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Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

In the absence of the Chairman, Mr. Tabibi (Afghanistan), Rapporteur, took the Chair.

## AGENDA ITEM 53

Report of the International Law Commission on the work of its ninth session (A/3623; A/C.6/L.400) (continued)

## GENERAL DEBATE (concluded)

1. The CHAIRMAN, on behalf of all the members of the Committee, congratulated Mr. Spiropoulos, who was shortly to leave New York to take up his new duties, on the occasion of his election as a judge of the International Court of Justice.
2. Mr. ALVARADO (Honduras) said that his Government reserved the right to present later its comments on the draft articles concerning diplomatic intercourse and immunities (A/3623, para. 16). At that point he would, however, offer a few observations.
3. In the first place, he hoped that the final draft would contain some provision on the right of political asylum, to which Honduras attached special importance, as it had applied that right on several occasions.
4. In the second place, he said the draft should state specifically that the privileges and immunities should be granted to diplomatic agents in all categories.
5. He shared the view of the representative of Haiti (509th meeting, para. 55), that diplomatic intercourse and immunities and consular intercourse and immunities should be considered simultaneously. He hoped that the International Law Commission would not delay in preparing draft articles concerning consular intercourse and immunities.
6. Finally, he inquired if the Commission which, under the plans for co-operation with the Asian Legal Consultative Committee, would obtain the latter's assistance in the question of diplomatic intercourse and immunities, was also proposing to submit the draft articles to the Inter-American Council of Jurists at Rio de Janeiro. He thought that the draft should be submitted to the Organization of American States and

to the Organization of Central American States, the secretariat of which had its headquarters in San Salvador.

7. Mr. PERERA (Ceylon) wished to make some comments on the International Law Commission's proposed studies on the question of *ad hoc* diplomacy.

8. The expression "*ad hoc* diplomacy" covered the whole range of international relations, and it was in that field that the Commission could make an effective contribution, for the Commission's function was to encourage the progressive development of international law and its codification which, in turn, promoted harmony between nations and international co-operation. The members of the Commission were, of course, aware of the changing political concepts which determined the practice of States, but they tended to be too much influenced by the juristic methods of Europe.

9. It was true that as a result of the General Assembly's decision at its eleventh session (resolution 1103 (XI)) to increase the membership of the Commission from fifteen to twenty-one, the Commission had become more representative, but its approach to the codification of international law had not changed. It should, however, remember that law sometimes lost contact with reality, and that the rules of law should reflect the needs of modern life. It should determine the part to be played respectively by juridical and political factors in the establishment of State practice. It should create a climate favourable to the achievement of unity in theory and practice, and should not isolate law from political realities. It should be continually seeking legal norms on the basis of universality.

10. As representative of a country which was a member of the Asian Legal Consultative Committee, he thanked the delegations which had expressed themselves in favour of establishing consultative relations with that important body.

11. He said that current political events had produced profound changes in the practice of States. Yet, the legal experts hesitated to change the traditional structure of international law. The provisions of Articles 38 and 59 of the Statute of the International Court of Justice placed certain limitations on the action of the Court in the field of the development of international law: the Court could not lay down new rules of law applicable to all States. Hence, one had to look to the International Law Commission as the means of translating the purposes and principles of the Charter into reality.

12. He suggested that the Commission should consider the idea of forming a sub-commission to re-formulate international law in the light of political changes, in particular the attainment of independence by many African and Asiatic nations and the discovery of nuclear weapons. That was a function not only desirable

but possible within the Commission's terms of reference. He hoped that the Commission would study the question at its next session and make some proposals.

Mr. Pérez Pérez (Venezuela) took the Chair.

13. Mr. EL-ERIAN (Egypt) said he would not make a detailed analysis of the Commission's report, for Governments had not yet had the chance to submit comments on the draft articles concerning the extremely important and complex question of diplomatic intercourse and immunities, which constituted the main part of the report. He wished to say, however, that in general the Commission's text was acceptable to his delegation.

14. The Commission had very properly requested the Special Rapporteur to make a study of the question of ad hoc diplomacy. Though the diplomatic status and the privileges and immunities of international organizations were in most cases governed by special conventions, he hoped that in due time the Commission would deal with those questions, too.

15. He noted with satisfaction that the Commission had decided to co-operate more closely with various legal bodies, in particular inter-American and Asian bodies. He hoped that the Commission would also consider obtaining the assistance of other institutions concerned with the development of international law.

16. With regard to the Swedish suggestion (510th meeting, para. 16) concerning possible means of increasing the speed of the International Law Commission's work, he said that the question was so important that the Commission itself should decide whether there was any real need to depart from the method of work which it had followed since the outset of its proceedings. The codification of international law was, by its very nature, a slow operation. The Committee should not recommend methods which, in the words of paragraph 28 of the report, might be detrimental to the quality of the Commission's work.

17. He agreed with the representative of the United Kingdom who had stated (511th meeting, para. 14) that the question of emoluments of the members of the International Law Commission was a purely financial question within the competence of the Fifth Committee. Pending the outcome of the Fifth Committee's debate on the subject, the Sixth Committee should take no action.

18. Mr. FRONTAURA ARGANDOÑA (Bolivia) said that although Member States were to comment on the draft articles concerning diplomatic intercourse and immunities, the Committee might usefully express its views on the draft and, in particular, draw attention to certain matters which should be taken into consideration when the law relating to the subject was formulated.

19. The Convention regarding Diplomatic Officers adopted at Havana in 1928 established a number of highly important principles in that connexion. In particular it contained provisions concerning the inviolability of the premises and property of diplomatic missions, and the personal inviolability of diplomatic agents, as well as rules governing jurisdiction under international law. The Bolivian Government had always scrupulously adhered to those principles, to which it attached the greatest importance.

20. His delegation shared the views of the Uruguayan and other delegations concerning the right of political asylum. The right was frequently applied in Latin America, and was one of the greatest achievements of humanitarian law. Its universal application would eliminate many difficult situations. His delegation hoped that the International Law Commission would give due consideration to the comments which had been made on that point.

21. Mr. DJAJAPRAWIRA (Indonesia) observed that the draft articles on diplomatic intercourse and immunities were of special importance in view of the growing number of newly independent nations with little experience of diplomatic relations. His Government would communicate its comments to the International Law Commission at a later date.

22. With respect to the proposal for the establishment of sub-commissions, his delegation would accept the opinion of the International Law Commission which was in a better position to appreciate the advantages and disadvantages of that procedure.

23. Mr. KOUNWICK (Cambodia) said that his Government would give careful consideration to the draft articles prepared by the Commission and would present its comments in due course. At the same time, he wished to pay a tribute to the Commission's work which was of considerable value to newly independent countries like Cambodia.

24. Mr. MALOLES (Philippines) considered that the draft articles, however meritorious, adhered too closely to traditional principles which were not adapted to modern conditions. Rules intended to regulate relations between States and individuals or between States and international organizations in the modern world must take account of the progress mankind had made, and the changes that had occurred since the days of Grotius. A number of representatives, including the representatives of France, Chile and certain other Latin American countries, had already made comments on those lines; attention had, for example, been drawn to the need to consider relations between States and international organizations, and to the desirability of provisions concerning the right of asylum. He also had some suggestions to make with a view to taking new needs into account.

25. For example, the last sentence in the commentary on article 20 was of great importance in the light of present-day conditions and should be embodied in the text of the article to ensure the freedom of movement of diplomatic agents in the territory of the receiving State. The words "after having been appropriately marked and identified" might usefully be added to article 21, paragraph 2, dealing with the diplomatic bag.

26. He introduced the draft resolution (A/C.6/L.400) submitted by the delegations of Brazil, Chile, Cuba, Peru, the Philippines and Spain.

27. Mr. PERERA (Ceylon) felt that paragraph 1 of the draft resolution should be amended to express the General Assembly's appreciation of the Commission's work at its ninth session. While all representatives who had spoken had expressed their gratitude to the Commission, it was desirable that the resolution should contain an official expression of the appreciation of the Assembly as a whole.

28. Mr. ZOUREK (Chairman of the International Law Commission) thanked the members of the Sixth Committee for their comments, which might very usefully be incorporated in the comments of their respective Governments. He could not attempt to answer all the questions raised, but would endeavour to remove any misunderstandings that might have arisen on certain points.

29. Article 10 referred to chargés d'affaires accredited to ministers of foreign affairs - chargés d'affaires en pied - although the category was tending to disappear, because it appeared necessary to regulate a situation as long as it existed. Similarly there would be no point in eliminating article 24, paragraph 1 (c). Everyone agreed that such a case ought not to arise; if it arose, nevertheless, it would be useful to have a provision governing the situation.

30. The representative of El Salvador had expressed the opinion (510th meeting, para. 4) that it might be deduced from article 24, paragraph 4, in conjunction with article 25, that a diplomatic agent might be less well treated than a private individual. This was perhaps a misunderstanding, since a private individual residing abroad was under the jurisdiction of the State on whose territory he was in residence, while remaining subject to the jurisdiction of his own State to the extent to which that jurisdiction extended beyond the frontiers of that State.

31. The representative of El Salvador had criticized article 30 (510th meeting, para. 6) on the grounds that it rested upon a distinction between official and unofficial acts, a distinction which was very difficult to establish in practice. That difficulty did exist, and several members of the International Law Commission opposed granting any immunity whatsoever to a diplomatic agent who was a citizen of the State to which he was accredited. The solution adopted was a compromise which appeared to be correct from the theoretical point of view, since for official acts accomplished in the exercise of his functions a diplomatic agent who was a citizen of the State to which he was accredited became the spokesman of the accrediting State. This distinction between official and unofficial acts came up again in the case covered by article 31, paragraph 2.

32. The right to offer asylum on the premises of diplomatic missions was not recognized in international law except by Latin American countries; it constituted a special question which the Commission had not felt able to discuss, but it had noted that usage which was peculiar to Latin America in article 33, paragraph 3.

33. Certain representatives had said that it might be useful for the International Law Commission to consider the question of relations between States and international organizations, and the question of relations between international organizations themselves. The Commission would certainly take that suggestion into consideration, but it should be recalled that the list of subjects awaiting codification was already rather long.

34. Several representatives had expressed the wish that the draft articles should deal simultaneously with the question of permanent missions and ad hoc missions, whereas the representatives of Belgium (510th meeting, para. 20) and the Soviet Union (511th meeting, para. 28) had expressed the fear that this procedure might involve delays. It was quite possible that the

Commission, after studying Mr. Sandström's report, might reach the conclusion that non-permanent missions should enjoy the same immunities as permanent missions.

35. It did not appear possible to deal simultaneously, as several representatives had requested, with the draft concerning diplomatic intercourse and immunities and the draft concerning consular intercourse and immunities. The Commission intended at its next session to prepare the draft on arbitral procedure which it would submit to the thirteenth session of the General Assembly. It would then have to examine at the second reading the draft on diplomatic intercourse and immunities in the light of the observations of Governments, and to study the draft on non-permanent missions. It was scarcely to be hoped that it could in addition produce a draft on consular immunities. He would however communicate to the International Law Commission the wishes expressed in the Sixth Committee. He thought the Commission's agenda (A/3623, para. 25) might be amended by placing the question of consular intercourse and immunities immediately after the question of diplomatic intercourse and immunities. Those were two parallel questions which raised similar, though not identical, issues, but they were not inseparable.

36. The Commission had already begun to study ways of accelerating its activities. As an experiment it had set up a committee to deal with arbitral procedure, and it had also resorted on several occasions to a drafting committee. It was intending to return to this question at the beginning of the next session, and he intended to submit a note to the Commission on the subject. It should be realized, however, that the speeding up of the work could only be relative, and could never be pursued to the detriment of the quality of the work performed. A radical solution would have been to make the Commission a permanent organ, but that solution had been rejected and the sessions of the Commission could not exceed ten weeks annually.

37. The work of codification was a long-range project and a certain slowness was inevitable. There must first be an examination of the practice of States, which was not always fully known, and that sometimes necessitated rather laborious research. Sometimes it was found that the States whose practice had been studied belonged to the same continent, and it then remained to discover whether that practice was in conformity with international law and would meet with general acceptance. Thus, to solve satisfactorily the difficulties raised by the nationality of ships, the Secretariat had first had to publish a collection of the laws involved.

38. Nevertheless, the increase in the number of Commission members made it possible and even necessary to evolve new methods of work. It was now possible to set up sub-commissions which were sufficiently representative and which contained ten members or so; that had not been feasible when the Commission itself had only fifteen members. He had listened with much interest to the Swedish representative's suggestion (510th meeting, para. 16), which would be considered by the Commission at its next session. Personally, he thought that the Commission should continue to discuss the most important matters in plenary. Experience at the ninth session had shown that the best way of dealing with a particular topic or



draft was to hold a general discussion in which all Commission members expressed their views, which would then serve as a guide to a sub-commission appointed to work out details. In any case, the question of the organization of work should be left to the Commission itself, as several members of the Sixth Committee had suggested. The Commission would take the necessary measures at its next session. Immediate consideration should be given to the administrative and financial measures involved in any reorganization of the Commission's work. If a sub-commission were established, summary records of its meetings would be necessary so that all members of the Commission would be kept informed of its activities. Such records would obviously involve additional expenditure.

39. The representative of Israel had suggested (512th meeting) that members of the Commission other than the special rapporteur should assist in the drafting of reports. In fact, the special rapporteur took advantage of the discussion on the preliminary draft of the report to acquaint himself with the views of the members of the Commission. On the other hand, another interesting suggestion made by the representative of Israel, which was in conformity with article 20 of the Commission's statute, was that its drafts should be accompanied by commentaries similar to those prepared by the Secretariat for the drafts concerning arbitral procedure and diplomatic intercourse and immunities.

40. Many representatives had noted with satisfaction the Commission's closer co-operation with other bodies such as the Inter-American Council of Jurists and the Asian Legal Consultative Committee.

41. He thanked the members of the Sixth Committee for the understanding they had shown in connexion with the question of the emoluments of the members of the Commission. The best plan was that suggested by the United Kingdom representative (511th meeting, para. 14): the members of the Sixth Committee would explain to their colleagues in the Fifth Committee why it was desirable that the decision embodied in General Assembly resolution 1106 (XI) should be maintained.

42. Lastly, on behalf of the International Law Commission, he congratulated Mr. Spiropoulos on his election to the International Court of Justice.

43. Mr. HOLMBACK (Sweden) thanked the Chairman of the International Law Commission for his explanations, and wished to clarify his own position in order to avoid any misunderstanding. He had never underrated the Commission's work; on many occasions at earlier sessions he had voiced the Swedish delegation's satisfaction with that work. It was in order to encourage that work that he had suggested means of accelerating it, since the Commission's own reports showed that on several occasions it had had to postpone certain projects. It was somewhat disappointing to note that the Commission's report on its ninth session said nothing about possible ways of correcting the situation, and he hoped that its next report would deal with the point at greater length. He was glad to note that the Commission would examine the matter at its next session; for the moment, his delegation was satisfied with the explanation given by the Chairman of the Commission.

44. Mr. LIANG (Secretary of the Committee), replying to the representative of Israel, who had asked for particulars concerning the Asian Legal Consultative Committee (512th meeting, para. 13), said the Committee had been established on 15 November 1956 by the Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria. According to article 3 of its statute, one of its functions was to study questions that were under consideration by the International Law Commission. At its first session, which had been held from 18 to 27 April 1957, the Committee had decided to establish relations with the Commission. The United Nations Secretariat had not yet received a report from the Asian Legal Consultative Committee but, as soon as it did so, it would communicate the report to the Commission at its next session.

45. Mr. VITSAXIS (Greece), speaking on behalf of Mr. Spiropoulos, thanked all representatives who had congratulated Mr. Spiropoulos on his election to the International Court of Justice.

46. Mr. MAURTUA (Peru) said the function of the International Law Commission was to unify the existing law without sacrificing any of the fundamental elements of the law. He referred to the evolution of the inter-American system of law; it was, of course, a regional system, but that did not mean that it was incapable of being extended.

47. The CHAIRMAN declared the general debate closed.

#### CONSIDERATION OF THE DRAFT RESOLUTION SUBMITTED BY BRAZIL, CHILE, CUBA, PERU, THE PHILIPPINES AND SPAIN (A/C.6/L.400) AND THE AMENDMENT THERE-TO

48. The CHAIRMAN invited the Committee to proceed to vote on the joint draft resolution (A/C.6/L.400), to which the representative of Ceylon had orally submitted an amendment (para. 27 above).

49. Mr. MALOLES (Philippines) said that the sponsors of the draft resolution accepted the Ceylonese amendment.

50. Mr. VALLAT (United Kingdom) said the Ceylonese amendment should constitute paragraph 1 of the operative part; the terms of the existing paragraph 1 would, of course, be retained.

51. Mr. HSUEH (China) said he would vote for the draft resolution, but hoped that its adoption would not mean the closure of the debate.

52. Mr. LIANG (Secretary of the Committee) explained that usually when a Committee had adopted a draft resolution the draft was transmitted to the plenary meeting of the General Assembly, and the item would be considered as disposed of. However, there was nothing to prevent the Committee from deciding to suspend debate on the question temporarily, after the vote on the draft resolution, it being understood that consideration of the item was not finished. With regard to paragraph 2 of the draft resolution, he said the Secretary-General had invariably transmitted to the International Law Commission the summary records of the Committee's discussions of the Commission's reports.

53. Mr. PERERA (Ceylon) considered that his amendment should replace, and not merely supplement, operative paragraph 1 of the draft resolution.

54. Mr. TABIBI (Afghanistan) moved the adjournment of the debate.

over the question of the emoluments of the members of the Commission.

55. Mr. ILLUECA (Panama) supported the motion.

The motion of the representative of Afghanistan was adopted by 50 votes to none, with 8 abstentions.

56. Mr. MALOLES (Philippines) said the Committee could very well vote on the draft resolution and hold

The meeting rose at 6 p.m.