

United Nations
**GENERAL
ASSEMBLY**

FOURTEENTH SESSION
Official Records

**SIXTH COMMITTEE, 604th
MEETING**



Wednesday, 30 September 1959,
at 3.20 p.m.

NEW YORK

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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443) (continued)

1. Mr. MONACO (Italy) said he would confine his comments to a few points in the International Law Commission's report (A/4169).
2. The codification of the law of treaties was an important task which could not be carried out quickly and at a single stroke. In that respect, the explanations offered by the Commission were fully justified.
3. The method of work suggested in paragraph 13 of the report, namely to subdivide the study of the question into several parts, appeared to be sound and should save time, provided that the General Assembly's decisions on the various parts did not come at unduly long intervals and that changes of substance did not have to be made when the final drafting was done.
4. With regard to the form of the text to be adopted, his delegation agreed with the Special Rapporteur that a code of general character should be envisaged rather than one or more international conventions, both for the reasons given by the Commission in paragraph 18 of its report and because the law of treaties was made up primarily of purely instrumental rules which should be subject to exceptions. In the case of international instruments, substance was more important than form. Moreover, there were precedents—the London Declaration concerning the laws of naval warfare, and the Oxford Manual on the laws of war on land—which proved that voluntary rules could be applied as broadly as conventions of a binding character.
5. In connexion with the Commission's draft articles, he pointed out that the procedure for the authentication of treaties provided for in article 9, paragraph 1 (c), would in reality have a much stronger effect in the case of a text adopted by an international organization, in conformity with paragraph 4 (d) of draft article 6, since the incorporation of the text in a resolution of the organization would give it binding force and render its acceptance final. Agreements emanating directly from international organizations were a new field which should be given special study by the Commission.
6. The extent of the task the Commission had already taken upon itself was clear from the outline of the work in progress it had given at the end of its report (A/4169, chap. IV, sect. I); at the same time, the num-

ber of fields in which codification was needed continued to grow, as the Salvadorian delegation had pointed out, in the case of the right of asylum, in its draft resolution (A/C.6/L.443). Italy, which gave political asylum a prominent place in its Constitution, was greatly interested in the proposal. However, before preparing a draft resolution it was important to consider whether the subject of the right of asylum could be codified, and to what extent such codification was desirable. In that connexion, it might be useful to recall the work done by the Institute of International Law at its 1950 session at Bath, England. On that occasion, Professor Perassi of Italy had submitted a report and draft articles on the right of asylum which represented the most important statement of present-day theory. Leaving regional practices out of account, the Institute of International Law had recognized that existing practice was not uniform, and that general rules could not match the maximum standards which might exist in a particular region. The Commission would therefore have to solve the problem of the existence of two different sets of standards, side by side.

7. With regard to international jurisprudence on the subject, he would only refer to the decision made by the International Court of Justice in the recent *Haya de la Torre* case, involving a dispute between Colombia and Peru. The Court had noted on that occasion that it had been unable to find a constant and uniform practice which was accepted as law.

8. The purpose of his remarks had been solely to point out to the Committee the difficulties involved in codifying the rules relating to the right of asylum. But by undertaking a preliminary study as quickly as possible the Commission might give the subject an order and clarity it did not as yet possess.

9. Mr. MESSINA (Dominican Republic), referring in particular to chapters II and III of the Commission's report (Law of treaties and Consular intercourse and immunities), said that the provisional rules prepared by the Commission would be of great assistance in the preparation of final drafts. In spite of all difficulties, the Commission continued to contribute to the formation and codification of positive international law, which perhaps before long would regulate the relations between States on a binding basis.

10. At the present stage of the Commission's work, it would be preferable, as several representatives had said, for the Sixth Committee simply to take note of the Commission's report and to express its gratitude for the work the Commission had done.

11. His delegation regretted that it was unable to support the Salvadorian proposal (A/C.6/L.443) concerning codification of the rules of international law relating to the right of asylum, first because his country had denounced the regional conventions on diplomatic asylum concluded at Havana in 1928 and at Montevideo in 1933, and secondly because the question

seemed too controversial to be the subject of general codification within the meaning of article 15 of the Commission's Statute.

12. U MAUNG MAUNG (Burma) said that in spite of the difficulties noted by its Chairman, the International Law Commission had succeeded in making a further contribution to the progressive development of international law.

13. Since the draft articles on the law of treaties and on consular intercourse and immunities had not yet been completed, the Committee should, as had been said, confine itself for the time being to taking note of the report, and postpone a discussion of substance to a later date. In the meantime, it might perhaps be advisable to provide for closer co-operation between Governments and the Commission and its Special Rapporteur. If Governments could be induced to take a larger part in preparing the draft articles, the final discussions would be shortened and it would then be easier to reach unanimous agreement. The practical means for achieving that co-operation remained to be studied.

14. Lastly, his delegation wished to associate itself with the views expressed by the representatives of El Salvador and Cuba at the 602nd meeting concerning codification by the Commission of the principles relating to the right of asylum. As new States were born, the problem of asylum and extradition would take on new dimensions, and it was important to define and, if possible, codify the relevant legal principles generally accepted, even if the problems involved often had political implications.

15. Mr. CACHO ZABALZA (Spain) thanked Sir Gerald Fitzmaurice for his explanations concerning the difficulties the Commission had encountered at its eleventh session. It must be recognized that very little progress had been made with the two studies undertaken on the law of treaties and on consular intercourse and immunities. It seemed that the Sixth Committee could do no more than take note of the Commission's report.

16. Although the work done so far on the law of treaties covered only a few articles, the question immediately arose whether codification of the subject should take the form of a code or a draft convention. While the first Special Rapporteur had advocated a draft convention, the Commission had now decided in favour of a code. It would be very useful to ascertain the opinion of Governments on that important question. Consideration should also be given without delay to means by which the Commission might overcome its difficulties and advance its work. It might, for example, submit to Governments the parts of a draft it had already completed, without waiting to complete its study of the subject.

17. At the twelfth session of the General Assembly the members of the Sixth Committee had expressed the hope that the highest priority would be given to the question of consular intercourse and immunities, but it had not yet been possible to submit the final text of the draft articles to Governments; time would be saved if questionnaires on the specific points on which additional information was needed were submitted to Governments.

18. His delegation welcomed the Salvadorian proposal (A/C.6/L.443), and would be happy to support it.

19. Mr. VELAZQUEZ (Uruguay) said that his delegation greatly regretted the difficulties which the International Law Commission had encountered during its previous session, and which had considerably slowed down its rate of progress. Nevertheless, quality was much more important than speed, and his delegation found the progress achieved gratifying.

20. He shared the view that the Sixth Committee should confine itself to taking note of the progress made by the Commission, and should refrain from embarking on a discussion of the question whether the codification of a topic such as the law of treaties should take the form of a code or a draft convention. Although it might be interesting from the point of view of theory, such a discussion would be more appropriate when the Committee had before it a preliminary draft in a definitive form. It was true that all codification work involved a legislative element which fell within the province of the progressive development of international law, and that Article 13 of the United Nations Charter did not restrict the competence of the General Assembly to the formulation of a mere routine statement of the law in force, but it was equally true that, despite the practical difficulties which might be encountered in separating the two functions provided for by the Charter, codification consisted essentially in declaring that the laws existed. The advocates of a law of treaties code argued that such matters were governed by customary international law. Their contention could only be proved, and a decision made as to the desirability of a code, when at least the essential parts, if not the full text, of the draft articles were available.

21. His delegation welcomed the proposal of El Salvador that the Commission should be requested to undertake the codification of the principles and rules of international law relating to the right of asylum. It was primarily the Latin American countries which had drafted the relevant rules, but those rules had not always been received with favour and understanding by European jurists. Uruguay had attained political maturity, despite all its difficulties; it fully respected human rights and individual freedoms and was fortunately innocent of both genocide and racial discrimination. It therefore welcomed a move which would enable the study of that important matter to be entrusted to jurists among whom were representatives of countries where the concept of the right of asylum had perhaps lost much of its pristine vigour. Many of those countries enjoyed an atmosphere of peace and political calm, and the right of asylum might seem to them an unnecessary institution. It was well to remember, however, that the right of asylum had been instituted as a safeguard, at least as important as *habeas corpus*, that situations believed to have disappeared forever had a tendency to recur in many parts of the world, and that for many countries, particularly those of Latin America, the granting of political asylum was a duty, stemming from the solidarity of mankind.

22. Emphasizing that the codification proposed by El Salvador was not in any way likely to weaken the institution of the right of asylum, which would retain all its essential features, he pointed out the importance of the contribution which the Latin American countries could make in that connexion to the development of international law.

23. Mr. GUZMAN (Ecuador) found the International Law Commission's report most encouraging, in view of the difficulties encountered by the Commission. Like

several other representatives, he was in favour of waiting until the Commission had completed the drafts it was preparing, before discussing them in the Sixth Committee.

24. With regard to the future work of the Commission, his delegation would support the Salvadorian draft resolution on the right of asylum (A/C.6/L.443). As the Uruguayan representative had rightly pointed out, the right of asylum was an institution particularly cherished in Latin American countries. It had been in existence since the founding of the Latin American Republics, or for more than a century, and was rooted in the very essence of their legal and political institutions. That humanitarian legal institution had been instrumental in saving many lives and the peace of countless homes. In proof of that, he referred to the memorandum on foreign affairs which had been submitted to the nation by the Ecuadorian Minister of Foreign Affairs on 10 August 1959. In the last twelve months, Ecuadorian diplomatic missions had granted asylum to 123 nationals of various American countries. He did not propose to go into the history of the right of asylum, but it was sufficient to recall that regulations governing asylum had been included in some of the first agreements entered into by the Spanish American countries, for example in those adopted at the American Congress at Lima (1847) and in the Continental Convention of Santiago de Chile (1856). It was true that there was still discussion among the Spanish American States respecting questions of substance, but on the whole the institution had been respected and practised by them since the beginning of their sovereign existence. Even the United States of America, which did not recognize the right of asylum as a legal institution, had signed inter-American conventions on the subject and on repeated occasions had, in practice, waived its own reservation; even in very recent times, it had granted asylum not only in America but also in Europe. On the other hand, since Latin America was not the most politically disturbed area in the world, the right of asylum which was of Western origin would acquire new strength through the arrangement and standardization of the rules or practices prevalent also outside America. That would constitute a new contribution by the American continent to the progress of international law and would thus help to maintain world peace. His delegation, therefore, believed that the codification proposed by El Salvador would be a useful achievement and deserved support.

25. Mr. MAURTUA (Peru), referring to certain views expressed by the Italian representative, stated that the International Court of Justice had given a considered judgement in the dispute between Colombia and Peru; the weakness of that judgement lay, not in any lack of treaties, but in the fact that existing treaties had not been ratified. The dispute was settled, not exclusively by the judgement of the Court, but also as a result of agreement between Colombia and Peru.

26. On the American continent, the right of asylum was a regular institution and the subject of several conventions; it was also mentioned in the Universal Declaration of Human Rights. It was regarded as a moral duty and a universal obligation, which went beyond the scope of multilateral conventions. The difficulty lay in the designation of offences. The Montevideo Convention of 1933 had granted the right to define an offence to the country granting asylum. The problem for the Sixth Committee was to decide to what extent the two forms of asylum—political and diplomatic asylum, and territorial asylum—had been accepted. It would also have to decide the extent to which the International Law Commission should concern itself with the status of the political refugee.

27. In view of the importance of the right of asylum, his delegation would support the Salvadorian draft resolution.

28. Mr. SAHOVIC (Yugoslavia) said that while he was aware of the difficulties encountered by the International Law Commission during the past year, he hoped that its programme of work would enable it to submit to the Assembly at its fifteenth session the full text of its draft articles on consular intercourse and immunities.

29. His delegation had noted with satisfaction that at its eleventh session the Commission had resumed its consideration of the law of treaties. While codification was not of particular urgency, it seemed desirable to continue the study of that branch of international law without further delay, since the practice of States following the Second World War, as well as United Nations practice, had introduced many new factors worthy of appraisal and codification. A discussion on the methods of codification would be much more fruitful at a later stage, when the Committee had a complete draft before it.

30. Quoting paragraph 46 of the Commission's report, he expressed the fervent hope that the Commission would consider, at its twelfth session, the possibility of sending an observer to a future session of the Asian-African Legal Consultative Committee. Such a step was in conformity with the objectives of the International Law Commission, and would give expression to the Commission's wish to keep more closely in touch with current trends in the development of international law in regions which had undergone profound political and social changes in recent years.

31. The Yugoslav delegation, like many others, felt that the General Assembly should confine itself to taking note of the International Law Commission's report.

The meeting rose at 4.30 p.m.