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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. PATHAK (India) said that his delegation attached the highest importance to the work done by the International Law Commission because the codification and progressive development of law were steps conducive to the achievement of the great aim of the United Nations—the establishment of world peace. In the present age of thermo-nuclear weapons and ballistic missiles, when space exploration had opened new vistas for military strategy and the very existence of the human race was threatened, the rule of law was the last hope for the survival of mankind. The interests of peace and the necessity of the early settlement of certain doubtful points were almost sufficient reasons for increasing the rate of progress of the Commission's work. Among the proposals made with that end in view was the suggestion to establish sub-commissions, the advantage of which had also been stressed by Mr. Zourek (A/CN.4/L.76). A scheme closely resembling the proposed system of sub-commissions had been followed by the Indian Law Commission, which had been established a few years ago to examine the judicial system in India. In the view of his delegation, such a scheme would increase the Commission's rate of progress without impairing the quality of its work. With the present strength of the Commission it was possible to constitute sub-commissions which would represent all the legal systems of the world. If the full Commission, after having examined and discussed the rapporteur's report and the general principles, were then to send it to the sub-commission for detailed discussion, the area of controversy would be narrowed considerably; instead of twenty-one members having to devote their whole time to the entire work, only half—assuming a sub-commission of ten or eleven members—would deal with one subject and the other half with another. His delegation believed that such a scheme would save time and increase the output of work.

2. With regard to the question whether Governments and the General Assembly itself would be able to keep pace with the Commission if drafts were produced more quickly, his delegation felt that the Commission's reports represented the views of the most eminent

jurists of the world and possessed a value of their own. In urgent matters, if the reports were ready, Governments and the Assembly would, in their own interests, take quick action.

3. Mr. ROSENNE (Israel) described the United Nations Conference on the Law of the Sea held in Geneva last spring as "the most complicated endeavour" in the sphere of the codification and progressive development of international law yet undertaken by the organized international community. The work of that Conference, he said, was made possible by the painstaking preparatory work of the International Law Commission. The success achieved would encourage all who were concerned with the codification of the law as a factor for the maintenance of international peace and understanding.

4. He said that in the view of his delegation the complete autonomy of the International Law Commission and its freedom to conduct its proceedings as it deemed best within the limits of its statute and the formal directives of the General Assembly were essential for the successful prosecution of the task which the Assembly had entrusted to it. On the other hand, the International Law Commission had no legitimate ground for complaint if, after due consideration, its views were found to be wholly or partially inappropriate by the General Assembly, and the Sixth Committee could not demand that the Commission blindly accept all the views it expressed. The Commission seemed to have examined all the suggestions respecting its method of work and programme of future work in the light of two criteria: (a) that the quality of the Commission's work should not be impaired, and (b) that the Commission's character as a body representing the main forms of civilization and principal legal systems of the world should be fully reflected in every stage of work on a given project. His delegation felt that the Commission had been correct in taking those two criteria as a starting point for its examination of the question, and, on the assumption that both the Commission and the Sixth Committee would continue to keep the matter under review, it approved the conclusions reached by the Commission.

5. With respect to the furnishing of comments by Governments, referred to in the Commission's report (A/3859, paras. 60 and 68 (c)), his delegation regarded the system of consultation with Governments as one of the cardinal features of the procedural side of the codification of international law, and was prepared to approve anything which tended to improve that system. It regretted, however, for the reasons stated in the Sixth Committee (512th meeting), at the twelfth session of the General Assembly, that the introduction of the new procedure designed to give Governments more time to make their comments would adversely affect the topic of consular intercourse and immunities (see A/3859, para. 61), which apparently could

not be treated in conjunction with diplomatic intercourse and immunities. He reserved the right of his delegation to revert to that subject in connexion with chapter III of the Commission's report. Furthermore, he thought that, in stating that comments were furnished by only a small minority of Governments, the Commission had taken too pessimistic a view. Any decision taken by the Commission on the basis of a comment made by a Government might have political implications of which the Commission was not necessarily expected to be aware but which must be present in the mind of that Government. That fact would influence the decision of a Government whether or not to submit a comment. His Government's study of the Commission's records had led it to believe that the Commission might at times be too far removed from political realities to be able to appreciate fully the implications of a remark made in what appeared to be a purely scientific context.

6. He recalled that at an earlier meeting (550th meeting, para. 17) he had asked the Secretary-General's representative what administrative and budgetary arrangements had been made to implement paragraphs 65, 66 and 67 of the Commission's report. Mr. Liang had replied that the Secretariat had made a request in the draft budget for the credit required to implement paragraph 67, but had not thought it necessary to make any provisions with regard to paragraphs 65 and 66 since the Commission had not yet reached any formal decision on Mr. Zourek's proposals. His delegation was surprised at that reply and would welcome further clarification with respect to paragraphs 65 and 66. It was apprehensive lest the absence of appropriate administrative and budgetary arrangements might make it impossible for the Commission to make use of the procedures envisaged in paragraphs 65 and 66 whenever it should find that desirable.

7. In conclusion, he raised the question of the so-called "final clauses" which the Commission proposed to incorporate in international conventions. The Commission did not usually include those clauses in its drafts, and experience had shown that that had led to misunderstandings and procrastination. His delegation thought that the Commission should consider the inclusion of such clauses as a matter of standard practice, and he reserved the right to refer to the question concretely when discussing other items on the agenda.

8. Mr. LIANG (Secretary of the Committee), in reply to the Israel representative, explained that such decisions as the Commission had taken with regard to paragraphs 65 and 66 did not call for any budgetary appropriation by the General Assembly for 1959. So far as paragraph 65 was concerned, he thought that the Commission had merely decided that in 1959, as an *ad hoc* expedient, it would refer the work on consular intercourse and immunities to the Drafting Committee, on the express understanding that the latter would not be provided with simultaneous interpretation or summary records. That fact was clear from the first sentence of paragraph 64 of the report. With regard to paragraph 66, he thought that the Commission had only discussed the suggestion that special rapporteurs might hold a meeting with some member of the Commission a few days before the opening of the session. The Commission had admittedly referred to that suggestion as a "possibility", but no decision had been taken.

9. Mr. CHAYET (France) said that his delegation was in complete agreement with the conclusions reached by the International Law Commission in chapter V of its report. With regard to the acceleration of its work, he shared the view expressed by the Mexican representative at the 552nd meeting that the arduous task of the codification of international law required a more deliberate approach. He welcomed the Commission's decision (A/3859, para. 61) to allow Governments more time for submitting their comments on drafts; the wisdom of that decision was amply confirmed by the difficulties which his own Government had encountered in answering questionnaires. The objections to the proposed formation of sub-commissions expressed by the Commission (*Ibid.*, para. 63) seemed to him well founded. He agreed with the hope expressed by the representative of Greece at the 552nd meeting that it might be possible for State responsibility to be given priority over the law of treaties. In conclusion, he regretted that the Commission had not devoted more space to a topic which his delegation had proposed for codification several years ago, namely, the relations between States and international organizations. That question had been the subject of numerous special conventions and fully deserved the Commission's careful consideration, although it was only briefly referred to in paragraph 52 of the Commission's report.

10. Mr. GUERREIRO (Brazil) said that, if all the circumstances were considered, the International Law Commission's work had been proceeding not only effectively but reasonably rapidly. The value of sub-commissions as a means of accelerating the Commission's work was still unknown, and consequently no valid criticism could be made of the Commission's decision only to use sub-commissions on an *ad hoc* basis and to determine its future organization in the light of experience.

11. The Commission's programme also seemed satisfactory. The argument of the Greek representative at the preceding meeting that State responsibility should be given priority over the law of treaties was most forceful, but the very fact that the accepted notions on State responsibility were undergoing a process of dynamic development imposed a special duty of care on the Commission in the formulation of the applicable rules. Moreover, the law of treaties had already been considered in detail by three Special Rapporteurs and might thus be ripe for immediate consideration.

12. In conclusion, he stressed the importance of co-operation between the Commission and regional bodies. The value of such co-operation was not merely technical but also psychological. The Brazilian delegation therefore warmly supported the suggestion that the Commission's Secretary should attend the meeting of the Inter-American Council of Jurists in 1959.

13. Mr. CUTTS (Australia) said that the manifest truth of the Indian representative's statement that the rule of law was the last hope of mankind made the magnitude of the International Law Commission's achievements all the more welcome. The most heartening feature was that all of the Commission's work bore the hall-mark of authority. That authority had been amply demonstrated at the United Nations Conference on the Law of the Sea.

14. The Commission's decisions regarding the organization of its future work seemed generally acceptable. The Commission was the best judge of the measures which it should take to facilitate its work, and the desire for speedy results should not be permitted to prevail over the need to maintain the authoritative character of the work produced. Consequently, the reasoning contained in paragraph 68 (a) of the Commission's report could not be contested.

15. Lastly, the Australian delegation believed that the Commission had good reasons for revising the procedure for the submission of Government comments. The decision mentioned in paragraphs 60 and 61 of the Commission's report thus seemed perfectly reasonable.

16. Mr. COHEN (Chile), referring to the points raised by the representative of Israel regarding the difficulty encountered in the scientific task of codification when there was no real possibility of giving due weight to the political factors influencing Governments, said that in the inter-American system of codification the political aspect was adequately provided for. In that system, the Council of Jurists responsible for the work of codification contained representatives of all the Governments concerned and the entire mechanism functioned satisfactorily.

17. He agreed with the French representative that the Commission should at some stage consider the relationship between States and international organizations. The number of such bodies was constantly increasing and the nature of their relationship with the States in which they operated varied greatly. Not only were there those varying notions on privileges and immunities, but even the method of establishing the relationship between the organization and the host State was not uniform. There was thus a clear need for a body of rules designed to clarify the various issues.

18. The Chilean delegation wished to place on record its interest in the matter raised in paragraph 72 of the Commission's report. The resolution contained in that paragraph was particularly welcome, as co-operation between the Commission and regional bodies brought great benefits to both sides. In fact, the secretariats of the various bodies concerned should be in virtually constant liaison.

19. Lastly, he agreed that the decision on the Commission's methods of work was one solely for the Commission. As to the Commission's future programme, the Chilean Government hoped that special attention would be given to questions affecting the rights and duties of States.

20. Mr. MONACO (Italy) said that the International Law Commission's balanced conclusions in chapter V of its report called for little comment. There was, however, a general problem with a bearing on the principles which should guide the Commission's work: the precise relationship between the codification of international law and its progressive development. The two tasks were clearly not incompatible, yet there were some marked differences between them.

21. It was usually asserted that codification was the confirmation of existing customary law while progressive development was the elaboration of universally applicable rules to cover matters where there was

still an element of uncertainty, engendered by the multiplicity of principles established bilaterally or in special circumstances. That assertion, while basically true, failed to emphasize the fact that "custom", including international custom, was never fixed or crystallized but in a constant state of evolution. That fact was clearly borne out by the experience of legal systems which relied primarily on customary law and accorded only a secondary role to statute law. There was thus a constant need of new legal principles to reflect social changes. The Commission was no doubt well aware of that fact and, as its regular work of codification in no way conflicted with progressive development—and indeed by confirming customary rules tended to facilitate it—would always bear in mind the possibility of introducing universally applicable standards of international law into spheres previously considered immune to its influence.

22. The basic work of the Commission, however, remained the codification of the law on subjects with a solid historical background, where the practice of States was well established. Such codification could not be done prudently and well unless the Commission allowed itself adequate time for each task. The Commission itself would obviously do all in its power to ensure reasonable dispatch, but the idea of a compulsory acceleration of the Commission's work was inconceivable. Furthermore, even if the Commission were to act with greater haste, the work of codification would still inevitably be delayed by factors independent of the Commission's will.

23. With regard to the future organization of the Commission's work, he thought that the establishment of sub-commissions for the detailed consideration of all drafts might bring about a situation where the disadvantages outweighed the advantages. The Commission might obtain the best results from its work by functioning in plenary meetings as a general rule, while still resorting to any system likely to accelerate its work. That was precisely the case made in the report itself for conferring broader powers on the Drafting Committee, so that it could consider not merely pure drafting points but also points of substance which the full Commission had been unable to resolve (see A/3859, para. 65).

24. The question of co-operation between the Commission and other bodies raised the old issue of the relationship between universalism and regionalism in international life. The Commission was by its very nature universal and could, in theory, proceed with its work without worrying about regional activities. In practice, however, regional trends were of the first importance. The proper position for the Commission to adopt therefore, as its statute clearly implied, was not to limit itself to consulting other bodies pursuing similar objectives, but to co-ordinate its activities with those of such bodies. For example, the Council of Europe was also active in the preparation of multi-lateral conventions, and there had never been any lack of juridical groups promoting codification within the inter-American system. It might therefore prove very useful if the Commission's Secretary could attend some of the most important meetings of such bodies. That applied particularly to meetings of inter-governmental organizations, as the Commission was already represented by many of its members in a personal capacity on learned societies such as the Institute of

International Law or the International Law Association. In any event, the Commission should always maintain the question of co-operation with other bodies on its agenda.

25. Mr. PERERA (Ceylon) said, with reference to the planning of future work of the Commission, that perhaps the Commission might consider the advisability of holding two meetings a day throughout its session instead of only towards the end (A/3859, para. 57).

26. With regard to the review of the Commission's work during its first ten sessions, he agreed with the Italian representative that the Commission had been concerned mainly with the codification rather than the development of international law, and he felt that there was some scope for supplementing the work of the Commission in that sense.

27. Greater importance should be given to international law in the work of the United Nations, for the Charter contained only scanty references to international law and there was no permanent organ of the United Nations to deal with the subject when the International Law Commission was not in session. The existing machinery for co-operation with regional bodies dealing with international law was insufficient. The Secretary of the International Law Commission had attended the third meeting of the Inter-American Council of Jurists as an observer for the Commission; he would be authorized to attend the fourth meeting of that body and, no doubt, similar arrangements would be made in future for the Asian-African Legal Consultative Committee. Collaboration with regional bodies of jurists must be closer in order to ensure the adequate representation of the different forms of civilization in the work of the Commission.

28. Deliberation was no doubt necessary in the work of codification undertaken by the International Law Commission, but the law had to keep abreast of rapid developments elsewhere. In a sense, the development of international law was a race against time. The last hope of mankind was the rule of law, which was the only salvation for the weaker independent nations.

29. For all those reasons, his delegation, together with certain other delegations, was examining the possibility of a draft resolution which would recall resolution 94 (I) and 176 (II) of the General Assembly and request the Secretary-General to make arrangements as soon as possible for the printing and publishing of an international legal periodical or journal, and recommend that an editorial board be set up for the purpose of selecting and editing the material and articles to be published. Such a periodical would enable the views, judgements and commentaries available to Governments, national and international bodies and interested persons to be made more fully known. It was true that there existed already many valuable periodicals dealing with international law, but they were not sufficiently international in character.

30. It was not suggested that any reference be made to resolution 174 (II) which had established the International Law Commission. He wished to emphasize thereby the fact that the publication of the periodical in question would be intended merely to supplement the work of the International Law Commission and its valuable yearbook. It was in that

spirit that he placed his suggestion before the Committee for its consideration. Such a periodical could make a great contribution to the development of international law by providing a forum for the expression of the views of jurists from the various regions.

31. National life was organized on the basis of law; international life was as yet not so organized. It was the duty of the Sixth Committee, in the absence of any other organ, to uphold the importance of international law in the United Nations and to do everything in its power to supplement the work which the International Law Commission was doing with the limited means at its disposal.

32. Mr. SCHIFF (Netherlands) said that the Netherlands delegation recognized the importance of the work of the International Law Commission. He paid a tribute to the Commission for its spade-work on the subject of the law of the sea, which had led to an important advance in the codification of international law in 1958, notwithstanding the fact that one of the most important issues of the law of the sea still had to be decided.

33. The Netherlands delegation was in agreement with the Commission's decision to give priority to the drafting of a convention on consular intercourse and immunities. In view of the close connexion between that topic and the topic of diplomatic intercourse and immunities, it was unfortunate that the procedure outlined by the Commission (A/3859, para. 61) was calculated to separate the discussion of the two topics by a considerable period.

34. His delegation agreed with the Commission's remarks regarding suggestions that the length of the sessions should be increased (*Ibid.*, para. 66). In particular, he felt that special consideration should be given to the suggestion that the special rapporteurs for the various subjects to be taken up at a given session should hold a meeting with some members of the Commission a week or ten days before the opening of the session, in order to have a preliminary discussion and thereby shorten the discussion in the Commission itself.

35. He fully concurred with the views expressed by the Commission regarding Mr. Zourek's proposals (*Ibid.*, paras. 62 and 63). Precisely for that reason, his delegation had some misgivings regarding the Commission's decision (*Ibid.*, para. 64) to organize its work on the topic of consular intercourse and immunities on the basis of Mr. Zourek's proposals.

36. On the other hand his delegation supported the Commission's decision to extend the functions of the Drafting Committee (*Ibid.*, para. 65) as that might prove to be a time-saving procedure.

37. The Netherlands delegation considered that the decision of the Commission (*Ibid.*, para. 61) to prolong the period for the submission of Government comments was unlikely to lead to a greater number of replies. That decision had the additional disadvantage of obliging the International Law Commission to acquaint itself anew with each topic when it came to consider the Government comments on it a long time after it had prepared the original draft.

38. He found himself in agreement with the conclusion the Commission had reached as stated in paragraph 68 (c).

the proposal for co-operation with the Inter-American Council of Jurists (Ibid., para. 72).

39. Lastly, the Netherlands delegation fully endorsed

The meeting rose at 12.50 p.m.