surrender of jurisdiction.

22. Mr. GLASER (Romania) said that the delegations advocating the postponement of the proposed conference had not adduced a single new argument which would justify a further six or seven years' delay in the elaboration of a convention on diplomatic intercourse and immunities. Their intention apparently remained what it had been at the General Assembly's thirteenth session: to bury the whole question for all time. There could certainly be no other explanation for such attempts to reopen discussion on a question which had been effectively settled.

23. The statement that there was a link between diplomatic intercourse and consular intercourse was undoubtedly true. But there were also close interrelationships between all other branches of international law; yet it had never been argued that no codification should be attempted until a comprehensive statement of the law of nations as a whole could be formulated. In a somewhat more restricted sphere, there was a clear link between diplomatic intercourse and the notion of territory; it had not been suggested, however, that the codification of the law of diplomatic intercourse and immunities should be deferred until it was possible also to codify that branch of international law which concerned the definition of a State's territory. Again, diplomatic agents were required to refrain from interfering in the domestic affairs of the receiving State; but that did not mean that no conference should be called until some definition of "domestic affairs" had been arrived at. International law in general, and the law governing the representation of States in particular, was made up of many parts, and the applicable provisions could not all be formulated at once. It was necessary first to lay the foundations.

24. It had been expressly decided at the thirteenth session that codification of the law of diplomatic intercourse and immunities need not await the International Law Commission's report on consular intercourse or on ad hoc diplomacy. The Peruvian representative had argued, however, that to deal with the first topic separately would amount to breaking up the subject matter. If he had meant by that that the advocates of an early conference believed that international law had to be codified gradually, with separate complexes of rules coming into being at different stages, his conclusion had been correct. The Peruvian representative had probably sought to imply, however, that those who pressed for a conference were seeking to tear asunder an indivisible whole. That argument clearly could not be reconciled with the decision taken by the Committee in 1958, after full consideration of the facts. The only new argument advanced by the Peruvian representative had been the surprising one that an early conference might cause the International Law Commission to proceed with undue haste. In reality, only a decision not to call an early conference would have that effect, for it would lead the Commission to believe that the General Assembly was impatiently awaiting the other drafts, despite the fact that the subject of ad hoc diplomacy, being largely new, required a particularly prudent approach.

25. The Peruvian representative had also suggested that calling a conference under United Nations auspices would be damaging to the Organization's prestige. That argument was somewhat difficult to follow. Conferences attended by States non-members as well as Members of the United Nations in fact strengthened United Nations prestige, for they represented a desirable step towards universality. It had never been argued that the prestige of the Organization had been damaged by the United Nations Conference on the Law of the Sea, or by the General Assembly's decision to call a second conference on that subject (resolution 1307 (XIII)). The Peruvian representative's suggestion that the Sixth Committee should itself draw up the proposed instrument, as it had done in the case of the Genocide Convention, was also unacceptable. The Genocide Convention, comprising very few substantive articles, had necessitated fifty meetings; the forty-five substantive articles on diplomatic intercourse and immunities, together with the necessary formal provisions, would at that rate need more time than could ever be available at one session. It had been estimated that the drafting of the convention would take eight weeks, at a special conference which could refer various groups of articles to committees. The Sixth Committee could never subdivide in that manner, unless the small delegations increased their staffs to a degree where the desired economy of the procedure would prove illusory.

26. In the circumstances, the Committee should discontinue the discussion on the desirability of a conference and endeavour to dispose of the few practical questions which remained unresolved. The Romanian delegation would support any reasonable proposal to that end, and would resist any attempt to rescind resolution 1288 (XIII).

27. Mr. SPERDUTI (Italy) said that his delegation had co-sponsored the joint draft resolution because it approved, in principle, of the draft articles on diplomatic intercourse and immunities which had been prepared by the International Law Commission at its tenth session (A/3859 and Corr.1, para. 53), and because it was convinced that the General Assembly should convene an international conference for the purpose of drawing up a convention based on those draft articles.

28. Some doubts had been expressed as to the advisability of calling such a conference before the Commission had completed its draft articles on the subjects of ad hoc diplomacy and consular intercourse and immunities. Certain delegations thought that it would be better to postpone the conference until the law of diplomatic and of consular intercourse and immunities could be codified as a whole. Although there were reasons both theoretical and practical in favour of such a course, he felt that there was sufficient material already available on diplomatic intercourse and immunities to permit that subject to be codified before the others.

29. Lastly, with respect to the question what States should be invited to the conference, his delegation had co-sponsored the proposal contained in document A/C.6/L.456 and Add.1, which provided that all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice should be invited to participate in the conference. That formula, which had been used by the General Assembly in convening other diplomatic conferences to establish rules of universal importance, seemed likely to ensure that the conference would reflect the wishes and requirements of the international community.

30. Mr. Benjamín COHEN (Chile) said that there was a profound unity underlying the subjects of diplomatic and consular intercourse and immunities, as also the subjects of ad hoc diplomacy and the immunities of international organizations. In the interest of continuity, he would have preferred all those subjects to be dealt with together in the Sixth Committee; but if at the current session the majority should decide in favour of convening an international conference of plenipotentiaries to consider the question of diplomatic intercourse and immunities, he would abide by that decision. His Government, however, was much concerned at the rising cost of such conferences; if the conference was to be held in 1960, therefore, he hoped that the place selected would be New York.

The meeting rose at 12.30 p.m.

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