

United Nations Conference on Diplomatic Intercourse and Immunities

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40th meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

an increasing use was being made of roving ambassadors. There was also the question of members of arbitral tribunals.

62. At the fifteenth session of the General Assembly his delegation had expressed reservations² because the draft articles on special missions had not been submitted to governments for their comments. His delegation had, however, accepted for practical reasons the procedure set out in resolution 1504 (XV). The Sub-Committee on Special Missions had now reached the considered conclusion that the subject of special missions should be referred back to the General Assembly with the suggestion that the International Law Commission be entrusted with the task of further study of the topic; he strongly supported that recommendation.

63. The CHAIRMAN said that there appeared to be unanimous support for the recommendation set forth in paragraph 13 of the Sub-Committee's report. He suggested that the Drafting Committee be asked to prepare, for submission to the Conference, a draft resolution along the lines of that paragraph.

It was so agreed.

The meeting rose at 5.40 p.m.

² See *Official Records of the General Assembly, Fifteenth Session, Sixth Committee, 664th meeting, paragraph 14.*

FORTIETH MEETING

Wednesday, 5 April 1961, at 10.50 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Title and final clauses

1. The CHAIRMAN said that, having adopted (subject to final drafting) the substantive provisions and the preamble of the convention to be submitted to the plenary Conference, the Committee would proceed to consider the question of the title of the convention and the final clauses. A number of proposals were before the Committee,¹ the two main proposals being those submitted by Poland and Czechoslovakia (L.175) and by Italy and six other delegations (L.289 and Add.1 and 3). The latter, he thought, covered the proposals

¹ The following proposals had been submitted: Poland and Czechoslovakia, A/CONF.20/C.1/L.175; Mexico, A/CONF.20/C.1/L.193; Italy, Liberia, Mexico, Peru, Philippines, Turkey and United States of America, A/CONF.20/C.1/L.289 and Add.1 and 3; Nigeria, A/CONF.20/C.1/L.311; Ghana, A/CONF.20/C.1/L.313; Iran, A/CONF.20/C.1/L.317; Netherlands, A/CONF.20/C.1/L.330/Rev.1; Ecuador and Venezuela, A/CONF.20/C.1/L.332. In addition, Ireland and Sweden had submitted a motion (L.331) concerning the custody of the Final Act of the Conference.

submitted individually by Mexico, Nigeria and Ghana, which would not consequently have to be considered separately.

2. Mr. CAMERON (United States of America), introducing the seven-Power proposal (L.289 and Add.1 and 3), drew attention to the comments following the draft final clauses. He pointed out that the title proposed by the seven delegations for the convention was the same as that proposed by Nigeria, Ghana, Ecuador and Venezuela. His delegation would support the motion submitted by Ireland and Sweden (L.331), and the amendments submitted by Iran (L.317) and the Netherlands (L.330/Rev.1).

3. Mr. GASIOROWSKI (Poland) introduced the proposal which his delegation had submitted jointly with that of Czechoslovakia (L.175) and reviewed the commentary appended to the draft final clauses. That commentary showed that the necessary conclusions had merely been drawn from the fact that Vienna had a diplomatic tradition and that the Conference was taking place there.

4. However, the seven-Power proposal (L.289) had been submitted in opposition to the joint Polish-Czech proposal with the argument that, according to established practice, the Secretary-General of the United Nations was designated as the depositary of all conventions adopted by the United Nations except certain commodity conventions which made other arrangements. But if, as was thus admitted, there were already exceptions to that practice, it was not clear why another exception could not be added. Moreover, the annex to the seven-Power proposal, listing several conventions in respect of which the Secretary-General acted as depositary, showed that all those conventions adopted after the establishment of the United Nations had been signed either at Headquarters in New York or at the European Office at Geneva. Since the present Conference was taking place neither in New York nor at Geneva, the annex in fact proved the opposite of what it was intended to prove, and the argument therefore fell to the ground.

5. As the Conference was concerned not with particular but with general rules, it should observe universally recognized practices. And there was one universal practice, based on elementary courtesy, under which the depositary of a multilateral convention was the government of the country in whose territory the convention had been signed. He requested that that practice should be respected, and recalled that the Committee had adopted at its thirty-ninth meeting a draft preamble stating that customary international law remained in force. The Committee would be untrue to itself if on the morrow of the adoption of that statement it were itself to contravene one of the most firmly established customary rules. Nor could it be argued that, because the Conference had been convened by the United Nations, therefore the convention should be deposited with the Secretary-General of the Organization. For since the Conference's terms of reference gave it full freedom to amend the draft of the International Law Commission, it would be illogical to contend that the Conference

was completely free to draft clauses of substance as it chose, but not the final clauses, which were much less important.

6. Reviewing the various amendments or proposals concerning the final clauses, he said he found the reasons for the Iranian amendment (L.317) hardly convincing, since governments could always give heads of mission the necessary powers to sign the convention. The Netherlands sub-amendment (L.330/Rev.1) added nothing of substance to the Iranian amendment. As to the motion of Ireland and Sweden (L.331), he said it would be a complicated arrangement if the Final Act and the convention were deposited in two different cities. Lastly, while the general purport of the proposal by Ecuador and Venezuela (L.332) was satisfactory, it was unclear in which draft of the final clauses the new article could be incorporated.

7. Those considerations showed that the arguments advanced in favour of the seven-Power proposal were unsound. The proposal submitted by Poland and Czechoslovakia, on the other hand, was based on objective considerations and he asked members of the Committee to examine it without preconceived ideas.

8. Mr. KRISHNA RAO (India) said that the clause on the accession of States to the convention was very important from the point of view of the convention's usefulness to the international community. International agreements enabled States to pass from isolation to intimate association with other States and marked the direction in which they were moving. In addition, international conventions tended to induce recalcitrant States to take heed of world opinion, and had the merit of curbing individual action. That being so, no State, whether large or small, should be denied the possibility of acceding to the convention on diplomatic intercourse and immunities. The accession of a State which was not recognized by all States would have no effect, in international law, on the "recognition" or "representation" of that State. There were many multilateral conventions to which States which did not recognize each other were nevertheless parties. Besides, the convention being prepared by the Conference was not a political treaty: it was essentially utilitarian. It would serve as a guide to those States which, of their own free will, had decided to have diplomatic relations. The countries signing the convention would be all the less justified in forming an exclusive club because the United Nations Charter did not anywhere provide that only Member States could accede to conventions concluded under the auspices of the United Nations.

9. With regard to the deposit of the instruments of ratification, he thought the sponsors of the various proposals should try to work out an agreed provision. That would avoid a discussion, which it seemed hardly desirable to pursue in Committee.

10. He wished to thank the Austrian Government for its generous hospitality, and considered it only right that the convention should bear the title "Vienna Convention", in recognition of the leading part which Vienna had played in the history of international relations.

11. Mr. JEZEK (Czechoslovakia) said that the final clauses were of particular importance, in that they determined the universality of the convention. For that reason the draft final clauses proposed by Poland and Czechoslovakia followed as closely as possible the final clauses which had ensured such wide support for the four Geneva Conventions of 1949 cited in the commentary to the proposal.²

12. The draft differed from the seven-Power proposal in two respects. First, article 3 provided that the convention should be open to accession by all States; that was perfectly right, since the convention dealt with a matter of interest to all States without exception. Secondly, the draft provided that the instruments of ratification and accession should be deposited with the Federal Government of Austria. That provision was in keeping with the practice which had long been generally followed, of designating as the depositary of a multilateral convention the government of the country in which it had been concluded. True, after the Second World War most of the conventions concluded under the auspices of the United Nations had been deposited with the Secretariat; but there was no hard-and-fast rule. What the Czechoslovak and Polish delegations proposed was that a well-justified exception be made. Other delegations had submitted proposals to the same effect (L.331 and 332). In designating the Austrian Government as the depositary of the convention, the Committee would acknowledge the part played by Vienna in the codification of diplomatic law, and the generous hospitality extended by the Austrian Government to the Conference.

13. Mr. PONCE MIRANDA (Ecuador) considered that the clauses relating to the title of the convention, the depositary of instruments of ratification, and the place of registration should be included in one article, as was proposed by Ecuador and Venezuela (L.332). He would, however, be quite prepared to vote for separate articles.

14. The proposal submitted by Ecuador and Venezuela concerning the title of the convention was similar to other proposals on the same subject. The clause relating to the deposit of instruments of ratification accorded with the proposal of Poland and Czechoslovakia, but differed from the seven-Power proposal, article 2 of which provided that instruments of ratification should be deposited with the Secretary-General of the United Nations. Ecuador considered that, both on historical grounds and as an act of courtesy, the Austrian Government should be the depositary.

15. Mr. HAASTRUP (Nigeria) said that by reason of its universality the convention should necessarily be open to accession by all States. Though the Conference

² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention relative to the Treatment of Prisoners; Geneva Convention relative to the Treatment of Civilian Persons in Time of War — all of 12 August 1959; United Nations *Treaty Series*, vol. 75.

had been convened by the United Nations, the general practice was nevertheless to designate as the depositary the government of the country in which the multilateral convention had been concluded. For that reason, and as a tribute to the generous hospitality of the Austrian Government, the Committee should decide that the instruments of ratification should be deposited with that government, which would arrange for their registration with the United Nations Secretariat.

16. Mr. REGALA (Philippines) criticized article 3 of the Polish-Czechoslovak proposal, which provided that the convention should be open to accession by all States. Citing General Assembly resolution 1450 (XIV), he said that the Conference would be violating the Assembly's express instructions if it permitted all States to accede to the convention. The participation of States in the Conference had been discussed at length during the fourteenth session of the General Assembly and had been the subject of two draft resolutions. The first had provided that all States might take part in the Conference; the second had confined participation to States Members of the United Nations, States Members of specialized agencies, and States parties to the Statute of the International Court of Justice. The second of those two draft resolutions had been adopted; and Sir Gerald Fitzmaurice, who had represented the International Law Commission in the Sixth Committee at the time, had drawn attention to the difficulties which the adoption of the first of the draft resolutions would have raised. He (Mr. Regala) therefore asked the delegations which proposed that the convention should be open to accession by all States not to press the point, and not to introduce political considerations into the discussion.

17. Mr. GHAZALI (Federation of Malaya) considered that the convention should provide a basis for diplomatic relations among all nations. Hence it should be open to signature by all sovereign States. That would not harm the dignity of the United Nations. The convention was not a political instrument, but a codification of the principles of diplomatic law.

18. Mr. YASEEN (Iraq) held that the principles of international law should be applied universally. Consequently, the convention should admit accession by all sovereign States, for otherwise the uniformity of the diplomatic status might suffer. His delegation would find it difficult to agree that accession to the convention should be restricted to certain nations. He was strongly in favour of the title "Vienna Convention".

19. Mr. KIRCHSCHLAEGER (Austria) expressed the gratitude of the Austrian Government and people, and of the City of Vienna, for the compliment paid to them by the proposal that the title of the convention should be "Vienna Convention".

20. The Austrian delegation appreciated the motive of the delegation which proposed that the Austrian Government should be the depositary of the convention. In inviting the United Nations to hold the Conference on Diplomatic Intercourse and Immunities at Vienna, Austria had not sought any honour for itself. It was particularly happy that the discussions had taken place

in a friendly atmosphere. He welcomed the proposals submitted by the Netherlands, Sweden and Ireland as a compromise between the various points of view on the deposit of instruments. He hoped that the Committee would understand why, for reasons which would be readily perceived, his delegation felt it necessary to abstain from voting on motions which paid tribute to Austria.

21. Mr. TUNKIN (Union of Soviet Socialist Republics) said that there were four main issues. General agreement had been achieved on the title of the convention. All proposals for the appointment of two depositaries of instruments of ratification should be rejected, since that would contravene existing practice and probably create difficulties. Austria should be designated the depositary, because of the diplomatic traditions of Vienna, in gratitude for its generous hospitality to the delegations, and out of elementary courtesy.

22. No country should be debarred from acceding to an instrument of international law. An attempt to restrict accession would conflict with the purpose of the convention, which was to codify principles and customs and obtain world-wide recognition for them. His delegation had therefore not been convinced by the Philippine representative's argument, and pointed out that General Assembly resolution 1450 (XIV) dealt only with the "convocation" of the Conference; the Conference was not bound by any restriction preventing the accession of all States, and had sovereign power to decide the issue.

23. Lastly, he considered that the time for ratification should be extended until 1 March 1962, as the Netherlands delegation had proposed.

24. Mr. GIMENEZ (Venezuela) noted that all delegations were agreed on the convention's title.

25. So far as the deposit of instruments of ratification was concerned, he said his delegation would in principle accept the seven-Power proposal if the proposal submitted by Ecuador and Venezuela were embodied in it. The instruments of ratification should in tribute to Vienna, the site of the Conference, be deposited with the Federal Government of Austria.

26. Mr. WESTRUP (Sweden) said that the best solution would be to designate the United Nations as the depositary of the convention. The joint proposal of Ireland and Sweden expressed the Conference's gratitude to Vienna and to Austria by making the Federal Government depositary of the Final Act. In company with all others, his delegation tendered its sincere thanks to the host nation. The choice of the convention's title would be confirmed happily by the deposit of the Final Act in the archives of the Austrian Government, and the Committee should make a recommendation to that effect.

27. Mr. BOUZIRI (Tunisia) said that the object of the Conference was to prepare a codification which all countries needed. It was a pity that the Committee was meeting difficulties at the close of its work. His delegation would not accept any clause harmful to the prestige of the United Nations; but out of loyalty to the principle of universality it wished all countries to be free to accede to the convention. He hoped that the

delegations which had submitted proposals would work out a formula which would not place the Committee in a difficult position.

28. Mr. RUEGGER (Switzerland) associated himself with the tributes paid by previous speakers to the government and people of Austria. It was right and proper that the convention should bear the name of a city that had played so great a part in diplomatic history. Nevertheless, respect should also be paid to the United Nations tradition by which the Secretary-General was the depositary of instruments drafted under United Nations auspices. The Austrian delegation had implied clearly that the unanimity of the tribute paid to it should not be qualified. The proposal submitted by Ireland and Sweden would be supported by his delegation, which could not support other proposals that might infringe the competence of the United Nations.

29. Mr. BOTELHO (Brazil) expressed his delegation's appreciation of the dignity of the Austrian representative's statement.

30. Mr. MARESCA (Italy) pointed out that Vienna symbolized the historical continuity of diplomatic law; he unreservedly approved the choice of the title "Vienna Convention". The deposit of the instruments of ratification was a matter of diplomatic technique. The Conference had met under United Nations auspices, and therefore the Secretary-General should be the depositary. With regard to accessions, he said the convention had been prepared under the auspices of a specific organization, and both should aspire to universality. Hence, the seven-Power proposal (L.289) could hardly be said to restrict the possibilities of accession to the convention.

31. In conclusion he said that the convention did not mention possible reservations by particular governments to particular provisions. His delegation concluded from the convention's silence on that point that reservations would not be admitted. Actually, his delegation thought it would have been desirable if the convention had expressly provided for possible reservations at least in respect of some specific clauses.

32. Mr. MELO LECAROS (Chile) said that three questions had to be settled: What was to be the title of the convention? Who would be the depositary? And what States would be free to accede to the convention?

33. So far as the first question was concerned he supported the proposed title "Vienna Convention". So far as the second question was concerned, he supported the seven-Power proposal, for he thought that the Conference should not introduce an innovation. He also supported the Irish-Swedish motion. In that connexion he asked whether it would be practicable for the Final Act to be deposited in the archives of the Austrian Government and the convention at United Nations Headquarters. So far as the third question was concerned, he said he had been impressed by the Philippine representative's remarks; he doubted whether the Conference could enlarge the terms of reference given it by the General Assembly by allowing all States to become parties to the convention.

34. The Italian representative had very pertinently raised the question of reservations, for it was not dealt with in the text adopted by the Committee. The signatory Powers should be able to make reservations, but not to the provisions on diplomatic immunity.

35. Mr. HAASTRUP (Nigeria) considered that the question of the right of all States to accede to the convention should be distinguished from that of the States invited by the General Assembly to participate in the Conference. Several States not represented at the Conference maintained diplomatic relations with many participating States. Those States, and all fully sovereign States, should be free to accede to the convention.

36. Mr. VALLAT (United Kingdom) said that the seven-Power proposal, the amendment submitted by Iran, the Netherlands sub-amendment and the motion submitted by Ireland and Sweden were complementary and together amounted to a compromise acceptable to the majority of the Committee. The Conference apparently wished to observe two principles: first, to follow United Nations practice with regard to the exercise of depositary functions; and secondly to pay a tribute to the Austrian Government and the City of Vienna. The proposals he had mentioned, taken together, satisfied both those considerations, for their effect would be that instruments of ratification and of accession, in accordance with United Nations practice, would be deposited with the Secretary-General, the name of Vienna would appear in the title of the convention, Austria would be appointed depositary of the Final Act, and the convention would remain open for signature at Vienna for several months.

37. Turning to the details of the seven-Power proposal, he suggested that the word "intercourse" in the English title of the convention should be replaced by the word "relations". That suggestion might be referred to the Drafting Committee, which should also consider whether the year "1961" should be added to the title, as Nigeria had proposed. Article 1 of the draft final clauses submitted by the seven delegations limited the right of accession to the convention to the States referred to in General Assembly resolution 1450 (XIV), paragraph 3. The Conference was not, of course, legally obliged to observe that restriction, but article 1 had been drafted in the spirit of the General Assembly resolution and should be accepted. Moreover, the States Members of the United Nations, the States Members of the specialized agencies and the States which had subscribed to the Statute of the International Court of Justice comprised the vast majority of the States of the world. It would, moreover, be altogether improper if States not acceptable to the United Nations were allowed to accede to a convention drawn up under its auspices.

38. After the Austrian representative's statement, there seemed to be no difficulty in designating the Secretary-General as depositary of the convention and the Austrian Government as custodian of the Final Act of the Conference.

39. Mr. WALDRON (Ireland) supported the seven-Power proposal on the final clauses, and also the Iranian proposal as amended by the Netherlands. Ireland had joined Sweden in proposing that the Final Act of the

Conference should remain in the archives of the Austrian Government, as a just tribute, together with the title of the convention, to the part Austria had played in the success of the Conference. He hoped that that compromise solution would be acceptable to the Committee, particularly since the delegation of Austria had said it was acceptable to the Austrian Government. It would be strange if the Conference were to be a cause of embarrassment or difficulty for the Austrian Government, and he respectfully suggested that those delegations which had made proposals on the final clauses which might cause difficulty or embarrassment should consider the possibility of withdrawing them.

40. Mr. NAFEH ZADE (United Arab Republic) said that his country firmly supported the principle of universality, and he had defended that principle during the debate on the accession of States to the Geneva Conventions on the Law of the Sea. It was even more imperative to observe that principle in the case of a convention which established rules of diplomatic law and which was intended to contribute to the progressive development of international law. His delegation expressed its gratitude to the Austrian Government and to the City of Vienna for the generous hospitality they had accorded to the Conference and to the delegations, and would have great pleasure in voting for the proposals associating the City of Vienna with the title of the convention.

41. Mr. DADZIE (Ghana) said that his delegation's proposal needed little comment, for the proposed title conformed to the nomenclature of legal instruments and to custom. In regard to article 1 of the final clauses proposed by the seven delegations, restricting accession to the convention to the States mentioned in the General Assembly resolution, he referred to the interesting debate in the Sixth Committee of the General Assembly in 1959 on the question of participation in the Vienna Conference.

42. At that time the delegation of Ghana had had special reasons to vote for the formula as it appeared in General Assembly resolution 1450 (XIV); however, in view of the historic importance of the convention on diplomatic intercourse and immunities, it felt bound to support the Indian delegation's opinion that accession to the convention should be open to all States. In regard to the deposit of instruments of ratification, he supported the proposal of Ecuador and Venezuela, which conformed to international courtesy and, like the proposals associating the City of Vienna with the title of the convention, was a just tribute to Austria. He associated his delegation with all those which had expressed their gratitude to the Federal Government of Austria for its generous hospitality, and to the people of Vienna for the courtesy with which they had received the participants in the Conference.

43. Mr. BARNES (Liberia) said that this delegation, as co-sponsor of the seven-Power proposal, wished to express its gratitude to the government and people of Austria by associating the City of Vienna with the title of the convention. In regard to deposit of instruments of ratification, he said the proposal observed the continuity principle and custom. The Conference had met under United Nations auspices, and in resolution 1450

(XIV) the General Assembly had limited the field of accession to the Convention. The Conference, which derived from the General Assembly, was bound to conform to the instructions laid down by its parent body. The article 1 of the final clauses proposed by the seven delegations was the logical consequence of that obligation.

44. Mr. DANKWORT (Federal Republic of Germany) associated his government with the tributes and thanks offered to the Austrian Government and people. In that spirit his delegation would support the proposals of the seven delegations, of Iran and of Ireland and Sweden. In regard to signature and accession, he thought the restrictions laid down by the General Assembly after long discussion were appropriate. It therefore approved the seven-Power proposal for article 1 of the final clauses, which did not prevent other States from acceding to the convention if invited to do so by the General Assembly.

45. Mr. HAYTA (Turkey) said it was hardly necessary to explain at length why his delegation had joined with six others in proposing a title and final clauses of the convention. As mentioned in the commentary to the seven-Power proposal, the practice of designating the Secretary-General as depositary had been observed not only in the case of the Conventions on the Law of the Sea, but in that of all general conventions adopted by or under the auspices of the United Nations. The Conference, which had met to codify the rules of international law governing diplomatic intercourse and immunities, could not depart from the practice followed by other United Nations conferences. The designation of the Secretary-General of the United Nations as depositary of the instruments of ratification of the convention could in no way be considered a breach of courtesy to the Austrian Government.

46. The Turkish delegation supported Iran's proposal as amended by the Netherlands and accepted by the Austrian delegation. It also supported the proposal of Ireland and Sweden, which paid a deserved tribute to the Austrian Government.

The meeting rose at 1 p.m.

FORTY-FIRST MEETING

Wednesday, 5 April 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (concluded)

Title and final clauses

1. The CHAIRMAN invited the Committee to continue its debate on the title and final clauses of the draft convention on diplomatic intercourse and immunities.¹

¹ For the various proposals submitted concerning the title and the final clauses, see 40th meeting, para. 1 and footnote.