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MEETING**

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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/Rev.1, A/C.6/L.430, A/C.6/L.431) (continued)

1. Mr. CUEVAS CANCINO (Mexico) said that, in response to the appeal made to them by the USSR representative (578th meeting, para. 27), the sponsors of the joint draft resolution (A/C.6/L.429 and Add.1) and of the amendments thereto (A/C.6/L.430) had met together in order to draft a single text. It had appeared clear to all concerned that the main requirement was to indicate that the conclusion of a convention on diplomatic intercourse and immunities was approved in principle. In the circumstances, and in view of the fact that the co-sponsors of the draft resolution had presented a revised text (A/C.6/L.429/Rev.1) which took into account the various changes proposed by the co-sponsors of the amendments, the latter had withdrawn their proposal.

2. The main objections to the joint draft resolution were, first, that Member States had not had sufficient time to decide whether the International Law Commission's draft (A/3859, para. 53) could serve as the basis for a convention on diplomatic intercourse and immunities and, second, that it should not already be envisaged that codification of the topic should be effected by means of a convention. In the general debate, the Member States had shown that they had had an opportunity to form an opinion on the usefulness of the International Law Commission's draft and the comments made by the Italian representative (578th meeting, para. 19) had been an excellent refutation of the second objection. Although not less than fifteen Latin American countries had ratified the Havana Convention of 1928 he found it odd that those who had criticized the inter-American system for having rarely codified a topic of international law by means of a convention were now showing extreme reticence in regard to the conclusion of a convention on diplomatic intercourse and immunities.

3. His delegation would vote in favour of the revised joint draft resolution (A/C.6/L.429/Rev.1).

4. Mr. YASSEEN (Iraq) said that he wished to make some comments on the Pakistan amendments (A/C.6/L.431) which concerned both the substance and the form of the joint draft resolution.

5. The delegation of Pakistan wished the draft resolution to be adopted by the Sixth Committee to refer to "codification of that topic" rather than to "formulating a convention on that subject". Even in its most restrictive sense, codification did not exclude the conclusion of a convention. Codification was, in fact, nothing more than the compilation of rules of written law on a given subject and was effected in international affairs by the conclusion of a convention. As the Turkish representative had pointed out (568th meeting, para. 5), the provisions of the Charter relating to codification of international law did not mention conventions, but it was not necessary, when stating an objective, to indicate also the means of attaining it, particularly when those means were not very numerous.

6. However, even assuming that the use of the word "codification" in the draft resolution would not prevent the subsequent conclusion of a convention, its use should be avoided in order not to give the impression that it was desired to assign a purely declaratory role to the codification of diplomatic intercourse and immunities. It should not be forgotten that an express agreement reached by States in a representative body, whether that body was the General Assembly or a conference of plenipotentiaries specially convened for the purpose of concluding a convention, constituted a source of international law: it could not only note the existence of rules of customary law, but could also create new rules. States should not have their hands tied in advance, particularly on a topic such as diplomatic intercourse and immunities, on certain points of which customs differed.

7. Article 12 of the International Law Commission's draft was only one example of those differences which it was desirable to eliminate. Noting the existence of differing regional practices, the International Law Commission had decided to leave to the receiving State the choice of the method to be applied in determining the date on which the head of mission should be considered as having taken up his functions in that State. That choice, which the International Law Commission had been unable to make, should be made by a representative body and there was no reason why such a body should be deprived of the choice. Furthermore, it was necessary to avoid hampering the establishment of new rules which certain aspects of modern diplomatic intercourse might require. For all those reasons, his delegation could not accept the first and fifth amendments submitted by Pakistan (A/C.6/L.431).

8. The sponsors of the joint draft resolution had taken into account, in their revised text, the Pakistan

amendments concerning questions of procedure, particularly the fourth amendment. They could not however, accept the sixth amendment which would delete the last operative paragraph, because, although they did not exclude the possibility of convening an international conference of plenipotentiaries to conclude a convention on diplomatic intercourse and immunities, they wished to leave it to the General Assembly to make a decision on that question at its fourteenth session, after it had received the comments of the Member States.

9. Mr. RAHMAN KHAN (Pakistan) said that he was pleased to note on reading the revised joint draft resolution that some of the amendments submitted by his delegation had been accepted by the co-sponsors. Neither in the revised text nor in the original text, however, had he found any indication of the reason why consideration of the International Law Commission's draft should be postponed. Yet, in presenting his second amendment, in order to rectify that omission, he had laid special emphasis on the need to explain the Committee's attitude.

10. As there were further Pakistan amendments, he proposed a brief adjournment for the purpose of consultation.

The meeting was suspended at 3.50 p.m. and resumed at 4.30 p.m.

11. Mr. LACHS (Poland) said that the sponsors of the joint draft resolution had considered the suggestions of the representative of Pakistan in the same spirit of co-operation that had led them to modify their original text in order to take into account the amendments submitted by the eight Latin-American countries (A/C.6/L.430). They had felt that the deletion of the fifth paragraph of the preamble should satisfy the Pakistan delegation and were therefore prepared to eliminate that paragraph if the Pakistan delegation withdrew its amendments.

12. Furthermore, on the suggestion of the Secretary of the Committee, the sponsors of the revised joint draft resolution had re-worded operative paragraph 5 to read as follows:

"5. Decides to consider at its fourteenth session the question as to what body the formulation of the convention should be entrusted."

13. Mr. RAHMAN KHAN (Pakistan) said that the sponsors of the joint draft resolution, by agreeing to eliminate the last paragraph of the preamble, had overcome his main objection. His delegation favoured the conclusion of a convention, but the existing text of the draft articles did not provide an adequate basis for such action. The Committee's first task at the fourteenth session would be either to draw up a final text of the draft articles, or to entrust the task to some other body.

14. He was pleased to note that his third and fourth amendments had been incorporated in the revised joint draft resolution. As a result, only Member States would be invited to submit their comments, and the latter would be circulated sufficiently early to permit discussion of the subject at the fourteenth session of the General Assembly.

15. In view of the changes which had been made in the joint draft resolution and in a spirit of co-operation, he would not ask that his amendments (A/C.6/L.431) be put to the vote.

16. Mr. EVANS (United Kingdom) was glad that the sponsors of the various proposals had been able to reach a compromise.

17. He did not know what the final position of his Government with regard to the draft articles would be. But, as a matter of principle, his delegation would not wish to rule out the possibility of the Assembly's approving the draft articles more or less as they stood and opening a convention for signature without an article-by-article discussion. He enquired of the sponsors of the revised joint draft resolution whether the effect of operative paragraph 5 would be to exclude that possibility. He also suggested the deletion of the word "as" in the English text of that paragraph.

18. Mr. PERERA (Ceylon) accepted, on behalf of the co-sponsors, the change suggested by the United Kingdom representative.

19. The joint draft resolution left the General Assembly completely free to choose, at the fourteenth session, the solution which it deemed preferable; in particular, it did not preclude the convening of a conference, consideration of the draft by the Sixth Committee or the possibility mentioned by the United Kingdom representative.

20. Mr. STABELL (Norway) said that he was in favour of the Pakistan amendments because they made it possible to avoid prejudging the Assembly's decision. As operative paragraphs 4 and 5 of the revised joint draft resolution still prejudged that decision, his delegation found it difficult to adopt so conciliatory an attitude as the Pakistan delegation. He would not take over the Pakistan amendments in his own name, and requested a separate vote on the last part of operative paragraph 4 "with a view to the early conclusion of a convention on diplomatic intercourse and immunities", and on operative paragraph 5.

21. Mr. GLAZER (Romania) said that the Committee was divided between two opposing points of view. Those who wanted to move forward were urging that the question of diplomatic intercourse and immunities should be made the subject of a convention: a conference would be convened for the purpose, or else the Sixth Committee would examine the draft articles of the International Law Commission at the fourteenth session. Those who wanted to leave the situation as it stood were opposed to taking a positive decision of that kind. They were trying to achieve their purpose through a procedural stratagem by requesting that the basic provisions of the revised joint draft resolution, which embodied the idea of a convention, should be put to the vote separately. If that procedure were adopted, the result might well be that, after two weeks' of debate, the Committee would have accomplished nothing.

22. The CHAIRMAN felt that the Committee found itself in the position covered by article 130 of the rules of procedure. Since the Romanian representative had spoken against the motion for division presented by the Norwegian representative, he would call upon two other representatives to speak, one for the motion and the other against it.

23. Mr. MOROZOV (Union of Soviet Socialist Republics) supported the remarks of the Romanian representative. One could hardly speak of a compromise solution when one of the parties was giving something without receiving anything in return.

24. Apart from those moral considerations, he based his protest against the motion for division on the provisions of article 130 of the rules of procedure. The previously existing article relating to the division of proposals had given rise to abuses. The General Assembly had amended it for the very purpose of making it impossible to distort a draft resolution, by means of a motion for division, to the point of depriving it of all meaning. Yet, that was precisely the situation in which the Committee now found itself. The deletion from a draft resolution of the very phrase which gave it all its meaning could not be permitted. Hence, the Committee should reject the motion for division. He reserved the right, if the Committee should decide otherwise, to reintroduce on behalf of his delegation the paragraph in the draft resolution which had been deleted at the request of the Pakistan representative. He did not agree to the deletion of the paragraph unless there was a compromise. The revised joint draft resolution was acceptable only if its basic principles were maintained, even though in a weakened form.

25. He urged the Committee to decide against a separate vote, lest it should create an unfortunate precedent, and to reach a decision which was based on a broad compromise and represented the product of the efforts of many different States.

26. Mr. PHLEGER (United States of America) said that his delegation supported the proposal of the Norwegian representative.

27. The statement of the Romanian representative that the members of the Sixth Committee had accomplished nothing during the two weeks of debate was not accurate. They had considered the draft articles of the International Law Commission; they had reached agreement on approving most of the articles, while expressing criticism of certain other ones; above all, they had recognized the need to set up machinery to enable the Member States to study the articles in detail so that they could make an intelligent decision next year.

28. The only remaining question was whether the Committee, even before it heard the observations of Member States, should decide on embodying the articles in a convention. The voting procedure proposed by the Norwegian representative was the most suitable way to settle that point.

29. The CHAIRMAN put to the vote the Norwegian motion for division.

The motion for division was rejected by 31 votes to 24, with 15 abstentions.

30. The CHAIRMAN then invited the members of the Committee to indicate whether they preferred to have the preamble and the operative part of the revised joint draft resolution put to the vote separately or to have a single vote taken on the draft resolution as a whole.

31. Mr. BELTRANENA VALLADARES (Guatemala) formally proposed that the Committee should vote separately first on the preamble, then on the first three operative paragraphs, and lastly on paragraphs 4 and 5, since the latter two paragraphs seemed to him to constitute an entity distinct from the preceding ones.

32. Mr. NINCIC (Yugoslavia), supported by Mr. PERERA (Ceylon), objected that the rejection of the Norwegian motion for division in effect constituted a decision to vote on the revised joint draft resolution as a whole.

33. Mr. GLAZER (Romania) also felt that the Guatemalan proposal was contrary to the rules of procedure, which provided that a decision which had already been taken could not be reopened for discussion unless the Committee decided otherwise. The revised joint draft resolution, as amended, represented a compromise which was the product of negotiation and of mutual concessions; by rejecting the Norwegian motion for division, the Committee had clearly indicated that it did not wish a separate vote which would reopen points on which agreement had finally been reached. The Guatemalan proposal, if adopted, would have the same effect as the motion presented by the Norwegian representative.

34. Mr. MOROZOV (Union of Soviet Socialist Republics) also opposed the Guatemalan proposal as inadmissible, for the rejection of paragraphs 4 and 5 of the operative part would result in the adoption of a draft resolution which did not even go as far as the supporters of the Pakistan amendments were prepared to go.

35. Mr. Morozov, with the support of the CHAIRMAN, therefore requested the Guatemalan representative not to maintain his proposal.

36. Mr. BELTRANENA VALLADARES (Guatemala) withdrew his proposal.

37. The CHAIRMAN put to the vote the revised joint draft resolution (A/C.6/L.429/Rev.1) as a whole, as amended.

The revised joint draft resolution was adopted by 56 votes to 1, with 12 abstentions.

38. Mr. DIAZ GONZALEZ (Venezuela) explained that his delegation had voted for the draft resolution because it enunciated the main points on which agreement had been reached. That did not mean that his delegation gave its final approval to the draft articles as the basis for a convention. The Venezuelan Government intended to give them close study and to offer its observations in due course.

39. Mr. EL-ERIAN (United Arab Republic) said that he had voted for the draft resolution, even though he had stated during the general debate that he wanted to see the Sixth Committee reach a decision at the current session, in response to the desire expressed by several delegations to give the Governments time to study the draft articles more thoroughly.

40. Mr. HOLMBACK (Sweden) pointed out that, when he had submitted the joint draft resolution (A/C.6/L.429 and Add.1) together with eight other Powers, he had felt that the conclusion of a convention was the only means of codifying the subject of diplomatic intercourse and immunities. Indeed, the Swedish representative had upheld that point of view in 1947 in the Committee on the Progressive Development of International Law and Its Codification. At that time, during the drafting of the statute of the International Law Commission, the Swedish representative had opposed the adoption of the provision in article 23, paragraph 1 (b) of the statute, under which the Commission could

recommend to the General Assembly "to take note of or adopt the report by resolution", on the ground that it was not the General Assembly's responsibility to decide on the content of international law (see A/331, para. 7). From the point of view that the conclusion of a convention was the only means of carrying out a codification the amendments proposed by Pakistan (A/C.6/L.431) scarcely departed from the original joint draft resolution (A/C.6/L.429 and Add.1). From the same point of view, to speak of a convention in no sense constituted a prejudgement of the issue.

41. Mr. RAHMAN KHAN (Pakistan) said that he had voted for the draft resolution on the understanding that the draft articles of the International Law Commission were to be revised in the light of the observations which the various Governments would offer. Only then would they be able to serve as the basis for concluding a convention.

42. Mr. ROSENNE (Israel) said that his delegation would have voted for the Pakistan amendments but

that, in view of the compromise which had been reached, it had voted for the draft resolution as amended on the understanding that the observations to be offered by the Governments could also deal with the suitability or otherwise of concluding a convention. The Israel delegation was not opposed in principle to the conclusion of such a convention, but it did not have sufficient information at the moment to take a position on the matter.

43. Mr. DZIRASA (Ghana) said that it had been his delegation's view, in voting for the draft resolution, that any convention that might be concluded should simply enunciate principles which had been established by usage and were the outgrowth of freely evolving practices.

44. The Ghanaian delegation was prepared to take part in drafting a final draft convention.

The meeting rose at 5.50 p.m.