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Chairman: Mr. Jorge CASTAÑEDA (Mexico).

AGENDA ITEM 56

**Report of the International Law Commission on the
work of its tenth session (A/3859) (continued)**
**CONSIDERATION OF CHAPTER III: DIPLOMATIC
INTERCOURSE AND IMMUNITIES (A/C.6/L.427/
REV.1 AND CORR.1, A/C.6/L.429 AND ADD.1, A/
C.6/L.430, A/C.6/L.431) (continued)**

1. Mr. HAROMY (Austria) said that the International Law Commission's draft (A/3859, para. 53) was a valuable contribution to the codification of international law on the subject of diplomatic intercourse and immunities. That codification would meet an existing need, because State practice varied on many points; the preparation of uniform rules would therefore facilitate the work of diplomatic agents.

2. His delegation supported the draft in general. Some of the articles, however, did not correspond to existing international practice, and would have to be amended to make them acceptable to the majority of States.

3. The subject of diplomatic intercourse and immunities was ripe for codification by convention. A new convention would take into account changes in State practice since the Vienna Regulation of 1815, the Aix-la-Chapelle Protocol of 1818, and, so far as inter-American relations were concerned, the Havana Convention of 1928.

4. Although Governments needed time to examine the Commission's draft, there should be no undue delay in concluding a convention. His delegation did not accordingly support the suggestion that an agreement on permanent diplomatic missions should be made contingent upon the settlement of the questions of "ad hoc diplomacy", consular intercourse, and relations between States and international organizations. Such a course would entail a delay of several years. It therefore shared the majority opinion that the discussion should be postponed to the fourteenth regular session of the General Assembly when a decision could be taken on the need for a special conference to conclude a convention.

5. The financial implications of convening a conference outside New York would have to be considered. However, it was doubtful whether the Sixth Committee

could, during the fourteenth session of the General Assembly, devote sufficient time to the task of reconciling the divergencies of opinion on many of the articles. Another argument in favour of a conference was the fact that the subject under discussion was of direct interest to all States, and that no satisfactory solution had apparently yet been found to the problem of the participation of non-member States in the deliberations of the General Assembly on an equal footing with Member States.

6. If a decision should be taken at the next session to hold a conference away from Headquarters, the Austrian Government would be most happy to adopt the idea expressed by the delegation of Ceylon, and would regard it as a privilege to accommodate the conference in Vienna in commemoration of the Congress of 1815.

7. Mr. EL-ABDALLAH (Lebanon) said that at the 567th meeting his delegation had voted in favour of the draft resolution on the question of arbitral procedure but had not had an opportunity of expressing its views on that question. It wished to place on record that it would have voted in favour of any resolution on the subject which was consistent with the purposes of the Charter and was generally acceptable to Member States.

8. With regard to the question of diplomatic intercourse and immunities, the Lebanese delegation felt that it was suited for codification by convention. The International Law Commission's draft provided an adequate basis for such a convention, but it was desirable to meet the wishes of those delegations which had asked for more time to consider that draft in its final form.

9. Lebanon considered that the question of *ad hoc* diplomacy deserved special attention because of the difficulties to which it could give rise. It also believed that the question of cultural relations between States should receive study.

10. Mr. ZLITNI (Libya) said that the Commission's draft embodied essentially the same principles as the Havana Convention of 1928, but included certain new provisions intended to meet changes in certain aspects of diplomatic relations. In view of the importance of the draft, the Libyan delegation, while expressing its reservations regarding articles 7, 12, 30, 36 and 45, associated itself with other delegations which had asked that Governments should be given more time to study it.

11. With regard to the method to be followed in preparing a multilateral convention, both the methods which had been proposed had their merits. A special conference would enable States which were not Members of the United Nations to participate; the preparation of the convention by the Sixth Committee would on the other hand enhance the Committee's standing and entail less expenditure.

12. He hoped that the International Law Commission would, in due course, prepare similar drafts on the

topics of consular intercourse, ad hoc diplomacy, and relations between States and international organizations.

13. U BA CHIT (Burma) said that the question of diplomatic relations had of late gained in complexity, as a result of the accession to independence of many new countries in Asia and Africa. Consequently, the practice of States, which had always lacked uniformity, was now in danger of becoming more diversified than ever. A codification of the relevant rules would thus introduce an element of harmony into diplomatic intercourse and contribute to friendly relations between States.

14. The various problems could best be resolved by a multilateral convention, provided that its provisions were widely acceptable, and the International Law Commission's draft could clearly serve as a proper working basis for such an instrument. Despite its qualities, however, the draft was not perfect, and his Government would present its comments thereon at the appropriate time.

15. In considering the procedural decision which it should take, the Committee should neither defer the question indefinitely nor attempt the preparation of a draft convention with unwarranted haste. His Government, for one, had not had sufficient time to give the International Law Commission's draft and the Government observations thereon the consideration which they deserved. Consequently, he favoured the suggestion that the detailed discussion on the draft should be deferred to the fourteenth session, by which time it would have received closer study and delegations would be in a better position to decide whether the final task should be undertaken by the Sixth Committee itself or by a special diplomatic conference. That decision would depend primarily on the prospects of devising a text to which the vast majority of Governments could adhere. In conclusion, he expressed the hope that the greatest possible number of Governments would submit their comments at an early date.

16. The CHAIRMAN declared the general debate closed.

17. Mr. TABIBI (Afghanistan) introduced the joint draft resolution (A/C.6/L.429 and Add.1). He hoped that the compromise proposal which it embodied would be unanimously approved.

18. Most delegations, while commending the International Law Commission's draft, had favoured postponement of the question to the fourteenth session of the General Assembly. Accordingly, operative paragraph 3 of the joint draft resolution stated that the item "Diplomatic intercourse and immunities" would be included on the provisional agenda of the fourteenth regular session of the General Assembly with a view to the early conclusion of a convention on the subject.

19. Operative paragraph 4 left it to the Assembly to decide at the fourteenth session whether the task of formulating a convention ought to be entrusted to an international conference of plenipotentiaries or should be undertaken by the Sixth Committee. Arguments had been put forward in favour of both courses of action and the sponsors of the draft resolution wished to leave the door open for the adoption of either, as circumstances might dictate.

20. Mr. NINCIC (Yugoslavia) said that his delegation had co-sponsored the draft resolution as a satisfactory compromise proposal, which it hoped would receive unanimous support.

21. The joint draft resolution noted the overwhelming sentiment in the Committee in favour of the early conclusion of a convention on diplomatic intercourse and immunities, and the general agreement that the International Law Commission's draft constituted as a whole an adequate basis for such a convention.

22. His delegation felt that a convention should be prepared as soon as practicable, but it was willing to meet the wishes of those who wanted more time to study the 1958 draft. It had no strong feelings with regard to the method of preparing a convention. Some delegations, however, were not yet ready to take a position for or against the holding of a conference and, in operative paragraph 4 of the joint draft resolution, the sponsors had, therefore, left it to the Sixth Committee to decide at the fourteenth session on the method to be adopted.

23. Mr. CUEVAS CANCINO (Mexico) presented the amendments proposed by Argentina, Brazil, Colombia, Costa Rica, Cuba, Mexico, Paraguay and Peru (A/C.6/L.430) to the joint draft resolution (A/C.6/L.429 and Add.1). There was a certain lack of logic in the latter draft resolution; it noted that the draft articles on diplomatic intercourse and immunities constituted an adequate basis for formulating a convention on that subject, but only provided that the General Assembly should, at its next session, decide whether the task of formulating a convention on the subject ought to be entrusted to an international conference of plenipotentiaries or to the Sixth Committee. Since there appeared to be general agreement that the Commission's draft constituted an adequate basis for formulating a convention, there was surely no reason why the Committee could not decide immediately when and how that convention should be formulated. To postpone that decision for an entire year was quite unjustifiable.

24. The arguments in favour of convening an international conference of plenipotentiaries were equally fallacious, since there was no true parallel between the recent United Nations Conference on the Law of the Sea and a conference on the subject of diplomatic privileges and immunities. Recourse to an international conference was an extraordinary measure which could be justified only by the magnitude of the problems involved. The topic of diplomatic intercourse and immunities, however, constituted only one part of a larger branch of international law which included consular intercourse and immunities, ad hoc diplomacy and relations between States and international organizations. That branch of international law could perhaps best be codified one part at a time, through the efforts of the International Law Commission and the Sixth Committee. It was significant that the Commission itself had not, in its report, recommended the convening of an international conference.

25. The Sixth Committee should desist from adopting resolutions which denied its own competence to settle questions of substance. That tendency, which had become more pronounced in recent years, was in unfavourable contrast with the fruitful co-operation which had existed between the Committee on Legal and Constitutional Questions and the Committee on Political Questions of the League of Nations, and which still existed within the Organization of American States. It had been argued that the Committee's competence to decide such questions was limited by General Assembly resolution 362 (IV), in which recommendations of the Special Committee on Methods and Procedures of

the General Assembly had been approved. The Special Committee had pointed out—in paragraph 13 of its report, cited in annex II of the resolution—that a Main Committee, by the very fact of its size, was not particularly fitted to draft conventions. The Special Committee had recommended, therefore, that when conventions had been negotiated by international conferences in which all the Members of the United Nations had been invited to take part, the Assembly should not undertake a further detailed examination. It had expressly refrained, however, from extending that recommendation to cover recommendations made by a committee of experts, such as the International Law Commission. The amendments submitted jointly by the eight Latin American countries were not therefore, in the opinion of the sponsors, inconsistent with the spirit and letter of resolution 362 (IV).

26. The argument that a conference of plenipotentiaries would enable States which were not Members of the United Nations to sign the convention was likewise unfounded. In point of fact, not all the countries in the world would be represented at such a conference, and the universality achieved would, at best, be only relative. Equally unsound were the arguments based on the example of the Third Committee with respect to its work on the draft International Covenants on Human Rights, since the subject of diplomatic intercourse and immunities not only did not have any strong political implications but was also one on which a large measure of agreement, based on long tradition, already existed.

27. A further objection, based on the practical difficulties which would confront the Secretariat in helping the Committee to carry out the work proposed in the eight-Power amendments, was not without some weight. In that connexion, he wished to ask the representative of the Secretary-General to state the respective advantages and disadvantages, from the Secretariat's point of view, of entrusting the task of formulating a convention to the Sixth Committee itself.

28. He would also like to know whether, in addition to circulating the observations of Governments, the Secretariat could prepare an analytical compendium of the amendments proposed by Governments to articles of the International Law Commission's draft, including any relevant observations made in the course of the current debate.

29. Lastly, he stated that his delegation could not support the amendments submitted by Pakistan (A/C.6/L.431) to the joint draft resolution, since those amendments only tended to obscure the original purpose of that resolution.

30. Mr. STAVROPOULOS (Legal Counsel), replying to the Mexican representative, said that he could only speak authoritatively on the practical aspects of the question whether the Sixth Committee could properly prepare a draft convention. Such a procedure was perfectly possible, provided that Governments had ample warning of the proposed task and could send to the Sixth Committee the same specialists as they would normally send to a diplomatic conference.

31. Entrusting the task to the Sixth Committee would admittedly have certain disadvantages: non-member States would be unable to send representatives empowered to vote, and the Sixth Committee, unlike a conference, would not normally be able to meet twice

a day. On the other hand, Member States had repeatedly stressed the need for economy, and the holding of a special conference would necessitate the expenditure of an additional \$40,000 to \$80,000. Moreover, the Committee's agenda at the fourteenth session was expected to be extremely light; the only item currently envisaged was the International Law Commission's report, which, on that occasion, would be purely informational. If all the arguments were weighed, therefore, it might prove fruitful to entrust the elaboration of the draft instrument to the Sixth Committee. So far as the Secretariat was concerned, its task would remain the same whatever course of action was agreed upon, but staff would be more readily available at Headquarters than at a conference held elsewhere.

32. In conclusion, he stressed that, if the Sixth Committee wished to undertake the task itself, it should take a decision to that effect as soon as possible. Furthermore, the resolution finally adopted might expressly invite Member States to send duly qualified specialists.

33. Mr. EVANS (United Kingdom) asked whether the Secretariat could give a rough estimate of the number of meetings which might be required for the consideration article by article of the International Law Commission's draft. He also asked whether it would in fact be possible for the Secretariat to accommodate and staff the necessary number of meetings, including meetings of sub-committees which might be appointed to study specific aspects of the text.

34. The CHAIRMAN asked the Legal Counsel why the Sixth Committee was limited to only five or six meetings weekly while other Committees met more often. The allocation of time to Committees was presumably determined by the nature of their agenda.

35. Mr. STAVROPOULOS (Legal Counsel), replying to the United Kingdom representative, said that an estimate of the number of meetings necessary to consider the Commission's text was virtually impossible. Experience at conferences had shown that the first two weeks were normally devoted to a general debate. In the subsequent consideration of individual provisions, the conference tended to get off to a very slow start and then work up to a feverish pitch towards the end of its allotted time. In the case of the draft under consideration, however, the debate had seemed to indicate that differences of opinion were not extreme and there was therefore some reason for optimism.

36. The staffing of meetings, whether of the Committee as a whole or of sub-committees, should not present insuperable difficulties, unless each sub-committee demanded simultaneous interpretation and summary records.

37. Replying to the Chairman's point, he recalled that at one stage the Sixth Committee had in fact met twice daily. Subsequently, however, its agenda had become lighter and some of its time had accordingly been assigned to other Committees. The question was complicated by the fact that there were only five suitable conference rooms and only a limited number of servicing teams. Any Committee could, of course, increase the number of its meetings by meeting in the late evening or on Saturdays.

38. Mr. ROSENNE (Israel) asked whether the Secretariat could say by what date it could prepare the ana-

lytical compendium, which the Mexican representative had mentioned, of Government proposals and of views expressed in the Sixth Committee. Both that document and the observations submitted by Governments should be transmitted to Member States at the earliest possible moment.

39. The CHAIRMAN suggested that it might also be advisable to include in the relevant draft resolution an express provision requesting the Secretariat to prepare the analytical compendium.

40. Mr. STAVROPOULOS (Legal Counsel) replied that an express request would not be necessary, as the

Committee's wish would duly appear in the summary record.

41. In reply to the Israel representative, he said that all Government observations received before, say, 1 June 1959 could be circulated to Member States within four weeks, and all those received after that date would be transmitted immediately they arrived. The Secretariat would prepare the analytical paper as rapidly as possible, but he could not guarantee any specific date, as the work would depend on the extent to which Governments respected the proposed deadline for the submission of their comments.

The meeting rose at 5 p.m.