United Nations
GENERAL ASSEMBLY
SEVENTEENTH SESSION
Official Records

SIXTH COMMITTEE, 775th MEETING

Thursday, 6 December 1962, at 3.25 p.m.

NEW YORK

CONTENTS

Chairman: Mr. Constantine EUSTATHIADES (Greece).

AGENDA ITEM 74

Consular relations (A/4843, A/5171 and Add.1 and 2, A/5191, A/C.6/L.515) (concluded)

1. Mr. ZOUHIR (Tunisia) congratulated the International Law Commission on the work of codification and progressive development of international law that it had carried out with regard to consular intercourse and immunities. The Tunisian delegation had carefully studied the draft articles (A/4843, chap. II), taking into account the development of international law in the matter and the importance of codification of that branch of law for small countries.

2. Consulates had come into being as soon as peoples had felt the need to know and trade with one another. The conclusion of bilateral consular conventions had arisen out of the spirit of good-neighbourliness, or to use modern legal terminology, the desire for peaceful coexistence. Those bilateral and, sometimes, regional conventions had given rise to a customary international law to which the small countries had never really been parties. Indeed, a different customary law had developed side by side with those conventions, a law which had its origins in the capitulations and was exercised to the detriment of the small countries. The capitulations had at first been treaties concluded between the Sublime Porte and France, and, subsequently, between Turkey and the Western Powers. They had given the nationals of Christian nations residing in the countries described as "beyond Christendom", and particularly in Moslem countries, the right of broad exemption from the power of the local authorities and of being under the jurisdiction of their national authorities, represented by their diplomatic agents and consuls. The capitulations had thus been born of religious mistrust, but Christianity and Islam, both entrenched on the shores of the Mediterranean, had soon been obliged to submit to the exigencies of trade and to collaborate and co-operate. Religious motives had gradually given way to political considerations, and the capitulations had become a body of treaties guaranteeing the nationals of European countries certain special privileges, exempting them from taxes and subjecting them to the jurisdiction of their consuls. The capitulations had soon engendered abuses and, through the fictions of extraterritoriality and naturalization, had quickly resulted in the creation of a State within a State. In some countries, the capitulations system had only recently been abolished.

3. It was because under cover of that system consular privileges and immunities had led to a real mutilation of their sovereignty, that the small countries had certain reservations about the customary law which existed on the subject. They hoped that the codification of consular law would restore the balance between large and small States and would normalize their relations on a basis of justice, freedom, reciprocal advantage and mutual respect. The attempt at codification just made by the International Law Commission bore witness to the development of customary law and to the need to adapt that law to such new international facts as the emancipation of peoples, the appearance of new States on the international scene, difficulties encountered by former colonial Powers in maintaining their consulates in newly-independent States, the reaction of the latter against the abuses of the past and the need to maintain relations in an increasingly interdependent world.

4. Commenting on the draft articles on consular relations, he observed that one great principle ran through the whole text—the principle of freedom to assume commitments in conditions of equality. Any State whatsoever, irrespective of its political situation or economic or military potential, was free to consent to, or refuse, the establishment within its territory of the consulates of another State. Consular relations were no longer based on force; they were governed by conventions to which States acceded freely and which left States their freedom of action. That development of law was of vital importance to small countries like his own. It confirmed the position taken by those delegations, including his own, which had maintained, during the debate on principles of international law concerning friendly relations and co-operation among States, that international law was a dynamic science which must take into account the changes occurring in relations among peoples and nations. From the principle he had mentioned derived all the provisions which made the entry into force of a convention subject to the mutual consent of States. Although the opening of consulates offered greater advantages for large than for small States, the principle of mutual consent presented some advantages which offset the defects of the system.

5. On the other hand, the draft articles reflected other principles and tendencies of which the Tunisian delegation could not approve. It considered it excessive to place consular officials on the same footing as diplomatic agents, since, in its view, the privileges and immunities of the latter were already too wide. Privileges and immunities should be granted to consuls only to ensure the normal exercise of their functions and respect for their status. Any extension of those privileges and immunities was prejudicial to the small countries. Moreover, consuls were re-

sponsible for representing economic and commercial interests, and diplomatic agents for political representation, so there was no reason to apply the same criteria to both. The inviolability of premises and of the pouch exceeded requirements for the free exercise of the consular function. He shared the view expressed by the United Kingdom representative at the 771st meeting that public opinion was not in favour of the undue extension of consular privileges and immunities. Moreover, in the newly-independent States, public opinion was even more opposed to that extension because the privileges granted to foreign colonies were still fresh in the memory of the people. Accordingly, the privilege granted to consular officials in article 41, paragraph 1, was somewhat excessive. In some legislations, a "grave crime" was an offence of extreme gravity, and it would be better to use the expressive "grave offence". Lastly, the Tunisian delegation had reservations to make concerning certain articles of the draft which related to honorary consuls. The latter were usually nationals of the receiving State and often carried on a gainful activity at the same time, so that the question of the privileges to be granted to those consuls should be studied carefully and with due consideration of the implications of such privileges for municipal law.

6. The question of consular relations, privileges and immunities was governed both by customary international law and by the municipal law of States. Municipal legislation often dealt with matters which were governed by international law, while consular conventions sometimes governed questions of municipal law. That overlapping of municipal and international law might entail difficulties for new States. In those countries, municipal law was as yet poorly defined and in many cases commercial and maritime law was only partially codified. The newly-independent countries might therefore hesitate to accede in the near future to a multilateral convention which would hamper their freedom of action in drafting or codifying their municipal law, or which would be in flagrant contradiction with legislation that they had recently drafted with considerable difficulty.

7. Nevertheless, the draft articles on consular relations represented a step towards the inauguration of the rule of law. Despite its shortcomings, the draft would promote the establishment of friendly relations and co-operation among States.

8. Mr. FREELAND (United Kingdom), introducing draft resolution A/C.6/L.515, observed that the text was procedural in nature and to a large extent self-explanatory. The United Kingdom delegation considered that the initial stage of the work of the United Nations Conference on Consular Relations would be facilitated if Governments were to submit before the Conference, for circulation to other States, the amendments they intended to submit to the draft articles on consular relations prepared by the International Law Commission (A/4843, chap. II). Of course, that would in no way prevent participating States from submitting amendments during the Conference; that point was expressly made clear in the fourth preambular paragraph. As the Peruvian representative had pointed out, amendments might be received at various stages of the proceedings, but it would be better if they could be sent in as soon as possible.

9. Paragraph 2 of the draft resolution referred to "States which intended to participate in the Conference". Some of the States which were included in the invitation to participate contained in resolution 1685 (XVI) might decide not to attend the Vienna Conference, and his delegation thought it appropriate that the invitation to submit amendments in advance should be addressed only to those of the invited States which did intend to participate. Lastly, the date of 10 February 1963 in the same paragraph had been inserted to meet the wishes of the French representative. Proposals received after that date would not be circulated until the Conference itself.

10. He welcomed the support that his delegation's proposal had already received and also said that his Government would consider carefully the statements which had been made during the debate.

11. Mr. PECHOTA (Czechoslovakia) recalled that he had already expressed his interest in draft resolution A/C.6/L.515. He wished, however, to ask the United Kingdom representative whether, in his opinion, the amendments which would be received and circulated to Governments would be formal amendments within the meaning of the rules of procedure of the Conference, or merely an indication of the preliminary intentions of Governments.

12. Mr. FREELAND (United Kingdom) replied that that would depend on the rules of procedure of the Conference. The United Kingdom believed, however, that it would be better for those amendments to be treated as more than mere indications of intention; otherwise, some of the advantages of draft resolution A/C.6/L.515 would be lost.

13. The CHAIRMAN, speaking as the representative of Greece, said that the priority to be given to those amendments was an important point.

14. Mr. PECHOTA (Czechoslovakia) observed that that point would indeed arise if the amendments submitted in advance of the Conference were formal.

15. Mr. FREELAND (United Kingdom) said that his delegation was not urging that the amendments should be treated as formal. It might, however, be useful if there were some further discussion of the question before the Committee proceeded to a vote.

16. The CHAIRMAN said that that point could not be settled by the Committee. Every international conference was a sovereign body which decided upon its own rules of procedure.

17. U SAN MAUNG (Burma) said that his delegation would be obliged to abstain from voting if it were decided that the amendments submitted in advance of the Conference would be formal in character.

18. Mr. FREELAND (United Kingdom) agreed that the Conference alone would be competent to decide whether or not the amendments would be formal. He explained that, in asking that the matter should be discussed before the vote, he had in no way intended to urge the Committee to decide that the amendments should be recognized as being formal, but had only wished to obtain clarifications on that point.

19. The CHAIRMAN said that while the Conference alone was competent to decide what status should be given to amendments circulated in accordance with paragraph 2 of draft resolution A/C.6/L.515, the discussion in the Sixth Committee had the merit of bringing home the existence of the problem.

20. Mr. VASQUEZ (Colombia) thought it would be illogical to consider the amendments submitted by Governments as mere indications; he admitted, however, that the Sixth Committee could not give them formal status. He accordingly suggested that a third operative paragraph should be added to the United Kingdom draft resolution to make it clear that the amendments received would be considered formal amendments, but that the way in which they were treated would be established by the rules of procedure of the Conference.

21. Mr. MOLINA (Venezuela) said he would support the United Kingdom draft resolution (A/C.6/L.515), the purpose of which, in his view, was to associate the United Nations with the forthcoming Conference on Consular Relations at Vienna, so as to facilitate its work. Governments would be better prepared if they knew in advance what attitude they would be able to adopt towards the amendments which would be submitted, it being understood that the rules of procedure of the Conference would determine whether or not the amendments thus submitted were formal amendments.

22. Mr. USTOR (Hungary) said that no question arose concerning the priority to be accorded in the voting to amendments submitted in accordance with the United Kingdom draft resolution, since priority was not determined by the chronological order in which the amendments were submitted but by how far they departed in substance from the original draft. However, it was difficult to make a distinction between amendments properly so called and proposals, for instance, in the case of new articles. That problem would disappear if it were understood that the United Kingdom draft resolution referred only to amendments.

23. Mr. CAPOTORTI (Italy) said that the matter was of great practical importance. There might be some question whether States would be authorized to propose new articles or simply amendments to existing articles. That question could be solved by deciding to consider proposals for new articles as amendments to the draft articles as a whole, so that the term "amendments" would include new articles also. Since the purpose of the draft resolution (A/C.6/L.515) was to make known the intentions and position of Governments, there was no reason to limit its application exclusively to amendments. Either the words "or any new draft articles" might be added after the words "any amendments" in paragraph 2, or it might be specified in the report of the Sixth Committee that the term "amendments" was meant to apply to new draft articles as well.

24. Mr. KIRCHSCHLAEGER (Austria) believed that the amendments mentioned in paragraph 2 of the draft resolution (A/C.6/L.515) should be regarded as having been submitted for purposes of information. Furthermore, the Secretariat should consider the possibility of circulating those amendments grouped by articles and not by countries, in order to make it easier for Governments to examine and comment on them. His delegation would support the draft resolution.

25. Mr. FREELAND (United Kingdom) said that it had not been his delegation's intention to exclude proposals for new articles. The English text left room for the submission of amendments to the draft articles as a whole in the form of new articles.

26. Mr. E. K. DADZIE (Ghana) agreed that that was so.

27. Mr. MOVCHAN (Union of Soviet Socialist Republics) recalled that his delegation had already announced its intention of supporting the United Kingdom draft resolution (A/C.6/L.515), for that text did not deny the unquestionable right of Governments to submit amendments at the Conference itself. He agreed with the Austrian representative that the purpose of the draft resolution was to facilitate the work, by making known the position of Governments and the text of any amendments, new articles or even preambles which they intended to submit, it being understood that those preliminary texts were purely for information and would have to be submitted again formally at the Conference as official documents. He shared the view of the Hungarian representative concerning the priority to be given such texts in the voting.

28. Mr. USTOR (Hungary) said that three conclusions appeared to have emerged from the discussion: the Committee was apparently agreed that the word "amendments" in the draft resolution (A/C.6/L.515) applied to amendments and proposals; the rules of procedure of the United Nations Conference on Consular Relations would establish later what was or was not a formal amendment; and lastly, it might be expected that the rules of procedure of this Conference would differ slightly from those of the United Nations Conference on Diplomatic Intercourse and Immunities of 1961, in that there would be no distinction between proposals and amendments, so as to avoid any discrimination in voting. If the Conference decided that all changes proposed in writing would be considered as amendments and that the priority to be accorded them would depend on their substance, the problem would be satisfactorily solved.

29. Mr. TSHIMBALANGA (Congo, Leopoldville) asked the United Kingdom representative whether the words "States which intend to participate in the Conference" in paragraph 2 of the draft resolution (A/C.6/L.515) referred to the intention as such or to the possibility of participating in the Conference, and whether actual attendance was required.

30. Mr. FREELAND (United Kingdom) replied that paragraph 2 related to all States which had been invited to the Conference in accordance with the decision taken at the previous session and which at the appropriate time, intended to participate. Amendments submitted by a State which, in the event, did not participate would not, he assumed, be taken into consideration by the Conference.

31. As for the three conclusions which the Hungarian representative had just put forward, he thought that the question might perhaps be settled by the inclusion of a passage reflecting the first two in the report of the Sixth Committee. With regard to the third, he felt that the Sixth Committee could not prejudge the content of the rules of procedure of the forthcoming Conference.

32. Mr. ROSENNE (Israel) shared that view.

33. Mr. USTOR (Hungary) accepted the United Kingdom representative's suggestion concerning the first two points and acknowledged that the third could be finally settled when the rules of procedure of the Conference were drawn up.

34. Mr. EL-ERIAN (United Arab Republic) said that he would support the United Kingdom draft resolution (A/C.6/L.515), since it would greatly facilitate the work of the forthcoming Conference.

35. Mr. PATEY (France) said that the reply of the United Kingdom representative to the question put by the representative of the Congo (Leopoldville) clearly revealed that the amendments submitted in advance of the Conference would be provisional in character. As the USSR representative had said, they would have to be submitted again at the Conference under an appropriate document symbol. Accordingly, the amendments in question would be merely for information, and would make known the position of Governments.

36. Mr. COCHAUX (Belgium) agreed with the previous speaker: it was not for the Sixth Committee to settle the question of consular relations and to speak of amendments before the Conference had opened.

37. Mr. AMADO (Brazil) also thought that the problem fell within the competence of the Conference. He would vote for the United Kingdom draft resolution (A/C.6/L.515), which seemed to him likely to facilitate the work of the Conference. As for the status of the amendments and the treatment to be given to them, the plenipotentiaries attending the Conference would consider those which were consistent with the rules of procedure.

38. U SAN MAUNG (Burma) and Mr. OKANY (Nigeria) shared the views of the representatives of Austria, Belgium, Brazil, France and the USSR, and would vote for the draft resolution.

39. Mr. MAURTUA (Peru) also felt that the draft resolution submitted by the United Kingdom (A/C.6/L.515) would facilitate the work of the Conference on Consular Relations. The problem, in brief, was to bring out in advance of the Conference the position which Governments were likely to take. At the practical level, the draft resolution asked Governments to submit their proposals and amendments as soon as possible. The fourth preambular paragraph stated clearly that the action of States in submitting amendments in advance of the Conference would be without prejudice to their right to propose amendments in the course of the Conference. He agreed with the United Kingdom representative that the proposals submitted in that manner might be new draft articles as well as amendments to existing articles. The problem of priority was important, but it could not be settled at the present time. Governments did not have to make a judgement as to the character of their amendments in advance of the Conference, and chronological order should not be taken into account in determining the order in which those proposals would be put to the vote. The sole purpose of the draft resolution, therefore, was to make known as soon as possible the proposals which States might make, and on that basis Peru was prepared to accept it.

40. Mr. KIRCHSCHLAEGER (Austria) thought it might be difficult for Governments to submit amendments if the nature of those amendments was not specified at the time of their submission. He suggested, therefore, that the words "any amendments" in paragraph 2 should be replaced by the words "any draft amendment or draft proposal": the new text would have the advantage of referring to all the amendments or proposals which Governments might wish to submit. It would also be desirable to insert the words "for information" after the words "circulation to Governments" in that paragraph.

41. Mr. RUDA (Argentina) said that two points seemed to be generally accepted: the amendments would be submitted for information, and they would have no official status until the Conference had drawn up its rules of procedure. The only problem at the present stage, therefore, was the wording of the last part of paragraph 2, in which the words "which they may wish to propose in advance of the Conference" should be replaced by the words "which they may wish to propose at the Conference" or "during the Conference". It was impossible to propose amendments before the rules of procedure of the Conference had been adopted.

42. Mr. STAVROPOULOS (Legal Counsel) said that there were two aspects to the problem—one practical and the other legal. As a practical matter, Governments could send in their amendments up to 10 February 1963. From the legal viewpoint those amendments would be treated as if they had been submitted on the first day of the Conference.

43. Mr. FREELAND (United Kingdom) noted that the members of the Committee were, on the whole, in agreement as to the main purpose of the proposal submitted by his delegation. That purpose was that Governments should make known in advance of the Conference their views on what changes were required in the draft articles on consular relations. The exact legal status of any amendments they might propose in advance would be established by the rules of procedure of the Conference.

44. The CHAIRMAN put the United Kingdom draft resolution (A/C.6/L.515) to the vote.

The draft resolution was adopted unanimously.

The meeting rose at 4.55 p.m.

Litho in U.N. 77601—May 1963—2,075