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CONTENTS

Chairman: Mr. Constantine EUSTATHIADES (Greece).

AGENDA ITEM 74

Consular relations (A/4843, A/5171 and Add.1 and 2, A/5191, A/C.6/L.515) (continued)

1. Mr. LUTEM (Turkey) said that his delegation had already twice made known its views on the draft articles on consular relations prepared by the International Law Commission. At the fifteenth session of the General Assembly, at the 656th meeting of the Sixth Committee (paras. 20-23) it had made general comments on the draft articles on the subject contained in the report of the International Law Commission covering the work of its twelfth session (A/4425), and at the sixteenth session, at the 702nd meeting, (paras. 3-27) it had examined in greater detail the draft articles prepared by the Commission at its thirteenth session (A/4843, chap. II). Since he did not wish to repeat himself, he would limit himself to recalling that his delegation's comments related mainly to article 1, paragraph (j), and articles 2, 5, 6, 7, 10, 11, 15, 17, 19, 20, 29, 30, 33, 34, 40 and 41.

2. The Turkish delegation had carefully studied the comments by States in documents A/5171 and Add.1 and 2. It regretted that the Committee had not time to study consular relations in great detail at the current session, since an exhaustive general debate would have considerably facilitated the work of the United Nations conference on Consular Relations, to be held at Vienna in March 1963. Nevertheless, it had followed with the greatest interest, and would support, the proposal which the United Kingdom delegation had made orally at the 771st meeting and had now submitted formally in document A/C.6/L.515.

3. The Turkish delegation congratulated the International Law Commission on the important work it had accomplished, and expressed the hope that the Vienna Conference would result in the conclusion of an international convention which would make a valuable contribution to the development of friendly relations among nations.

4. Mr. IQBAL (Pakistan) recalled that his Government had communicated, in accordance with General Assembly resolution 1685 (XVI), its written comments (A/5171) on articles 23, 32, 41, 58, 59, 70 and 57 of the Commission's draft and said that he wished to make some further remarks.

5. The text proposed for article 26 provided that, in the case of armed conflict, members of the families of persons enjoying privileges and immunities should be granted facilities to leave the receiving State at the earliest possible moment. According to that wording, the privilege would be extended even to members of the family who were nationals of the receiving State. In the opinion of Pakistan, that provision should be made subject to the law of the receiving State governing its own nationals. Article 35, paragraph 2, should be so amended that official correspondence found with the nationals of the receiving State and other private persons should not enjoy inviolability. In article 43 the expression "in the exercise of consular functions" should be slightly qualified—for instance by expanding the phrase to read "in the proper exercise of consular functions". The concessions provided in articles 46 and 62 should only be granted subject to reciprocity. The Pakistan Government considered that the principle of reciprocity should apply to all the proposed privileges, and that the draft should contain an express provision to that effect.

6. The Pakistan delegation welcomed the United Kingdom suggestion that Governments should submit their amendments before the Vienna Conference, since that would hasten the work. It hoped that the Conference's efforts would be successful and would ultimately be embodied in a convention or some other international instrument.

7. Mr. SUCHARITKUL (Thailand) stated his delegation's opinion that a general multilateral convention on consular relations could play a vital part in strengthening friendly relations and co-operation among States and developing world trade. He paid tribute to the International Law Commission for its valuable work, and stressed the constructive part played by the Sixth Committee.

8. At the fifteenth session of the General Assembly, his delegation had, at the 657th meeting of the Committee (paras. 5-8), already made some general comments on the draft articles on consular intercourse and immunities prepared by the Commission at its twelfth session (A/4425, chap. II). Since then the draft had been revised and improved in the light of comments made by various Governments and the views expressed in the Committee at the fifteenth session, and had been further discussed. The Thai Government was among the twenty-three Governments which had sent in written comments (A/5171 and Add.1 and 2) as required by General Assembly resolution 1685 (XVI); it was continuing its detailed study of the subject in the light of the comments of other Governments. Without prejudging the position which the Thai Government would finally take at Vienna, he wished to make a few observations.

9. The main purpose of the draft articles was to achieve uniformity, and the Thai delegation was pleased to note that such principles as the sovereign equality of States, equal treatment, and non-discrimination, which called for unification of the laws and practice of States concerning consular relations, were unanimously recognized in the Committee. It had been said during the debate that customary international law, though developed through the practice of European States alone, had been generally accepted by all States and should therefore be preserved. Speakers had cited the example of the customary international law which governed diplomatic relations and immunities. On consular relations and immunities, however, customary international law was much less developed, and it was fortunate from many points of view that everyone agreed in recognizing the considerable variety in the practice of States.

10. The task of the forthcoming Vienna Conference differed considerably from that of the United Nations Conference on Diplomatic Intercourse and Immunities as the draft articles on consular relations contained rules derived from a wide variety of sources, such as usage, State practice, municipal laws and regulations, special conventions and bilateral agreements. The success of the work would depend on the spirit of conciliation and compromise shown by the participating States.

11. Consular relations had passed through different phases in history. Extra-territoriality, now disclaimed by the great Powers and firmly rejected by the new African and Asian States, had been replaced by certain privileges and immunities. The new system did not originate from customary international law but from comitas gentium or "courtoisie internationale", which did not bind States but was based on the principle of reciprocity.

12. As several members of the Committee had pointed out, the practice of States with regard to consular privileges and immunities was not uniform, and the application of the doctrine of reciprocity merely accentuated diversity and often led to unequal and discriminatory treatment. That diversity was due to differences between the States themselves, and no satisfactory solution could be reached unless the jurists of all countries tried to establish generally acceptable standards in a spirit of compromise. It was particularly important to define consular functions, since the consular status depended on them, and consular privileges and immunities, unlike those of diplomats, were exclusively functional.

13. The Thai delegation welcomed the United Kingdom's proposal (A/C.6/L.515). The Thai Government had already submitted amendments to the draft articles on consular relations prepared by the International Law Commission (A/4843, chap. II), and hoped that other Governments would study them and try before March 1963 to prepare the ground for the United Nations Conference on Consular Relations, which should help considerably to promote friendship and harmony in international life and relations.

14. Mr. KERLEY (United States of America) said that, although his Government had submitted to the Secretary-General written comments on the draft articles on consular relations prepared by the International Law Commission (A/4843, chap. II), his delegation agreed with the United Kingdom representative that an exchange of views in the Sixth Committee would be a useful preliminary to the forthcoming Conference of Plenipotentiaries in Vienna. Since the comments of the United States were given in full in document A/5171, he would confine himself to emphasizing a few issues to which his Government attached special importance.

15. The performance of consular functions by a diplomatic mission, dealt with in article 2, paragraph 2 and in articles 3 and 68, had already been considered at the United Nations Conference on Diplomatic Intercourse and Immunities, which had not resolved the issue, believing that a solution should be reached in the context of the formulation of legal rules governing consular relations. At that time the United States delegation had stated the view that consular functions might be performed by a diplomatic mission only with the express consent of the receiving State. His Government still held that view, and considered that the relevant provisions of the draft should be amended accordingly.

16. Article 5 enumerated the consular functions. His delegation agreed with the Canadian representative that a general definition along the lines of that contained in the Commission's first draft would be more useful. The definition should also distinguish between those functions which were inherent in the consular activity and thus not generally subject to the laws of the receiving State, and those which were linked with the implementation of the local laws, which should be specifically declared subject to them.

17. The United States Government recognized the necessity of respecting the inviolability of consular premises in accordance with article 30. It considered, however, that provision should be made to entitle officials of the receiving State to enter consular premises in case of fire or other disaster. It was true that the United Nations Conference on Diplomatic Intercourse and Immunities had considered the question and decided not to make such an exception; but there was a difference between consulates, which often occupied only part of a large building, and diplomatic chanceries and ambassadorial residences, which were usually separate buildings.

18. The United States Government considered that the provisions of article 52 on acquisition of the nationality of the receiving State by members of the consulate and their families raised so many constitutional questions that they ought to be placed in a separate protocol, like the similar article of the Convention on Diplomatic Relations.[1/]

19. Mr. MOVCHAN (Union of Soviet Socialist Republics) recalled that his delegation had already had occasion to express its opinion of the draft articles prepared by the International Law Commission, to whose useful work it had drawn attention at the fifteenth session. The draft articles (A/4843, chap. II) in their present form took into account the fundamentally important fact that law should develop in accordance with the general practice of States, either as evolved during centuries or only recently. It reflected recent consular conventions, in particular those concluded between the USSR and European and Asian States possessing highly different systems, and was a very good foundation for the drafting of a multilateral convention on consular relations.

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

20. His country shared the firm belief expressed by the General Assembly in its resolution 1685 (XVI) "that the successful codification and progressive development of the rules governing consular relations would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems". In view of the Committee's agreement on friendly relations among States, he hoped that it could also reach agreement on consular relations. At the United Nations Conference on Diplomatic Intercourse and Immunities in 1961 the participating States had recognized unanimously that the conclusion of a multilateral convention on diplomatic relations would make relations more friendly. The USSR felt that a convention on consular relations would improve relations between countries irrespective of their national characteristics and stage of development. In spite of certain particular features, consular functions were in some respects similar to diplomatic functions and were intended to encourage friendly commercial, economic, cultural and scientific relations among countries. Article 5 should therefore state that the promotion of friendly relations should be an integral part of consular functions.

21. His country would propose other amendments at Vienna. However, he supported the United Kingdom proposal (A/C.6/L.515), which would undoubtedly ensure better preparation of the work. The conclusion of a convention on consular relations would be a new step forward in the codification of international law, and would be a concrete expression of the respect which all countries, including the USSR, had for its rules and principles.

22. Mr. RUDA (Argentina) said that his delegation approved all the draft articles on consular relations prepared by the International Law Commission (A/4843, chap. II), and in particular the following general rules on which they were based: first consuls were not in principle authorized to perform political functions in their relations with foreign Governments, but were appointed to perform, with those Governments' consent, other functions in their territory; second, consular relations between States were established by mutual consent; third, the main function of consuls was to protect the interests of the sending State and its nationals; fourth, consular premises, archives and documents were inviolable and the receiving State was bound to protect them; fifth, consuls should enjoy considerable freedom of communication in the discharge of their official functions; sixth, consular agents were in principle subject to the jurisdiction of the receiving State except for acts performed in the discharge of their functions; seventh, consuls, and consuls only, should be granted by the receiving State the privileges and prerogatives indispensable for the discharge of their functions, in particular personal inviolability even in the case of a serious offence; eighth, consuls were bound in return to respect the laws of the receiving State and must not interfere in its internal affairs or abuse their privileges; ninth, career consuls and honorary consuls should not receive the same treatment, so that nationals of the receiving State who were honorary consuls of another State might not benefit by any unjustified exception.

23. His delegation agreed with the International Law Commission that the proposed convention should be divided into chapters and sections, and that each subdivision should have a heading indicating its contents. The convention should also have a preamble stating, for example, the following principle: "Recognizing that the prerogatives confirmed by the present convention are granted not for the benefit of their recipients but for the efficiency of consular relations", since that principle, according to the latest doctrine, lay at the very root of consular prerogatives. His delegation deliberately refrained from mentioning the representative character of consular functions, since the views expressed on that subject by the Commission and in the comments submitted by certain Governments were for practical purposes irreconcilable.

24. Concerning the actual text of the draft articles, his delegation thought that article 5 should list the principal consular functions, on the understanding that the list was not exhaustive and did not exclude certain functions sanctioned by custom or convention. It should also include the functions of arbitrator and ad hoc adviser discharged, subject to the laws of the receiving State, by consuls in disputes submitted to them by nationals of the sending State. Similarly, in article 9, it would be advisable to list the classes of heads of consular posts. Concerning the exequatur (article 11), it would be advisable to state expressly the right of the receiving State to deny exequatur to a consul by adding the following phrase at the end of paragraph 2: "which may be denied to him by the receiving State". His delegation approved the views of those who felt that the convention should not contain any provision requiring a State which had denied exequatur to give reasons for its decision. The wording of article 23 on withdrawal of exequatur did not make clear whether the sending State was entitled to ask that the reasons for a complaint against a member of the consulate should be communicated to it; if that was the meaning of the article, it was not in conformity with the practice of many States. Article 9 of the Vienna Convention on Diplomatic Relations[2] of 1961 authorized the receiving State to declare the head or any member of a diplomatic mission persona non grata at any time without explaining its decision; a more privileged status could hardly be granted to consuls. His delegation considered that the contents of article 52 on acquisition of the nationality of the receiving State should be included in an optional protocol drafted in terms similar to the corresponding provisions of the Optional Protocol concerning acquisition of nationality adopted by the United Nations Conference on Diplomatic Intercourse and Immunities in 1961.[3]

25. His delegation felt that it would be desirable to devote a new, special article to the breaking off of consular relations, as in the Special Rapporteur's original draft.[4] The future convention should also contain final clauses concerning the conditions under which States could be parties to it; the procedure and time-limits for signature; ratifications, accessions and official languages; all based on articles 48 to 53 of the Vienna Convention on Diplomatic Relations. The settlement of disputes concerning the application of the provisions of the convention should also be dealt with in an optional protocol establishing the compulsory jurisdiction of the International Court of Justice when other remedies had been exhausted; the text prepared on that subject by the United Nations Conference on Diplomatic Intercourse and Immunities

2/ Ibid.

3/ Ibid.

4/ Yearbook of the International Law Commission 1957, vol. II (United Nations publication, Sales No.: 1957.V.5.Vol.II), document A/CN.4/108, part II, chapter I, article 19.

might be reproduced without change. Lastly, the draft articles should be arranged in a different order from that of the present text.

AGENDA ITEM 75

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/5192, A/C.6/L.505, A/C.6/L.507/Rev.1 and Rev.1/Add.1, A/C.6/L.509/Rev.1, A/C.6/L.510, A/C.6/L.511, A/C.6/L.512, A/C.6/L.513, A/C.6/L.514) (continued)

26. Mr. MOLINA (Venezuela) strongly supported draft resolution A/C.6/L.510, which should ensure wider dissemination and a better knowledge of international law in all countries. The Afghan amendments (A/C.6/L.514) made the draft more practical. He approved the reference to technical co-operation organs of the United Nations, and also the idea of a United Nations Decade of International Law. By voting for draft resolution A/C.6/L.510 and all the Afghan amendments, his delegation would express its conviction that the strengthening of international law was necessary for the establishment of peaceful and friendly relations among peoples.

27. Mr. USTOR (Hungary) thought that a better knowledge of international law would be a factor promoting peace. If public opinion were better informed on that subject, it would inevitably discourage recourse to power politics and induce leaders to conform to the rule of law. In the light of General Assembly resolution 1505 (XV), which recognized the importance of the role which international law might play, nothing should be left undone to encourage the teaching and study of that law. During the debate several representatives had referred to the courses given by the Academy of International Law at The Hague, which were of valuable assistance to all who wished to perfect their knowledge of public and private international law. Those courses, however, did not fairly reflect all the existing doctrines of international law. Although some socialist jurists, such as Mr. Krylov, Mr. Zourek, Mr. Tunkin and Mr. Lachs, had taught at the Academy—to the great interest of the students—it must be admitted that internationalists of the socialist countries were very seldom invited to give courses there. The same applied to the jurists of Asia and Africa. Though the matter undoubtedly concerned the Administrative Board of the Academy alone, he hoped that the regrets which he had just expressed would induce the Board to change its attitude to some extent.

28. Mr. SCHWEBEL (United States of America) supported draft resolution A/C.6/L.510 without reservation. The proposals in the Afghan amendments (A/C.6/L.514) deserved to be studied with attention, but at present they seemed somewhat premature. He formally submitted, as sub-amendments [5/] to the Afghan amendments, the suggestions he had made orally at the 771st meeting. In addition, he proposed that the words "practical application" should be substituted for the word "role" in paragraph 4 of those amendments; he felt that to ask the Secretary-General to report on the role of international law would place a very heavy responsibility on him, apart from the fact that a study of that topic would be much too far-reaching. In order that the objectives of the sponsors of draft resolution A/C.6/L.510 might be respected, the title of the item to be inscribed on the provisional agenda of the eighteenth session of the General Assembly should be: "Technical Assistance for the teaching and study of international law: report of the Secretary-General on the teaching and study of international law with a view to the strengthening of its practical application." He hoped that the few changes he had proposed would enable the Committee to reach a unanimous decision.

29. Mr. TABIBI (Afghanistan) agreed to the deletion of the words "and technical co-operation organs of the United Nations" in paragraph 3 of his amendments (A/C.6/L.514). He felt, however, that no effective step could be taken without the collaboration of those organs. Action was required. The role of international law was constantly diminishing, the jurisdiction of the International Court of Justice was not recognized; the work of the International Law Commission was hampered because the Commission did not receive the assistance which it had a right to expect from the technical services; the Secretariat's Office of Legal Affairs, unlike the other basic departments, had not grown; all the Main Committees of the General Assembly took decisions which had financial implications, whereas for ten years the Sixth Committee had been postponing from year to year the question of the publication of a juridical yearbook. In his delegation's view, it was time that a technical assistance programme, however small, was put into operation in the field of international law. That was why mention of the technical co-operation organs of the United Nations had seemed to him essential. Moreover, the collaboration of UNESCO could not be envisaged without financial assistance from those organs. Consequently, it was only out of a desire for conciliation that he agreed to the request of the United States representative. He also agreed to the proposed change in paragraph 4 of his amendments.

30. On the other hand, he could not bring himself simply to abandon the idea of a United Nations Decade of International Law. He regarded it as a very effective method of strengthening the role of international law, and he stressed the importance of that law for the protection of small countries. The Assembly, moreover, was not called upon to take any decision at the present session; the Secretary-General was simply asked to consider the possibility of resorting to a measure of that kind. The proclamation of a Decade of International Law would have no financial implications, and the misgivings of some delegations were therefore difficult to understand. He was gratified by the warm support given to his proposal by a large number of delegations. Feeling that the desire for unanimity should not lead any delegation to abandon positions of principle, he would agree to delete the words "including in this context the possibility of proclaiming a United Nations Decade of International Law" only if that idea could be retained in another form. The Rapporteur, for example, might indicate in his report that it had been deemed desirable, in the general opinion of the members of the Sixth Committee, that the Secretary-General should study the possibility of proclaiming a United Nations Decade of International Law; and in that way the Secretariat could meet the wishes of the Committee, which need not then take a formal decision. He would be grateful if the representative of the Secretary-General would indicate whether it was possible to proceed along those lines.

5/ Subsequently circulated as document A/C.6/L.517.

31. Mr. STAVROPOULOS (Legal Counsel) replied that that could be done. The report on that point would constitute the second part of the report requested in paragraph 3 of the Afghan amendments (A/C.6/L.514), since the Secretary-General could not make a report unless it was expressly required by a resolution.

32. Mr. TABIBI (Afghanistan) was anxious that the report of the Sixth Committee should expressly state that it was recording the general opinion of the Committee and not merely the wish of the Afghan delegation. There was in fact no disagreement on that point.

33. Mr. COCHAUX (Belgium) felt that the words "technical assistance" must not be used in any mystical sense, for it was, after all, simply a question of asking the Secretary-General to obtain funds wherewith to do useful work. As for the idea of a United Nations Decade of International Law, he thought that it was not very appropriate to present international law as a novelty, as if it were a new product. His delegation would support the United States sub-amendments to the Afghan amendments. For its part, it proposed that the following paragraph should be inserted immediately after the second preambular paragraph of draft resolution A/C.6/L.510: "Desiring to ensure that these measures are also aimed at promoting the dissemination and thorough knowledge of international law, over and above its teaching in universities and higher educational institutions". 6/ While it was very desirable to promote the teaching of international law in universities so as to enable the younger generations to become more familiar with it, thought must also be given to those who had left the university, had an interest in learning about international law and could contribute to its dissemination and strengthening.

34. Mr. SCHWEBEL (United States of America) thanked the Afghan representative for having adopted an attitude of compromise, which was all the more commendable in view of his strong attachment to the ideas which he would like to see put into effect. The United States delegation would welcome with great satisfaction a report by the Secretary-General on the possibility of proclaiming a United Nations Decade of International Law within the scope of a programme to strengthen the practical application of international law. He admitted that there had perhaps been a tendency to attach rather too much importance to securing unanimity in the adoption of the Committee's decisions. He felt, however, that in the present case unanimity was desirable. The subject was not controversial, and all delegations favoured the strengthening and dissemination of international law by means of programmes such as that proposed by the Afghan delegation.

35. Mr. AMADO (Brazil) thought that any resolution adopted unanimously was more effective than a resolution which had not received the approval of all. The statements of the Afghan representative had been marked by concern to remove the threat of an atomic war capable of annihilating the planet at any moment, by placing the emphasis consistently on international law. Unlike the Belgian representative, he felt that international law was a novelty, for the concept of internationality in law was recent. Grotius himself had not claimed to be international; he had defended Netherlands law. International law was accordingly a new thing in the world, and the proposals of the Afghan representative were very valuable. It would be entirely appropriate to mention them in the report of the Sixth Committee, and he was sure that the Rapporteur would give to them all the weight they deserved.

36. Mr. CACHO ZABALZA (Spain) approved the initiative taken by Ghana and Ireland in their draft resolution (A/C.6/L.510). It was extremely desirable and opportune that UNESCO should collaborate in the programme for the dissemination of international law. His delegation saw no objection to the United Nations proclaiming a Decade of International Law. Accordingly, it would vote for the draft resolution and for the amendments thereto. However, it proposed that the word "dissemination" should be substituted for the word "strengthening" 7/ in paragraph 3 of the Afghan amendments (A/C.6/L.514).

37. Mr. VASQUEZ (Colombia) proposed that in paragraph 2 of the Afghan amendments (A/C.6/L.514) the words "and of publications" should be inserted after the words "exchanges of fellows". It should be recognized that one very common reason why international law was not well-known was that legal works were costly and difficult to obtain. The reference to the role of international law in paragraph 4 was inappropriate, for it was difficult to say what that role was. The words "the strengthening of the role of international law" should therefore be replaced by the words "measures to promote the dissemination of international law". 8/

38. Mr. BERNSTEIN (Chile) admitted that he was disappointed by the concessions which the Afghan representative had made with a view to ensuring unanimity. The Chilean delegation was always in favour of unanimity provided that it involved no sacrifice of basic principles. Moreover, there had been many infringements of that so-called tradition. The desire to achieve unanimity might condemn the Sixth Committee to immobility. Its prestige had already declined considerably, since items such as the right of asylum, sovereignty over natural resources, the minimum age for marriage, and the advisory opinion of the International Court of Justice—all of which would seem to fall within the competence of the Sixth Committee—were considered by other Committees. In the present case, the members of the Committee should not allow themselves to be hampered by concern for unanimity.

39. Mr. PATEY (France), supported by Mr. MISHRA (India) asked that the various amendments and sub-amendments which had been proposed should be submitted in writing—the sponsors of the amendments which had been the subject of sub-amendments being asked whether or not they accepted those sub-amendments—and moved that in the meantime the meeting should be adjourned.

40. The CHAIRMAN asked the delegations concerned to comply with the request relating to the amendments. The representative of Spain had asked to speak; however, in view of the fact that the adjournment of the meeting had just been moved, the Chair would be obliged, under rule 119 of the rules of procedure, to ask for an immediate decision on that motion, and he

6/ This amendment was subsequently circulated as document A/C.6/L.516.

7/ This sub-amendment was subsequently circulated as document A/C.6/L.519.

8/ These sub-amendments were subsequently circulated as document A/C.6/L.520.

would accordingly have to consult the Committee before he could give the floor to any speaker.

41. Mr. CACHO ZABALZA (Spain) said that he wished to support the motion for the adjournment of the meeting.

42. The CHAIRMAN said that, in the absence of any objection, he would adjourn the meeting.

It was so decided.

The meeting rose at 6.5 p.m.

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