

United Nations
**GENERAL
ASSEMBLY**

FOURTEENTH SESSION
Official Records



**SIXTH COMMITTEE, 601st
MEETING**

Thursday, 24 September 1959,
at 3.15 p.m.

NEW YORK

CONTENTS

	Page
<i>Tribute to the memory of Mr. Raphael Lemkin. . .</i>	5
<i>Agenda item 55:</i>	
<i>Report of the International Law Commission on the work of its eleventh session</i>	5

Chairman: Mr. Alberto HERRARTE (Guatemala).

Tribute to the memory of Mr. Raphael Lemkin

1. Mr. MAURTUA (Peru) announced the death of Mr. Raphael Lemkin, who had worked ardently in the cause of human rights and had to a great extent been responsible for the preparation of the Convention on the Prevention and Punishment of the Crime of Genocide.

2. The CHAIRMAN asked the members of the Committee to observe a minute of silence in tribute to the memory of the late Mr. Raphael Lemkin.

The Committee observed a minute of silence.

AGENDA ITEM 55

**Report of the International Law Commission on the
work of its eleventh session (A/4169)**

At the invitation of the Chairman, Sir Gerald Fitzmaurice, Chairman of the International Law Commission, took a place at the Committee table.

3. Sir Gerald FITZMAURICE (Chairman of the International Law Commission), introducing the Commission's report on the work of its eleventh session (A/4169), said that, in view of the report's purely interim character, the Committee might consider it unnecessary to do more than take note of the progress made on the two main subjects covered, namely, the law of treaties and consular intercourse and immunities. If that was to be the Committee's decision, no useful purpose would be served by his giving any detailed explanation of the substance of the draft articles in the report. He would accordingly confine himself, for the present, to observations of a general character. If any point raised subsequently by the Committee called for more specific observations on his part, he would gladly furnish them.

4. The Commission's 1959 session had proved unusually difficult and frustrating. Owing to circumstances quite outside its control, the Commission had been unable to accomplish the main task which it had set itself, and had been obliged to take up and devote a considerable amount of time to another project with which it had not expected to deal seriously until a later session. Those developments had been quite contrary to the wishes of the Commission, which had hoped to follow its practice of producing one completed project

or piece of work at each session. Strict adherence to that practice was admittedly not always possible, since the work of codification was necessarily slow and laborious, but the Commission's record in recent years had been encouraging.

5. The Commission's intention before its last session, as stated in its 1958 report (A/3859, para. 57), had been to complete a first draft on consular intercourse and immunities for submission to Governments for their comments. The urgency of that task was all the greater because of the understandable desire of the Sixth Committee to consider consular intercourse and immunities along with the closely related subject of diplomatic intercourse and immunities. Unfortunately, at the opening of the Commission's session, the Special Rapporteur on consular intercourse and immunities, Mr. Zourek, had been detained at The Hague as *ad hoc* judge of the International Court of Justice. Even after he had finally arrived, approximately one month after the opening of the session, he had had to return to The Hague for a further brief period.

6. Moreover, the Commission had encountered other difficulties. The two other main subjects on its agenda which it had intended to discuss, time permitting, had been the law of treaties and State responsibility. Work on the law of treaties, however, had been rendered difficult by the fact that he, the Special Rapporteur on that subject, had been elected Chairman of the Commission for 1959, and it was awkward for a Chairman to act in a dual capacity. On the other hand, any discussion on State responsibility would inevitably have been inconclusive, for there again, the Special Rapporteur, Mr. Garcfa Amador, had had to delay his arrival.

7. In those circumstances, the Commission had been obliged to begin with the law of treaties despite the obstacle mentioned. The subject was a very extensive one, containing many branches. The Commission had, in fact, already received from the Special Rapporteur four reports on different aspects, and several further reports had still to be presented. Fortunately, however, as was explained in paragraph 13 of the Commission's 1959 report (A/4169), that very wide subject was readily divisible into a number of more or less self-contained parts. The Commission, in deciding to consider the part relating to the drawing up and conclusion of treaties, had thought that it would be possible to finish that topic fairly soon and eventually to present the Assembly with a completed project which the Assembly could take up without awaiting completion of the work on other branches of treaty law. Indeed, even in the limited time it was able to devote to the subject, the Commission had managed to deal with about half the articles presented on it by the Special Rapporteur.

8. On Mr. Zourek's arrival at Geneva, the Commission had naturally felt obliged to suspend its consideration of the law of treaties and to take up the

subject of consular intercourse. It had realized that the time then remaining would probably prove insufficient for the completion of a first draft, but it had felt that, by making a start, it would at least ensure its completion in 1960.

9. The Commission greatly regretted the fact that circumstances had prevented it from producing any finished project. But so far as consular intercourse and immunities were concerned, it would be possible to make up for lost time. As the Committee would recall, the Commission had concluded in 1958 (A/3859, para. 60) that a year was, as a rule, an insufficient period for Governments to be able to submit their comments on the first draft of any project. It had consequently decided at that time that, if it could complete a first draft on consular intercourse and immunities in 1959, it would not take the matter up again for the preparation of a final draft, in the light of the comments of Governments, until 1961. In view, however, of the difficulties which had prevented the Commission from completing the first draft on schedule, the Commission would in 1960 revert to its former practice of requesting immediate comments and would then prepare a final draft in the following year. In that manner, the original deadline would still be met. With reference to the drawing up and conclusion of treaties, he said that, there too, it might yet prove possible for the Commission to complete a first draft on the topic in 1960. In that case, however, the procedure decided on in 1958 would be followed and the Commission would only attempt to prepare a final draft in 1962.

10. Since most of the Commission's difficulties in 1959 had stemmed from the absence of the Special Rapporteur for the main subject on the agenda, it might legitimately be asked why the Commission had not proceeded to discuss the subject despite his absence. But the relationship between the Special Rapporteur and the Commission was more complex than might at first sight appear. In the case of tasks which could be classified as progressive development of international law, the Commission was specifically directed to appoint a rapporteur by article 16 of its Statute. If the task was one of codification, the Statute did not specifically direct such an appointment, but it was still the Commission's invariable practice to make one. That practice could be explained by two facts: first, that practically every project of codification contained an element of legislation, which meant progressive development; and secondly, that the Commission could only accomplish something useful in a ten-week session if it had a basic text to work on, and such a text had to be prepared in the intervals between sessions by one of the members working in his own time.

11. Another factor to bear in mind was the true nature of the special rapporteur's task. Essentially, he was required to undertake the basic research and to present a set of draft articles with an accompanying commentary. But he also had another vitally important function, namely, to formulate a definite approach to and concept of the subject according to his views. Many topics of international law permitted more than one approach, and it was the special rapporteur's duty to consider the various possibilities and to present the one he considered the most promising. There was thus a considerable personal element involved, which made it undesirable for the Commission to proceed with a special rapporteur's report without his being

present to explain and defend it. The Commission was naturally anxious to produce drafts as rapidly as possible, but quality was even more important than speed and the drafts would inevitably suffer if they were drawn up in the absence of the person most directly concerned.

12. The factors which he had enumerated showed that when the Commission had decided to give priority treatment to a draft with a view to completing it at a given session, the inability of the special rapporteur for that subject to attend that session, or a considerable part of it, necessarily had a somewhat paralysing or frustrating effect on that session's work. The members of the Commission were all well aware of that consideration, and he hoped that Governments would also bear it in mind in order to avoid any repetition of the circumstances which had had such an unfortunate effect on the Commission's work in 1959.

13. He then referred to the action which the Committee might take on the Commission's report. It should be borne in mind that the Commission's work fell into two main categories: the first was any special work which was not in the nature of codification or progressive development of international law but which concerned particular subjects of immediate importance assigned to the Commission by the General Assembly. Examples of such subjects had been the question of defining aggression and the question of reservations to multilateral conventions. In such cases it was obviously the Commission's duty to work as rapidly as possible and to transmit its results to the General Assembly at the earliest possible date. Where, however, the Commission's work concerned the codification or progressive development of international law, the position was more complicated. A definite procedure for dealing with that type of work had been laid down in article 16 and articles 18 to 22 of the Commission's Statute. That procedure contemplated various stages, one being the preparation of a first draft which was then submitted to Governments for their comments. Only when those comments had been received did the Commission prepare a final draft for submission to the Assembly. The usual practice of the Sixth Committee in dealing with first drafts was simply to take note of them or to take note of the progress of the work. Examples of such action by the Committee could be found in General Assembly resolutions 1185 (XII) and 601 (VI).

14. It was true that chapters II and III of the Commission's present report (A/4169) did contain some actual draft articles, namely those on the law of treaties and consular intercourse and immunities, accompanied by commentaries, but they fell into the category of incomplete drafts which had not yet even been sent to Governments. When completed, they would be duly transmitted to Governments and at that stage all the Governments represented in the Sixth Committee would be able to comment on the draft. For that reason, the Committee might consider it unnecessary to embark on any substantive discussion of the articles at the present time; if it did, however, decide to do so, he hoped that he would have an opportunity to comment on them further.

15. Briefly reviewing chapter II of the Commission's report, concerning the law of treaties, he noted that the original draft articles which had been prepared by himself, in his capacity as Special Rapporteur for that subject, were to be found in the Yearbook for

1956.^{1/} About half of those articles had been dealt with at the Commission's eleventh session and there was reason to believe that the remainder of the work might be completed fairly soon. Concerning the action to be taken with regard to that subject, he drew the Committee's attention to article 23 of the Commission's Statute. Under that provision, the Commission might recommend to the General Assembly: (a) to take no action, the report having already been published; (b) to take note of or adopt the report by resolution; (c) to recommend the draft to Members with a view to the conclusion of a convention; or (d) to convoke a conference to conclude a convention. The two latter courses he considered inappropriate in connexion with the law of treaties. Many subjects in international law could be embodied in a convention, but it was doubtful whether that was true of the law of treaties, which was of universal application and a part of general international law. To attempt to embody it in a convention would suggest that only those Members who signed and ratified it would be bound by such a convention. Since that would obviously create an undesirable situation, the Commission had, in drafting that chapter, allowed itself a certain latitude and had envisaged its work as being more in the nature of a code than of a contract or convention. However, in dealing with those articles, the Sixth Committee and the General Assembly would be free to take such action as they deemed most advisable and if they should wish the articles to be drawn up in the form of a convention, that could perhaps best be done through an international conference, which would bring the articles into conformity with accepted treaty practice.

^{1/} Yearbook of the International Law Commission, 1956, vol. II (United Nations publication, Sales No.: 1956.V.3, vol. II), document A/CN.4/101, pp. 104-128.

16. With respect to chapter III, concerning consular intercourse and immunities, he recalled that the original draft had been prepared by the Special Rapporteur, Mr. Zourek, and could be found in the Yearbook for 1957.^{2/} That draft comprised thirty-nine articles and of those the Commission had already dealt with nineteen, so that it was in a good position to complete its work in the following year. The remaining articles would cover such questions as the privileges and immunities of career and honorary consuls and the termination of the consular function. Two other topics were connected with the subject of consular intercourse and immunities: ad hoc diplomacy and relations between States and international organizations. The question of ad hoc diplomacy was one on which traditional international law was virtually silent but which was assuming increasing importance at the present time. As stated in the Commission's report (A/4169, para. 44), the Special Rapporteur on diplomatic intercourse and immunities, Mr. Sandström, had been requested to make a study of that subject and to submit a report at a future session. The other topic, that of relations between States and inter-governmental organizations (*ibid.*, para. 48), which was also of considerable current interest, had been placed on the Commission's agenda pursuant to General Assembly resolution 1289 (XIII) and would be taken up in due course.

17. In conclusion, he invited the members of the Committee to comment on the Commission's report and expressed his readiness to give any necessary explanations.

The meeting rose at 4.30 p.m.

^{2/} *Ibid.*, 1957, vol. II (United Nations publication, Sales No.: 1957.V.5, vol. II), document A/CN.4/108, pp. 71-103.