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CONTENTS

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

In the absence of the Chairman, Mr. Yasseen (Iraq), Vice-Chairman, took the Chair.

AGENDA ITEM 70

Future work in the field of the codification and progressive development of international law (A/4796 and Add.1-8; A/C.6/L.491 and Corr.1 and 2) (continued)

1. Mr. THIERRY (France) said that the question under discussion was of great importance, since it affected the very future of the International Law Commission. The Commission had thus far accomplished much work and arrived at results of far-reaching effect, in particular where multilateral conventions had been drawn up following its work of codification, as had been the case with the law of the sea and diplomatic relations, and as would probably soon be the case with consular relations. In addition, even where its work had not yielded conventions, it was undeniably of doctrinal value for the study of international law. It was, therefore, essential that the quality of the Commission's work, and by that token its prestige, should not be compromised by decisions that might later prove to be erroneous or ill-considered.

2. Subject to those factors, the questions were, first, what should be the tenor of the future work programme of the International Law Commission and, next, how that programme should be established having regard to the relations between the Commission and the Sixth Committee.

3. In view of the Commission's completion of several of the tasks it had undertaken, the entry of many new Members into the United Nations and the recent political evolution throughout the world, some delegations wished for a change in the general orientation of the Commission's work: for them, it was not only a matter of adding topics to those already listed, but also one of directing the Commission's future activities away from codification, so that it might concentrate more on the progressive development of international law; instead of arriving at progressive development by means of codification, as it had thus far done with success, the Commission should now give priority to the development of international law, treated as a separate subject.

4. His delegation believed that such a change in orientation would involve serious risks. It agreed with the United Kingdom representative's opinion (717th meeting, para. 3) that the Commission should avoid dealing with questions which other United Nations organs were considering, and that account should also be taken of the insuperable difficulties that the Commission would face if it were to tackle controversial subjects which had too direct a bearing on current political tensions. Having no powers of negotiation, the Commission could clearly do no useful work on subjects regarding which irreconcilable differences of opinion subsisted between the Governments which would ultimately be called upon to decide on its drafts.

5. The work to be performed by the Commission would be of great practical value, particularly for States that had recently acceded to international life; the presence of those States would indeed enable international law to acquire a truly universal character.

6. Those States were faced with a body of international law which was, to a large extent, customary and, therefore, uncertain. It was often difficult to discover what was the law, owing to the diversity and number of sources that had to be drawn on; moreover, where the juridical equipment had not attained the completeness that was to be found in countries where specialized services, libraries of international law and research centres had long been functioning, there was no certainty that the available works truly reflected the positive law.

7. The advantage of the codification of international law was that it remedied the drawbacks of customary law. It put an end to the uncertainty of the law and permitted its adequate dissemination. States called upon to ensure the universality of international law derived most practical benefit from the codification of the rules which were applied daily in international relations, and the French delegation therefore considered that that should be the International Law Commission's primary task. If the Commission succeeded, in the near future, in preparing draft conventions on the law of treaties and on State responsibility which would be acceptable to the international community as a whole, a definite step forward would have been taken in the historic development of international law. Such an undertaking certainly appeared to be more directly useful than the formulation of the general principles which the Commission might enunciate at the conclusion of a debate on a subject such as peaceful coexistence.

8. Turning to the question of relations bwtween the International Law Commission and the Sixth Committee in the establishment of the future work programme, he said that the Commission itself might be entrusted with drawing up the programme, but the General Assembly should retain the right to intervene in approving the plans and, should the occasion arise, in proposing other topics which it considered desirable. That system of "the Commission's initiative" had been adopted in 1949 when the Commission had prepared a list of fourteen topics with an order of priority

(A/925, para. 16). The system had thus been tested and had produced good results; that was why many delegations wished to depart from it as little as possible.

9. On the other hand, it might be argued that the Assembly should refer to the Commission a programme of work drawn up by the Assembly itself. That method was advocated by delegations which believed that the choice of topics was a political matter which should be dealt with by the representatives of States rather than by experts. But the danger would then arise that the International Law Commission, precisely because of political considerations, might be assigned topics which did not lend themselves well enough to codification or which could lead the Commission, in the pursuit of progressive development, along a path that might prove inadvisable.

10. Lastly, there was the intermediate method, namely, collaboration between the International Law Commission and the Assembly. That was the solution which the French delegation recommended, considering it normal that a technical organ entrusted with a technical task should first be asked whether that task was possible and what were its advantages and drawbacks from the technical standpoint. He was convinced that, if the Assembly adopted that formula and avoided the dangers he had mentioned, it would be making a useful contribution to the excellent work already done by the International Law Commission.

11. Mr. PATTABHI RAMAN (India), tracing the work of the International Law Commission since 1947, noted that, on more than one occasion, the Commission had been criticized for the slow rate of its progress. In 1950, the General Assembly, in its resolution 484 (V), had requested the Commission to make recommendations concerning revisions of its Statute which might appear desirable for the promotion of its work; and in 1956 and 1957, some delegations, pointing out that only four of the fourteen topics selected for codification in 1949 had reached the stage of drafts, had suggested that the Commission should perhaps be divided into sub-commissions. The majority of delegations had, however, felt that the Commission should be left to itself to organize its work.

12. At the fifteenth session of the General Assembly, the idea had been advanced that a special committee should be set up to study the whole field of international law, make suggestions with regard to a new list of topics for codification and the progressive development of international law and report to the Assembly. However, in the light of the views expressed in the debate, the Assembly had finally adopted unanimously resolution 1505 (XV), which marked a definite advance in the history of international relations.

13. It was encouraging to note the achievements of the International Law Commission during the fourteen years of its existence. They included the draft declaration on the rights and duties of States, the formulation of the principles of international law recognized in the charter of the Nürnberg Tribunal and in the judgement of the Tribunal, the draft code of offences against the peace and security of mankind, the definition of aggression, the examination of the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes, the recommendations concerning the problem of reservations to multilateral conventions, the draft conventions on the elimination and reduction of future statelessness, the examination of the ways and means for making the evidence of customary international law more readily available, the draft convention on arbitral procedure for the pacific settlement of international disputes and, lastly, the draft convention on diplomatic intercourse and immunities and the draft conventions on the régime of the high seas, the régime of territorial waters, the continental shelf and fisheries: conservation of the living resources of the high seas, which had served as the basis for the preparation, by conferences of plenipotentiaries, of the Vienna Convention of 1961[1] and the four Geneva Conventions of 1958.[2] The International Law Commission had also taken up the consideration of the law of treaties and of State responsibility and had completed its study of consular intercourse and immunities.

14. Various agreements had been concluded at the regional level. The work of the conferences of the American States in 1902 and 1906 had been continued by the Inter-American Council of Jurists and its permanent organ, the Inter-American Juridical Committee, leading to the signature of conventions on the treatment of aliens, the right of asylum and the pacific settlement of international disputes. Considerable progress had been made in the matters of extradition, recognition of States and Governments, and private international law. Efforts had also been made to bring the provisions of the "Bustamente Code" into line with those of the Montevideo treaties of 1889 and 1940, with some modifications. The Inter-American Council of Jurists maintained close relations with the International Law Commission; the same applied to the Asian-African Legal Consultative Committee which had been set up in 1956 to deal with such legal problems as might be referred to it by the Governments of certain Asian countries and which, at the instance of the Prime Minister of India, had, in 1958, invited the African countries to participate in its work.

15. Article 3 of the statute of the Asian-African Legal Consultative Committee conferred on it, inter alia, the task of examining questions under consideration by the International Law Commission and placing its views before the Commission, exchanging views on legal matters of common concern and communicating to the United Nations, other institutions and international organizations, with the consent of the Governments of the participating countries, the Committee's views on international legal problems referred to it.

16. At its first session, held in 1957, the Asian-African Legal Consultative Committee had examined such problems as the sovereignty over and use of outer space. He felt that, as a result of scientific and technological developments, several new topics—including the legal aspects of the problems created by disarmament, the legal aspects of the concept of neutrality and the use of outer space—should be added to the subjects already chosen by the International Law Commission and should receive intensive study with a view to eventual codification. The question whether those subjects could be codified and what priority they should receive would have to be left to the discretion of the International Law Commission,

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

2/ United Nations Conference on the Law of the Sea, Official Records, Volume II: Plenary Meetings (United Nations publication, Sales No.: 58.V.4, Vol. II), annexes, pp. 132-143.

which must proceed with its work uninfluenced by the criticism or views of States Members of the United Nations.

17. The United Kingdom representative had rightly pointed out that many international bodies inside and outside the United Nations were dealing with various aspects of international relations; they included the Commission on Human Rights, the international conference dealing with civil aviation problems and the Committee on the Peaceful Uses of Outer Space.

18. The Conference of African and Asian countries, held at Bandung in 1955, was also of far-reaching importance, having been the first to recall the age-old doctrine of Pancha Shila that had become the pattern for non-aligned countries. That doctrine of the golden mean had been preached in India for many centuries before the birth of Christ, and the Bandung Conference had merely restated it in proclaiming the principle of peaceful co-operation among nations, which was also a corollary of Article 13 of the Charter of the United Nations. It was therefore essential that the principles of peaceful coexistence and the means of implementing them should receive study.

19. Emperor Asoka, in edict XII, had done reverence to men of all sects, but had proclaimed that gifts and external expressions of respect were not enough, for the first consideration was that a man must not pay reverence to his own sect by disparaging that of another man without reason. The Prime Minister of India had restated the same idea in pointing out, in an address to the General Assembly (1051st plenary meeting, para. 37) that, notwithstanding the conflicts of today, the world went on because of the co-operation of nations, even of those opposed to one another in the political or other fields. The Prime Minister had added that too much was said about every point of conflict and nothing about that co-operation which was going on, and that it might be more truthful to make it clear that the world today depended on co-operation and not on conflict.

20. The legal activities of the United Nations had to be revitalized, for any weakness in those activities was regarded as a weakness of the United Nations itself. Moreover, it should not be forgotten that the Charter and the resolutions of the United Nations were part of international law.

21. Before concluding, he wished to quote two conclusions reached by Erich Fromm, a political thinker, who was an eminently constructive critic of the democracies of the West as well as of the Soviet system. Mr. Fromm had said that the first step in avoiding a nuclear cataclysm and preserving democracy was to agree on universal disarmament; in order to preserve the world, certain changes had to be made and, in order to make those changes, historical trends had to be understood and anticipated.

22. The USSR representative had referred to the efforts being made to free diplomacy from the legal strait jacket (717th meeting, para. 29); it was true that the jurists' search for perfection annoyed the statesmen and diplomats, but without a legal foundation the United Nations would become weak. Democracy was no longer for the few as it had been in ancient Greece, and egalitarianism was a generally accepted doctrine. International law was the law of all mankind; war had been outlawed and was treated as a violation of international relations. The Sixth Committee had to attune itself to the new trends in international relations and had to avoid losing sight of the ideals which had motivated the founders of the United Nations.

23. Mr. SHARP (New Zealand) said that he would concentrate on a few questions of principle connected with the difficulties his country had faced on assuming control of its own external affairs a comparatively short time back. Its experience might be useful to countries which had recently attained independence.

24. Every country attaining self-government had first to lay down broad lines of policy. History, tradition and economic considerations played their part, but, in the case of a nation fully awakened to national consciousness, it did not take long for the people's will to crystallize along reasonably well-defined lines. However, mastering the methods whereby the political principles thus adopted could be carried into effect was a more lengthy and difficult process. The formulation of detailed rules governing the practical day-to-day relationship between States and their respective citizens required a detailed study which must, in the first instance, be based on the experience of other States.

25. One member of the Committee had said that his country had not yet been able to organize its consular service. Several years had elapsed before New Zealand had produced a satisfactory set of consular instructions. It was true that the Commonwealth countries had the advantage of being able to pool their knowledge, but, since they were all completely self-governing, they had, in the last analysis, to develop their own laws. In settling those practical issues, New Zealand had been greatly helped by the work already carried out by the International Law Commission. A quick perusal of the work already done or to be done by that important legal body showed their practical nature. The most recent example was the Convention on Diplomatic Relations which, even before its entry into force, afforded a good guide to a newly independent country; such a country could also be guided by the draft convention on consular relations, the research carried out by the Special Rapporteur, Mr. Zourek, and the comments transmitted by Governments.

26. His delegation looked forward with impatience to the conclusion of the work on the law of treaties, because day-to-day international intercourse would proceed on a sounder basis when rules relating to treaties had been definitely established and because the completion of the work would be of particular benefit to the newly independent States. Another topic of considerable practical importance still remaining on the International Law Commission's agenda was the succession of States and Governments. The Commission might study the rules of international law governing the succession of States which had acquired their independence by ordinary peaceful means. Other practical topics were the treatment of aliens and the jurisdictional immunities of States and their property. The Sixth Committee might also refer to the Commission the question of the privileges and immunities of special missions.

27. His delegation considered it necessary to avoid prejudicing the early completion of the work on the law of treaties and the adequate consideration of the other practical topics already on the International Law Commission's agenda by adding a formidable number of new and contentious subjects to the list. The Commission's new composition, resulting from its en-

largement, would provide the "broader approach" to all questions which had been considered desirable in General Assembly resolution 1505 (XV). His delegation did not agree with the view that international law had been created by the colonial Powers for their own benefit. International law was something greater and nobler than that. Nor did his delegation believe that a country was justified in accepting the benefits of international law as a whole while repudiating some specific obligation on the ground that it had not been a self-governing State at the time when the rule in question had become part of international law. On the other hand, it seemed to his delegation quite reasonable and even desirable that a country which considered any particular rule to be unfair should seek its alteration. The Committee would be untrue to the ideal of Grotius and the spirit which had always been characteristic of international law if it did not continue to strive for a larger measure of justice and to ensure that international law developed in accordance with the needs of the times.

28. He still maintained that the Committee should endeavour to recommend only practical questions for codification and to avoid contentious matters which would inevitably lead to a cold war debate or which were unlikely to be the subject of agreement, as well as theoretical topics in which there was no established practice or which might have a detrimental effect on the work of the International Law Commission.

The meeting rose at 11.50 a.m.

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