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Summary record of the 614th meeting

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The Commission decided, by 9 votes to 7, with 2 abstentions, that sub-paragraph (i) (definition of "member of the family") should be omitted.

94. Mr. MATINE-DAFTARY said that, in view of the Commission's decision, the Drafting Committee might consider his suggestion that the words "forming part of his household" should be added wherever the expression "members of the family of a member of the consulate" occurred.

95. The CHAIRMAN said that the point had been raised during the discussion of the various articles and would no doubt be taken into account by the Drafting Committee.

Sub-paragraph (j): Member of the private staff

96. Mr. ŽOUREK, Special Rapporteur, said that the definition of "member of the private staff" was identical with the 1960 definition. The expression "member of the private staff" had been retained in preference to "private servant", appearing in article 1 (h) of the Vienna Convention. The Drafting Committee regarded the expression "private servant" as unduly restrictive; it did not cover, for example, a governess brought from the sending State by the consul.

97. The CHAIRMAN suggested that, in the absence of comments on sub-paragraph (j), it should be adopted.

Sub-paragraph (j) was adopted.

Sub-paragraph (k): Consular premises

98. Mr. ŽOUREK, Special Rapporteur, said that the definition of "consular premises" had been amended so as to bring it into line with the corresponding definition in article 1 (i) of the Vienna Convention.

99. The CHAIRMAN suggested that, in the absence of comment on sub-paragraph (k), it should be adopted.

It was so agreed.

Sub-paragraph (l): Consular archives

100. Mr. ŽOUREK, Special Rapporteur, said that the Drafting Committee had amended and broadened the 1960 definition of "consular archives", in deference to government comments. The Soviet Union Government (A/CN.4/136/Add.2), for example, had proposed that the 1960 definition be replaced by broader language; the Netherlands Government (A/CN.4/136/Add.4) had made a proposal along the same lines, but going even further in the same direction.

101. The definition raised chiefly problems of language. In some countries, "archives" meant only files of settled matters. Until a matter was settled, the relevant papers were regarded as "correspondence" or "documents."

102. The Vienna Convention did not contain any definition of diplomatic archives, but that definition was perhaps not so necessary because of the status enjoyed by the premises of the diplomatic mission, the residence of diplomatic agents and the diplomatic agents themselves. The consular archives enjoyed a specific inviolability, and it was therefore important to define the term. Moreover, the definition of "consular

archives" should be as broad as possible, in order to give the sending State every possible safeguard in respect of the correspondence, documents, books, ciphers and codes at its consulate.

103. Lastly, there was the special problem of monies belonging to the sending State and held by the consulate (cf. Netherlands comments, A/CN.4/136/Add.4), which were hardly covered by the term "consular archives". However, there could be no doubt that, as monies belonging to a foreign State, they were inviolable in the receiving State wherever they might be, and it would therefore be desirable to add an express clause to that effect either in the article on inviolability of premises or in a separate article.

The meeting rose at 6.5 p.m.

614th MEETING

Tuesday, 20 June 1961, at 10 a.m.

Chairman: Mr. Grigory I. TUNKIN

Consular intercourse and immunities (A/4425); A/CN.4/136 and Add.1 to 11 (A/CN.4/137)

(continued)

[Agenda item 2]

DRAFT ARTICLES (A/4425) *(continued)*

ARTICLE 1 (Definitions) *(continued)*

Sub-paragraph (l): Consular archives (continued)

1. The CHAIRMAN invited the Commission to continue its discussion of the Drafting Committee's redraft of article 1 (613th meeting, para. 8) of the draft on consular intercourse and immunities (A/4425).

2. Mr. YASSEEN said that the Vienna Convention on Diplomatic Relations (A/CONF. 20/13) did not contain any definition of the diplomatic archives. That was, of course, not a reason for excluding a definition of the consular archives from the draft on consular intercourse, if such a definition appeared necessary. However, article 1 should only define those terms which occurred frequently in the draft. In the case of the consular archives, which were mentioned in articles 33 and 55, it would be better to follow the example of the Vienna Convention, which defined the term "official correspondence" not in article 1, but in article 27, concerning freedom of communication.

3. He therefore suggested that, if the Commission approved the proposed definition of "consular archives", it should incorporate it in article 33, dealing with the inviolability of these archives. As to article 55, it merely constituted the adaptation of article 33 to honorary consuls and the expression "consular

archives" as used therein must be construed in the light of article 33.

4. Mr. PAL pointed out that article 33 referred to "the documents and the official correspondence of the consulate" as distinct from the consular archives. If, therefore, it were proposed that the definition of "consular archives" should cover the documents and correspondence also, the language of article 33 would need to be modified.

5. Mr. AGO said that the correspondence intended to be covered by the word "archives" was correspondence relating to matters which had been terminated. The draft should therefore lay down separately the inviolability of the official correspondence of the consulate relating to current matters.

6. Mr. ŽOUREK, Special Rapporteur, said that, although agreeing with Mr. Yasseen's general approach to the matter of definitions, in the specific case of the consular archives there were good reasons for leaving the definition in article 1. In the first place, there was the practical reason that persons reading the draft would normally consult article 1 for the definition of terms used throughout the text. In the second place, the term "consular archives" was used in articles 33 and 55 and the latter article was independent of the former: it did not merely refer back to article 33.

7. Mr. ERIM said the proposed definition of consular archives was satisfactory. He agreed, however, with Mr. Pal that all inconsistency between that definition and the terms of article 33 should be removed. The same was true of article 55, which also spoke of the consular archives, the documents and official correspondence of the consulate.

8. The CHAIRMAN, speaking as a member of the Commission, said that a definition of the consular archives was necessary in article 1.

9. With reference to the point raised by Mr. Pal, he suggested that the Drafting Committee should review articles 33, 36 and 55 and remove any inconsistencies. Article 36, dealing with freedom of communication, would refer to the inviolability of the consular correspondence as a means of communication.

10. Speaking as Chairman, he said that if there were no objection, he would take it that the Commission agreed to that suggestion.

It was so agreed.

Sub-paragraphs (m): Nationals and (n): Vessel

11. Mr. ŽOUREK, Special Rapporteur, said that he had prepared the definitions of the terms "nationals" and "vessel" in deference to government comments; the definitions had been revised by the Drafting Committee.

12. Mr. ERIM said that the two definitions in question were unnecessary in the draft articles. Article 1 should define only terms employed in the terminology of consular relations. The Commission should avoid defining general legal terms, which were defined elsewhere than in instruments dealing with consular relations.

13. The meaning of "national" should be left to be determined by the general rules of international law, and that of "vessel" by the rules of maritime and commercial law.

14. Many general legal terms were used in the draft, but that was no reason for defining them in article 1. He recalled that the Commission had had to abandon the attempt to define the meaning of "member of the family", even though such a definition would have been useful (613th meeting, para. 93).

15. Mr. AGO, agreeing with Mr. Erim that article 1 should not define general legal terms, said that, if "nationals" and "vessel" were not defined in article 1, it would be essential to make it clear, in the appropriate articles, firstly, that the term "nationals" meant also bodies corporate, and, secondly, that the term "vessel" included not only sea-going ships, but also inland navigation craft.

16. There was a practical disadvantage in that the wording of the articles as so amended would become unduly cumbersome. It was for the Commission to decide whether it wished the Drafting Committee to adopt that course or whether it preferred to retain the definitions in article 1. What the Commission could not and should not do was to leave unsettled the two questions to which he had referred; in the absence of an explicit statement, doubts would subsist on those two points and serious difficulties of interpretation would arise.

17. Mr. ŽOUREK, Special Rapporteur, said that he saw no difficulty in including sub-paragraph (m). It was not intended to lay down a criterion for the purpose of determining who was a national of the sending State, or what bodies corporate were deemed to have the nationality of that State. Its object was merely to make it clear that, in so far as the article in question could apply to bodies corporate, they were entitled to the same protection as individuals, if they had the nationality of the sending State. A statement to that effect was absolutely necessary because, as he had mentioned in his third report (A/CN.4/137, *ad* article 4), during the debate in the Sixth Committee at least one delegation (that of Indonesia) had suggested that the term "nationals" should be construed to mean individuals only, not bodies corporate.

18. Lastly, from the practical point of view, it was simpler to settle the point in the definitions article than to amend the drafts of all the relevant articles. Article 1 would normally be consulted for the purpose of the interpretation of the terms occurring in the draft.

19. Mr. LIANG, Secretary to the Commission, said that there was much to be said in favour of the view expressed by Mr. Erim. At the Vienna Conference one representative had asked whether the term "national" as used in the diplomatic draft included also bodies corporate or juridical persons; the question had been answered to his satisfaction, but no provision on the subject had been included in the Vienna Convention.

20. It would no doubt be somewhat singular to find definitions of the terms "nationals" and "vessels" in

article 1, which dealt with matters relevant to consular relations. He fully agreed with the statement by Mr. Ago that, of the two alternatives before the Commission, the second was preferable: it would leave the definitions out of article 1, and involve a change in the wording of the relevant articles.

21. Sub-paragraph (n) involved a more complex question. Its provisions were at variance with the terms of article 5 of the Geneva Convention on the High Seas of 1958 (A/CONF.13/L.53), according to which the registration of a ship in the territory of a State was a prior condition for that ship to have the right to fly that State's flag. It would be quite abnormal for a ship to fly the flag of one country and be registered in another; such a situation had not been envisaged in the Convention on the High Seas. Article 6, paragraph 1, of the same Convention, stated that ships were subject to the exclusive jurisdiction of the flag State on the high seas.

22. In view of those provisions of the Convention on the High Seas, the disjunctive terms of sub-paragraph (n) could give rise to complications.

23. The CHAIRMAN said that it would be useful to know from the Special Rapporteur in how many articles the term "nationals" was used to mean both individuals and bodies corporate. Also, how many articles referred to "vessels".

24. Mr. ŽOUREK, Special Rapporteur, said that references to vessels occurred three times in article 4 and article 5(c). With reference to the statement by the Secretary to the Commission, he explained that, in some countries, small craft (e.g. fishing smacks) were not entitled to fly the national flag; their nationality was evidenced by their registration.

25. For the purposes of article 5(c), it was particularly useful to have a broad definition of the term "vessel". The sending State was interested in being informed through its consulates of any mishap to one of its ships, whether a sea-going vessel or an inland navigation craft, and regardless of whether the ship was large enough to fly its flag.

26. Several bilateral conventions defined the term "vessel", e.g. the Anglo-Swedish Consular Convention of 1952, article 2 of which also provided that the term "nationals" included, where the context permitted it, "all juridical entities duly created under the law" of one of the States concerned.¹

27. Sir Humphrey WALDOCK suggested that it would suffice if it were stated simply that, where appropriate in the draft, the term "nationals" included bodies corporate and the term "vessels" included inland navigation craft.

28. The Commission would be wise not to attempt the more challenging task of endeavouring to determine in what circumstances a person was a national of the sending State or a ship a vessel of that State. In regard to ships, any attempt to go into that question would

involve dealing with the awkward and controversial problem of flags of convenience. It was not necessary, for the purposes of the draft, to touch upon the conditions which had to be fulfilled in order that a vessel could be considered a vessel of a particular State. Moreover, if the Commission were to go into that question it would have to explore it fully.

29. References to vessels occurred in article 5(c) and in article 4 of the draft. In all those contexts, reference could be made to "vessels of the sending State", and the Commission would thus avoid going into the difficult legal questions of registration and the right to fly the flag of a State.

30. The CHAIRMAN, speaking as a member of the Commission, suggested that the Drafting Committee should decide where the statement that the term "nationals" included bodies corporate should be inserted, whether in article 1 or in the various articles where the term was intended to cover more than just individuals.

31. With regard to sub-paragraph (n), he said its provisions were inconsistent with those of article 5 of the Geneva Convention on the High Seas. He agreed with those members who had suggested that the Commission should not go into the legal problem of the determination of the nationality of ships. For the purposes of the consular draft, it was sufficient to refer to vessels "having the nationality of the sending State". He recalled that the manner in which the nationality of a vessel was determined had given considerable difficulties to the first United Nations Conference on the Law of the Sea, and also to several International Labour Conferences; it was therefore wiser for the Commission not to examine the conditions under which a vessel was entitled to fly the flag of a State.

32. Mr. YASSEEN doubted whether it was really correct to speak of the nationality of bodies corporate. For many authorities the similarity between an individual and a body corporate was more apparent than real.

33. In any event, the sole purpose of including a definition of "nationals" had been to make it clear that certain rules set forth in the draft articles applied not only to individuals, but also to bodies corporate. That statement, however, was made in far too broad and absolute terms in the proposed sub-paragraph (m). The definition given in that sub-paragraph could patently not be applied to all the articles where the term "nationals" was used. For example, where reference was made to "nationals" in article 6(b) and 6(c), dealing with persons in custody or imprisoned, and article 11, on the appointment of nationals of the receiving State, it was obvious that the term could only refer to individuals. The only provisions which applied to both individuals and bodies corporate seemed to be those of article 4 on the protection of nationals and, with some qualifications, the provisions of article 6(a) on communication with the consul.

34. In the circumstances, the appropriate course was to insert, in the relevant places in articles 4 and 6(a), a reference to bodies corporate immediately after the word "nationals".

¹ *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities. United Nations Legislative Series, vol. VII (United Nations publication, Sales No. 58.V.3), p. 468.*

35. Mr. VERDROSS agreed that the problem under discussion only concerned the protection of bodies corporate. Since, however, there was an extensive legal literature on the subject, the Commission should tackle the problem. Somewhere in the draft articles, the Commission should make it clear that if a State granted its nationality to a body corporate, it had the right to extend consular protection to it.

36. Mr. ERIM said that the discussion had confirmed him in the view that it was better to delete sub-paragraphs (m) and (n). There was no reason why the terms "nationals" and "vessel" should be defined in article 1, any more than the large number of general legal terms used in the draft, such as "State" or "municipal law". Moreover, any reference to the nationality of persons, bodies corporate or vessels would create more problems than it would solve. A reference of that type would evoke such problems as that of dual nationality, which the Commission had no intention to solve.

37. Mr. JIMÉNEZ de ARÉCHAGA said that he agreed with Mr. Ago that the definition of "nationals" might be deleted from draft article 1 and the explanation that the term covered both individuals and bodies corporate be included in article 4. The Commission need not decide there and then whether bodies corporate had a nationality and if so, what nationality. The definition of "vessel" should be amended, as it was at variance with the Geneva Convention on the High Seas. The Commission should be very careful not to sponsor definitions which conflicted with definitions drafted by it on earlier occasions and accepted by a plenipotentiary conference. Article 5 of the Geneva Convention spoke of the flag which the vessel was entitled to fly, whereas the definition in draft article 1 under consideration spoke of the flag actually flown. The definition submitted by the Drafting Committee also dropped the concept of the "genuine link" mentioned in the Convention on the High Seas. The phrase might therefore run: "having the nationality of the State in question".

38. Mr. AGO observed that almost all members agreed that the second of the two elements in the definition of "vessel" should be eliminated and that the Drafting Committee should be asked to consider what consequential amendments were needed in the draft articles. The definition of "nationals" was required only in articles 4 and 6. It was not the Commission's task to inquire into the modes of determining the nationality of vessels or, consequently, into the questions of the "genuine link" and registration.

39. Mr. FRANÇOIS agreed with Mr. Ago. Mr. Erim seemed to have overlooked the fact that the Commission was not drafting a convention on nationality but an instrument defining the functions of consuls. Naturally, consuls could protect bodies corporate which were regarded as their nationals under their own law. To make that clear, it was sufficient to state in the draft that the consul had the necessary competence. The same applied to the question of vessels. If the definition mentioned both the flag and the registration, the question arose what would be the status of a ship flying the flag of one State but registered in another. The definition of

"vessel", if retained, should be broadened to cover vessels which, according to the law of the sending State, were regarded as having its nationality.

40. Mr. ŽOUREK, Special Rapporteur, explained that the definition of "vessel" in sub-paragraph (n) was an abridged version of an earlier definition prepared by him for the Drafting Committee in which the term "vessel" of a State was defined as "any ship or craft, other than a warship, which is used for maritime or inland navigation and which flies the flag of the State in question or (in the case of craft not entitled to fly the national flag) is registered in the State in question". The clause about registration had been included as merely accessory. Whatever the Commission decided, however, it must be stated somewhere in the draft that the term "vessel" meant any craft which was used for maritime or inland navigation, since several governments had so requested.

41. The CHAIRMAN said that the consensus was that sub-paragraph (m) should be deleted and that the Drafting Committee be instructed to insert a reference to bodies corporate in the articles intended to cover not only individuals but also bodies corporate. With regard to sub-paragraph (n), it might be awkward to repeat in each appropriate article that vessels meant any craft which was used for maritime or inland navigation, and such awkwardness of drafting might justify the retention of the definition in draft article 1. That was for the Drafting Committee to decide, but, in any case, the last phrase should be deleted and should be replaced by the phrase "having the nationality of the sending State" or "having the nationality of the State in question".

It was so agreed.

42. The CHAIRMAN said that the Commission had concluded its preliminary examination of draft article 1 (Definitions).

Planning of future work of the Commission (A/CN.4/138)

(resumed from the 597th meeting)

[Agenda item 6]

43. The CHAIRMAN said that, according to General Assembly resolution 1505 (XV), the item "future work in the field of the codification and progressive development of international law" would be placed on the provisional agenda of the Assembly's sixteenth session. The Commission was not instructed to take any decision under that resolution, but members might wish to take the opportunity to place their views on record for the use of the Sixth Committee of the Assembly.

44. Mr. VERDROSS said that four general principles should guide the planning of the Commission's future work. The first was that the Commission could codify only the law concerning topics of universal importance; the second that it could not codify the law concerning extremely controversial topics; the third that the codification should already be in progress as reflected in generally established practice; since the Commission was

not competent to make entirely new international law; and the fourth that the Commission's work should not overlap with that of other competent international organs such as the Commission on Human Rights. The Commission's programme of work contained three very important topics which satisfied those principles: the law of treaties, the general law of State responsibility and the more particular topic of the international responsibility of States for injury to aliens. New suggestions were, however, in order. One topic of capital importance was that of the succession of States. With the emergence as States of former colonies and Trust Territories immense problems arose. The four topics were all of general importance; they were not the subject of insurmountable divergencies of opinion and the practice concerning them was sufficiently firmly established. With those four topics the Commission would probably have enough work to fill its next five-year period. That, however, did not prevent the Commission from beginning to codify other topics proposed by the General Assembly if it had the time.

45. Mr. AMADO said that his personal experience as a representative of his country to the United Nations and later as a member of the International Law Commission had led him to the conclusion that there was only one attitude to take with regard to General Assembly resolution 1505 (XV). The League of Nations had been guided by the Institute of International Law in choosing a list of subjects suitable for codification; for it was obvious that at all times the work of codification of international law should be entrusted to experts in the matter, since experienced jurists were best qualified to settle the text of multilateral conventions which were to become the law of States. For the Hague Conferences of 1899 and 1907 the Institute of International Law had proposed a number of topics, from which the League of Nations had chosen a few. It was obviously difficult for politicians to realize in what the work of the Commission consisted. To achieve positive results, progress must of necessity be slow. For example, the vast amount of effort that had been expended on the Commission's draft on the law of the sea could not have been compressed into a relatively short debate. He could not countenance the facile way in which politicians approached the work of codification, for that work had to be done deliberately. At the stage of civilization reached by the world, it was all the more important that experienced jurists should provide States with carefully thought out legal instruments. Accordingly, he thought that the Commission should be allowed to continue with its work on such subjects as State responsibility, even if it took time.

46. Mr. SANDSTRÖM, referring to the second preambular paragraph of the General Assembly resolution, asked what branches of international law, if any, had been suggested as tending to strengthen international peace, develop friendly and co-operative relations among nations, settle disputes by peaceful means and advance economic and social progress throughout the world.

47. Mr. LIANG, Secretary of the Commission, replying to the previous speaker, said he could give a list of the

topics, but it would not be exhaustive. They included the right of asylum; State responsibility; the compulsory jurisdiction of the International Court of Justice; the principles and practices governing the registration of treaties; methods and procedures in use by the General Assembly; the question of the definition of aggression; legal questions connected with the peaceful co-existence of States; legal problems created by disarmament; legal problems created by the final abolition of colonialism; the question of neutrality; the succession of States; the use of outer space; the theory of the sources of international law; the right of all peoples to exploit their national resources; violation of national sovereignty; and the international aspects of land reform.

48. He drew attention to operative paragraph 2 of the General Assembly resolution, under which Member States were invited to submit any views or suggestions they might have on the question to the Secretary-General before 1 July 1961. He had inquired from the United Nations Headquarters whether any comments on the subject had yet been received, and had been informed that no government had submitted views or suggestions by 20 June 1961.

49. Mr. GARCÍA AMADOR said that in accordance with General Assembly resolution 1505 (XV) it was for governments alone to submit views or suggestions on the Commission's future work for discussion by the Sixth Committee of the General Assembly at its sixteenth session. The Commission had not been asked to comment, but he wished to take advantage of the opportunity offered by the Chairman to make some observations on the discussions in the Sixth Committee at the fifteenth session.

50. Resolution 1505 (XV) in itself was not only unobjectionable, but filled a growing need, as was evidenced by its references to the many new trends in the field of international relations which had an impact on the development of international law and to recent developments in international law. The only surprising thing was that those new trends had not been noticed long before. Very soon after the Second World War, writers and even government representatives had drawn attention with increasing urgency to the need for the re-examination and revision of international law in the light of the profound changes taking place in the internal life of States and in their international relations. The Assembly resolution was therefore no more than a culmination of such individual moves.

51. That was why it was the more regrettable that the resolution had been so closely associated with one of the most aggressive and demagogic propaganda campaigns in the history of the United Nations. It was quite obvious to anyone who had heard the discussions in the Sixth Committee or who had read the summary records and the Committee's report to the plenary that a group of countries which had never been concerned with the development and codification of international law, but had customarily opposed them, had suddenly tried to pose as the champion of the progress of international law and as the defender of its principles. It was the same group of countries which repeatedly and consistently had

subordinated and were subordinating the validity of international law to the principle of national sovereignty and had opposed and continued to oppose compulsory arbitration.

52. While he would not dwell on the details, he must raise the question of the unfair — when they were not wholly unfounded — attacks on the Secretariat, the Special Rapporteur and even the Commission itself in connexion with the topic of State responsibility.

53. The question had arisen on the pretext of the invitation to the Harvard Law School to collaborate with the Commission's work on that subject. In that connexion, it was gratifying to see that Professor Sohn had once again been invited to report on the work undertaken by the Harvard Law School with a view to co-operating with the Commission. It was equally satisfactory to have heard that similar efforts were being made in other parts of the world. He was sure that the Commission would also welcome such efforts, regardless of whence they came, and that no delegation or group of delegations in the Sixth Committee would in the future object to them.

54. The Secretariat had been able to show fully that co-operation with the Harvard Law School was not incompatible with the relevant provisions of the Commission's Statute, much less incompatible with Article 101 of the United Nations Charter. It should be noted, however, that the arrangements for that collaboration had been made in 1955 and had been announced at that time, and that for six years no one, so far as he could recall, had impugned their validity.

55. The five reports of the Special Rapporteur on the topic of State responsibility (A/CN.4/96, 106, 111, 119, 125), though widely circulated, had not been noticed by the delegations in question until the autumn of 1960. However, those delegations had not only criticized the Legal Office of the United Nations for its remissness in submitting important matters to the Sixth Committee, for having violated the principle of geographical distribution in the recruitment of staff, and for the invitation to the Harvard Law School, but had also severely criticized the method of preparing those reports and, indeed, their substance. The fact that the Special Rapporteur had visited the Harvard Law School and had also collaborated with the Legal Office of the Pan American Union had been censured, and it had been openly stated, not merely insinuated, in the Sixth Committee of the General Assembly that the collaboration with the Harvard Law School had been in the nature of a consultation and that the Harvard draft reflected reactionary views (657th meeting of Sixth Committee, para. 27).

56. As the Special Rapporteur concerned, he hardly thought it necessary to reply to such criticism. It was well known that there were countries and universities where intellectual work was directed by the authorities and others in which prevailed full freedom of research and expression. It was hard to see what objection could be taken to the Special Rapporteur's having chosen a place to prepare his reports where he could enjoy the fullest intellectual freedom. Neither was it worth going into the criticisms of the substance of the reports, but it was worth mentioning that they were sometimes so

unfounded that it was really doubtful whether the critics had actually read the documents in question.

57. The topic of State responsibility had also been used as grounds for criticising the International Law Commission. In that case, too, unfounded criticisms had been launched, such as that only one aspect of the topic — responsibility for injury to aliens — had been studied and that other aspects, such as responsibility for the violation of territorial sovereignty, subversive activities and espionage, etc., had been ignored.

58. The CHAIRMAN, observing that the Commission was not discussing the work of the Sixth Committee, but the future codification of international law, requested Mr. García Amador to keep within the limits of the subject under consideration.

59. Mr. GARCÍA AMADOR replied that that was precisely the point to which he was referring. It was regrettable that no member of the Sixth Committee had explained the Commission's reasons for limiting for the time being the scope of the codification of State responsibility. It would not, however, have been so easy to answer another criticism made during the discussions, namely that little progress had been made in that codification. The Assembly, in resolution 799 (VIII) of 1953 had requested the Commission to undertake the codification as soon as it thought advisable. Two years later, the Commission had elected the Special Rapporteur, who had submitted his first report in 1956, when the Commission's agenda had become appreciably lighter since it had finished the draft on the law of the sea. Since that time there had only been two items on its agenda of which the Assembly had specifically requested codification: diplomatic immunities and State responsibility, except for the revision of the draft on arbitral procedures. During those six years many delegations had repeatedly stressed the importance of carrying the codification of State responsibility further, as had done recently the United Nations Commission on Permanent Sovereignty over Natural Resources. How was it then that the Commission, which had produced such fruitful work in its first six years, had continually deferred the study and codification of the topic of State responsibility? He could only hope that the Commission would undertake at its next few sessions the examination of a topic of such vital importance in the relationships between States and between them and private persons of foreign nationality, a topic with regard to which such profound and interesting changes were occurring.

60. As a member of the Commission, he had been surprised to note that in a resolution designed to promote the codification and progressive development of international law the Assembly should have completely ignored the Commission and the provisions of its Statute. The records of the Sixth Committee showed that the problem had been duly raised by certain delegations, but unfortunately the view seemed to have prevailed that the work should be left to the governments and to political bodies such as the Sixth Committee. It was doubly regrettable that anyone representing the International Law Commission should have remained completely silent during the discussion of that topic, as of

others involving the Commission's prestige. One reason for their silence might have been that some delegations had pressed for the establishment of a special committee of government representatives to cope with the preparatory work for the plan contemplated in resolution 1505 (XV) (*cf.* excerpts from Sixth Committee's report cited in A/CN.4/138). However that might be, it would be desirable that in future members of the Commission representing it in the General Assembly should lay stress on the provisions of its Statute, as had always been done in the past, and should do their best to ensure that its prestige was not in any way diminished.

61. Mr. FRANÇOIS endorsed the views expressed by Mr. Verdross and Mr. Amado and agreed with the four criteria advanced by Mr. Verdross as a basis for the choice of topics for the Commission. He would, however, add a fifth criterion, namely, that the topics should not be too broad and too complicated. The Commission could be said to have succeeded in its work on the three subjects of the law of the sea, diplomatic relations and consular intercourse and immunities. The reason for that success was that the topics concerned were to some extent limited in their scope. Even the subject of the law of the sea, although vast, had been restricted by the method employed by the Commission, which had completed its work on the subject within the time limit of five years, the term of the Commission's membership. It should be remembered that governments had to be given two years in which to submit their comments; accordingly, that left the Commission a relatively short time to reconsider its drafts in the light of those comments. A remedy for that situation might be to prolong the term of office of members, but it was hardly the time to make any suggestions to that effect. Such far-reaching topics as State responsibility and the law of treaties could not be dealt with in five years if the Commission's sessions lasted for a mere ten weeks. The Harvard Law School, which had been preparing a draft on State responsibility for a number of years, was in a much more favourable situation to deal with that subject since it had far more time to devote to it. Accordingly, if the organization of the Commission's work were to remain unchanged, it could not be expected to discuss such broad topics exhaustively; its discussions would either be too hasty or would be prolonged beyond the five-year term of the Commission's membership, in which event there would be the additional difficulties of a change of membership and of a change of special rapporteurs. He would not deny the increasing importance of a study by the Commission of a vast subject of the law of nations, such as State responsibility or the law of treaties, but so long as the organization of the Commission remained unmodified it would be impossible in practice for it to deal with more than certain specific aspects of such subjects.

62. Mr. ERIM, commenting on General Assembly resolution 1505 (XV), noted that it referred to a new need to take into account certain extremely far-reaching subjects, concerned with such matters as the strengthening of international peace, the development of friendly and co-operative relations among nations, the peaceful settlement of disputes and the advancement of

economic and social progress throughout the world. It seemed that the need for giving priority to certain subjects had arisen in a little over one year, for in its latest directives to the Commission the General Assembly had instructed it to study only the right of asylum and the question of the juridical regime of historic waters, including historic bays (General Assembly resolutions 1400 (XIV) and 1453 (XIV)). Whereas in 1959 the General Assembly had been content with the programme comprising consular intercourse and immunities, State responsibility, the law of treaties, together with the right of asylum and the regime of historic waters, it apparently wished to reconsider that programme in the light of certain new trends. On the other hand, the Secretary had just told the Commission that no views or suggestions had yet been received from Member States in response to operative paragraph 2 of resolution 1505 (XV). The Commission thus found itself in a vacuum; it was called upon to take new trends into account and to give priority to new topics, but had not received any precise directives from the General Assembly, although the comments of governments might give some guidance. Personally, he could not say with any confidence that he had observed in the juridical field any pressing new trends in international relations that had reached the stage of codification. For the time being, there was no subject having such high priority as to cause the Commission on that account to delay its study of the topics already entrusted to it. A perusal of General Assembly resolution 1505 (XV), however, had given him the idea that the objectives contained therein might be achieved by an exhaustive study of compulsory international jurisdiction and of the gradual surrender of the exclusive jurisdiction of States. It was extremely unlikely, however, that States would be prepared to accept a suggestion that the Commission should deal with that topic. The Commission would therefore be hard put to it to find a subject for a draft which would serve to promote the objectives set forth in the General Assembly resolution. It could only await the views or suggestions of governments, especially those of the governments of the States which had sponsored the resolution in the General Assembly. After that stage, the Commission could usefully reconsider the matter and make a suggestion.

63. The CHAIRMAN pointed out that the Commission was not expected to make any recommendation or take any decision on the subject. The debate had been initiated only because some members of the Commission had wished to put on record their views on future work in the field of the codification and progressive development of international law.

The meeting rose at 12.55 p.m.