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DIPLOMATIC INTERCOURSE AND IMMUNITIES

Report of the Sixth Committee

Rapporteur: Mr. S.T. SHARDYKO (Byelorussian Soviet Socialist Republic)

1. The General Assembly at its thirteenth session, having considered chapter III of the report of the International Law Commission covering the work of its tenth session,^{1/} which contained draft articles and commentaries on diplomatic intercourse and immunities, adopted on 5 December 1958 resolution 1288 (XIII), a portion of the operative part of which read as follows:

"2. Invites Member States to submit their comments on the draft articles concerning diplomatic intercourse and immunities not later than 1 June 1959;

3. Requests the Secretary-General to circulate such comments so as to facilitate the discussion of the subject at the fourteenth session of the General Assembly;

4. Decides to include the item entitled 'Diplomatic intercourse and immunities' in the provisional agenda of its fourteenth session with a view to the early conclusion of a convention on diplomatic intercourse and immunities;

5. Decides to consider at its fourteenth session the question to what body the formulation of the convention should be entrusted."

1/ Official Records of the General Assembly, Thirteenth Session, Supplement No. 9 (A/3859 and Corr.1).

2. In accordance with operative paragraph 2 of that resolution, Member States submitted their comments on the International Law Commission's draft articles. These comments were reproduced in document A/4164 and Add.1-7.
3. At its 803rd plenary meeting on 22 September 1959, the General Assembly placed the item entitled "Diplomatic intercourse and immunities" on the agenda of its fourteenth session and allocated it to the Sixth Committee.
4. The Committee considered this item at its 632nd to 638th meetings on 12 to 20 November 1959.

Proposal and amendments

5. The Committee had before it a draft resolution submitted by the following twenty Powers: Belgium, Cambodia, Ceylon, Cuba, Czechoslovakia, Federation of Malaya, Ghana, Greece, Iraq, Italy, Japan, Mexico, Nepal, Pakistan, Poland, Portugal, Tunisia, United Arab Republic, United Kingdom of Great Britain and Northern Ireland and Yugoslavia (A/C.6/L.455 and Add.1-3).

6. The operative part of this draft resolution read as follows:

- "1. Decides that an international conference of plenipotentiaries shall be convoked to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as may be necessary;
2. Requests the Secretary-General to convoke the conference at (New York, Geneva, Vienna) not later than the spring of 1961;
3. Invites
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4. Invites the specialized agencies and the interested inter-government organizations to send observers to the conference;
5. Requests the Secretary-General to present to the conference all relevant documentation, and recommendations concerning its methods of work and procedures, and other questions of an administrative nature;
6. Requests the Secretary-General to arrange also for the necessary staff and facilities which would be required for the conference;
7. Refers to the conference chapter III of the report of the International Law Commission covering the work of its tenth session, as the basis for its consideration of diplomatic intercourse and immunities;
8. Expresses the hope that the conference will be fully attended."

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7. An amendment (A/C.6/L.456 and Add.1 and Add.1/Corr.1) to this draft resolution was submitted by Belgium, Federation of Malaya, Ghana, Greece, Italy, Japan, Mexico, Pakistan and the United Kingdom of Great Britain and Northern Ireland.

The amendment proposed the insertion of the following as operative paragraph 3:

"3. Invites 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 to participate in the conference and to include among their representatives experts competent in the field to be considered."

8. Ceylon, Czechoslovakia, Indonesia, Poland, Romania and Yugoslavia also submitted an amendment (A/C.6/L.457/Rev.1 and Add.1) to the twenty-Power draft resolution, proposing the insertion of the following as operative paragraph 3:

"3. Invites all States to participate in the conference and to include among their representatives experts competent in the field to be considered."

9. A further amendment (A/C.6/L.459 and Add.1 and 2) was submitted by Australia, Canada, Chile, Colombia, Denmark, Ecuador, Finland, Guatemala, Liberia, Norway and the Philippines. It proposed: (1) to add to the preamble of the draft resolution two paragraphs noting that the International Law Commission was to prepare a final draft on consular intercourse and immunities in 1961 and to take up the subject of ad hoc diplomacy in 1960; (2) to replace operative paragraph 1 by the following:

"Decides that an international conference of plenipotentiaries shall be convoked to consider the questions of diplomatic and consular intercourse and immunities and such other related matters as may be ready at the time, and to embody the results of its work in one or more international conventions together with such ancillary instruments as may be necessary;"

(3) to replace operative paragraph 2 by the following:

"Requests the Secretary-General to convoke a conference in 1963 at a place to be decided by the General Assembly at a future session;"

and (4) to add to operative paragraph 7, after the word "immunities", the words:

"and the relevant reports of the International Law Commission as the basis for its consideration of consular intercourse and immunities and any other related topics ready for consideration."

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10. Chile submitted an amendment (A/C.6/L.460) to replace the operative part of the joint draft resolution (A/C.6/L.455 and Add.1 - 3) by the following:

"1. Decides that the Sixth Committee shall be entrusted with the drafting of the conventions on diplomatic intercourse and immunities, on consular intercourse and immunities, on ad hoc diplomacy and on immunities of inter-governmental organizations as and when the International Law Commission submits reports on those questions;

2. Decides that the resulting conventions shall be open for signature by all States;

3. Resolves that the first part of the task mentioned in operative paragraph 1 to be undertaken shall be that relating to diplomatic intercourse and immunities, which shall be considered not later than at the sixteenth session, in 1961;

4. Urges the International Law Commission to accelerate its preparatory work on consular intercourse and immunities, ad hoc diplomacy and immunities of inter-governmental organizations so that, if possible, a large number of the present members of the Sixth Committee who have been concerned with the consideration of these questions shall be able to take part in the study of that work."

11. The Secretary-General submitted a statement of the financial implications (A/C.6/L.458) of the twenty-Power draft resolution.

Discussion

12. Under resolution 1288 (XIII) the General Assembly was required merely to decide to what body the formulation of a convention on diplomatic intercourse and immunities should be entrusted.

13. Most representatives expressed themselves in favour of convening a conference of plenipotentiaries to draft a convention.

14. Some representatives considered that that task could be undertaken by the Sixth Committee; however, several representatives pointed out that, while such a course was financially attractive, it involved many technical problems and the Sixth Committee might take several sessions to adopt a convention.

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15. Since it was found that the majority favoured the convening of a conference, discussion centred on four main points: (1) the programme of the conference, (2) the States to be invited, (3) the opening date, and (4) the place of the conference.
16. With regard to the programme, several representatives expressed the view that the conference should deal only with the question of diplomatic privileges and immunities.
17. Other representatives held that the questions of consular privileges and immunities and ad hoc diplomacy should be added to the list in view of their connexion with diplomatic privileges and immunities.
18. On the subject of the States to be invited to attend, two views emerged. Some representatives wanted all States to be invited. They argued that discrimination against particular States was inadmissible, gravely detrimental to the interests of the United Nations, and incompatible with the Purposes and Principles of the Charter. Other representatives, in accordance with a practice followed by the United Nations hitherto, wished to invite only States Members of the United Nations and the specialized agencies and States parties to the Statute of the International Court of Justice. They held that a decision to invite all States would place the Secretary-General in the awkward position of having to decide to whom invitations should be sent.
19. The question of the opening date of the conference was linked with that of the programme, the only text at present in existence being that on diplomatic privileges and immunities; in principle the International Law Commission was not expected to adopt a final text on consular privileges and immunities until its 1961 session or to take up the subject of ad hoc diplomacy until its 1960 session.
20. Those representatives who favoured limiting the conference to the subject of diplomatic privileges and immunities wished it to be convened in the spring of 1961.
21. Those who wished diplomatic and consular privileges and immunities and ad hoc diplomacy to be discussed at the same conference expressed a preference for 1963.
22. With regard to the meeting-place, some representatives favoured the European Office of the United Nations, others, for reasons of both finance and convenience, preferred Headquarters in New York.

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23. The representative of Austria, renewing an offer made at the previous session, stated that if the Assembly decided to hold the conference outside New York, his Government would deem it an honour to invite the conference to meet at Vienna in commemoration of the Congress of 1815.

24. Generally speaking, the response to this proposal was very favourable, but many representatives expressed concern over its financial implications. In the course of the discussion the Austrian Government announced that it was prepared to meet the additional costs involved in meeting at Vienna, up to a total of \$130,000. Several representatives expressed their satisfaction and their gratitude to the Austrian Government, and the Committee decided without opposition to recommend that the conference should be held at Vienna.

Voting

25. At its 638th meeting, on 20 November, the Sixth Committee took a vote on the twenty-Power draft resolution (A/C.6/L.455 and Add.1-3) and the amendments thereto. The results of the voting were as follows:

(a) The paragraph 2 recommended by Chile in its amendment (A/C.6/L.460) was rejected by 41 votes to 24, with 12 abstentions. The vote was taken by roll-call, with the following result:

In favour: Afghanistan, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Czechoslovakia, Guinea, Hungary, India, Indonesia, Iraq, Libya, Morocco, Nepal, Poland, Romania, Saudi Arabia, Sudan, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Yugoslavia.

Against: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Costa Rica, Denmark, Dominican Republic, Ecuador, El Salvador, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Iceland, Iran, Ireland, Israel, Italy, Japan, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Philippines, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Burma, Cambodia, Colombia, Cuba, Ethiopia, Jordan, Panama, Peru, Portugal, Tunisia, Turkey, Union of South Africa.

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(b) The remainder of the Chilean amendment was rejected by 54 votes to 6, with 18 abstentions.

(c) Paragraph 2 of the eleven-Power amendment (A/C.6/L.459 and Add.1 and 2) was rejected by 39 votes to 25, with 14 abstentions. The vote was taken by roll-call, with the following result:

In favour: Australia, Burma, Canada, Chile, China, Colombia, Costa Rica, Denmark, Ecuador, El Salvador, Finland, France, Ghana, Guatemala, Haiti, Iceland, Ireland, Israel, Liberia, Nicaragua, Norway, Philippines, Sweden, Turkey, Uruguay.

Against: Afghanistan, Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Cuba, Czechoslovakia, Federation of Malaya, Greece, Hungary, India, Indonesia, Iraq, Jordan, Lebanon, Libya, Mexico, Morocco, Nepal, Netherlands, New Zealand, Pakistan, Poland, Portugal, Romania, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Yemen, Yugoslavia.

Abstaining: Dominican Republic, Ethiopia, Guinea, Honduras, Iran, Italy, Japan, Luxembourg, Panama, Peru, Thailand, Union of South Africa, United States of America, Venezuela.

(d) The Committee then decided, by 49 votes to 1, with 22 abstentions, not to vote on the remainder of the eleven-Power amendment.

(e) The nine-Power amendment (A/C.6/L.456 and Add.1 and Add.1/Corr.1) was adopted by 51 votes to 21, with 7 abstentions. The vote was taken by roll-call, with the following result.

In favour: Argentina, Australia, Austria, Belgium, Brazil, Burma, Cambodia, Canada, Chile, China, Costa Rica, Denmark, Dominican Republic, Ecuador, El Salvador, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Iceland, Iran, Ireland, Israel, Italy, Japan, Lebanon, Liberia, Luxembourg, Mexico, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Philippines, Spain, Sweden, Thailand, Tunisia, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

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Against: Afghanistan, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Guinea, Hungary, India, Indonesia, Iraq, Morocco, Poland, Romania, Saudi Arabia, Sudan, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Yugoslavia.

Abstaining: Colombia, Cuba, Ethiopia, Jordan, Libya, Peru, Portugal.

(In view of this vote, the six-Power amendment (A/C.6/L.457/Rev.1 and Rev.1/Add.1) was not put to the vote.)

(f) The twenty-Power draft resolution (A/C.6/L.455 and Add.1-3) (except the place of the conference) was adopted by 67 votes to 1, with 11 abstentions. The vote was taken by roll-call with the following result:

In favour: Afghanistan, Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Cuba, Czechoslovakia, Denmark, Ecuador, El Salvador, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Japan, Jordan, Lebanon, Liberia, Libya, Luxembourg, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sudan, Sweden, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: Peru.

Abstaining: Australia, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ethiopia, Haiti, Israel, United States of America.

(g) The Committee decided by 70 votes to none, with 8 abstentions, that the conference should be held at Vienna.

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Recommendation by the Sixth Committee

26. The Sixth Committee accordingly recommends that the General Assembly adopt the following draft resolution:

International conference of plenipotentiaries
on diplomatic intercourse and immunities

"The General Assembly,

Recalling that, by its resolution 1288 (XIII) of 5 December 1958, it decided to include in the provisional agenda of its fourteenth session the question entitled 'Diplomatic intercourse and immunities' with a view to the early conclusion of a convention on diplomatic intercourse and immunities,

Believing that the codification of the rules of international law in this field would assist in promoting the purposes and principles of the Charter of the United Nations,

1. Decides that an international conference of plenipotentiaries shall be convoked to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as may be necessary;
2. Requests the Secretary-General to convoke the conference at Vienna not later than the spring of 1961;
3. Invites 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 to participate in the conference and to include among their representatives experts competent in the field to be considered;
4. Invites the specialized agencies and the interested inter-governmental organizations to send observers to the conference;
5. Requests the Secretary-General to present to the conference all relevant documentation, and recommendations concerning its methods of work and procedures and other questions of an administrative nature;
6. Requests the Secretary-General to arrange also for the necessary staff and facilities which would be required for the conference;

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7. Refers to the conference chapter III of the report of the International Law Commission covering the work of its tenth session,^{2/} as the basis for its consideration of diplomatic intercourse and immunities;
8. Expresses the hope that the conference will be fully attended."

^{2/} Official Records of the General Assembly, Thirteenth Session, Supplement No. 9 (A/3859 and Corr.1).