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Chairman: Mr. Jorge CASTAÑEDA (México).

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. RAHMAN KHAN (Pakistan) introduced the Pakistan amendments (A/C.6/L.431) to the joint draft resolution (A/C.6/L.429 and Add.1). He regretted that his delegation could not accept that draft resolution in its entirety, but it was clear from the debate that no delegation was prepared to support the International Law Commission's draft articles on diplomatic intercourse and immunities in their final form (A/3859, para. 53). Until the Committee had examined the draft articles in detail, it was premature and illogical to say that they constituted an adequate basis for a convention. His first amendment, however, would overcome that defect by replacing the words "for formulating a convention on that subject" in the fifth preambular paragraph by the words "codification of that topic"; in international law, codification was considered a preliminary step towards the conclusion of a convention. His fifth amendment was a logical corollary to the first. His sixth amendment also followed logically from the first, since it rendered operative paragraph 4 of the joint draft resolution entirely superfluous. At its fourteenth session, the General Assembly would be free to take any action for codification of the topic which it saw fit.

2. His second amendment was necessary, because the joint draft resolution, while reviewing the history of the topic at considerable length in its preamble, had failed to state the reason for postponing consideration of that topic to the fourteenth session. That was a gap which tended to make the Committee appear guilty of undue procrastination.

3. The words "not later than 1 June 1959" in operative paragraph 2 of the joint draft resolution implied that comments received after that date would not be accepted. Since there might be unavoidable reasons why the comments of Governments might be received after that date, he preferred the less rigid wording contained in his third amendment.

4. The fourth amendment was desirable, because the very purpose of inviting comments would be frustrated if the comments received were not transmitted to Member States well before the fourteenth session. That amendment would in particular ensure that Member and non-member States not having a permanent mission at Headquarters would have the comments of other Governments forwarded to them by the Secretariat.

5. Mrs. AYDA (Turkey) said that the joint draft resolution seemed to imply that all delegations were in favour of concluding a convention on the subject of diplomatic intercourse and immunities. On the contrary, the views of delegations during the general debate had ranged from the extreme position of those who wished to convene an international conference of plenipotentiaries for the purpose of concluding a convention to the opposite extreme of those who denied the desirability of a convention altogether. The Pakistan amendments, which reflected an intermediate position, tended to replace the idea of a convention by the idea of codification. It was, indeed, significant that both Article 13 of the Charter and General Assembly resolution 685 (VII) referred to codification and made no mention of a convention. It was likewise significant that, although article 23 (d) of the statute of the International Law Commission authorized it to recommend to the General Assembly to convoke a conference to conclude a convention, the Commission had not done so. Obviously the Commission considered that the time was not yet ripe for the conclusion of a convention. Operative paragraph 4 of the joint draft resolution, therefore, was clearly unacceptable because it prejudged and anticipated the Committee's decision on a question which was not, in any case, an urgent one.

6. Moreover, even if a convention were concluded, that convention could cover only the draft articles on diplomatic intercourse and immunities. The Commission's work was incomplete, since it had not yet dealt with the topics of consular intercourse and immunities, ad hoc diplomacy and the relations between States and international organizations. The latter topics, however, were fully as important as that of diplomatic intercourse and immunities, since international relations were no longer centred exclusively in embassies. If a conference were to be convened for the purpose of concluding a convention, therefore, that conference should, for reasons of economy alone, be prepared to conclude conventions on all four topics at the same time. For those reasons, her delegation, while not opposed to the idea of a convention at some future date, felt that the Committee should, for the time being, confine itself to the work of codification. It would, therefore, support the Pakistan amendments (A/C.6/L.431).

7. Mr. STEWART (Union of South Africa) observed that the fifth preambular paragraph of the joint draft resolution, read in conjunction with operative paragraphs 3 and 4, implied that the Sixth Committee was

already in full agreement that a convention was the best possible solution. His delegation felt, however, that until Government views on the subject were more widely known any such conclusion might be somewhat premature. General Assembly resolution 685 (VII)—expressly referred to in the second preambular paragraph of the joint text—had merely requested the International Law Commission to undertake the codification of the topic "Diplomatic intercourse and immunities" and to give it priority consideration. There had thus been no mention of a convention at the outset. Subsequently, in 1957, the Commission had admittedly stated in its report on its ninth session that its preliminary draft had been prepared "on the provisional assumption that it would form the basis of a convention", but it had also stressed that the final decision on the form in which it would be submitted to the General Assembly would be taken in the light of the comments received from Governments (A/3623, para. 15). The preliminary draft (*ibid.*, para. 16) had then been transmitted to Governments for their comments, but the comments received (A/3859, annex) had concentrated almost exclusively on the value of the draft articles as a work of codification. In fact, of the twenty-one Governments which had found it possible to transmit their comments in time for the International Law Commission's tenth session, only three had referred to the question whether a convention might be the best means of codifying the relevant rules.

8. In submitting its final text to the General Assembly, the Commission had explicitly proposed that the draft articles should be recommended to Member States with a view to the conclusion of a convention (see A/3859, para. 50). That proposal, and two weeks of somewhat inconclusive debate in the Sixth Committee at the current session, hardly seemed to warrant, however, the adoption of the joint text, whereby the General Assembly would simultaneously recognize, in operative paragraph 2, that no further action could be taken without additional Government comments, and decide in advance, in the fifth preambular paragraph and in operative paragraphs 3 and 4, that a convention was the sole solution. Those provisions appeared virtually impossible to reconcile, as a final decision on the form of the proposed codification could not be taken until all the relevant facts were known. His delegation supported the idea of a convention in principle, but could not be party to an ambiguous text. It would therefore support the Pakistan amendments (A/C.6/L.431), which did not deny the possibility of a convention but left the matter open for consideration at the proper time.

9. Mr. STABELL (Norway) said that the general debate had revealed agreement on two points: first, that the International Law Commission's draft constituted a sound basis for further progress and, secondly, that more time should be allowed for Governments to study the text and submit their comments.

10. The only question before the Committee, therefore, was what constructive decision could be taken at the current session pending the receipt of further Government views. On that point, however, there seemed to be some disagreement. Some delegations thought that the Committee should decide forthwith on the drafting of a convention. That view was mainly prompted by the belief that the draft articles had already been extensively considered and that it would be embarrassing to leave the position completely un-

changed. Other delegations, including his own, thought that any decision on that particular point at the current session might be both imprudent and unnecessary. Since it was generally admitted that the Committee was in no position to examine the merits of the text, any decision regarding the desirability of a convention might be premature. Such a decision would wrongly imply that the Committee already had the thorough knowledge of the draft which could only be acquired after more exhaustive study.

11. The draft articles largely embodied existing rules of international law. In some provisions, however, such as article 36, the Commission had gone somewhat further than the generally accepted rules and had ventured into progressive development; and the general debate in the Committee had shown that most of the doubts entertained by delegations centred on those very innovations. Yet if those elements of progressive development were not to be included in the text finally adopted, a good case could be made out for a restatement of existing rules in preference to a convention. His delegation would accordingly welcome further time to determine its final position.

12. Another question which the General Assembly might be ill-advised to anticipate was that of the organ which should undertake the consideration of the substance of the draft. The answer to that question might prove considerably simpler at the fourteenth session, when the Sixth Committee would be able to see exactly the amount of work assigned to it in the agenda. It would in fact be almost illogical for the Sixth Committee to take a decision on that point forthwith.

13. The joint draft resolution expressly deferred the question of the competent organ to the fourteenth session. That was a positive feature, but the text unfortunately prejudged the second vital question, namely, the desirability of a convention. The amendments submitted by the eight Latin-American Powers (A/C.6/L.430) prejudged even more, as they expressly stated that the convention should be drafted by the Sixth Committee. His delegation, having weighed all those factors, would accordingly support the joint draft resolution, subject to the incorporation of the amendments proposed by Pakistan (A/C.6/L.431). Those amendments seemed to reflect exactly the same views as those of his delegation, being designed to eliminate from the joint draft resolution the provisions which would anticipate the nature of the final document.

14. Mr. MATSUDAIRA (Japan) said that his delegation had co-sponsored the draft resolution (A/C.6/L.429 and Add.1) because the text emphasized three important points: in the first place, it invited Governments to submit their comments by a specified date; secondly, it recommended that the General Assembly should consider at its fourteenth session whether the convention should be drawn up by an international conference or by the Sixth Committee; and thirdly, it indicated that a convention was a necessity and that the General Assembly should make special efforts to ensure the early conclusion of such an instrument. In his delegation's view, those had to be essential features of any constructive decision which the Committee might take. Nor should arguments in favour of delay be permitted to impede the removal of ambiguities in the status of diplomatic officers.

15. The Japanese delegation viewed the eight-Power amendments with sincere sympathy. It might be somewhat premature, however, to place the responsibility for making a convention on the very next session of the General Assembly. The questions whether the Sixth Committee was the proper organ to undertake the task and whether it would find that task technically possible were still unanswered. A decision on those points should be easier to take after all the relevant material had been collected.

16. The Pakistan amendments would inevitably eliminate any possibility of a convention in the near future. Moreover, they would introduce an unfortunate element of ambiguity into the process of codification. His delegation would therefore have to oppose those amendments, the need for which had not been convincingly demonstrated.

17. Mr. PHLEGER (United States of America) said that his delegation would support the Pakistan amendments (A/C.6/L.431), as it believed that, if read in conjunction with those parts of the joint draft which would be retained, they accurately reflected the majority view expressed in the Sixth Committee. The resulting text would leave open both the principal question whether codification should be undertaken by means of a convention or through a restatement of existing law, and the secondary question whether a convention, if found desirable, should be prepared by the Sixth Committee or by a diplomatic conference. Those questions would be much easier to answer at the fourteenth session, after consideration of the conditions then prevailing and the comments submitted by Governments in the meantime.

18. In conclusion, he stressed that the Sixth Committee could not bind itself on those essential points in advance. It would hardly be in keeping with accepted juridical standards to render judgement before the evidence was in.

19. Mr. MONACO (Italy) said that the idea of codification did not conflict with that of a convention. On the contrary, a multilateral convention was but one of the means that could be used to achieve codification.

20. The manner in which codification should be carried out depended on the subject to be codified. In the case of a set of rules to be observed by States as subjects of international law, the method of a declaratory restatement was adequate; such was the case with the Universal Declaration of Human Rights. In the case of diplomatic intercourse and immunities, however, codification could only be satisfactorily carried out by means of an international convention because the rules to be codified had an effect on municipal law. Only a convention could oblige States to adapt their national legislations on the various fiscal, police and administrative questions affected by the rules on diplomatic intercourse and immunities.

21. The Italian delegation agreed that there was still some work to be done on the subject before a convention could be concluded, but considered that the Committee had to take a decision at that stage that a convention was necessary.

22. Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation would vote against the Pakistan amendments (A/C.6/L.431) which served the purpose of those who did not wish a convention to be

formulated on the subject of diplomatic intercourse and immunities. If the Pakistan amendments were adopted, the subject would be left, after three weeks' discussion by the Committee, exactly at the point where the Committee had taken it up.

23. It had been suggested by some speakers that the meaning of the terms "codification" and "progressive development" of international law had not been made clear by the Charter. In fact, those terms were clearly defined in article 15 of the statute of the International Law Commission. That statute had been adopted by the General Assembly and therefore constituted an interpretation of the Charter which was within the Assembly's powers.

24. Articles 16 (j) and 23 (c) of the statute of the International Law Commission made it clear that the Commission was empowered to submit its draft in the form of a convention.

25. The Pakistan representative had suggested that the majority of delegations had reservations regarding most of the articles of the draft. In fact, the summary records of the meetings showed that the great majority of speakers had expressed approval for the draft as a whole and had only criticized a few of its articles.

26. The Soviet Union delegation agreed with the majority view that the Commission's draft articles constituted an adequate basis for drawing up a convention, and accordingly it supported the joint draft resolution. Of course, approval of the draft as an adequate basis for a convention did not imply its acceptance in its entirety, as some of the critics of the joint draft resolution had appeared to suggest.

27. Lastly, he appealed to the sponsors of the amendments in document A/C.6/L.430 to endeavour to reach agreement informally with the sponsors of the joint draft resolution in order to arrive at an agreed text which could receive unanimous, or almost unanimous, support from the Committee.

28. Mr. PERERA (Ceylon) thanked the representative of Austria for having recognized and accepted his suggestion regarding the holding of a conference at Vienna. The United Nations should be grateful to the Austrian Government for that offer of assistance in the formulation of public international law and, when a decision came to be taken regarding the holding of a conference, he hoped the Secretary-General would consult with the Austrian Government regarding its generous offer (577th meeting, para. 6).

29. As one of the sponsors of the joint draft resolution, his delegation could not accept the Pakistan amendments. He noted that those amendments did not affect the first four preambular paragraphs of the joint draft resolution, and in particular the fourth preambular paragraph which took into account the recommendation of the International Law Commission that the draft articles should be recommended to Member States with a view to the conclusion of a convention. That being so, the Pakistan amendments which contradicted that recommendation were somewhat illogical.

30. The proposal to delete the fifth preambular paragraph of the joint draft resolution constituted an indictment of the work of the International Law Commission. It was, however, generally agreed in the Committee that the Commission's draft constituted an adequate basis for a convention on the subject of diplomatic

intercourse and immunities. That fact was clear not only from the discussions at the current session, but also from the comments by Governments, all but one of which were favourable to the draft, and from the discussions in the Sixth Committee during the twelfth session of the General Assembly. Actually, there was general agreement that a convention should be concluded as early as possible; it was only with regard to the procedure to be followed that several views had been expressed and that there was a general desire to postpone a decision until the fourteenth session.

31. It had to be remembered that the International Law Commission's 1958 draft was final as far as the Commission was concerned. The 1957 draft of the Commission had been circulated, comments from Governments had been received, a discussion had taken place in the Sixth Committee at the twelfth session, and the 1958 draft had been prepared by the Commission

taking all Government comments into account. The Commission having thus completed its work, the Sixth Committee had now to take the next step, and that was the purpose of the joint draft resolution.

32. The effect of the Pakistan amendments would be to postpone the matter indefinitely. The adoption of the eight-Power amendments would have the effect of going a step further than the joint draft resolution, by deciding at that stage that the Sixth Committee and not an international conference would be responsible for drawing up a convention. He urged the sponsors of the latter amendments not to press them, and to accept the joint draft resolution as it stood. There was no disagreement with regard to substance between the two groups of sponsors: all agreed that a convention was necessary and they only differed on the question of procedure.

The meeting rose at 1.10 p.m.