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SIXTH COMMITTEE, 639th MEETING

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Chairman: Mr. Alberto HERRARTE (Guatemala).

In the absence of the Chairman, Mr. Sperduti (Italy), Vice-Chairman, took the Chair.

AGENDA ITEM 56

Diplomatic intercourse and immunities (A/3859 and Corr.1, A/4164 and Add.1 to 7) (*concluded*)

1. Mr. BARNES (Liberia) said that his delegation had co-sponsored the draft amendments (A/C.6/L.459 and Add.1 and 2) because it believed that the law of diplomatic intercourse and immunities should be considered in conjunction with that of consular intercourse and immunities and with other related matters, not only for logical reasons but also for reasons of economy.

2. As, however, those amendments had been rejected, his delegation had decided, for reasons it had already explained (635th meeting), to vote in favour of the joint draft resolution (A/C.6/L.455 and Add.1 to 3) at the previous meeting.

3. Mr. STEWART (Union of South Africa) said his delegation had believed that the proposed convention on diplomatic intercourse and immunities should be drafted by the Sixth Committee rather than by a special conference. Nevertheless, it had supported the joint draft resolution, considering that the subject was ripe for codification.

4. His delegation had abstained on the draft amendments, as it had some doubts whether consular intercourse and immunities was a subject suitable for codification.

5. Mr. ASRAT (Ethiopia) said that his delegation had supported the Chilean proposal (A/C.6/L.460) and abstained on all the others because it believed, for the reasons he had already explained (635th meeting), that no special conference was necessary and that the proposed convention could well be drafted by the Sixth Committee.

AGENDA ITEM 57

Question of the publication of a United Nations juridical yearbook (A/4151)

6. Mr. CACHO ZABALZA (Spain) congratulated the Secretary-General on the objective report (A/4151) which he had submitted pursuant to General Assembly resolution 1291 (XIII). The publication of a United Nations juridical yearbook had been considered as far back as the fifth session of the General Assembly. However, after the seventh session, at which the Secretary-General had submitted his first study on the subject,^{1/} the matter had been virtually forgotten; and the fact that the Committee was now in a position to take effective action on it was due solely to the energetic efforts of the representative of Ceylon at the thirteenth session.

7. The Spanish delegation believed that the publication of a juridical yearbook would be not merely interesting but useful. Care should consequently be taken, in deciding on the terms of reference of the publication, to ensure that it remained strictly doctrinal and impartial and did not become a dangerous instrument of political propaganda. The crux of the matter was whether it should include articles written by individuals and even reports from private associations or institutions. That question was so vital that it overshadowed even the budgetary implications of the project.

8. The yearbook had originally been contemplated within the context of article 24 of the Statute of the International Law Commission. Later, however, much thought had been given to the question of what precisely the contents of the publication should be, and the Secretary-General's report showed that some of the learned societies, particularly the Institute of International Law and the American Society of International Law, thought that its scope should be considerably wider than that first envisaged. But the inclusion of articles by private authorities would inevitably lead to serious difficulties, for the principles to be applied in the selection of such articles, having regard to both their content and the standing of their author, were bound to prove a matter of dispute. The publication of articles from private sources could no doubt make the yearbook more interesting; but the greatest care would have to be taken to ensure that they were not calculated to provoke political controversy or propagate the beliefs of any single school of juridical thought.

9. Consequently, if such material was to be included, the Committee's first duty would be to decide who would be best qualified for the difficult and delicate task of objective selection. At the thirteenth session it had been suggested that the task should be assigned to an editorial board representative of the various legal systems, due care being taken to maintain fair geographical distribution. The Spanish delegation would suggest, as a further requirement, that the persons chosen should be experts in international

^{1/} Official Records of the General Assembly, Seventh Session, Annexes, agenda item 55, document A/2170.

law of recognized standing. Furthermore such a representative board should of course be free to publish also articles by jurists of undisputed authority from non-Member States, such as the Federal Republic of Germany and Switzerland. The qualifications for appointment to the board could be similar to those specified in article 8 of the Statute of the International Law Commission, but the final choice would in any event be a delicate and difficult matter, one important point to remember being convenience of consultation between members serving in an honorary capacity and living in different countries. In that respect, the Committee should have due regard to the experience gained in connexion with the special rapporteurs of the International Law Commission. An added point to bear in mind was that according to paragraph 83 of the Secretary-General's report, a single annual meeting of the board would cost \$9,000. The only way to avoid all the difficulties he had enumerated would be to entrust the functions of the editorial board to judges of the International Court of Justice. That would guarantee impartiality; and members of the International Court, having been elected by the General Assembly, enjoyed the absolute confidence of Member States. Moreover, the publication would then be completely apolitical, exchanges of views on the material to be selected would be easier and the United Nations would be spared undue expense. If the Committee shared the Spanish delegation's opinion on that point, the debate on the whole question need not be protracted.

10. The Spanish delegation considered the plan proposed by the Secretary-General acceptable in principle. Care would have to be taken to avoid any overlapping with the many specialized publications already in existence; but the most important point was that the yearbook should be strictly independent and impartial and that it should be published in English, French and Spanish. The Spanish delegation hoped that the Committee would take a constructive decision on the matter.

11. Mr. ERADES (Netherlands) said that paragraphs 39 to 49 and 70 of the Secretary-General's report (A/4151) entirely reflected his delegation's views on the question whether the proposed yearbook should include articles on international law in general and United Nations law in particular. Such articles would have to be strictly scientific in approach. But any article was an expression of opinion by its author, and responsibility for what he had written must rest with the author alone. That was why the title-pages of many international law reviews bore notices relieving the editors of all responsibility for the views expressed in the articles published. Normally, the choice of articles in such reviews was made by an editorial board, which was guided in its selection by its own sense of scientific responsibility. If an international law review was to serve and advance the cause of international law, its editorial board must be independent.

12. The publication of an article in the United Nations juridical yearbook would have an effect different from that of publication in an ordinary law review. Any article published under United Nations auspices would necessarily enjoy enhanced prestige, and would carry a weight not necessarily justified by its intrinsic worth. That, he considered, should be avoided. And there were other reasons against publishing articles

on international law in the yearbook. Even if an editorial board of the highest scientific reputation were formed, it would not enjoy complete freedom of action. It would be subject to supervision by a United Nations organ; and in United Nations organs, as everybody knew, political considerations were always paramount. In those circumstances, influences other than scientific ones would be felt, and the yearbook would suffer accordingly.

13. A United Nations yearbook containing articles by private authors would not contribute to the development of international law, since it would not meet the basic conditions required of an international law review. There were already some thirty specialized reviews of public international law in the world, and there was really no reason to add another one to their number.

14. Mr. PERERA (Ceylon) said that the practically unanimous adoption at the thirteenth session of General Assembly resolution 1291 (XIII) on the question of the publication of a United Nations juridical yearbook was ample proof that the publication of such a document would constitute a substantial contribution to international law—a contribution in which the Committee would have played a large part. His delegation had participated in the discussion of the subject at the previous session, and wished now to comment on the practical aspects of the proposed publication, which appeared to be generally desired.

15. He wished to emphasize, and to reassure the Netherlands representative in particular, that neither he nor those who had participated in the preparation of the working paper^{2/} on the subject of the yearbook had intended that the United Nations should trespass in the field of the various institutions concerned with international law. If the yearbook was to be published, it would be necessary to bear in mind the existence of other publications in the same field. However, as the working paper had stated, existing periodicals on international law were invariably associated with the country in which they were edited and published; that was not a question of bias, but merely of the natural association which developed between a periodical and its contributors. In a United Nations yearbook it was hoped to find a common meeting-ground for views of a completely international character.

16. His delegation believed that, although the International Law Commission had been in existence for ten years and the United Nations itself for over thirteen years, sufficient emphasis had not yet been placed on the legal work of the world organization. The fact that the United Nations was doing work in the legal field was well known, but, for any given year, it was very difficult to find what precisely had been accomplished. That fact had been in the minds of delegations in the past, and his own delegation had felt that the time had now come to take some active measures to remedy the deficiency. In that connexion, it had welcomed the proposal made by the Ecuadorian delegation (582nd meeting, para. 26) to add to the preamble of the joint draft resolution submitted to the thirteenth session^{3/} a paragraph recalling that it was a function of the General Assembly to take appropriate measures to encourage the development of international law. While the codification

^{2/} *Ibid.*, Thirteenth Session, Annexes, agenda item 56, document A/C.6/L.428.

^{3/} *Ibid.*, document A/C.6/L.432.

of international law was a function which the United Nations had entrusted to the International Law Commission, the other primary function imposed by Article 13 of the Charter, of encouraging the progressive development of international law, was one which could most effectively be performed by means of a publication such as the proposed yearbook.

17. On the question of the possible contents of what the working paper had described as part I of the yearbook—Studies on problems of international law—his delegation believed that there were many eminent jurists who could contribute useful material. It had been argued that contributions written by private individuals would inevitably reflect some measure of national bias. But the eminent international lawyers whom he envisaged as contributors were generally distinguished by their objective approach to questions of international law. He believed, therefore, that the fears expressed by some delegations were unfounded. While, however, the authors of the working paper had never envisaged a yearbook which would serve as a forum for political propaganda, he agreed that contributions from individuals would inevitably have some national colouring, owing to the different cultures and systems of jurisprudence which existed in the world.

18. Some delegations had suggested that if the yearbook did not include a part I containing articles written by private individuals, its publication would scarcely be worthwhile. If a part I was included, the question of the appointment of an editorial board or committee would necessarily arise. But in his view, such a body would be necessary even if the yearbook contained no material by private individuals. The Office of Legal Affairs of the United Nations would, of course, be able to produce a yearbook without outside guidance; but that would impose a heavy additional load on an already hard-worked Secretariat, which might, moreover, find it difficult to take into account all the suggestions which might be made in the Committee. Furthermore, he doubted whether it was right to leave the subject of the progressive development of international law in the hands of the Secretariat alone. Some intermediary organ between the General Assembly and the Secretariat was therefore necessary, and the Committee should give careful consideration to that point.

19. The Secretary-General, in his report (A/4151), had expressed approval of the inclusion in the yearbook of the proposed part II, Legal activities of the United Nations, and part III, Decisions of international and national tribunals on questions of international law, but had suggested that a substantially larger number of pages should be devoted to those parts than had been envisaged in the working paper. His delegation agreed that a larger amount of such material would increase the usefulness of the publication. Decisions of international and national tribunals on questions of international law were reported in international law periodicals of considerable standing, but generally with some delays and omissions. Prompt publication of such information in the yearbook would be invaluable to all international lawyers.

20. He wished it to be understood that his proposal that the yearbook should be published in one or two

languages only had been dictated solely by reasons of economy. He would be the first to agree on the desirability of publication in English, French and Spanish. However, if that was precluded by financial considerations, there existed precedents of United Nations publications which had been issued initially in one or two languages only.

21. The Secretary-General had not been favourable to the inclusion of a part IV (Bibliography) in the yearbook, and had contended that bibliographies of the type envisaged already appeared in other publications. But even if such material did exist, it was in scattered form. The yearbook should constitute a whole, and, as such, should contain an appropriate bibliography, material for which could be selected from other sources.

22. If the yearbook did not contain the proposed parts I and IV, the question arose whether its publication would be justified. His delegation believed that it would. If items by private individuals were not considered suitable, the yearbook might perhaps publish contributions or reports by organizations prominent in the field of international law. Valuable material appeared at intervals in journals such as those of the International Law Association and the Asian-African Legal Consultative Committee. However, such periodicals did not reach the public with great frequency or rapidity, and some of the material which they contained could form a useful part of the yearbook.

23. One of the arguments advanced against the inclusion of a part I in the yearbook was the problem of selection, and the appointment of a suitable editorial board was therefore an important matter. The interesting suggestion made by the Spanish representative in that connexion could serve as a useful basis for discussion. He wished to make a strong plea for the inclusion in the yearbook of the proposed part I, which should not be excluded on grounds of possible bias or propaganda. Work in the United Nations over the years had served to reduce national bias, and areas of controversy were narrowing down.

24. With regard to the cost of publication of the yearbook, he believed, without wishing to enter into questions of staffing and recruitment, which were not within the Committee's competence, that the figures suggested by the Secretary-General could be reduced.

25. The first and second preambular paragraphs of General Assembly resolution 1291 (XIII) having been accepted, a final decision now had to be taken on the question of the publication of the yearbook. The proposed parts II and III of the yearbook appeared to be generally approved, and a decision could soon be taken with regard to part IV. The cost of publication might require some discussion, but the only remaining controversial issue was the question of part I. His delegation had an open mind on that subject, and would make no specific suggestions at present. It might, however, wish to speak again at a later stage.

The meeting rose at 12.10 p.m.