

GENERAL ASSEMBLY

TWELFTH SESSION

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Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

AGENDA ITEM 53

Report of the International Law Commission on the work of its ninth session (A/3623) (continued)

GENERAL DEBATE (continued)

1. Mr. BODY (Australia) said that his delegation shared the view that it would be inopportune for the Sixth Committee to express its views on the emoluments of the International Law Commission's members (A/3623, paras. 30-32) while the whole question of honoraria and allowances payable to members of the United Nations commissions was being examined in the Fifth Committee. The Fifth Committee had the Commission's own views on record, and would undoubtedly take them into account in reaching a decision. The best course for the members of the Sixth Committee would be to take note of the Commission's report.
2. Mr. EGHBAL (Iran) said that he was in no position to make any official comment on chapter II of the report because the matter was being studied by his Government. Furthermore, he felt that the question of diplomatic privileges should be dealt with in conjunction with the expected draft on consular immunities.
3. With reference to chapter IV, he welcomed the Commission's decision to establish a working relationship with the Asian Legal Consultative Committee, and agreed with the United States representative's suggestion regarding the question of emoluments (511th meeting, para. 8).
4. Mr. CHAUMONT (France) said that the Commission's very comprehensive draft on diplomatic intercourse and immunities appeared at first sight excellent. He himself could not enter into the substance of the text, as in doing so he would be anticipating the views of his Government, but he certainly would not deny the right of those delegations which already had instructions on the subject to make detailed observations.
5. A point of considerable interest was the Commission's statement in paragraph 14 of its report on the relations between States and international organizations. It was not wholly clear whether the Commission proposed to look into that problem at a later stage, but the last sentence of the paragraph was in itself hardly sufficient to dispose of the entire

subject. It would some day have to be studied in its entirety, and the principles developed through experience would have to be translated into explicit rules. One example of the problems confronting international organizations and requiring regulation was the question of representation.

6. Mr. ROSENNE (Israel) said that, as the greater part of the Commission's report was of an interim character, he would confine himself to some general observations.

7. The year under review had seen the appearance of the first two volumes of the Yearbook of the International Law Commission, which did not perhaps contain all the information that his delegation would have wished, but was nevertheless a welcome step in the right direction.

8. His delegation, which had never regarded the codification of international law as a purely technical process, welcomed the Committee's willingness to devote a reasonable time to the debate on the Commission's report. The success of codification always depended on a close integration of the subject with the political environment in which the law operated, and such integration was precisely the function of the Sixth Committee. The Committee's appreciation of that point, coupled with the fact that the Commission had disposed of the various special tasks assigned to it by the General Assembly and had been able in the last few sessions to concentrate on the work outlined in Article 13 of the Charter, augured well for the future.

9. For Israel, the Commission's work had a special significance. The comprehensive legal system taken over from the Mandatory Government was being thoroughly overhauled and completed, and the Commission's researches were of the greatest value in guiding the legislature and executive in the mixed spheres of international and domestic law. Recent Israel legislation and certain international agreements to which Israel was a party had been influenced by the Commission's work on the law of the sea and on arbitral procedure, while the consolidation of the legislation on diplomatic and consular privileges and immunities, although urgent, was being held over pending the completion of the Commission's work. The Israel delegation was therefore somewhat perturbed by the order of priorities set forth in paragraph 25 of the Commission's report, and hoped that the topic of consular intercourse and immunities would be given more immediate consideration.

10. Since the draft articles on diplomatic intercourse and immunities were now being studied by his Government, his delegation was not in a position to make any observations on the substance of chapter II of the Commission's report. There were, however, other points arising out of the report which could be discussed immediately. Paragraph 15 seemed to suggest

that the Commission might be paying too much attention to the form in which its completed draft would be submitted to the General Assembly. In codification, which consisted of stating existing law, the question of form was of subsidiary importance. It would probably only assume material significance if any given draft, or part thereof, fell predominantly into the classification of "progressive development", where the form in which obligations were defined would have a permanent influence on the evolution of new principles. Referring to a statement made by his delegation in 1953 at the 382nd meeting of the Committee, he drew attention to recent jurisprudence of the International Court of Justice, notably in the *Nottebohm Case*,^{1/} which indicated that the work of the International Law Commission could come within the scope of Article 38, paragraph 1 d of the Statute of the Court.

11. The issues raised in paragraphs 26 to 29 of the report were also of great importance. The Israel delegation believed that it would be improper for the Committee to issue directives to the Commission on the conduct of its affairs. The quality of the Commission's work should never be sacrificed in favour of speed, and the possibility that the completion of some particular task might take an extra year or so was hardly a cause for worry. On the other hand, once any task had been started, its completion should not be unduly delayed for purely procedural reasons. In that connexion, he thought that the Commission was perhaps spending too much time on line-by-line discussions of the various drafts. It might consider some procedure under which the special rapporteurs would submit an initial draft which would be more representative of the various points of view held by members of the Commission. Possibly, the special rapporteur might act partly as co-ordinator for a small sub-committee, the members of which would comment in writing on his preliminary work, always so long as the draft submitted to the Commission would continue to bear the stamp of the personality of the special rapporteur. Furthermore, the Commission could be asked to include in the report to be submitted to the thirteenth session of the General Assembly a special section dealing with the whole question of its method of work. It was to be remembered, however, that the most efficient method of work might have financial or administrative implications to be considered in other organs than the Sixth Committee.

12. Another point arose in connexion with the commentaries provided by the Secretariat. Two such documents had appeared: the Commentary on the Draft Convention on Arbitral Procedure (A/CN.4/92) and the reference guide to the articles concerning the law of the sea (A/C.6/L.378). Since those two documents differed very substantially, he hoped that the Commission, in co-operation with the Secretariat, might work out a standard form for such commentaries, combining the characteristic features of both — a note on doctrine and practice and a legislative history of the texts. Such a form would, of course, only serve as a guide, as rigid adherence to it might often prove impracticable.

13. His delegation had noted with interest the Commission's decision to establish relations with the Asian Legal Consultative Committee, for in that way the international law as interpreted and practised by

the peoples of Asia would be brought into contact with the main stream of internationalist thought. Such contact would certainly enrich universal international law. He enquired if the Secretariat could give particulars of the origins and constitution and methods of work of that Committee.

14. In conclusion, he said that the Israel delegation would give its support, both in the Sixth Committee and in the Fifth Committee, to proposals designed to secure adequate payments for the Commission's members.

15. Mr. SZTUCKI (Poland) said that the Commission's draft on diplomatic intercourse and immunities constituted a succinct and useful codification of the recognized principles of international law, as well as of contemporary diplomatic practice. The risk of disputes concerning the interpretation of the provisions would, he thought, be reduced if some of the commentaries, in particular those on articles 18, 20 and 24, were embodied in the articles themselves.

16. In the interests of ensuring the participation of as many States as possible in the future convention on the subject, it was important, on the one hand, to formulate rules which would be as uniformly binding as possible and, on the other, to leave States a certain latitude to retain specific usages to which they were particularly attached. It would be neither just nor practical to impose upon States institutions or practices which they were not prepared to accept.

17. His delegation welcomed the Commission's decision to discuss rules pertaining to so-called "ad hoc diplomacy" at its next session.

18. With regard to paragraph 14 of the report, concerning relations between States and international organizations as governed by special conventions, he pointed out that there were cases when States on whose territory an international organization was holding its meeting were not parties to such conventions. On some occasions that gave rise to delicate situations which might be avoided by special provisions to cover such cases. He thought the Commission should draft such provisions.

19. His delegation was glad to note the progress of the Commission's work on arbitral procedure.

20. Mr. PETRZELKA (Czechoslovakia) said that the International Law Commission, with its enlarged membership, was adopting new and more effective working methods. It was gratifying to note also that the Commission had begun to co-operate with some important regional bodies.

21. The decision of the Commission concerning arbitral procedure (A/3623, para.19) was at variance with General Assembly resolution 989 (X), the ultimate object of which was a convention, not merely a set of guiding rules.

22. Commenting on the draft articles on diplomatic intercourse and immunities, he said that article 2 should contain a more detailed description of the functions of permanent diplomatic representatives.

23. He welcomed the statement made in paragraph 13 of the report that the Commission would prepare a codification of the rules concerning ad hoc missions, which were playing an increasingly important part in international relations.

^{1/} I.C.J. Reports 1955, p. 4.

24. With regard to the relations between States and international organizations (A/3623, para.14), he said the provisions of Article 105 of the Charter were quite satisfactory. They were supplemented by the 1946 Convention on the Privileges and Immunities of the United Nations. The privileges and immunities of specialized agencies were likewise governed by multilateral international conventions. There was therefore no practical reason for the Commission to make a special study of the question.

25. In view of the many similarities between the two subjects, the Commission should deal with the question of consular intercourse and immunities immediately after completing its final draft on diplomatic intercourse and immunities.

26. He reserved the right to comment on specific points.

27. Mr. FUSTER (Paraguay) said that his delegation would refrain from commenting in detail on the draft articles at that time. He wished to associate himself with the representative of Uruguay, who had expressed the hope that the final draft on diplomatic immunities would include some mention of the right of asylum (511th meeting, para.17).

28. Mr. DEVASER (Federation of Malaya) said that he was not in a position to comment in detail on the draft articles on diplomatic intercourse and immunities at that time, but reserved the right to do so later.

29. His delegation hoped that the International Law Commission would be able to complete its work as quickly as possible without sacrificing thoroughness and accuracy. In that connexion, he shared the view of the Indian representative (510th meeting, para.29) that the Commission's work might be expedited if particular topics were referred to sub-commissions.

30. With respect to certain doubts which had been expressed concerning article 2 (b) of the draft articles, he said that the protection of its nationals was very clearly part of the functions of a diplomatic mission. Speaking on matters touched on in articles 24 and 26, he supported the view that a diplomatic agent should not be allowed to purchase private property in the receiving State, but that if he were so allowed, his immunity should be absolute and not relative. Concerning article 34 on the termination of an agent's function, he thought that provision should be made for the contingency of the dethronement or abdication of the agent's sovereign.

31. Mr. COOPER (Liberia) complimented the Commission on its masterly report; he hoped it would receive the written comments of Governments in time for its 1958 session.

32. His delegation supported the view of the representatives of Haiti (509th meeting, para.55) and the United States (510th meeting, para.23) that the questions of diplomatic and consular intercourse and immunities should be considered together.

33. With respect to the Commission's emoluments (A/3623, paras.30-32), he thought that no action should be taken by the Sixth Committee until it had received the report of the Fifth Committee.

34. Mr. TODOROV (Bulgaria) said that it would not be advisable for the Committee to make a detailed study of the draft articles on diplomatic intercourse and immunities at that time; the written comments of Governments would furnish a good basis for discussion at the next session.

35. The suggestion that the Commission's work might be expedited by dividing it into sub-commissions appeared at first glance to have considerable merit; it might, however, prove to have serious disadvantages in the long run, and the question was one which, in any case, should be carefully studied and decided by the Commission itself.

36. He welcomed the Commission's decision concerning its relations with the Asian Legal Consultative Committee.

37. U THAUNG SEIN (Burma) said that, inasmuch as the draft articles on diplomatic intercourse and immunities had been submitted to the Sixth Committee for information only, his delegation would for the time being simply take note of the report. In due course, his Government would communicate its observations in writing.

38. Mr. BUDO (Albania) said the draft articles on diplomatic intercourse and immunities constituted a valuable contribution to the codification of an important subject. The Commission's work would facilitate the future task of all those engaged in diplomatic intercourse.

39. His Government would transmit comments on the draft articles in due course.

The meeting rose at 12.10 p.m.