United Nations

GENERAL ASSEMBLY

THIRTEENTH SESSION

Official Records

SIXTH COMMITTEE 570th MEETING

Wednesday, 29 October 1958, at 3.20 p.m.

NEW YORK

CONTENTS

Page

Agenda item 56:
Report of the International Law Commission on the work of its tenth session (continued)

Consideration of chapter III: Diplomatic intercourse and immunities (continued) 93

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 AND CORR.1) (continued)

1. Mr. CUEVAS CANCINO (Mexico) said that nations had always found it necessary to be represented among other peoples by officials authorized to speak and act on their behalf. Diplomatic envoys, whose only responsibility, initially, had been to settle one particular matter, had been supplanted by permanent missions. Concurrently, the purely ad hoc protection extended to them had been transformed into a body of permanent rules, which the International Law Commission, at the request of the General Assembly, had codified in the draft articles before the Sixth Committee (A/3859, para. 53), achieving an adequate synthesis of all the earlier attempts at the codification of diplomatic law.

2. Confining himself, at that stage of the discussion, to general observations on the draft articles, he wished to point out that the Convention regarding Diplomatic Officers adopted at Havana in 1928, from which the Special Rapporteur of the International Law Commission had sought guidance, had contributed in large measure to promoting mutual understanding among the American Republics.

3. He then turned to the question of the procedure to be followed. If, as the International Law Commission urged (ibid., para. 50), the draft was recommended to the General Assembly with a view to the conclusion of a convention, it would also be necessary to decide how such a convention would be concluded. The calling of an international conference for such a purpose, in conformity with article 23, paragraph 1(d) of the Commission's statute, had a number of drawbacks, especially that of necessitating additional expense.

4. On the other hand, it had been argued that codification of the law on diplomatic intercourse and immunities, based on an established practice of long standing, might, in the present circumstances, do more harm than good. As a jurist, he could not accept that opinion. The law must not depend on the world situation; on the contrary, it was the law which should govern relations between States, and the independence and individuality of the law should be reaffirmed. Such was the interpretation which should be given to Article 13 of the Charter, which entrusted the General Assembly with encouraging the progressive development of international law and its codification.

5. The Sixth Committee had the further advantage, in the present case, of dealing with a draft which, broadly speaking, was regarded as acceptable to all the delegations. Accordingly, it was the view of the Mexican delegation that, as stated by the representative of Pakistan (568th meeting), the Sixth Committee should play an active part in the codification of that branch of international law, and study the substance of the draft articles at the fourteenth session of the General Assembly with a view to approving the text in the form of a convention. Such a solution would leave States time to consider the draft and would avoid the additional burden of a conference of plenipotentiaries.

6. Mr. THORVALDSON (Canada) commended the International Law Commission on its valuable contribution to a field of international law that was ripe for codification.

7. After reviewing the background of the Commission's work on the subject of diplomatic intercourse and immunities, he recalled that the Commission at its tenth session had made significant changes in the provisional draft (A/3623, para. 16); the present draft (A/3859, para. 53) should not be considered merely as a final draft but also as a substantially new draft, requiring further thorough study on the part of Governments. Not less than one year would be required for such a study.

8. That period would also enable the International Law Commission to prepare the general outlines of a draft on consular intercourse and immunities, a question which gave rise to problems similar to those of diplomatic intercourse and immunities. Moreover, the two drafts should be studied by the same officials, and it was possible that a number of States would prefer to have a general idea of the draft on consular intercourse and immunities before entering into any commitments with respect to the draft on diplomatic intercourse and immunities.

9. The International Law Commission had not confined itself to codifying the existing principles and

rules and recognized practice in that branch of international law, as provided in General Assembly resolution 685 (VII); its draft was also an attempt at the progressive development of that law, an attempt duly authorized by its statute. That was an additional reason why—in a matter which was of such importance and which was due to be the subject of a convention—Governments should study the draft with the closest attention. At the present stage, it would be idle to undertake a discussion article by article.

10. A large number of delegations had expressed satisfaction with the text submitted to them and appeared to favour the idea of a convention. Accordingly, there existed a foundation for general agreement which should be built on with care if the final product was to be worthwhile. It had to be borne in mind that the conclusion of a multilateral convention would fundamentally alter the character of the law governing diplomatic intercourse and immunities.

11. On the whole, the Canadian delegation would welcome the conclusion of a multilateral agreement on the subject. But the draft gave rise to several difficult questions of government policy, especially with respect to duty-free import privileges, and required more thorough study.

12. He therefore urged that consideration of the substance of the articles should be postponed for one year. He reminded the Committee that, as the Government of the United States of America had pointed out in its written observations (A/3859, annex, section 20), a multilateral convention could not produce satisfactory results if it did not have the support of a large majority of States. Moreover, although the draft dealt only with permanent diplomatic missions, a convention would inevitably have a great influence on "ad hoc diplomacy" and on the privileges accorded to representatives of international organizations and to the staff of such organizations.

13. For those reasons, the Canadian delegation proposed that detailed consideration of the draft should be deferred to the fourteenth session of the General Assembly; at that time, the Sixth Committee would decide whether such consideration should be entrusted to an international conference of plenipotentiaries.

14. Mr. EVANS (United Kingdom) recalled that his delegation had been one of those which at the seventh session of the General Assembly had supported the resolution requesting the International Law Commission to give priority to the codification of the law on diplomatic intercourse and immunities. Though that was one of the most firmly established parts of international law, yet there were points of difference and uncertainty which hampered the conduct of relations between States. Rules for diplomatic intercourse and immunities were a functional necessity, and without them diplomatic agents could not perform their duties.

15. Since the Second World War, the increase in the number of persons claiming diplomatic immunities, and the need in many countries for legislation to extend such immunities to international organizations and persons connected with them, had prompted a closer examination of the justification for them. It was generally accepted that they were justified, but there had been a movement towards greater insistence on reciprocity and away from what many authorities believed to be customary rules of law. In the circumstances, an authoritative restatement of the rules, preferably in the form of a multilateral convention, was timely.

16. The provisional view of his delegation was that the International Law Commission's draft constituted a sound basis for a convention.

17. Certain articles however did not appear to be entirely in accord with the views and practice of the United Kingdom. For instance, the provisions of article 28 concerning inviolability of the property of diplomatic agents did not indicate with sufficient precision the circumstances in which such property—an agent's motor car, for example—should be inviolable. Such inviolability should be recognized only when the property was in the possession or under the control of the diplomatic agent, or of a person authorized by him. His Government had presented written comments on article 32.[1] It would also have liked to see that article give specific recognition to the established practice of releasing from bond, or refunding duty paid on petrol used for diplomatic purposes. Furthermore, certain provisions of article 36 went beyond the current United Kingdom practice, particularly those concerning the granting of customs privileges to the members of the administrative and technical staff of a mission and their families and to the relatives of a diplomatic agent, other than his wife or children or a near relative acting as his official hostess.

18. Those points and others required further study.

19. The International Law Commission had recommended to the General Assembly that its draft articles should be recommended to Member States with a view to the conclusion of a convention (A/3859, para. 50). If the Sixth Committee favoured the conclusion of a convention, it would be possible either for the Committee itself to make a study of the substance of the draft and then open a convention for signature by Member States, or to convene a conference of plenipotentiaries. His delegation was well disposed towards the idea of a convention, but considered that it would be impracticable to make an article by article study of the draft in the Sixth Committee. The text prepared by the Commission represented a compromise between conflicting views. It might be thought, therefore, that a detailed discussion would be unlikely to improve it, and that a convention could be opened for signature as a result of only a general debate in the Sixth Committee. If the majority was not of that opinion, however, a study of the text, article by article, could usefully be undertaken only at a conference specially called for that purpose.

20. There would be no advantage in a further debate at the fourteenth session of the General Assembly if the general tendency at the current session was in favour of convening a conference. Such a conference should not take place in 1959, but a decision to convene a conference could be taken forthwith, unless it was considered that such an important matter required further study, in which case it would be necessary to defer a decision until the fourteenth session.

21. His delegation, unlike some others, did not be-

---

[1] Article 26 of the provisional draft. See A/3859, annex, section 19.

lieve it was necessary to postpone consideration of the draft until the International Law Commission had prepared the draft on consular intercourse and immunities. The two topics had many points in common, but the rights and privileges granted to consular representatives rarely, if ever, exceeded those enjoyed by diplomatic agents. There was therefore no difficulty, and there might even be some advantage, in dealing with the topics separately.

22. His delegation noted that the International Law Commission had requested the Special Rapporteur to make a study of what had been termed "ad hoc diplomacy", but had not planned, for the time being at least, to codify the law governing relations between States and international organizations (ibid., paras. 51 and 52). A study of ad hoc diplomacy would usefully supplement the draft rules before the Committee. On the other hand, a set of rules designed to govern relations between States and international organizations would be liable to cause confusion, owing to the fact that some of its provisions would inevitably conflict with those of the various agreements which had already been concluded, and which differed in detail in order to take account of the particular needs of each organization. The representative of France had emphasized (569th meeting, para. 22) that certain matters, such as the relations between international organizations and non-member States, were not covered by existing agreements, and that it would be useful to draw up rules on such matters. The United Kingdom would give sympathetic consideration to that aspect of the French proposal.

23. Mr. PEREZ PEROZO (Venezuela) also wished to congratulate the International Law Commission on its performance of the task entrusted to it by the General Assembly.

24. The majority of the rules prepared by the International Law Commission could not give rise to serious objections, as they reflected faithfully the practice which had long been followed by States. The draft nevertheless contained some provisions which he was unable to accept, and on which he would comment at the proper time. Meanwhile, he would merely consider the action to be taken on the draft.

25. Two tendencies had become apparent in the course of the debate. Some delegations wanted the General Assembly to adopt the Commission's recommendation and convene a conference with a view to the conclusion of a convention. Others, on the contrary, believing that the question had not been studied sufficiently, advocated postponing further consideration until the fourteenth session. Though not opposed to the idea of a conference, he confessed to some apprehension at the increasing number of international meetings of that type. If the majority of the members of the Sixth Committee, however, expressed themselves in favour of that solution, he would concur, since, in his view, that would point to a large attendance at the conference, which would ensure the success of its work.

26. He was firmly opposed to the Sixth Committee's undertaking a study of the draft, article by article, either at the current or at the following session. It was not a question of recommending the adoption of a text such as that of the model rules on arbitral procedure, but of deciding on the calling of a conference. The conference would discuss the Commission's draft with a view to drawing up a convention for signature by the States. A preliminary study of the draft by the Sixth Committee would duplicate the work of the conference.

27. The General Assembly had examined the substance of the Convention on the Prevention and Punishment of the Crime of Genocide at its third session. That was not a case to quote as a precedent, because, firstly, the text in that instance was a draft prepared by an ad hoc committee composed of representatives of Governments, and, secondly, the General Assembly then wished to prepare a convention in final form to be opened directly for signature by Member States. On the other hand, the case could be quoted of the recent United Nations Conference on the Law of the Sea, to which the General Assembly had referred the texts prepared by the International Law Commission, without having studied them beforehand.

28. As stated in annex I to the rules of procedure of the General Assembly (A/3660, p. 31), a Main Committee, by the very fact of its size, was not particularly fitted to draft conventions. If it undertook a task of that nature, it would be detrimental to other work entrusted to it. The best solution would therefore be to establish a special committee composed of representatives of Governments, with instructions to study the International Law Commission's draft, to modify it as necessary, and to report to the following session of the General Assembly. The latter would then only have to decide, after a relatively brief study of the revised text, on the further action to be taken. That solution, mentioned also in annex I to the rules of procedure of the General Assembly (ibid., p. 32), had provided excellent results in the case of genocide, the definition of aggression, international criminal jurisdiction and the methods and procedures of the General Assembly.

29. He had not yet had time to study the draft resolution submitted by France (A/C.6/L.427 and Corr.1). He had no serious objection to it on the whole, but reserved the right to speak again in the debate if he found that necessary.

30. Mr. PECHOTA (Czechoslovakia) congratulated the International Law Commission and the Special Rapporteur on the excellent draft which they had prepared, and which, on the whole, provided a solid foundation for the conclusion of a general convention on diplomatic intercourse and immunities.

31. Although there were a considerable number of rules, established by custom, convention, judicial opinions and doctrine that could be referred to on the subject of diplomatic intercourse, on some points, there was uncertainty which could be cleared up easily if States agreed to apply uniform rules. The Commission's report offered the General Assembly an opportunity to take a positive decision which would favour the codification and progressive development of international law as provided in Article 13 of the Charter.

32. The rules governing diplomatic intercourse and immunities were based on a very old tradition. Without rejecting traditional notions, the value of which had been proved by experience, the international law in force reflected the evolution of the international community. The establishment of rules of international

law was no longer the privilege of a small number of States. Several new States had taken their place in the great family of nations, and the scope of application of international law had thereby been considerably extended. In addition, it was now universally recognized that any State, whatever its constitutional or social structure of its ideology, and irrespective of its recognition or otherwise by other States, was a subject of international law. In those circumstances, it was all the more important to observe and apply the principle of peaceful coexistence in the relations between States, together with all the obligations which resulted therefrom as set forth in the Charter.

33. Those important considerations had to be kept in mind in the codification of the law governing diplomatic intercourse. The principles of law had to be adapted to the new structure of the international community, and certain rules had to be interpreted so as to ensure the maximum co-operation between nations and to prevent any abuse likely to endanger peace and normal relations between States. He considered that, as a general rule, the International Law Commission had taken those facts into account in the well-balanced draft before the Sixth Committee.

34. The draft recognized the "right of legation" which was considered one of the attributes of the sovereignty of States; nevertheless, for reasons which were not quite convincing, the Commission had made no reference to that right in the text of article 2, and only referred to it in the commentary to that article. That right, however, occupied an important place in existing conventions concerning diplomatic intercourse and immunities.

35. The draft very properly attempted a definition of the functions of a diplomatic mission. The present practice was marked by a considerable widening in scope of those functions, which were no longer limited to observation, protection and negotiation. The Commission was to be congratulated on having mentioned—in article 3 (e)—the functions of promoting friendly relations and developing economic, cultural and scientific relations, the importance of which was bound to increase.

36. The draft had the merit of simplifying the classification of heads of mission. The Czechoslovak delegation approved article 13, paragraph 2, which conformed with the principle of the equality of States.

37. With regard to the commencement of the functions of the head of the mission, the Czechoslovak delegation favoured the alternative choice mentioned in article 12. The question was important. The establishment of a uniform practice would put an end to doubts which arose, for example, with regard to the moment from which the statements of a diplomatic agent had to be considered as statements of the Government of the sending State. It was desirable to eliminate the first proposal.

38. The draft articles gave proper attention to the immunities to enable diplomats to carry out their duties successfully, and to the principle of non-interference in the affairs of the receiving States and the observance of its laws.

39. In article 36, the granting de lege of privileges and immunities should be limited to diplomatic agents and their families, and should not apply to other persons except with the agreement of the States concerned.

40. Experience had shown that advantage was sometimes taken of the diplomatic status to commit acts incompatible with the principle of peaceful coexistence. International law in force condemned any act which violated the sovereignty of the receiving States. Diplomatic agents were under an obligation to respect the political and social system of the receiving State and to observe its laws. They should not allow the premises of their missions to be used in an unwarranted manner, in particular by giving refuge to persons who had violated the laws of the receiving State, except where the question was covered by a convention on the right of asylum.

41. It was unfortunate that the Commission should have abandoned, in article 45, the principles governing the pacific settlement of disputes between States. In contrast with article 37 of the 1957 draft, article 45 of the new draft provided for the compulsory jurisdiction of the International Court of Justice in the case of disputes concerning the interpretation and application of the convention, at the request of either party. Article 45 was unacceptable in its present form to many States, and would render more difficult the acceptance of the draft as a whole. In addition, a provision of that type was not in its place in a convention on diplomatic intercourse and immunities. The jurisdiction of the International Court of Justice should not be established automatically for all kinds of disputes. The great majority of disputes could be settled much better by non-judicial methods.

42. The Czechoslovak delegation approved the Commission's recommendation in paragraph 50 of its report; his delegation attached great importance to the conclusion of a convention on diplomatic intercourse and immunities, since the diversity in existing practice could only give rise to numerous difficulties. The General Assembly could choose between two possibilities: either to examine the draft itself and draw up a multilateral convention, or to entrust that task to a conference. Without expressing any final view on that point, the Czechoslovak delegation favoured the second alternative. A conference would be better able to convert the draft into a definitive instrument. The success of the first codification conference held at Geneva in the spring of 1958 under the auspices of the United Nations was an argument in favour. In addition, the rules on diplomatic intercourse and immunities were of direct interest to all States, even to those which were not members of the United Nations, and it was therefore necessary to give them an opportunity of examining the draft. The Sixth Committee, in view of its many other duties and in view of the complicated character of the proposed work of codification, would find it difficult to undertake the task. It seemed preferable to call a conference of plenipotentiaries, a measure which did not appear likely to encounter insurmountable obstacles.

43. Mr. RODRIGUEZ (Costa Rica) thought that it would be very difficult to make an exhaustive study of the draft at the current session. As was probably the case with other Governments, the Costa Rican Government had not had time to give the draft the careful attention which it deserved.

44. The Sixth Committee could either recommend

the convening of a conference of plenipotentiaries to draw up a convention, or it could consider the draft itself at the General Assembly's fourteenth session. His delegation preferred the latter, which had been proposed by the representative of Pakistan (568th meeting), because it would enable Governments to make a thorough examination and avoid the expense of an international conference. Financial difficulties might prevent Costa Rica from participating in such a conference in spite of its advantages.

45. His delegation sincerely complimented the International Law Commission and its Special Rapporteur on the draft, which was a valuable contribution to the unification and development of international law and, in general, conformed with the practice followed by Costa Rica.

46. Mrs. AYDA (Turkey) stated that the item under discussion was entirely different from arbitral procedure. The draft articles on diplomatic intercourse and immunities were submitted as a basis for an international convention which would entail legal as well as moral obligations. Thus, it was impossible to be too cautious. Considerations of time and procedure should be relegated to the background. The important thing was to produce a lasting work. The rules to be set up should meet the practical requirements of international life. Once codified, it was to be hoped that those articles would have a life span which would be at least as long as that of the Regulation of Vienna of 1815.

47. As the Commission had pointed out in its report (A/3859, paras. 51 and 52), however, the present draft dealt with only one part of a whole which, in addition to the relations and immunities of permanent missions, included the relations and immunities of temporary or ad hoc missions, relations between States and international organizations, and consular intercourse and immunities. The ideal procedure would be to consider those four topics at the same time and in terms of the same principles. It would then be possible to draw up an international code possessing both unity and uniformity.

48. Some steps had been taken in that direction. The International Law Commission had requested the Special Rapporteur to make a study of the question of ad hoc diplomacy (ibid., para. 51). It intended, in two sessions, to prepare a draft on consular intercourse and immunities (ibid., para. 61). Lastly, the representative of France had submitted a draft resolution (A/C.6/L.427 and Corr.1) requesting the Commission to include in its agenda the subject of relations between States and international organizations. Her delegation warmly supported that proposal. Since the four topics mentioned above constituted an organic whole, it hoped that a thorough study could be made of all of them at the same time, with a view to their codification.

49. The connexions between them, however, were not all equally strong. The questions of diplomatic intercourse and immunities and consular intercourse and immunites were complementary. There were countries, like Turkey, where there was no clear dividing line between the system of diplomatic representation and the system of consular representation: a secretary of embassy might be appointed to serve as a consul and then later return to the diplomatic career. It would, therefore, be very difficult for the Turkish Government to consider the present draft before examining the draft on consular intercourse and immunities.

50. Moreover, the question of diplomatic intercourse and immunities was in no way urgent. The subject was not a frequent source of friction between States, and even when such friction did arise, it did not constitute a threat to peace. It would, therefore, be advisable to wait until the International Law Commission had completed its work on consular intercourse and immunities so that the two questions could be considered and discussed at the same time—in 1962 or even in 1963. If the Sixth Committee was not prepared to agree to that postponement, her delegation would insist that consideration of the question should be deferred until at least 1959. As the Pakistan delegation had pointed out (568th meeting), the present draft required a careful examination on the part of Governments.

51. The draft before the Committee was rather different from the original draft, since the International Law Commission, in an attempt to satisfy everybody, had drawn heavily on the observations of Governments, contrary to what it had done in the case of arbitral procedure. The result was that certain articles, such as article 12, mentioned various possibilities instead of stating a clear and simple rule. If the provisions were too flexible, they might give rise to dangerous situations: thus, where article 8, paragraph 2, referred to a "reasonable period", it would be more advisable to define that period exactly. Similarly, there was a danger that such an expression as "exceeding what is reasonable" in article 10, paragraph 1, might lead to misunderstandings and even disputes. In addition to those questionable articles, there were some, like article 7, which her delegation could not accept.

52. The very fact that the Commission had drawn its material from widely different systems was a reason why the draft should be re-examined by Governments, since it had been brought to their attention only a few months before. In considering the draft, Governments had, in fact, met the difficulties to which the Commission referred in its report (A/3859, para. 60), and postponement of the question to the fourteenth session was justified on that ground alone.

53. She wished to explain why certain Governments were so late in submitting their observations. Consultation was easy in the case of countries which received the draft in their own language. The situation was quite different in the case of countries such as Turkey, Afghanistan and Pakistan, where translation was rendered even more difficult by the fact that their languages were very remote from the working languages, and translators had to do double duty as jurists also. The translations had to be revised by the responsible department heads. When the opinion of the competent authorities had been obtained, it still had to be translated. It was, therefore, very important to allow Governments sufficient time in which to submit their observations, and the decision of the Commission on the matter (see A/3859, paras. 60 and 61) should be respected.

54. In conclusion, her delegation requested that consideration of the question of diplomatic intercourse and immunities should be deferred at least to the fourteenth session, and should be discussed, if possible, at the same time as consular intercourse and immunities.

The meeting rose at 5.10 p.m.

Litho. in U.N. 77601–January 1959–2,050