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CONTENTS

Chairman: Mr. César A. QUINTERO (Panama).

AGENDA ITEM 69

Report of the International Law Commission on the work of its thirteenth session (A/4843; A/C.6/L.485 and Add.1, A/C.6/L.486) (continued)

1. Mr. MUSTAFA (Pakistan), exercising his right of reply, thanked the Indonesian representative for having quoted a passage from the statement which he had made on behalf of the Pakistan delegation at the 695th meeting.

2. It was true that, at that meeting, he had stated that the realities of a new world made it imperative that international law should become genuinely international in spirit and universal in character as regards both its rules and its concepts. International law could not be purely western or purely eastern in character, either in its rules or in its concepts, for it must be capable of application to both West and East, i.e., to the entire world community, and must be adaptable to special historical circumstances of every kind. With the recent attainment of independence by many countries of Africa and Asia it was more necessary than ever for international law to develop along those lines.

3. He recalled that, in his statement at the 689th meeting, he had spoken of a world community governed by rules of international welfare within the framework of an international order of which the United Nations would be the sole guardian. Unfortunately, it was not enough to take a purely idealistic view of the present-day world or to cherish noble aspirations; if it was to be an effective instrument, international law must be based on the fundamental realities of the international order, and the responsibility for protecting that political and juridical international order rested with the United Nations, mankind's only hope.

4. With regard to the Indonesian representative's observations concerning China (706th meeting, para. 28), his delegation felt that, from the strictly legal point of view, it was for the General Assembly to decide the question of Chinese representation and not for the Secretariat or for the Sixth Committee, which was not the proper forum for a discussion of that nature.

5. Miss AGUIRRE (Mexico) congratulated the Special Rapporteur of the International Law Commission. The draft articles on consular relations (A/4843, para. 37), which had been prepared with equal care and competence, constituted an excellent set of rules which, in conjunction with the Vienna Convention on Diplomatic Relations,[1] would make it possible to codify and standardize customary law in two major spheres: diplomatic relations and consular relations. Delegations should be given an opportunity to submit further comments on the draft articles at the seventeenth session of the General Assembly; that would, in particular, enable the new Member States to participate fully in the discussion of the matter. Generally speaking, her delegation favoured a single convention sufficiently flexible to permit the greatest possible number of States to accede to it; one way to ensure such flexibility would be to provide for the possibility of making reservations. Her delegation endorsed paragraph 27 of the report of the International Law Commission (A/4843), which envisaged the convening of an international conference of plenipotentiaries for the purpose of drafting the convention to which she had just referred. It was also in favour of 1963 as the date for the conference, since the calendar for 1962 was already very full and, moreover, Governments should be given sufficient time to prepare and communicate their comments.

6. Her delegation had already expressed its views on the question of invitations at the time of the United Nations Conferences on Diplomatic Intercourse and Immunities and on the Law of the Sea. It felt that invitations should be extended to the States Members of the United Nations, the States members of the specialized agencies and to the States parties to the Statute of the International Court of Justice.

7. Her delegation supported the ideas contained in the eight-Power draft resolution (A/C.6/L.485 and Add.1) and had gladly joined in co-sponsoring it, since, in general, it followed the basic lines of resolution 1450 (XIV), by which the General Assembly had decided to convene the United Nations Conference on Diplomatic Intercourse and Immunities, and which was based on a draft resolution of which Mexico was also a co-sponsor.[2]

8. Mr. SHARP (New Zealand) commended the Chairman, the Special Rapporteur and the members of the International Law Commission on the work that had been done with a view to the codification and progressive development of international law. The report which was before the Committee was most satisfactory, and the draft articles on consular relations constituted an excellent basis for the negotiation of a multilateral convention in a highly important sphere of international law. A great deal could be said about the differences between diplomatic and consular functions. Diplomats were primarily concerned with great political concepts

1/United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Volume II: Annexes (United Nations publication, Sales No.: 62.X.1).

2/See Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 56, document A/4305, paras. 5 and 7.

and ideological principles, whereas it was the fate of individuals and human relations in general that constituted the chief concern of consuls. It was through the consul that friendly relations were established between persons of different nationalities, and it was in that sphere of human relations between individuals that international law achieved its full dimension. The functions of a consul were infinitely varied and required him to possess many qualities of courage, integrity and human understanding. That was why it was important that the status and privileges of consuls should be defined precisely, as they were in the draft articles.

9. His delegation was unable to submit any detailed comments on the matter at the present time. However, it wished to point out that it could not support the suggestion of the representative of Turkey (702nd meeting, para. 6) that the word "rights" should be substituted for the word "interests" in article 5; consuls often provided their fellow citizens with assistance which the latter could not claim as a right in the strict sense of the word.

10. The question of the exercise of consular functions on behalf of a third State (article 7) was of special concern to a relatively small country like New Zealand, which had a limited number of consular representatives abroad and was often represented by the consular services of the United Kingdom. His Governments would also have to give particularly close study to the provisions relating to honorary consuls (articles 57-67), since, although New Zealand did not make a practice of appointing such officials, a number of countries were represented in its territory by honorary consuls.

11. His delegation endorsed the idea of convening an international conference of plenipotentiaries for the purpose of considering the question of consular relations and embodying the results of its work in an international convention; in that respect, it supported the eight-Power draft resolution (A/C.6/L.485 and Add.1). As to where the conference should be held, his delegation would point out that a meeting in New York would have the advantage, firstly, of costing less than one held in Geneva and, secondly, of facilitating participation by countries which had a permanent mission in New York, but only limited representation in Geneva.

12. With regard to the question of participation in the conference, the suggestion made in operative paragraph 4 of the six-Power draft resolution (A/C.6/L.486) might well seem appealing; however, he agreed with the representative of Pakistan that it was not for the Sixth Committee to modify the practice normally followed by the United Nations with respect to international conferences.

13. His delegation would therefore vote for the eight-Power draft resolution, which recommended that invitations should be extended to States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice.

14. Mr. MACHOWSKI (Poland) recalled that his Government had already expressed its views on the draft articles; he wished to thank the International Law Commission for having taken certain of his Government's comments (A/4843, annex I, section 13) into consideration in preparing the final text. The members of the Sixth Committee seemed to be in agreement in recognizing the value of the draft articles in terms of the codification and progressive development of international law; in view of the major contribution made by Mr. Zourek, a personal invitation should be extended to him to participate in the international conference of plenipotentiaries as Special Rapporteur of the International Law Commission.

15. In view of the consul's special mission, which was, inter alia, to protect in every way in the receiving State the nationals of the State which he represented, consular law could be regarded as an important factor in international relations; it constituted the embodiment in daily practice of the general principle of peaceful coexistence. Hence, it was more than mere chance that the second of the consular functions enumerated in draft article 5, paragraph (b), was that of promoting trade and "furthering the development of economic, cultural and scientific relations". The Polish Government had been guided by that principle in concluding a number of bilateral consular conventions during the past several years, thus demonstrating its desire to promote the development of consular relations with all States that were prepared to do the same.

16. He wished to indicate some of the considerations which had prompted his delegation to join in sponsoring the six-Power draft resolution.

17. It had been said that, by drawing up the draft articles, the International Law Commission had made an important contribution to the further codification of international law, the importance of which was stressed in Article 13 of the Charter. But, as the eminent jurist, Mr. de Visscher, had pointed out, codification, even in the strictest sense of the word, always retained a legislative element, and an international convention on consular relations must be more than a mere mechanical compilation of existing rules; it must be a synthesis embracing customary international law, international conventions and the principles on which the national practice of States was based. The Polish delegation therefore considered that the draft articles represented a contribution not only to the codification of consular law but also to its progressive development.

18. If the problem were considered from a broader viewpoint—from the viewpoint of history—it could be said that the rules of consular law were the resultant of the three factors he had mentioned. Consular law had been and still was strongly influenced by the historical development of international relations, considered in the broadest sense. The fact that the efforts made for many years by the International Law Commission had finally proved successful confirmed that, despite the doubts expressed in certain quarters, the decision to codify that aspect of international law had been a sound one. He recalled that, as far back as 1928, the League of Nations had called for such a codification. In that same year, the Sixth International Conference of American States held at Havana had adopted a Convention on consular agents and, in 1932, the Harvard Law School had drawn up a draft convention on the legal status and functions of consuls.[3] The convening of an international conference of plenipotentiaries to draft a convention on consular relations which should be acceptable to the largest possible number of States would thus be the logical climax not only to the efforts of the International Law Commis-

[3] Harvard Law School, Research in International Law, II. The Legal Position and Functions of Consuls (Cambridge, Mass., Harvard Law School, 1932), p. 362.

sion, but also to those made much earlier by many other international bodies.

19. The progress of consular law had been a sequel to the rapid growth of the consular system in the course of the nineteenth century, which had itself come about owing to the expansion of international trade and the need to protect the interests of the growing number of persons travelling abroad. In contrast to diplomatic law, consular law was essentially based on convention. As States had attempted to formulate the rules more precisely, more and more bilateral consular conventions had been concluded, until finally they numbered about one thousand. But it was wrong to maintain, as certain jurists did, that consular law was based exclusively on convention. That thesis was contrary to the fact, as could be seen, for instance, if one compared the number of consular conventions entered into by different States with the number of countries with which those States entertained consular relations. Poland, for example, had maintained consular relations between the two world wars with fifty-seven States, but had signed consular conventions with only eleven States. Similarly, in 1946, France had been a party to twenty-four consular conventions and Italy to sixteen, whereas both countries had, at that time, maintained consular relations with more than eighty States. The inevitable conclusion must be that, even when consular law based on convention was highly developed, consular relations continued to be based in large measure on custom. In that respect, it was important that the framers of the future convention should proceed with caution and use terms sufficiently elastic to ensure that their work of codification would do nothing to impede the progressive development of new rules, which had not yet assumed their final form.

20. With regard to the draft resolutions and, in particular, the question of the place and date of the proposed conference, he said, speaking as a co-sponsor of the six-Power draft resolution, that it had seemed advisable, for practical reasons, to envisage holding the conference at Geneva. Plainly, however, if a State offered to act as host country, as Austria had done in the case of the United Nations Conference on Diplomatic Intercourse and Immunities, Poland would welcome such a gesture and would approach the question primarily from a financial point of view. With regard to the date of the conference, it would seem in the last analysis to be more realistic to plan for 1963 rather than 1962, in order to give States more time in which to submit their comments. But the Polish delegation considered that, in any event, the conference should not be deferred beyond that date. The question had been under consideration by the International Law Commission for more than six years; nineteen States had submitted observations on the provisional draft articles (A/4843, annex I); and the Sixth Committee was in process of discussing the matter for the second time. The preparatory work was practically finished and had resulted in a text which was generally considered to provide a sufficient basis for the work of the conference. Consequently, it seemed pointless to reopen the debate at the seventeenth session of the General Assembly. Furthermore, the Committee would have other urgent and important questions before it and should not jeopardize their consideration by holding a further discussion on consular law.

21. As to who should participate in the conference, Poland considered that all States without exception should be invited to attend. In that respect, the provisions of the eight-Power draft resolution were flagrantly discriminatory. In strict conformity with the United Nations principle of universality, a conference of such a nature should be open to the largest possible number of States, irrespective of their geographical location or their political, social and economic structure, the more so, as many non-member States maintained consular relations with a large number of countries. A policy of discrimination in that matter would directly conflict with the fundamental purpose of the United Nations, which was to further international co-operation. Poland welcomed the consistent progress made by the United Nations towards universality and considered that a political conference, such as that proposed, would afford the Organization an excellent opportunity to renounce the discriminatory practices it had followed of late with regard to the participation of States in international conferences held under its auspices. No one could claim that there could be two systems of consular law, one applicable to the States invited to the conference and the other to the States that had not participated. On the contrary, it was necessary to draw up an instrument capable of securing the widest possible acceptance. There were a number of States in the world which, for political or financial reasons, did not maintain diplomatic relations with one another, but did maintain consular relations. They provided yet another illustration of the universal character of such relations. Since it was one of the facts of modern life that many nationals of various States lived outside their homeland, it was natural that the States concerned should seek to protect their interests. It would be intolerable that States which had been refused the right to participate in the conference should find themselves bound by the provisions of an instrument in the drafting of which they had not taken part.

22. With respect to chapter III of the report of the International Law Commission, he said that the future work of the Commission should include the codification and progressive development of the following aspects of international law: right to peace, right to sovereignty and to territorial integrity, and right of peoples to self-determination. However, since some members of the Sixth Committee considered that that question should be discussed when the next item on the agenda was taken up, the Polish delegation would deal with it at that time.

23. Mr. EL-ERIAN (United Arab Republic) congratulated the Chairman of the International Law Commission on his excellent introduction to the item under discussion; he also congratulated the Commission itself and the Special Rapporteur on having completed with remarkable success their very difficult assignment of preparing the draft articles on consular relations. Like the representative of Poland, he thought that Mr. Zourek should be invited personally to the international conference of plenipotentiaries.

24. He would not discuss the provisions of the draft in detail, since they were at present being studied by his country's judicial and fiscal departments, but would confine himself to some general considerations. The draft was based on the practice of the various States with regard to consular relations and on existing legislation, which it had sought to codify. That had been far from easy. As the representative of Brazil had pointed out (702nd meeting, para. 29), the subject under discussion was governed by a heterogeneous set of rules, which were often ill-defined and even contradictory. The International Law Commission had not reproduced those rules just as they existed, but had

tried, as far as possible, to achieve uniformity. In its comments on the provisional draft articles (A/4843, section 18), the United States Government had congratulated the Commission on its success in indicating the areas in which the practice of Governments was sufficiently uniform to warrant its codification and those in which it was desirable that uniform rules be formulated although present practice varied.

25. The second feature of the present draft articles was that they adapted consular law to a trend which was emerging in consular relations, namely, the change in the functions of consuls and the tendency to make their status more akin to that enjoyed by diplomats. In addition, rightly taking into account the links between diplomatic and consular relations, the International Law Commission had deliberately modelled the final text of the draft articles on that of the Vienna Convention on Diplomatic Relations. Finally, the draft articles gave equal weight to traditional rules and to new ideas.

26. The two draft resolutions before the Committee were similar in many respects and differed on only two points: the States to be invited to the international conference of plenipotentiaries and the inclusion of the question of consular relations in the agenda of the seventeenth session of the General Assembly. As far as the first point was concerned, his delegation supported the proposal contained in the six-Power draft resolution, since the maximum usefulness of a general law-making international conference could only be secured if it was truly universal. Regarding the second point, it would be useful if Governments were given an opportunity for a further exchange of views, so that their plenipotentiaries arrived at the conference fully conversant with the subject and armed with the necessary instructions on controversial points. It was understood that the discussion at the next session would be merely of a general nature and that the inclusion of the question in the agenda would not affect the date fixed for the conference.

27. Mr. MOROZOV (Union of Soviet Socialist Republics) congratulated the International Law Commission on its achievement, which provided further evidence of the fact that the sole purpose of its work was to fulfil one of the fundamental principles of the Charter: the peaceful coexistence of all States and, in particular, of States with different political systems. The International Law Commission had been able to submit a complete and final draft to the Sixth Committee at its current session, owing to the efforts of its Special Rapporteur, Mr. Zourek, and to the co-operation of al its members. That example of unanimity placed certain responsibilities on the Committee, which was in duty bound to give the draft articles all the attention they deserved, without, however, neglecting to adopt a positive position on the practical measures to be taken. The general feeling seemed to be that the draft articles offered an excellent basis for concluding an international convention. He did not intend to discuss the draft articles in detail, since that would be the function of the proposed conference of plenipotentiaries. He merely observed that the draft articles were based on existing rules of international law and that they took into account both the rules of domestic law of States and the provisions of conventions already in force. Furthermore, they did not neglect recent trends in consular law. The draft articles were therefore of political as well as juridical value, since they were likely to strengthen friendly relations between countries.

28. As regards the practical measures to be taken for the conference of plenipotentiaries, the Committee had before it two draft resolutions, which were identical except in two respects. Such similarity was in itself a sign of unanimity; it should not be too difficult to eliminate the differences between the two texts. Unfortunately, one of those differences related to a very serious political problem; the six-Power draft resolution would put an end to an unjustifiable discriminatory practice designed to exclude certain countries, in particular, the People's Republic of China from the conference. It was regrettable that certain delegations were more interested in keeping up the cold war than in contributing to the success of United Nations activities. He hoped that all peace-loving countries would opt for the procedure that would make the conference universal and would support the principle whereby every State could participate loyally and competently in the work of the United Nations. The Soviet delegation would vote for the six-Power draft resolution.

29. It would not be impossible, however, to bring the two draft resolutions still closer together. For example, there was no obvious reason why the sponsors of the eight-Power draft resolution should not agree to the third preambular paragraph of the six-Power draft resolution, since it simply expressed the belief that approval of the International Law Commission's recommendations would also contribute to the development of friendly relations among nations. If that principle was questioned, what would be the point of convening an international conference? Thus, the preamble of the six-Power draft resolution was more comprehensive. Again, leaving aside the question of which States should be invited to the conference, the purport of the operative part was clearer and more definite. While it was true that both drafts requested that a conference should be convened, the Committee must decide whether to express its will in the unequivocal terms of the six-Power draft resolution or in the vague language of the eight-Power draft resolution. That observation also applied to the date of the conference. It was preferable to avoid ambiguity and make it clear from the very outset that the conference was to take place "in the spring of 1963" and "in Geneva"; the conferences which had been held in Europe had produced good results, no doubt because of the atmosphere of European towns or for climatic reasons. However that might be, the specific procedure proposed in the six-Power draft resolution was preferable to the vague provisions of the eight-Power draft resolution.

30. Another difference between the two draft resolutions, which raised no political problem, was the question whether the Sixth Committee should resume the debate on consular relations at the seventeenth session of the General Assembly. He was convinced that it had not been the intention of the sponsors of the eight-Power draft resolution to delay the conference of plenipotentiaries, but it was evident that, if the discussion were to be reopened, new decisions might be taken. Anything that risked introducing an element of uncertainty should be eliminated. The argument that Governments would submit comments, as fuller preparation for the conference, had been adduced in favour of a resumed discussion. It was admittedly indispensable that Governments should express their opinions on the draft articles, and both draft resolutions contained a reference to the subject. But the six-Power draft resolution was preferable in

that it invited States to submit comments by 1 September 1962, which allowed them ten months to prepare their comments and six months to study those they would receive. A resumed discussion would be too protracted, for it would be impossible to avoid going into detail; in fact, comments of a general nature would be of no practical interest. If the Committee wished to embark on technical discussions, there would be no point in convening a conference of plenipotentiaries, and if it was decided to convene such a conference, a resumed discussion would be superfluous. The Committee should rather turn its attention to the other questions which would be referred to it. When the following agenda item was taken up, some delegations would propose that the future work programme should include certain matters requiring thorough discussion, whereas no practical results were to be expected from a further exchange of views on consular relations.

31. He trusted that all delegations would co-operate in eliminating the differences between the two draft resolutions so that the Committee could reach a unanimous decision.

32. Mr. DONOSO (Chile) congratulated the International Law Commission on the quality of its report and on the work accomplished in the codification and development of international law, and expressed thanks to its Chairman and the Special Rapporteur.

33. His delegation fully endorsed paragraph 27 of the report, which recommended that a conference should be convened to draw up a convention on consular relations on the basis of the draft articles prepared by the International Law Commission. The draft articles were, on the whole, in conformity with the legislation and practice applied in Chile, except for certain provisions which would perhaps lead Chile to amend its legislation or make it more precise. Moreover, his Government had already offered its comments on the provisional text of the draft articles (A/4843, annex I, section 2).

34. There were two notable differences between the two draft resolutions: operative paragraph 3 of the eight-Power draft resolution proposed the inclusion of the item on consular relations in the provisional agenda of the seventeenth session of the General Assembly, to enable Governments to make additional observations concerning the draft articles, which was of paramount interest to all States. His delegation had no fixed opinion in the matter and would support the majority view.

35. The other difference, which concerned the membership of the conference, was more important. His delegation unreservedly supported the criterion proposed in operative paragraph 6 of the eight-Power draft resolution, whereby States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice would be invited. If all States were to be invited, there was a risk, as the United Kingdom representative had pointed out (706th meeting, para. 20), of aggravating controversies and compromising the work of an international conference, since certain entities claiming to be States were recognized as such by some Governments and not by others.

36. There was a third difference, which did not, however, raise any controversial issue. The third preambular paragraph of the six-Power draft resolution mentioned "the development of friendly relations among nations", while the eight-Power draft resolution was silent on the subject. His delegation considered that it was the primary objective of international law and of the United Nations to promote the development of friendly relations among nations and that it was unnecessary to mention the idea explicitly in a draft resolution.

37. Lastly, there was a difference to which no one had referred but which should be mentioned, since some delegations had spoken of the climate in connexion with the place and date for the conference. Instead of recommending that the conference should be held in the spring of 1963, the text might perhaps be made more specific by a reference to a month rather than to a season, especially as spring in the northern hemisphere corresponded to autumn in the southern hemisphere.

The meeting rose at 1 p.m.

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