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CONTENTS

| | Page |
|---|------|
| Agenda item 53: | |
| Report of the International Law Commission on the work of its ninth session (continued) | |
| General debate (continued) | 13 |

Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

AGENDA ITEM 53

Report of the International Law Commission on the work of its ninth session (A/3623) (continued)

GENERAL DEBATE (continued)

1. Mr. MAURTUA (Peru) said that he was sure that all the members of the Committee would wish to join him in extending congratulations to Mr. Spiropoulos on his election as judge of the International Court of Justice.
2. Mr. KESTLER (Guatemala) shared the view of many delegations that the Committee should not consider the substance of the International Law Commission's draft on diplomatic intercourse and immunities (A/3623, para. 16), since it was a provisional draft and would have to be commented on by Governments in due course. The Committee should simply take note of the report.
3. He pointed out that it would be appropriate for the Commission to take up the possibility of considering the American principles of international law, particularly those dealing with diplomatic intercourse and immunities embodied in the Convention regarding Diplomatic Officers adopted at Havana in 1928, and the right of asylum. Draft article 22, paragraph 1, concerning personal inviolability, was too restrictive; consideration should be given to the possibility of making provision for the right of asylum, which was recognized under the public law of many States. He also thought that reference should be made to the Calvo clause in the final text of articles 24 and 28, for many American States recognized the great legal value of the principle embodied in that clause, or had included it in their legislation.
4. Mr. GEAMANU (Romania) said that the draft dealt only with permanent diplomatic missions; the Commission had very rightly requested its Special Rapporteur to prepare a report on the subject of ad hoc missions as well, a subject which had assumed a special importance in view of the growing number of diplomatic conferences.
5. His delegation fully approved the Commission's desire to accelerate its work, and agreed, in principle, with the ideas expressed in that connexion by the representative of Sweden (483rd meeting, para. 4; 510th meeting, para. 16). Like other delegations,

however, it was anxious that the adoption of new working methods should not lead to a loss of that unity of views which could only materialize if all the members of the Commission participated in each phase of its work. In the final analysis, the Commission itself was the best judge of its own working methods.

6. With respect to the substance of the draft articles, he shared the view of the Philippine representative (510th meeting, para. 35) that the Committee was competent to express comments on those articles, but his delegation would refrain from doing so until the comments from Governments regarding their own State practice had been received.

7. In conclusion, he welcomed the Commission's decisions concerning co-operation with the Asian Legal Consultative Committee and with other inter-governmental bodies (A/3623, paras. 21-24).

8. Mr. KLUTZNICK (United States of America) said, with respect to paragraphs 30, 31 and 32 of the Commission's report, that his delegation agreed that the emoluments of the members should be maintained at the existing levels, but thought that the Sixth Committee should defer action on the subject until the Fifth Committee had considered it from the budgetary point of view. At the appropriate time, he intended to submit a motion under rules 117 and 120 that debate on that particular point should be adjourned so that final action might be taken in the light of the recommendations of the Fifth Committee.

9. Mr. USTOR (Hungary) said he was happy to have the opportunity of taking an active part in the work of the Sixth Committee. The noble purposes of the Charter were an inspiration to all jurists in his country, and the Hungarian delegation would do everything possible to fulfil the obligations arising from its country's membership of the United Nations.

10. With respect to chapter II of the Commission's report, he wished to point out that diplomatic immunity was of a procedural nature only; it protected diplomatic agents from the enforcement of local law as long as they enjoyed diplomatic status, but did not imply that they were wholly unaffected by the laws of the receiving State. It would be better, therefore, if article 33 preceded the enumeration of immunities and were formulated in broader terms.

11. He shared the view put forward by the representative of Haiti (509th meeting, para. 55) that it would be desirable to consider the draft articles on consular intercourse and immunities in conjunction with the articles on diplomatic intercourse and immunities, since diplomatic agents often performed both diplomatic and consular functions.

12. Mr. VALLAT (United Kingdom) said it appeared to be generally agreed that the Commission's report

was a progress report only; his delegation hoped that no debate would develop on the draft at that session, but reserved the right to comment on the substance of chapter II should such a discussion develop.

13. In the interests of accelerating the Commission's work, his delegation favoured the division of that body into two sub-commissions, as had been suggested by the Swedish representative; ultimately, however, the Commission itself was the best judge of its own working methods.

14. His delegation was also in general sympathy with paragraphs 30, 31 and 32 concerning emoluments, but felt that any formal action by the Committee at that stage on what was primarily a financial matter for the Fifth Committee might have an adverse effect.

15. Mr. ALFONSIN (Uruguay) said the Commission's report was undoubtedly an important document. It was regrettable, however, that the draft on diplomatic intercourse and immunities had not sufficiently taken into account the practice and doctrine of the Latin American States. Owing to that omission, a future convention based on the Commission's draft might be inconsistent with the law in force in those States, and especially with the Havana Convention of 1928 which the contracting parties considered satisfactory. The Uruguayan Government would hesitate greatly before adopting a universal convention which was inconsistent with the Havana Convention, for the simultaneous application of different rules to diplomatic representatives of different States would violate the principle of strict non-discrimination as between diplomatic agents.

16. Moreover, Uruguay did not admit the right of diplomatic protection, provided for in draft article 2 (b), except in the case of the denial of justice.

17. The Commission's draft completely ignored the important right of asylum, which was firmly established in the Americas. The right of asylum should be universal, not as a mere diplomatic privilege but as a duty of the diplomatic agent, for it involved the fundamental human right of self-preservation, and his delegation hoped that an appropriate provision would be included in the final draft.

18. Mr. BIERRING (Denmark) said that his delegation wished merely to take note of the Commission's draft articles without commenting on them at that time.

19. Mr. HSUEH (China) said that the International Law Commission's draft articles constituted a valuable contribution not only to the codification of existing practice but also to the progressive development of international law.

20. The articles were provisional and the draft text had only recently been circulated to Governments; the Chinese Government's comments would therefore be communicated later. He wished, however, at that stage to offer one general remark: the commentaries to some of the articles, such as commentary (3) to article 27 and the commentary to article 31, contained supplementary rules, or exceptions to the rules contained in the articles themselves. He considered it desirable that such rules and exceptions should be incorporated in the body of the articles rather than in the commentaries.

21. He hoped that the Commission would be able to complete its work on consular privileges and im-

munities so as to enable the General Assembly to consider the topics of diplomatic and consular immunities at the same session, or at least at successive sessions.

22. With regard to the emoluments of the members of the Commission, he referred to General Assembly resolution 1106 (XI). The Committee could either adjourn the debate on that particular point arising out of the Commission's report, as suggested by the representative of the United States of America, or take note of the report on the understanding that the question of emoluments would remain open until the Fifth Committee had taken action.

23. Mr. SECANDES Y MANRARA (Cuba) expressed the hope that the Commission's final draft on diplomatic privileges and immunities would take fully into account the Havana Convention of 1928 and would be submitted to the General Assembly at its thirteenth session, by which time the Commission would have considered the written comments of Governments and the observations made in the Sixth Committee.

24. He was confident that the co-operation between the Commission and the Asian Legal Consultative Committee would be mutually beneficial.

25. Mr. MOROZOV (Union of Soviet Socialist Republics) said the International Law Commission was performing a vital function in codifying and developing international law. The co-existence of States having different economic and social systems implied co-operation between those States; and many outstanding problems of international co-operation could only be solved on the basis of the recognized principles of international law.

26. The Commission had adopted its report unanimously, which was in itself a significant event. Unanimity had only been possible because the Commission had respected the principles of international law which were recognized by the majority of States and had eliminated from the earlier draft certain unsatisfactory provisions. As they stood the draft articles on diplomatic intercourse and immunities could serve as a useful basis for the study of the topic. His delegation reserved the right to comment in detail on the final draft articles to be submitted to the General Assembly at its thirteenth session.

27. He disagreed with the suggestion that the question of diplomatic immunities should be postponed until a time when the Assembly could deal with diplomatic and consular immunities concurrently. There were indeed similarities between the two subjects and some of the conclusions reached by the Sixth Committee on the question of diplomatic immunities might subsequently facilitate the solution of problems connected with consular immunities, but it was undesirable to postpone discussion for that reason. A discussion of the draft articles on diplomatic immunities, article by article, would probably absorb a whole Assembly session and would leave little or no time for a detailed discussion of consular immunities. The suggested postponement would therefore mean that instead of one of the questions being disposed of, both of them would be unduly delayed.

28. Nor was it desirable to delay the discussion of the draft articles on the diplomatic immunities of permanent missions until Governments had commented on the as yet non-existent draft provisions concerning

ad hoc missions. The latter formed a subsidiary subject, and the rules relating to them would be largely based on the final provisions concerning permanent missions and hence would not call for separate comments on the part of Governments.

29. With regard to the organization of the Commission's work, he had some doubt whether the proposed method of setting up two or three sub-commissions would in fact speed up the work. Past experience in the United Nations had unfortunately shown that the appointment of sub-commissions and sub-committees tended, rather, to delay proceedings. He thought it would be wisest to allow the Commission to plan its own work.

30. He welcomed the Commission's decision to establish co-operation with the Asian Legal Consultative Committee.

31. Mr. SHIMODA (Japan) said that Japan, although only recently admitted as a Member of the United Nations, had long been keenly interested in the International Law Commission's work. In drafting the articles on diplomatic intercourse and immunities, the Commission had now made a further substantial contribution. Those draft articles appeared generally satisfactory to his delegation, but it would be premature to comment on the details of a provisional text before Governments had had time to give it due consideration.

32. With reference to chapter IV of the Commission's report, he expressed the hope that the Commission's co-operation with the Asian Legal Consultative Committee would prove fruitful.

33. Mr. PONCE ENRIQUEZ (Ecuador) agreed that perhaps the Committee should not discuss in detail a document which was still before Governments for examination and comment. That did not mean, however, that it would not be very useful to analyse the Commission's report in general terms and to make comments which might be of great value for the final study.

34. The draft articles on diplomatic immunities would certainly have to be properly co-ordinated with those to be prepared on ad hoc missions and consular privileges, but the Commission had been quite right in approaching those problems in separate stages and in beginning with the topic covered by the report.

35. A study of diplomatic immunities should indicate the juridical foundations of the immunities. The Commission had very properly accepted the principle of "functional necessity" without abandoning the "representative character" theory. The basis of the whole draft on diplomatic immunities arose from the relationship between those two theories.

36. Diplomatic immunities were an exceptional prerogative enjoyed by the diplomatic agent for the better performance of his mission. It was therefore necessary to establish the various categories of persons who enjoyed those immunities, in order that privileges would not be granted to persons who had no direct and immediate connexion with diplomatic duties.

37. Immunity from jurisdiction was directly related to the status of a diplomatic agent, for he personified the sending State. Waiver of that immunity, even in civil actions, should always be effected expressly and with the authorization of the sending State.

38. Article 7 contained a real innovation. If it should be considered desirable to retain the provision, it should be carefully studied to make sure that its enumerative clauses expressed the idea correctly. While one might consider the possibility of stipulating a limitation of the size of a mission, it was difficult to admit that the functional necessities of the mission were not exclusively a matter for the sending State. The question concerning the right to accept or not to accept officials of a particular category should be judged from the same point of view.

39. In order that difficult situations would not arise in the future, he hoped that the International Law Commission would try to co-ordinate its drafts with the provisions of the Havana Convention of 1928.

40. Mr. TABIBI (Afghanistan) welcomed the draft articles, which seemed to reflect the practice followed by the majority of States on a basis of reciprocity. In view of the present importance of diplomacy, he hoped that the Commission's final report would be carefully reviewed in the light of the observations of Governments, and that it would be supplemented with provisions embodying the accepted principles governing ad hoc missions and the relations between States and international organizations.

41. He had always believed that the Commission's work was second to none in importance, but the Sixth Committee was fully competent to formulate suggestions for the Commission's guidance in the same manner as, for example, the Fourth Committee could make recommendations to the Trusteeship Council. He therefore saw nothing improper in the suggestion of the Swedish representative regarding the Commission's method of work. That suggestion had received much support in 1956 and could well provide the basis for a constructive reform.

42. He welcomed the Commission's willingness to co-operate with the Asian Legal Consultative Committee.

43. With reference to chapter IV, section III, of the Commission's report, he reiterated the view, expressed by his delegation on previous occasions, that the scale of the emoluments of the Commission's members should be maintained.

44. Mr. GUYER (Argentina) said that there seemed to be some contradiction between the Commission's decision to submit the provisional draft to the General Assembly and the statement in paragraph 15 of the report that a final decision as to the form in which the draft would be submitted would be taken in the light of the comments received from Governments. Nevertheless, the fact that the document was before the Committee justified the inference that the Committee was competent to discuss it. He himself felt that a general exchange of views could be very useful as long as it did not develop into a discussion of detail. The Argentine Government would submit its comments in due course.

45. The Commission deserved congratulations on the decision to intensify its co-operation with regional bodies and to extend the scope of its studies. As far as its rate of progress was concerned, he agreed with the Swedish representative that, in view of the Commission's enlarged membership, the appointment of sub-commissions might eliminate delays.

46. On the question of emoluments, he supported the Belgian representative's suggestion (510th meeting, para. 21). Where the views of the delegations of the United States and the United Kingdom were concerned, he felt that the Fifth Committee concentrated strictly on the budgetary aspects and only the Sixth Committee could truly appraise the value of the Commission's work. Those two points of view would eventually be reconciled by the General Assembly in plenary sessions.

47. Mr. ALVAREZ AYBAR (Dominican Republic) said that the necessary comments on the substance of the draft would be made by his Government. With reference to the question of the Committee's competence in the present circumstances, he said that in general, in a debate on a report of the International Law Commission, it was open to the Committee to take note of the report, to request clarifications, to make comments, observations and suggestions, to analyse the report (if it was a final report) or, lastly, to adopt a final resolution to be considered by the Assembly or at a special meeting. A decision to take note of the report had not yet been made, and hence comments on the report could not be barred. The Chairman had wisely allowed an exchange of views to take place, so that the Committee could form its own judgement, for it was surely difficult to decide prima facie whether an observation was or was not useful. In that connexion he recalled that in 1956 observations had been made on the report on the law of the sea (A/3159, para. 33), which, although a final report, might have been regarded as part of the preparatory work of the conference of plenipotentiaries recommended by the General Assembly in resolution 1105 (XI).

48. Whether the draft concerning diplomatic immunities and privileges should be submitted simultaneously with that relating to consular agents was a question that should be left to the wisdom of the Commission, which should also be left free to settle its own methods of work.

49. Mr. JOVANOVIĆ (Yugoslavia) said that in drafting provisions governing diplomatic intercourse and im-

munities the International Law Commission had rendered a great service to the international community. The matter was particularly urgent because no universally acceptable instrument relating to the status of diplomatic agents had been approved since the Regulation of Vienna (1815) and the Protocol of Aix-la-Chapelle (1818). He supported the Commission's proposal that the rules should be in the form of a convention.

50. The Commission had rightly decided to examine the rules relating to so-called "ad hoc diplomacy" at its next session. A comprehensive view of the problems of diplomatic law would then be possible, and the Commission's work would include a field of diplomatic relations where even less had been done to codify existing practice. He also hoped, despite the explanations given by the Commission's Chairman, that consideration would be given to the question of relations between States and international organizations.

51. He was glad to note the Commission's obvious determination to adhere strictly to the principles of the Charter. He felt, however, that some of the rules could be brought even more into line with the letter and spirit of that document.

52. Referring to chapter IV, section I, of the report, he said the Commission had quite properly decided to intensify its co-operation with other official bodies, but it might also consider the possibility of closer liaison with learned societies.

53. Lastly, with its enlarged membership the Commission would be able to make greater improvements in its methods of work. The proposal to establish sub-commissions seemed to him worth considering.

54. Mr. ROLIN (Belgium) said that he was surprised by the United States representative's suggestion that the Committee should adjourn its debate on the question of the emoluments of the members of the Commission. If some action was not taken before the Fifth Committee took a decision, the Sixth Committee's wishes might have little influence on the final settlement of the question.

The meeting rose at 12.55 p.m.