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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, 444 and Add.1, A/C.6/L.445) (continued)

1. Mr. GAMBOA (Philippines) observed that one of the most important functions of the General Assembly was the encouragement of the progressive development of international law and its codification, as provided for under Article 13, paragraph 1 a, of the United Nations Charter, to ensure that relations among States were governed, and their disputes settled, by the rule of law. While it was true that differences between States could be divided into two categories—legal and political—and that political questions could not appropriately be adjusted by international law, the history of international arbitration proved that gaps in international law could be filled by the application of the general principles of law recognized by civilized nations or by decisions rendered *ex aequo et bono* as provided for in Article 38, paragraph 2, of the Statute of the International Court of Justice.

2. With regard to the report of the International Law Commission (A/4169), particularly chapter II on the law of treaties, the rules governing treaties still lacked clarity and uniformity, in spite of the importance of that branch of international law as indicated by the large number of treaties signed. While codification of the law of treaties as envisaged by the International Law Commission might paralyse its natural development, such a step would have the advantage of rendering the law clear, specific and more easily accessible. It might in due course serve as the basis for an international convention on the law of treaties.

3. In view of the provisional character of the report, substantive discussion of the articles was premature. The Philippine delegation therefore supported the joint draft resolution (A/C.6/L.444 and Add. 1) under which the General Assembly would take note of the report of the International Law Commission and express its appreciation of the work done by the Commission.

4. With respect to the draft resolution on codification of the rules relating to the right of asylum submitted by the delegation of El Salvador (A/C.6/L.443), the practice of States on the subject varied widely. Some States recognized both the right of diplomatic asylum and the right of territorial asylum, whereas others recognized only the right of territorial asylum. It was precisely because the practice varied so greatly that

examination and codification of the rules relating to asylum would be most useful. The Philippine delegation would therefore vote in favour of the draft resolution submitted by El Salvador on the understanding that its affirmative vote should not be construed as affecting the current policy of the Philippines in respect of the right to diplomatic asylum.

5. Mr. CHOBANOV (Bulgaria) said he had been very much interested in the report of the International Law Commission and the statement made by its Chairman, Sir Gerald Fitzmaurice (601st meeting). While he would not deal with the substance of the drafts on the law of treaties and on consular intercourse and immunities, he agreed with the representative of Czechoslovakia, who had said (605th meeting), that it would be inadvisable to postpone consideration of the draft on diplomatic intercourse and immunities until examination of the draft on consular intercourse and immunities had been concluded. A postponement would only delay consideration of the draft on diplomatic intercourse and immunities without contributing in any way to improve the regulations governing both matters.

6. On the question whether the instrument on the law of treaties should be in the form of one or more conventions or a code, the International Law Commission appeared to favour the latter course. That was a departure from its previous position. In fact, the Commission had hitherto done more than engage in research, compilation and standardization; it had conceived its task to be a creative one and had sought to formulate its own rules where practice had been either non-existent or lacking in unity and consistency and where legal theory was uncertain or divided. The Bulgarian delegation felt that the Commission should not depart from that creative role. If the international community failed within a reasonable time limit to adopt conventions or treaties governing relations between States, it would take centuries for a body of customary law to be created. An understanding on common rules that scrupulously respected national sovereignty was perfectly feasible in spite of ideological, social and political differences among States.

7. Mr. CHAYET (France) said that the French Government held the International Law Commission and its Chairman, Sir Gerald Fitzmaurice, in high esteem. The French delegation supported the joint draft resolution (A/C.6/L.444 and Add. 1) since the two drafts prepared by the Commission were not yet ready for final comments.

8. On the question of the presentation of the work on the law of treaties, it might be best to endorse the view expressed by the Commission in its report (A/4169, para. 18) in favour of simple codification. All that had to be done in the matter was to prepare, for the benefit of experts, a guide to the practices followed. The arguments adduced in favour of a convention did not seem very convincing in the case of a subject the substance of which was so directly within the competence of States.

9. With regard to the draft resolution submitted by El Salvador (A/C.6/L.443), he recalled that, on the question of territorial asylum, the Commission on Human Rights, at its fifteenth session, had adopted a resolution<sup>1/</sup> in which it had decided to draft a declaration on the question at its sixteenth session. The International Law Commission could therefore not undertake a codification before the results of the study by the Commission on Human Rights were available. However, on the understanding that the Salvadorian draft resolution did not affect that study or the work provided for in paragraph 44 of the report of the International Law Commission, there was no reason to object to the inclusion of the question in the Commission's programme of work at a later stage.

10. The International Court of Justice, in its judgement on the "Haya de la Torre" case, had found that practice with respect to diplomatic asylum was not very clear. The French delegation doubted that the topic lent itself to codification.

11. With regard to the Bolivian draft resolution (A/C.6/L.445) no position could be taken at the present session on operative paragraph 1 for lack of essential data. On the other hand the Sixth Committee might, subject to the views of the Secretary-General, take a decision on operative paragraph 2, which was of a more practical nature.

12. Mr. ZEMANEK (Austria) congratulated the International Law Commission on the work it had done at its eleventh session in spite of the many difficulties it had had to overcome. The Austrian delegation would support the joint draft resolution (A/C.6/L.444 and Add. 1).

13. With regard to the law of treaties and the draft on consular intercourse and immunities, his delegation felt, as did many others, that it would be advisable to wait until the articles were drafted in their final form before discussing them in detail. He would like, nevertheless, to comment on two points immediately.

14. The first concerned the form in which the draft articles on the law of treaties should be presented to States. The International Law Commission had suggested either an international convention or a code. The Austrian delegation felt that the Commission, before making any recommendation to the General Assembly, should reconsider the question in the light of the statements made in the Sixth Committee. While Austria could not take a final position as yet, it thought that the two alternatives did not have the same legal value. Codification in itself was not a source of international law and had no legal force if it did not result in an instrument which in itself was a source of law. A code would therefore merely set forth the existing customary law and would have no binding effect upon States. It was open to doubt whether the Commission had really been set up to engage in such purely theoretical work or whether its task was not rather the progressive development of international law. Moreover, some of the articles already drafted, such as article 6, paragraph 4, and article 17, paragraph 2 (c), constituted development of international law and could hardly be embodied in a mere code. On the other hand, if the draft articles were embodied in a multilateral convention some States might either not become parties to it, or might do so subject to certain reservations, or

might become parties to it only to denounce it later. That argument, incidentally, was not restricted to the law of treaties. The danger of existing customary law being only partly observed might perhaps be even greater in the case of a code that was intended merely to restate that law than in the case of an international convention which, being a separate source, would leave customary law untouched.

15. The second point concerned *ad hoc* diplomacy and relations between States and international organizations. The Austrian delegation noted with satisfaction the inclusion of those topics in the Commission's agenda, since it considered them to be of the utmost importance. Consideration of those matters would contribute greatly to the development of international law. The Commission should ensure that the drafts conformed in structure to those already prepared.

16. The Austrian delegation would vote in favour of the Salvadorian draft resolution (A/C.6/L.443). It would state its position on the Bolivian draft resolution (A/C.6/L.445) at a later stage. However, it would like to know why reference was made in operative paragraph 1 to "international or inter-State waterways and navigation thereon" and in operative paragraph 2 to "the use of international or inter-State rivers", and also whether the Secretariat was expected to provide the funds for the work.

17. Mr. PATHAK (India) said that his delegation was in general agreement with the methods adopted by the International Law Commission. In particular, it endorsed the views expressed by the Commission in paragraph 13 of its report. Even though the work of the different branches of the law of treaties might subsequently have to be reviewed and adjustments made, the various subdivisions could be dealt with separately without awaiting completion of the work on the whole subject. However, as the draft articles in chapter II of the report were purely provisional, comment at the present stage would be premature. Without wishing to prejudge the Commission's decision on the form which codification of the law of treaties should take, the Indian delegation was inclined to favour a code rather than a draft convention.

18. He paid a tribute to the work done by the Commission and the Special Rapporteur on the subject of consular intercourse and immunities, and he noted with satisfaction that the Commission would give priority to the topic at its next session. The Indian delegation would comment on the subject at the appropriate time.

19. The Commission's inability to have an observer attend the meetings of the Asian-African Legal Consultative Committee was regrettable, and it was to be hoped that informal consultations between the Chairman of the Commission and the members of that Committee attending the current session of the General Assembly would lead to arrangements which would facilitate closer consultation between the two organs.

20. In conclusion, the Indian delegation would vote in favour of the joint draft resolution (A/C.6/L.444 and Add. 1) and the draft resolution submitted by El Salvador (A/C.6/L.443). In connexion with the latter, the work to be entrusted to the Commission was closely related to the work already done by the Commission on Human Rights on the subject. The International Law Commission would undoubtedly take into consideration the results of that work. The Indian delegation reserved the right to comment on the Bolivian draft resolution (A/C.6/L.445) at a later stage.

<sup>1/</sup>See Official Records of the Economic and Social Council, Twenty-eighth Session, Supplement No. 8, chap. III, para. 74.

21. Mr. SILVA (Venezuela) said he would support the joint resolution, while reserving the right to come back later to the substance of the questions discussed in the International Law Commission's report.

22. As the representative of a Latin American country, he was happy to note the interest shown by the Member States in the question of the right of asylum. His delegation would vote in favour of the Salvadorian draft resolution.

23. As the document containing the Bolivian draft resolution (A/C.6/L.445) had not been received until that morning, the Venezuelan delegation had not had time to study it and reserved the right to state its position on that subject at a later meeting.

24. Mr. TUNCEL (Turkey) thanked Sir Gerald Fitzmaurice for his very interesting report to the Sixth Committee on the work done by the International Law Commission at its eleventh session. He noted from that report that it had not been possible to complete the draft on consular intercourse and immunities in time for the current session of the General Assembly, because of the absence of the Special Rapporteur of the International Law Commission. He did not dispute the importance of the personal role of the Rapporteur, but he felt that the Commission could find suitable means of preventing similar situations from recurring in the future. In that connexion, the proposal made at the 606th meeting by the representative of Canada for the appointment of assistant rapporteurs was worthy of consideration.

25. With reference to article 16 (e) of the Statute of the International Law Commission, which provided that the Commission "may consult with scientific institutions and individual experts", he suggested that the International Law Commission should seek the advice of diplomats for the preparation of the draft on consular intercourse and immunities. The work of the International Law Commission would be even more satisfactory if it were based on the experience of diplomats in that field.

26. The question had been asked whether or not the draft articles on diplomatic intercourse and immunities and the draft articles on consular intercourse and immunities should be examined separately. The debates in the Sixth Committee, at both the preceding and the current sessions, showed that the attitude of States was influenced by the administrative regulations existing in each individual State. Brazil, for example, where consular and diplomatic functions were separate, had requested at the 606th meeting that the two drafts should be considered separately. That was an understandable question of principle, but States should not be guided solely by their own administrative systems; it would be better for them to adopt a conciliatory attitude which would make some progress in the matter possible. His delegation was in favour of the joint examination, at the same conference, of all texts dealing with immunities. In that respect, he expressed his satisfaction with the suggestion made by the Chairman of the International Law Commission not to postpone until 1961 the preparation of a final draft on consular intercourse and immunities but to submit the draft to Governments at its next session, so that the final examination of the draft could take place in 1961.

27. His delegation had also noted with satisfaction the progress achieved by the International Law Commission in *ad hoc* diplomacy (A/4169, para. 44). In

particular, it drew attention to the Special Rapporteur's statement to the effect that he would be able to submit his report to the International Law Commission at its next session. His delegation endorsed the joint draft resolution (A/C.6/L.444 and Add. 1) though it felt that some mention should be made therein of the progress achieved with regard to the law of treaties and to consular intercourse and immunities.

28. With reference to the Salvadorian draft resolution (A/C.6/L.443), he recalled that at its seventh session, the General Assembly had requested the International Law Commission to give priority to the codification of the topic of diplomatic intercourse and immunities (resolution 685 (VII)). That decision had been taken on the initiative of the Yugoslav delegation, which on that occasion had pointed out a specific instance of violation of the premises of a diplomatic mission. The circumstances in which the relevant decision had been taken indicated that the draft prepared by the International Law Commission would contain a provision guaranteeing the inviolability of the Embassy building in the event of diplomatic asylum. The Commission, however, had considered it advisable not to include such a provision in the draft, but had stated in paragraph (4) of its commentary on article 40 (A/3859, page 26) that among the agreements referred to in paragraph 3 of that article there were certain treaties governing the right to grant asylum in mission premises which were valid as between the parties to them. It would appear that that decision by the Commission not to deal with the question of asylum in its draft was in contradiction with its programme of work. Any draft on diplomatic intercourse and immunities should contain, among the provisions concerning the inviolability of the mission premises, a clause concerning the right of asylum. The University of Istanbul, which had studied the draft, had recommended that the Turkish Government should propose at the next conference that that significant gap should be filled. To those who asserted, in opposition to the codification of the right of asylum, that the custom in the matter was hardly uniform outside Latin America, he would point out that a well-established custom was in existence in most of the European countries. Moreover, territorial asylum had already been studied by the Commission on Human Rights; the point at issue there was the co-operation between the two Commissions, and it was clear that the International Law Commission would keep itself informed of the achievements of the Commission on Human Rights.

29. With reference to the Bolivian draft resolution (A/C.6/L.445), he pointed out that the International Law Commission was required, under article 18 of its Statute, to survey the whole field of international law with a view to selecting topics for codification and, when it considered that the codification of a particular topic was necessary and desirable, to submit its recommendations to the General Assembly. His delegation felt that it would be better for the Assembly to leave it to the International Law Commission to decide whether the question of international rivers was an appropriate subject for codification, than to take the initiative of requesting the Commission to include that question in its programme of work.

30. Mr. MATSUDAIRA (Japan) said that his delegation had been highly satisfied by the quality of the work done at its eleventh session by the International Law Commission, and had been happy to join several other delegations in proposing that the General Assembly



should congratulate the Commission and take note of its report. He also stated that his delegation would vote in favour of the Salvadorian draft resolution.

31. Mr. SARAIVA GUERREIRO (Brazil) pointed out to the representative of Turkey that in Brazil there was only one foreign service career for the members of the diplomatic and the consular corps, which were governed by the same rules. However, the same officer when posted in a diplomatic mission enjoyed diplomatic status, but when transferred to a consular post would have a different status. The Brazilian delegation's position on the advisability of examining together or separately the two sets of draft articles prepared by the International Law Commission was in no way dictated by the internal organization of the Brazilian diplomatic and consular service, but rather by considerations of a practical nature.

32. Mr. SAHOVIC (Yugoslavia) pointed out, for the benefit of the representative of Turkey, that when the Yugoslav delegation had proposed at the seventh session of the General Assembly that the International Law Commission should be requested to give priority to the codification of diplomatic intercourse and immunities,<sup>2/</sup>

<sup>2/</sup>See Official Records of the General Assembly, Seventh Session, Annexes, agenda item 58, document A/2252, para. 1.

it had had in mind, not the question of diplomatic asylum, but the codification of rules applicable to such intercourse and immunities, with a view to the preparation of a convention reflecting the current state of international law. He also recalled that during that same session a proposal for codification of the right of asylum had been rejected by a large majority.

33. Mr. TUNCEL (Turkey) recalled in that connexion the summary records of the 313th to 316th meetings of the Sixth Committee. At the 313th meeting, the representative of Yugoslavia, in submitting his Government's proposal, had mentioned violations of the premises of legations or embassies and of apartments occupied by diplomats; he had also given a concrete example.

34. Mr. ESCOBAR (Colombia) confirmed that at the seventh session his delegation had requested the International Law Commission to give priority to the codification of the right of asylum;<sup>3/</sup> but he wished to point out that that request had been rejected not as a result of an examination of the substance, but for procedural reasons, as it had been judged inadmissible within the framework of the Yugoslav proposal.

The meeting rose at 12.25 p.m.

<sup>3/</sup>Ibid., document A/C.6/L.251.