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Agenda item 143

### CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

#### Report of the Sixth Committee

Rapporteur: Mrs. Silvia A. FERNANDEZ de GURMENDI (Argentina)

#### I. INTRODUCTION

1. The item entitled "Convention on jurisdictional immunities of States and their property" was included in the provisional agenda of the forty-ninth session of the General Assembly pursuant to Assembly decision 48/413 of 9 December 1993.
2. At its 3rd plenary meeting, on 23 September 1994, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. At its 2nd meeting, on 23 September, the Sixth Committee, in accordance with General Assembly decision 48/413, decided to convene informal consultations to continue consideration of the substantive issues regarding which the identification and attenuation of differences was desirable, in order to facilitate the successful conclusion of a convention through general agreement.
4. At its 3rd meeting, on 26 September, the Committee elected Mr. Carlos Calero-Rodrigues (Brazil) Chairman of the informal consultations.

5. The participants in the informal consultations had before them, in addition to chapter II of the report of the International Law Commission on the work of its forty-third session, 1/ the reports of the Working Group established by the General Assembly in its resolution 46/55 of 9 December 1991 and reconvened pursuant to Assembly decision 47/414 of 25 November 1993. 2/

6. The informal consultations were held at six meetings, from 27 September to 3 October 1994.

7. At the 7th meeting of the Committee, on 6 October, the Chairman of the informal consultations introduced a document containing conclusions he had drawn from the consultations (A/C.6/49/L.2).

8. The Sixth Committee considered the item, and the Chairman's conclusions, at its 32nd, 33rd, 37th, 38th, 40th and 41st meetings, on 11, 14, 17, 18, 25 and 29 November 1994. In accordance with General Assembly decision 48/413, the Committee considered, in the light of the progress thus far achieved and of the results of the consultations, the recommendation of the International Law Commission that an international conference of plenipotentiaries be convened to examine the articles of the jurisdictional immunities of States and their property and to conclude a convention on the subject. The summary records of the meetings contain the views of the representatives who spoke during the consideration of the item (A/C.6/49/SR.32, 33, 37, 38, 40 and 41).

## II. CONSIDERATION OF PROPOSALS

9. At the 37th meeting, on 17 November, the representative of Brazil introduced a draft resolution entitled "Convention on jurisdictional immunities of States and their property" (A/C.6/49/L.14), sponsored by Algeria, Bolivia, Brazil, the Dominican Republic, Ecuador, France, Nicaragua, Peru, Uruguay and Venezuela, later joined by the Russian Federation, which read:

"The General Assembly,

"Having received from the International Law Commission a set of draft articles on jurisdictional immunities of States and their property 3/ adopted by the Commission at its forty-third session,

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1/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10).

2/ A/C.6/47/L.10 and A/C.6/48/L.4 and Corr.2.

3/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10), chap. II, sect. D.

"Recalling that the International Law Commission recommended that an international conference of plenipotentiaries be convened to examine the draft articles and to conclude a convention on the subject, 4/

"Having considered the draft articles at its forty-sixth to forty-ninth sessions, including in a working group and in consultations aimed at considering the issues of substance arising out of the draft articles, with the purpose of identifying and attenuating the differences of views concerning such issues in order to facilitate the conclusion of a convention through general agreement,

"Having considered the reports of the working groups established at its forty-seventh 5/ and forty-eighth 6/ sessions and of the consultations held at its forty-ninth session, 7/

"1. Decides to accept the recommendation of the International Law Commission and to convene an international conference of plenipotentiaries to consider the articles on jurisdictional immunities of States and their property and to conclude a convention on the subject;

"2. Also decides that the date and place of the conference shall be determined at the fifty-first session of the General Assembly, due consideration being given to the need for adequate preparatory work, including further consultations on matters of substance aimed at ensuring the widest possible agreement at the conference;

"3. Decides to include in the provisional agenda of its fifty-first session an item entitled 'United Nations conference on jurisdictional immunities of States and their property'".

10. At the 38th meeting, on 18 November, the representative of the United Kingdom of Great Britain and Northern Ireland introduced a draft resolution entitled "Convention on jurisdictional immunities of States and their property" (A/C.6/49/L.20), sponsored by Australia, Canada, Germany, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America, later joined by Austria, which read:

"The General Assembly,

"Having received from the International Law Commission a set of draft articles on jurisdictional immunities of States and their property adopted by the Commission at its forty-third session, 3/

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4/ Ibid., para. 25.

5/ A/C.6/47/L.10.

6/ A/C.6/48/L.4 and Corr.2.

7/ A/C.6/49/L.2.

"Recalling that the International Law Commission recommended that an international conference of plenipotentiaries be convened to examine the draft articles and to conclude a convention on the subject, 4/

"Having considered the draft articles at its forty-sixth to forty-ninth sessions, including in a Working Group and in consultations aimed at considering the issues of substance arising out of the draft articles, with the purpose of identifying and attenuating the differences of view concerning such issues in order to facilitate the conclusion of a convention through general agreement,

"Having also considered the reports of the Working Group established at its forty-seventh 5/ and forty-eighth 6/ sessions and of the consultations held at its forty-ninth session, 7/

"Noting that there remain issues of substance arising out of the draft articles on which a sufficient measure of agreement has not yet been achieved,

"1. Considers that the successful conclusion of a convention through general agreement would be a valuable contribution to the codification and progressive development of international law;

"2. Invites States to submit to the Secretary-General their comments on the conclusions of the Chairman of the informal consultations held pursuant to General Assembly decision 48/413 of 9 December 1993, as well as the reports of the Working Group established under Assembly resolution 46/55 of 9 December 1991 and decision 47/414 of 25 November 1992; 5/, 6/

"3. Decides to resume consideration at its fifty-third session of the issues of substance, in the light of the reports mentioned above and the comments submitted by States thereon, and to give full consideration to the recommendation of the International Law Commission to convene an international conference of plenipotentiaries to consider the draft articles and to conclude a convention on this subject;

"4. Also decides to include in the provisional agenda of its fifty-third session the item entitled 'Convention on jurisdictional immunities of States and their property'."

11. At its 40th meeting, on 25 November, the Committee had before it a draft resolution submitted by its Chairman (A/C.6/49/L.25).

12. At the same meeting, draft resolutions A/C.6/49/L.14 and A/C.6/49/L.20 were withdrawn in favour of the draft resolution submitted by the Chairman.

13. At its 41st meeting, on 29 November, the Committee adopted draft resolution A/C.6/49/L.25 without a vote (see para. 14).

III. RECOMMENDATION OF THE SIXTH COMMITTEE

14. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Convention on jurisdictional immunities  
of States and their property

The General Assembly,

Having received from the International Law Commission the set of articles on jurisdictional immunities of States and their property 8/ adopted by the Commission at its forty-third session,

Recalling that the International Law Commission recommended that an international conference of plenipotentiaries be convened to examine the articles and to conclude a convention on the subject, 9/

Having considered the articles at its forty-sixth to forty-ninth sessions, including in a working group and in consultations aimed at considering the issues of substance arising out of the draft articles, with the purpose of identifying and attenuating the differences of views concerning such issues in order to facilitate the conclusion of a convention through general agreement,

Having considered also the reports of the Working Group established at its forty-seventh session 10/ and forty-eighth session 11/ and of the consultations held at its forty-ninth session, 12/

1. Accepts the recommendation of the International Law Commission that an international conference of plenipotentiaries be convened to consider the articles on jurisdictional immunities of States and their property and to conclude a convention on the subject;

2. Invites States to submit to the Secretary-General their comments on the conclusions of the Chairman of the informal consultations held pursuant to General Assembly decision 48/413 of 9 December 1993, and on the reports of the Working Group established under General Assembly resolution 46/55 of 9 December 1991 and decision 47/414 of 25 November 1992;

3. Decides to resume consideration at its fifty-second session of the issues of substance, in the light of the reports mentioned above and the

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8/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10), chap. II, sect. D.

9/ Ibid., sect. B, para. 25.

10/ A/C.6/47/L.10.

11/ A/C.6/48/L.4 and Corr.2.

12/ A/C.6/49/L.2.

comments submitted by States thereon, and to determine, at its fifty-second or fifty-third session, the arrangements for the conference, including the date and place, due consideration being given to ensuring the widest possible agreement at the conference;

4. Also decides to include in the provisional agenda of its fifty-second session the item entitled "Convention on jurisdictional immunities of States and their property".

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