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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 V (*continued*)**

1. Mr. HOLMBACK (Sweden) congratulated the International Law Commission and its Special Rapporteur, Mr. François, on the results obtained in the codification of the law of the sea, recalling that the United Nations Conference on the Law of the Sea, held at Geneva, had adopted four conventions on the basis of the report prepared by the International Law Commission (A/3159, chap. II).

2. Owing to the extent of the Commission's tasks, the General Assembly in 1950, in resolution 484 (V), had requested that body to make recommendations concerning revisions of the statute likely to promote the Commission's work; the Commission had duly recommended (A/1858, para. 67) that its members should be enabled to devote the whole of their time to the Commission's work, but that recommendation had not been accepted by the General Assembly (see resolution 600 (VI)).

3. In 1956, at the eleventh session of the General Assembly, it had been proposed in the Sixth Committee (483rd meeting, para. 4) to sub-divide the Commission into two or more sub-commissions, on the ground that the proposed new membership was too large for the Commission to be able to do useful work in plenary meeting. That proposal had been supported by several delegations; the United Kingdom representative had suggested (*Ibid.*, para. 19) that the sub-commissions should be representative of the various legal systems and that the questions considered by them at one session should be examined by the plenary Commission at the following session.

4. After further discussion in 1957 by the International Law Commission and the Sixth Committee, the Commission had reconsidered the question at its tenth session in 1958, on the basis of a paper drafted by Mr. Zourek (A/CN.4/L.76). Mr. Zourek had opposed the permanent division of the Commission into several sub-commissions, but considered it advisable to make a more general use of the existing procedure of referring questions to a committee and to extend it, as experience had shown that the Commission's work

was considerably accelerated thereby. After a general discussion in plenary meeting, the questions concerned might be referred to a committee or sub-commission representative of the various legal systems.

5. The International Law Commission had not accepted Mr. Zourek's proposals (*Ibid.*, para. 26), which were reproduced in the report (A/3859, footnote 33), but had decided that the Commission's Drafting Committee should be formally constituted as it had long been in fact, namely, as a committee to which could be referred not merely pure drafting points, but also points of substance. He said he had not been convinced by the Commission's arguments and could not see the disadvantages of dividing the Commission into two sub-commissions with adequate geographical distribution of its membership. The revision of the Commission's statute involved would not present any insurmountable difficulties. Moreover, all the questions considered by the International Law Commission were subsequently examined by the Sixth Committee, in which all the legal systems were represented.

6. He considered that the Commission's decisions referred to in its report constituted a step forward and was confident that the Commission would in future have greater recourse to work in sub-commissions, if it deemed that method more suitable for the study of such vast topics as State responsibility and the law of treaties, which were listed in its programme of work.

7. Mr. LACHS (Poland) said he would confine his statement to general comments on the work of the International Law Commission. Despite the failure of certain projects, it might be said that the Commission's record was largely positive. The codification of law, and particularly of international law, was not an easy matter. Viewing the history of codification—from private efforts and the work of The Hague Conferences to the work of the League of Nations—one had to concede that there had been many failures, especially between the two wars. Nevertheless, the International Law Commission had succeeded where the experts of the League of Nations had failed. The main reason for that success had been that the Commission represented the various legal systems which existed in the world. Jurists, such as Lorimer or Bonfils, believed that an impassable gulf would always separate European or American States from other States in the realm of law, but experience had shown the fallacy of that belief and contemporary international law had become the common law of all mankind. It was that law which the International Law Commission had to codify and develop progressively. If the vastness of that task and of the difficulties encountered was taken into account, the results achieved by the Commission must be deemed to be satisfactory. Above all, the Commission was to be congratulated on formulating the Nürnberg principles and the draft articles on the law of the sea, which had

served as a basis for the work of the recent Conference on the subject. The indirect importance of the Commission's work was even greater, for it served as a living rebuttal to those who refused to admit that international relations were based on law.

8. With regard to the organization of its future work, the Commission should take care to maintain its widely representative character, which was the best guarantee of its success. Accordingly, it should never set up smaller and less representative working groups, except for simple matters of drafting.

9. He agreed with those who thought that Governments should have more time to submit their comments, and thus be enabled to make a more effective contribution to the Commission's work.

10. From the point of view of substance, the Commission should continue to move with the times; it should avoid petrifying principles which were only in the process of development, and should refrain from reviving others which had long ceased to be binding law.

ORDER OF CONSIDERATION OF THE CHAPTERS OF THE REPORT

11. The CHAIRMAN believed it desirable to decide immediately which of the two main chapters of the report of the International Law Commission should be examined first: chapter II on arbitral procedure or chapter III which dealt with diplomatic intercourse and immunities.

12. Mr. MONACO (Italy) proposed that chapter II should be examined first as it dealt with a subject which had been studied more thoroughly by the Sixth Committee itself.

13. Mr. EUSTATHIADES (Greece) agreed that that was an important point. Nevertheless, account should be taken of the fact that the question of arbitral procedure was included in the Committee's agenda as a separate item immediately after the report of the International Law Commission. From a practical point of view, it might therefore be desirable to begin with chapter III which dealt with the question of diplomatic intercourse and immunities, so that the subsequent consideration of arbitral procedure in chapter II should come immediately before item 2 of the agenda relating to that same question. If, however, the fact that the question of arbitration was of long date and ripe for discussion were considered decisive, chapter II of the report should be linked with item 2 of the agenda and chapter III could be taken up later.

14. Mr. STEWART (Union of South Africa) proposed that, for practical reasons, the question of diplomatic intercourse and immunities should be taken up after the question of arbitral procedure. If the Committee considered diplomatic intercourse and immunities first, some delegations—including his own—might not be sufficiently prepared. He pointed out that the report of the International Law Commission had only been distributed during the previous month. Governments would need more time because, in addition to the legal aspects of the question, they had to study the financial aspects which concerned several ministries as well as local authorities.

15. Mr. STABELL (Norway) agreed with the representatives of Italy and of the Union of South Africa.

It appeared logical to begin with the question of arbitral procedure, which the International Law Commission had itself taken up before the more complex and more controversial question of diplomatic intercourse and immunities. Moreover, the General Assembly had debated the former item at length at its seventh session.

16. The CHAIRMAN called for a vote on the proposal of Italy.

17. Mr. GLAZER (Romania) suggested that perhaps it would be preferable to give the delegations an opportunity to agree on the order of the Committee's work, without putting the matter to a formal vote.

18. Mr. GAMBOA (Philippines) said he had understood that by deciding, at its 449th meeting, to consider first the report of the International Law Commission and then the question of arbitral procedure, the Sixth Committee had meant to separate the latter question from the remainder of the report in order to take it up only when its study of the other chapters had been completed. He preferred to maintain the order of priority previously approved.

19. Mr. TUNCEL (Turkey) urged the Committee to organize its work in such a manner as to avoid all waste of time. The Committee should endeavour to complete as soon as possible its debate on chapter V of the International Law Commission's report. It might perhaps be useful to fix a time limit for the delegations to decide on the matter.

20. Like the delegation of the Union of South Africa, the Turkish delegation had not had time to study the draft articles on diplomatic intercourse and immunities and would be unable to comment on it during the current session. If the majority of the delegations found themselves in a similar situation, the Committee might consider the matter at an early date and decide to postpone it until the next session of the General Assembly.

21. Mr. DAVIN (New Zealand) pointed out that the Committee had simply decided to begin by considering chapter V of the report of the International Law Commission, but had reserved its decision on the order in which the other chapters would be studied. The New Zealand delegation would prefer to begin with chapter II on arbitral procedure and wished to know whether item 2 of the Committee's agenda, entitled "Question of arbitral procedure" would be considered at the same time as that chapter.

22. The CHAIRMAN thought that if the Committee decided to begin with arbitral procedure, the best solution—as the question was under two different agenda items—would be to open the general debate on chapter II of the International Law Commission's report. Upon the conclusion of the debate, the Committee could make a decision on both chapter II of the report and item 2 of its agenda.

23. Mr. LIANG (Secretary of the Committee) explained that the question of arbitral procedure was the subject of a special item in the Committee's agenda under General Assembly resolution 989 (X) of 14 December 1955 in which the Assembly had decided that the problem of the desirability of convening an international conference of plenipotentiaries to conclude a convention on arbitral procedure should be considered at the thirteenth session. The recom-

mendations contained in chapter II of the International Law Commission's report constituted, to a certain extent, the Commission's opinion in the matter, but there was nothing to prevent the General Assembly considering other solutions. It was important to retain item 2 as a separate item of the Committee's agenda and not to combine it with chapter II of the report, since the Rapporteur would have to submit a separate report to the General Assembly on item 2.

24. In reply to Mr. EVANS (United Kingdom), who had called attention to the fact that the drawing of a clear dividing line between chapter II of the report and item 2 of the Committee's agenda might provoke a double debate on the question, and had asked whether it would not be possible to present to the General Assembly a report on item 2 and chapter II of the Commission's report and a separate report on the other chapters of the report, Mr. LIANG (Secretary of the Committee) said that such a procedure could readily be adopted.

25. Mr. MOROZOV (Union of Soviet Socialist Republics) supported the proposal of the representative of Turkey concerning chapter V of the Commission's report and suggested fixing a day for closing the list of speakers and a time limit for submitting motions concerning that chapter.

26. As to whether the Committee should consider the question of arbitral procedure before or after that of diplomatic intercourse and immunities, he recalled that his delegation had already requested (549th meeting, para. 9) that diplomatic intercourse and immunities be taken first. Therefore, if the matter were to be put to the vote, the Soviet delegation's proposal had priority over that of the Italian delegation.

27. He regretted that certain delegations were not ready to discuss the draft articles on diplomatic intercourse and immunities which had been prepared by the International Law Commission, and he appealed to those delegations to take the necessary measures to enable them to participate actively in the Committee's deliberations on that question.

28. The CHAIRMAN proposed that the list of speakers on chapter V of the International Law Commission's report should be closed at the beginning of the following meeting, and that the end of that meeting should constitute the time limit for submitting proposals, but not amendments, relating to that chapter.

It was so decided.

29. As regards the order of priority of the Italian and Soviet proposals, the CHAIRMAN suggested that neither of the proposals should be voted on formally, but that the members of the Committee should be asked to indicate their preference regarding the order in which chapters II and III of the International Law Commission's report should be examined so soon as chapter V had been considered.

It was so decided.

Forty-three delegations indicated that they preferred to consider chapter II first; sixteen delegations preferred to start with chapter III. The Committee would therefore first consider chapter II concerning the question of arbitral procedure.

The meeting rose at 12.35 p.m.