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Chairman: Mr. César A. QUINTERO (Panama).

AGENDA ITEM 69

Report of the International Law Commission on the work of its thirteenth session (A/4843, A/C.6/L.485 and Add.1, A/C.6/L.486, L.488) (continued)

1. U SAIN BWA (Burma) congratulated the International Law Commission on the work it had done in preparing the draft articles on consular relations (A/4843, para. 37). His delegation was wholly in favour of the idea of convening a conference of plenipotentiaries to conclude one or more conventions on the basis of the draft articles. The draft resolution submitted by eight Powers (A/C.6/L.485 and Add.1) and that by six Powers (A/C.6/L.486) in that connexion differed on three points: (a) the inclusion of the question of consular relations in the agenda of the General Assembly's seventeenth session; (b) the date and place of the conference; and (c) the participation in the conference. On the first two points, his delegation would abide by the majority's decision. On the third point, it had definite views. At the fourteenth session, when the Sixth Committee had been considering the convening of a conference on diplomatic intercourse and immunities, Burma had asked the Legal Counsel for his opinion on the formula of inviting all States in the world to the conference (634th meeting, para. 2). The Legal Counsel had said (*ibid.*, para. 3) that there was no sure guide on that point. On mature reflection, the Burmese delegation had decided to vote in favour of the formula providing for universality, for Burma maintained consular relations with some States that would not be invited to the conference if participation was limited to States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice. Although he had not had time to study the joint amendments (A/C.6/L.488) to the eight-Power draft resolution, he hoped that they would provide the means of arriving at a single text on which the Sixth Committee could take a unanimous decision.

2. Mr. DEDEI (Albania) associated his delegation with those that had already congratulated the International Law Commission, its Chairman and its Special Rapporteur. His delegation was pleased to see that the draft articles took broadly into account the practice followed by States. Since consular relations were generally governed by bilateral agreements, there was no uniform international practice. It was therefore

very important—especially for the new countries which, having been for a long time under the domination of the colonialist Powers, could as yet not have had experience in the matter—that the general principles involved should be laid down in the convention which was to be prepared; that would also strengthen friendly relations among States. Although the draft articles were acceptable as a whole, some provisions required clarification, while others, such as those dealing with honorary consuls, should be purely optional, because, in practice, not all States recognized that category of consular officials.

3. His delegation was in favour of the idea of convening a conference of plenipotentiaries in Europe not later than 1963. In its opinion, further discussion of the draft articles would be futile, since delegations would have to state their final positions at that conference. It would be a mistake for the Sixth Committee to waste time in idle discussion when more pressing problems, such as State responsibility, peaceful co-existence and others, were awaiting study. His delegation considered that all States should be invited to the conference, since they all maintained consular relations with other countries. Moreover, that formula was in keeping with the principle that international law should reflect universal opinion. The discriminatory policy of excluding certain States had already been criticized by other delegations. It was obvious that the People's Republic of China should take part in the conference, firstly, because it was a great country which maintained relations, in various forms, with many States and, secondly, because, as a founder Member of the United Nations, it was entitled to occupy its rightful place. It stood to reason that the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam, the German Democratic Republic and other countries should also be represented. Those States existed, whether they were recognized or not. Consequently, his delegation would vote in favour of the six-Power draft resolution and, for the same reasons, would support the joint amendments. It could not support the eight-Power draft resolution, unless it was amended as had been proposed.

4. Mrs. DE GROTEWOLD (Guatemala), looking back over the history of consular law, recalled that it was a very old institution whose origins could not be established for lack of precise data. The Greeks and Romans had had officials whose duty it had been to protect the interests of aliens. In the towns of Asia Minor, the Crusades had given rise to the functions of consuls as protection for the nationals of European countries. Over the centuries, the importance of those functions had increased steadily with the development of trade. In Spain, under Arab rule, the commander-in-chief of naval forces had been known as the consul, and Spain had subsequently established commercial consulates in the Americas. In Guatemala, the commercial consulate had been established by Royal Ordinance in 1743. It had played an important part in developing

trade, in bridge and road building and in many other fields of activity.

5. Since consular relations were so important to the development of relations between peoples, it was natural that they should be embodied in an international legal instrument. Guatemala considered the draft articles prepared by the International Law Commission to be excellent, for they were based on international practice. Her delegation approved the idea of convening an international conference of plenipotentiaries so that uniform rules might be worked out. It hoped the sponsors of the two draft resolutions would manage to find a formula that was generally acceptable; failing that, the delegation of Guatemala would vote in favour of the eight-Power draft resolution, subject to such reservations as might prove necessary.

6. Mr. LI (China) said that he would not go into the substance of the draft articles because his Government had already submitted its preliminary comments (A/4843, annex I, section 3) and would be sending additional comments later on. Moreover, his delegation considered that all decisions would ultimately rest with the international conference of plenipotentiaries. However, the draft articles provided an excellent basis on which to prepare an international convention on consular relations.

7. His delegation considered that the conference should be convened in 1963. In order to avoid political controversy and to simplify the task of the Secretary-General, it would be better to keep to the practice which had been followed when other legal conferences had been held and to limit participation to States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice. Some delegations had alluded to the People's Republic of China. He did not think the Sixth Committee was competent to deal with that question, and he thanked the representative of Pakistan who had expressed the same opinion from the legal standpoint (708th meeting, para. 4). As to the place of the conference, his delegation would abide by the majority's decision. Since few Governments had sent in their observations, it would be well to provide a further opportunity for comments on the draft articles. His delegation would therefore vote in favour of the eight-Power draft resolution.

8. Mr. CAPOTORTI (Italy) congratulated the International Law Commission, and especially its Chairman and Special Rapporteur, on their remarkable achievement. In paragraphs 28 to 32 of its report (A/4843), the Commission rightly drew attention to the difficulties which had been encountered in seeking out and utilizing the sources of consular law. The Sixth Committee should go into the subject thoroughly and, to that end, should determine the best procedure for codifying the material. In the case of consular relations, the final purpose of codification was to establish new rules rather than to embody existing rules in a multilateral treaty. Indeed, it was evident that, in that connexion, specific agreements outweighed ordinary international law and that, on many points, no rules were in existence. Furthermore, the provisional draft articles were entitled "Consular intercourse and immunities" (A/4425, para. 28). However, everyone knew that the question of immunities was particularly controversial, for the determination of States to safeguard their sovereignty conflicted with the ever-increasing importance of consular functions, which required guarantees similar to those accorded to

diplomatic agents and international civil servants. Hence, new rules had to be established, and it was natural that the International Law Commission had not always found a clear and well-defined solution. If the proposed multilateral convention was to replace the existing bilateral treaties, several questions would have to be studied in more detail, as, for example, the question of consular functions, which was dealt with too cursorily in the draft articles. On the other hand, if the convention did not exclude supplementary bilateral agreements, it might be better to leave States to regulate the more troublesome questions by that method. The problem should be studied in advance in order to fix the character of the convention.

9. The appropriate services in each Member State should study the draft in detail and submit their comments to the Secretariat. If the preliminary work were completed before the seventeenth session of the General Assembly, a further exchange of views before the conference would be worth while, if, of course, additional comments had been received. In that way, States would be able to understand the reactions of other States, the general feeling concerning the structure of the convention would be clarified, and the task of the conference would thus be simplified.

10. With regard to the date of the conference, the majority seemed to favour 1963 and, since it was important to conclude the convention as rapidly as possible, it might be definitely stated that the conference should be convened during the first half of that year. That period would accord with the dates fixed in the eight-Power draft resolution for the preparatory work.

11. As for the place of the conference, the Committee might wait until the end of the present session in order to give States time to assess the financial implications of a meeting in New York, at Geneva or at some other city. A decision on that part of the draft resolution might be left pending.

12. Concerning the States to be invited to the conference, his delegation considered that the practice hitherto followed by the United Nations must be maintained. Since the States qualifying under the established conditions were almost all the States in the world, there was even less justification for changing that policy. If some States were not members of any of the institutions mentioned, the cause was a political one which could not reasonably be overlooked. Moreover, as they had not taken part in the work of codification which had begun long ago within the United Nations, there was no reason to invite them to take part in the last phase of the operation. For all those reasons, his delegation would vote for the eight-Power draft resolution.

13. Mr. BLIX (Sweden), having congratulated the International Law Commission, its Chairman and Special Rapporteur on their successful completion of the draft articles on consular relations, explained that his Government had been able to study the provisional draft articles submitted by the Commission to the General Assembly's fifteenth session (A/4425, para. 28) and to submit comments (A/4843, annex I, section 15) on them, but that it had not yet had time to study the final draft submitted in 1961. He would, therefore, merely comment on the proposal to convene an international conference of plenipotentiaries, which had his full support in view of the success of the United Nations Conference on Diplomatic Intercourse and Immunities held at Vienna.

14. Examination of the two draft resolutions before the Committee showed only a few differences between them, most of which pertained to formalities and one of which was of a serious character.

15. Some delegations had opposed the recommendation in operative paragraph 3 of the eight-Power draft resolution that the item on consular relations should be included in the provisional agenda of the seventeenth session of the General Assembly. However, that recommendation would allow Governments to make observations which would be added to whatever written comments had been submitted. His delegation had no fixed opinion on the recommendation, but failed to understand the objections raised to it. Enlightened discussion at the conference would be facilitated if Governments knew in advance which items would be controversial; moreover, Governments often neglected to send written comments, though invited to do so, and it might be useful if they could make their views known during the seventeenth session through their representatives in the Sixth Committee. The point was not, of course, to have a discussion of the text article by article, but rather to offer an opportunity for voicing preliminary official reactions.

16. The main difference between the two draft resolutions lay in the formula to be adopted for the invitations to the conference. His Government had always supported the principle of the universality of the United Nations, and was pleased to note that the Organization was continually drawing nearer to its fulfilment. Nevertheless, though the idea of universal adherence to a convention on consular relations was tempting, one must not overlook a number of practical difficulties which the formula inviting all States was likely to raise.

17. First, although international law defined the concept of "State", the question whether or not an entity constituted a State might give rise to controversy in specific cases. At the fourteenth session, the Legal Counsel, in reply to a question from the representative of Burma, had stated in the Sixth Committee (634th meeting, para. 3) that the problem might complicate the Secretariat's task when it came to issue invitations to a conference. Perhaps the Legal Counsel would indicate whether he still felt the same way.

18. A second problem might arise if the Secretary-General issued invitations to all States in a liberal sense of the word. There was a risk, unfortunately, that the presence of the representatives of some entities invited as States at a conference might cause other States to absent themselves, with the result that the desired universality would not be attained. Furthermore, even if States did not feel that participation in a conference with representatives of other entities implied recognition of those entities as States, the difficulties would not be entirely removed; whereas membership in the United Nations could be proved beyond doubt, the question of whether an entity constituted a State was open to argument, and some delegations might feel constrained to differ with the Secretary-General on his inviting or not inviting certain entities.

19. There was a third danger. If a convention were signed by the representatives of authorities or entities that many States did not recognize, it was to be feared that States which had not recognized those authorities or entities might make reservations in acceding to the convention and state that they did not consider

themselves bound by the provisions of the convention vis-à-vis those authorities or entities. Possibly, some States might take the same view without making formal reservations. If such reservations were made or such views held by many Governments, it might perhaps be asked whether much had been gained by the invitations to those entities or authorities.

20. His delegation doubted whether the proposed conference was the right context in which to settle the problems that the formula inviting all States was intended to solve in part. In the absence of a general solution to those problems, it considered that the rule traditionally adopted for invitations to international conferences should be retained.

21. The Ghanaian representative was to be commended for the efforts he had made to find a compromise solution; but his suggestion that some authorities which considered themselves Governments of States should be invited to the conference as observers would hardly commend itself to them.

22. The year 1963 suited his delegation as the date for the conference, and New York and Geneva seemed equally acceptable as a meeting-place.

23. Mr. YASSEEN (Iraq) paid a tribute to the International Law Commission and to its Chairman and stated that his delegation considered the draft articles on consular relations a satisfactory basis for the drafting of a convention by a conference of plenipotentiaries. He hoped that the Special Rapporteur would be invited to take part in the conference as an expert.

24. The two draft resolutions before the Committee called for the convening of a conference to codify the consular law. A convention for that purpose would be extremely valuable, since the problem of consular relations affected practical everyday interests; it would preclude controversy over the meaning, scope and existence of customary rules, and promote friendly relations among States.

25. Of the two differences between the draft resolutions, one concerned expediency, the other principle. His delegation had no objection to the inclusion of the question of consular relations in the provisional agenda of the seventeenth session of the General Assembly. That measure would provide foreknowledge of the changes which the States taking part in the conference wished to make in the draft articles.

26. Concerning the composition of the conference, his delegation was inclined, as it had been when invitations had been issued to the United Nations Conference on Diplomatic Intercourse and Immunities, to vote for the liberal invitation rule in the six-Power draft resolution. A technical argument in favour of that rule was that the purpose of codification was to systematize general, not special, international law. It was true that, to invite some States, might, by causing other States to absent themselves, prejudice the universality of international law; but the conference itself could vote in the last resort on any practical problems that might arise.

27. Mr. EL-ERIAN (United Arab Republic) wished to make a suggestion concerning the form of the eight-Power draft resolution. As he had said in the Committee (708th meeting, para. 26), it was relatively easy to reach agreement on the inclusion of the question of consular relations in the agenda of the seventeenth session, provided that it was clearly understood that that would not in any way affect the decision to convene

the conference of plenipotentiaries in 1963. In the eight-Power draft resolution, therefore, emphasis should be placed on calling the conference in 1963 by placing at the end of the draft resolution the provision of operative paragraph 3 concerning the inclusion of the question of consular relations in the agenda of the seventeenth session, which was only a secondary point. That provision implied only exchanges of views which would serve to complete the comments submitted in writing and, as the representative of Sweden had pointed out, would make it possible to prepare the conference better. If the Committee so desired, he was prepared to submit an amendment in which the phrase "to enable the making of additional observations" in operative paragraph 3 would be replaced by "to give Governments a new opportunity to express their opinions and exchange their views".

28. In his report to the General Assembly, the Rapporteur of the Sixth Committee should also make it clear that the inclusion of the question of consular relations in the agenda of the seventeenth session should not in any way affect calling the conference in 1963.

29. Mr. PATTABHI RAMAN (India) supported the statement of the representative of the United Arab Republic and noted that there was unanimity on one point, namely, the convening of a conference of plenipotentiaries, and that it was possible to secure unanimity on two other points: first, the exact date and place of the conference and, secondly, the reconsideration of consular relations at the seventeenth session. The latter point should not raise any serious difficulties, since it was obvious that a new discussion would facilitate the work of the plenipotentiaries. It was only the question of the composition of the conference which provoked any differences of opinion, which, moreover, were not of a purely political nature.

30. A speedy decision should be made, therefore, on the first three points, and the fourth point should be considered and voted on separately.

31. Mr. NISOT (Belgium) asked if it would not be advisable merely to make it clear in operative paragraph 3 of the eight-Power draft resolution that the item on consular relations should be included in the provisional agenda of the seventeenth session of the General Assembly "with a view to completing preparations for the 1963 conference".

32. Mr. MUSTAFA (Pakistan) approved the suggestion of the representative of the United Arab Republic concerning operative paragraph 3 of the eight-Power draft resolution. On the other hand, he thought, like the representative of India, that it was possible to reach agreement on the three secondary points mentioned by the latter.

33. Mr. EUSTATHIADES (Greece) thought that it would be helpful to examine the amendments (A/C.6/L.488) to the eight-Power draft resolution and he would be grateful to their sponsors if they would introduce them. An introductory statement of that kind would not only be in accordance with procedure, but it would be of very special interest to his delegation, since those amendments had taken into account the observations which it had made at the 709th meeting.

34. Mr. PERERA (Ceylon), speaking as a co-sponsor of the amendments (A/C.6/L.488), thanked the delegations of the United Arab Republic, Belgium and India for the useful suggestions they had made. In

preparing the amendments, the authors had tried to take into account all the observations made during the general debate and to approach the question under discussion in a business-like manner, as the representative of the USSR had very rightly recommended. In that respect, the suggestion of some delegations that the discussion of consular relations should be taken up again at the seventeenth session of the General Assembly had come to them as a complete surprise. Such a suggestion, in fact, was contrary both to operative paragraph 2 of General Assembly resolution 1504 (XV) and to paragraph 27 of the Commission's report (A/4843), which nevertheless seemed to have met with almost unanimous approval on the part of the Committee. In operative paragraph 2 of its resolution 1504 (XV), the Assembly expressed its hope that work on the topic of consular relations would be completed in time for consideration by the Sixth Committee at the sixteenth session. In view of that specific wish on the part of the General Assembly, delegations which had any observations to make on the text of the draft articles, which was now final, should submit them immediately and not at the seventeenth session.

35. Nevertheless, if it was considered advisable to make a place for the question of consular relations in the agenda of the seventeenth session, that place, as the representative of the United Arab Republic had very rightly said, could only be a secondary one. He also thought, like the representative of Belgium, that the only possible purpose of a discussion at that time would be to complete the preparations for the conference. The representatives of the United Arab Republic and Belgium could perhaps agree to a joint amendment on that subject.

36. That matter having been disposed of, the paramount question which the Committee now had to decide was that of summoning a conference of plenipotentiaries, and that decision—which should not in any case be subordinated to the question of a fresh discussion of the subject at the seventeenth session—should be given first place in the draft resolution to be submitted to the General Assembly. Care should be taken to avoid the possibility of that draft resolution being used to raise again the question of convening or delaying the conference.

37. He pointed out that the new preambular paragraph in point 1 of the amendments (A/C.6/L.488) was indispensable. Undoubtedly, as the representative of Chile had said (708th meeting, para. 36), its provisions were implicit in the eight-Power draft resolution as a whole, but a similar formula had been used in the preamble of General Assembly resolution 1450 (XIV) concerning the Vienna Conference. In the present case, there was no reason to diverge from the former practice.

38. As to point 2 of the amendments, he did not think that any objections could be raised to the proposed new preambular paragraph, since it only expressed the general opinion of the members of the Committee.

39. In point 3, the sponsors of the amendments had proposed to delete the third preambular paragraph of the eight-Power draft resolution. In the same spirit, they had proposed, in point 5, the deletion of operative paragraph 3 of the draft resolution. The purpose of point 4 was to replace the words "1 April 1962" in operative paragraph 2 by the words "1 July 1962", in order to take into account various suggestions which had been made during the discussion.

40. In point 6, the sponsors proposed a modified version of operative paragraph 4 by adding the formula "and such other instruments as it may deem appropriate", which was a standard one in such cases, since the decision to prepare one or more instruments was left to the discretion of the plenipotentiaries. He would not press point 7, which concerned the difficult question of the invitations to be addressed to States and on which a separate vote would undoubtedly be taken. Point 8 did not call for any special comments, except that the records of the debates of the General Assembly were generally furnished in such cases. The new operative paragraph proposed in point 9 merely repeated the terms of resolutions which had been adopted in the past in similar circumstances, and point 10 did not call for any explanation.

41. The question of the time and place of the conference did not appear to raise any insurmountable difficulties. The spring of 1963 seemed to be the appropriate time, in view of the schedule fixed for other United Nations conferences; but it was perhaps unnecessary to make any precise and final decision on that subject at the present time. As to the place of the conference, consideration had been given to Geneva for reasons of economy. Some delegations had thought that New York would be better because that city was the headquarters of the permanent missions; the fact should not be lost sight of, however, that it was to be a conference of plenipotentiaries, at which Governments would be represented by experts who were not necessarily members of their permanent missions. In any case, that point could always be subject to change, if a State offered to receive the conference in its territory.

42. In conclusion, he appealed to the sponsors of the eight-Power draft resolution to consider reviewing the question of operative paragraph 3 of their text in the light of the suggestions made by the United Arab Republic and Belgium. He also urged them to consider the deletion of the third paragraph of the preamble, since, as he had said, the time for making comments would have long elapsed at the seventeenth session. The Committee should not forget that it would have important questions to consider in 1962, such as, for example, the question of the law of treaties, to which a number of delegations attached the greatest importance. Those questions would require time, and they should not be sacrificed to a debate for which there was no longer any reason. Since the sponsors of the amendments had tried to bring the divergent points of view as closely together as possible, they expected that the Committee would soon be able to proceed to a vote.

43. Mr. E. K. DADZIE (Ghana) said that, since the proposed amendments were almost identical with those that his own delegation had intended to submit, it could refrain from doing so. It would, however, continue its consultations on the principal question at issue, that of the invitations to be sent out, and would reserve the right to take the floor again on that subject, should the occasion arise. It hoped that the sponsors of the eight-Power draft resolution would accept the amendments thereto.

44. Mr. SCHWEBEL (United States of America), in reply to a question by Mr. MOROZOV (Union of Soviet Socialist Republics), stated that the sponsors of the eight-Power draft resolution would consult in the very near future on the amendments that had been proposed

and would express themselves without delay on that subject.

45. Mr. CASTAÑEDA (Mexico) asked whether it would not be desirable, at that stage, to form a small working group, including one or several sponsors of each draft resolution. Its chairman might, for instance, be the Chairman of the Sixth Committee, and it would try to work out a single text. The paragraph relating to the invitations to be sent out, which was by far the most controversial, could be left blank. Two proposals, representing the two opposing points of view, could be submitted and voted on separately, and the approved text could be incorporated in the draft resolution as a whole, which could then, no doubt, be unanimously approved. A procedure of that kind had already been adopted in the case of the draft resolution relating to the convening of the Vienna Conference. If the Committee favoured that suggestion, the working group could perhaps meet in the afternoon of the same day.

46. The CHAIRMAN thanked the representative of Mexico for his suggestion, which seemed most appropriate, but noted that he still had speakers on his list for the general debate. He thought it would be better to hear them first and then call a meeting of the working group.

47. Mr. CASTAÑEDA (Mexico) thought that time could be saved if the working group held a meeting in the afternoon.

48. Mr. TABIBI (Afghanistan) supported the Mexican suggestion. It was true, as the Chairman had said, that all the speakers on the list had not yet taken the floor. But other representatives might perhaps desire to speak after the working group had met. They could all do so, of course, without any trouble, either before the vote, or during the explanations of the vote, and that method would have the advantage of bringing the Committee's work on the matter to an earlier conclusion.

49. Mr. PECHOTA (Czechoslovakia) felt, in general, that the procedure advocated by the representatives of Mexico and Afghanistan was the most satisfactory in such cases. Czechoslovakia had also said from the very outset that the two versions should be merged. The representative of the United States had just stated that the sponsors of the eight-Power draft resolution would meet soon and take a position without delay on the amendments. If they accepted those amendments, as the speaker hoped, it would not be necessary to draft a new text, and the desired result would then have been obtained. It would then be sufficient to take a separate vote on what seemed to be the irreconcilable difference relating to the invitations. Under those conditions, it would doubtless be better to await the opinion of the sponsors of the draft resolution before setting up a working group, and, in the meantime, efforts should be made to diminish the differences between the various points of view.

50. Mr. DEDEI (Albania) and Mr. SCHWEBEL (United States of America) were of the same opinion as the representative of Czechoslovakia.

51. Mr. CASTAÑEDA (Mexico) held to his view that it would be better to establish a small working group, in which negotiations and concessions would be easier. When differing views were expressed in a body that was more official and larger, it often resulted only in crystallizing them.

52. Mr. PERERA (Ceylon) repeated what he had already said. The sponsors of the amendments had sought to take account, as far as they possibly could, of the suggestions offered during the discussion. But, except for Ghana and Greece, the other delegations, especially those that had submitted the eight-Power draft resolution, had taken no position on those amendments. The Committee's work would be facilitated if they would give their comments without delay. One could then contemplate the establishment of the working group, as suggested by Mexico.

53. He added that any Government desirous of receiving the conference of plenipotentiaries in its

territory would greatly help by saying so at the earliest moment, if possible at the next meeting.

54. The CHAIRMAN thought that, in view of the opinions that had been expressed, the sponsors of the various proposals might proceed to consultations in the afternoon. He hoped the next meeting of the Committee would be brief, in which case the working group might meet, if required, immediately afterwards.

The meeting rose at 1.15 p.m.