



CONTENTS

Agenda item 65:

Page

*Report of the International Law Commission
on the work of its twelfth session* 5

Chairman: Mr. Gonzalo ORTIZ MARTIN (Costa Rica).

AGENDA ITEM 65

Report of the International Law Commission on the work of
its twelfth session (A/4425)

At the invitation of the Chairman, Mr. Luis Padilla Nervo, Chairman of the International Law Commission, took a place at the Committee table.

1. Mr. PADILLA NERVO (Chairman of the International Law Commission), introducing the Commission's report on the work of its twelfth session (A/4425), said that, of its two substantive chapters, the first, on consular intercourse and immunities, contained a draft of sixty-five articles on that subject which had been submitted to Governments for comment. The Commission hoped to receive those comments within the year and intended, at its thirteenth session, to complete its work on a final draft for submission to the General Assembly in 1961. The Committee would probably not, therefore, wish to examine the draft articles in detail at the present stage. There were, however, certain points on which the Commission would appreciate the Committee's views. The first concerned the nature of the international instrument in which consular law should be incorporated. As the members of the Committee well knew, the principal source of consular law was to be found in international conventions, both bilateral and multilateral, which revealed a certain homogeneity of content; but the subject was also to a considerable extent governed by customary international law, and many important questions which it would be necessary to include in an international codification were governed by the internal regulations of States. The Commission's work in that connexion thus constituted both the codification and the progressive development of international law, in the sense in which those concepts were defined in its Statute. Taking all those factors into account, the Commission had drafted its articles on the subject under the assumption that they would form the basis of an international convention. It could not take a final decision on that point, however, until it had considered the comments of Governments on the provisional draft. The views of members of the Committee, too, would be valuable in helping it to shape its final decision. The Commission would also be grateful for representatives' views on some of the more controversial points in the draft, for example, the question of the legal status of honorary consuls.

2. The other substantive chapter in the Commission's report was that on ad hoc diplomacy, which contained three draft articles on the subject of "special missions", one of the forms of diplomatic relations customarily classified as ad hoc. The purpose of the articles was to define the meaning of "special mission" and to indicate the provisions of the draft articles on diplomatic intercourse and immunities—otherwise known as "the 1958 draft" (A/3859, para. 53)—which would apply also to such missions. Since many of the rules devised for application to diplomatic missions in general arose out of the very fact of their permanency and other special characteristics such as their function of ensuring the maintenance of continuous diplomatic relations between countries, and the presence in capital cities of numerous missions of the same kind, it had been found that very few of the provisions of section I of the 1958 draft—in fact, only articles 8, 9 and 18—were applicable to special missions. On the other hand, sections II, III and IV of that draft had been found to apply in their entirety. The three draft articles contained in the Commission's report (A/4425, para. 38) had not yet been submitted to Governments for their comments, but, in view of the imminence of the United Nations Conference on Diplomatic Intercourse and Immunities at Vienna to consider the 1958 draft, the Commission had felt justified, exceptionally, in recommending that the new draft articles should be sent direct to the Conference, and it hoped that the General Assembly would take an affirmative decision in that respect.

3. Of the other forms of ad hoc diplomacy, the Commission had felt that that of itinerant envoys did not warrant separate and special treatment, and had therefore assimilated it to that of special missions. In the matter of diplomatic conferences, the Commission had considered that it was closely linked with the question of the relations between States and inter-governmental international organizations. Under General Assembly resolution 1289 (XIII) that matter was to form the subject of a separate study, which the International Law Commission had yet to begin.

4. Mr. Padilla Nervo drew attention to the other decisions of the Commission at its twelfth session, which were set forth in chapter IV of its report. The Committee would note that pressure of work and the need for further preparatory work had forced the Commission to defer to a future session consideration of the right of asylum and the régime of historic waters. The Commission had also been unable to begin a detailed study of the several reports submitted by the Special Rapporteur on State responsibility, but that topic was due to be taken up in the second half of the next session.

5. If members of the Committee had any questions on the report, he would be very happy to answer them.

The meeting rose at 3.45 p.m.