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REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS THIRTEENTH SESSION

Statement made by Mr. Grigory I. Tunkin, Chairman of
the International Law Commission at the 700th meeting
of the Sixth Committee

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1. The International Law Commission submits for the consideration of the Sixth Committee its report on the work of its thirteenth session, held at Geneva from 1 May to 7 July 1961.

The Commission had set itself the task of completing the preparation of the draft articles on consular intercourse and immunities at that session.

The International Law Commission had included the subject of consular intercourse and immunities in the programme of work drawn up at its first session, in 1949. At its seventh session, in 1955, the Commission decided to begin the study of this topic, and appointed the Czechoslovak jurist Professor Zourek as Special Rapporteur. Professor Zourek subsequently submitted three reports on this subject, including draft articles on consular intercourse and immunities and an exposition of their basis in international law.

The Commission considered the draft submitted by the Special Rapporteur at its eleventh and twelfth sessions, in 1959 and 1960, and drew up provisional draft articles on consular intercourse and immunities. In accordance with the regular procedure laid down in the Statute of the Commission, this draft was transmitted to Governments of States Members of the United Nations for their comments. Approximately twenty States submitted their comments on the draft.

At the thirteenth session, the Commission gave the provisional draft a second reading in the light of the comments received from Governments and of the observations on the subject made in the Sixth Committee during the fifteenth session of the General Assembly. The Commission reached agreement on a number of issues which had been left undecided at the previous sessions.

The Vienna Conference of 1961 and the Vienna Convention on Diplomatic Relations drawn up at that Conference strongly influenced the wording of the final text of the draft articles. The Commission followed, as far as it thought possible, the provisions of the Vienna Convention.

The Commission prepared final draft articles on consular intercourse and immunities and decided, in conformity with article 23, paragraph 1 (d), of its Statute, to recommend that the General Assembly should convoke an international conference to study this draft and conclude one or more conventions on the subject.

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2. In preparing the draft, the Special Rapporteur, Professor Zourek, and the Commission as a whole based themselves on the generally accepted rules of international law relating to consular intercourse and on the provisions of consular conventions. Naturally, in the consideration of the draft the Commission had to bear in mind also the municipal legislation of States on consular questions.

Accordingly, the draft articles on consular intercourse and immunities contain elements of codification of the customary rules of general international law and elements of unification of international practice as expressed for the most part in consular conventions, mainly of a bilateral character. The draft articles also include a number of new provisions, related to the progressive development of international law in the strict sense, which the Commission felt it necessary to propose in view of contemporary trends in this field and in the field of diplomatic law.

3. The draft articles on consular intercourse and immunities adopted at the Commission's thirteenth session consist of seventy-one articles and cover the following main topics:

Chapter I contains general provisions concerning consular relations (establishment and conduct of consular relations, end of consular functions).

Chapter II deals with the privileges and immunities of career consuls. By analogy with the Vienna Convention on Diplomatic Relations, these privileges and immunities are subdivided into privileges and immunities relating to a consulate and privileges and immunities regarding consular officials and employees.

Chapter III deals with the privileges and immunities of honorary consuls. It proved to be considerably more difficult than might have been supposed, since it necessitated a review of all the provisions relating to career consuls in order to determine to what extent they were applicable to honorary consuls.

Chapter IV, "General provisions", deals particularly with the question of the exercise of consular functions by diplomatic missions and the application of the appropriate articles of the draft in such cases.

4. In respect of chapter I, it should be noted that, of the two variants of the article on consular functions included in the first draft, the Commission, at its thirteenth session, preferred the shorter variant, which is similar in form to the corresponding provisions of the Vienna Convention on Diplomatic Relations. The

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Commission felt that any attempt to provide an excessively detailed enumeration of functions would inevitably run into difficulties in view of the differences in the legislation and practice of States. Consequently, draft article 5 contains a statement of the most important consular functions only - which, of course, does not rule out the performance by consuls of other functions too.

In the light of the discussion which took place at the Vienna Conference of 1961, the draft articles have been clarified on the question of the exercise of consular functions by diplomatic representatives. In the first place, the new draft articles provide that consent to the establishment of diplomatic relations implies, unless otherwise stated, consent to the establishment of consular relations. They also laid down that consular functions may be exercised by consulates or by diplomatic missions, although the exercise of consular functions by diplomatic missions involves a number of special features which are reflected in the draft. Both of the provisions mentioned reflect the contemporary practice of States and are undoubtedly conducive to the development of friendly international relations.

5. Among the changes introduced in chapter II, reference should be made to the modification of the article on freedom of communication. The new text of the article is similar to the corresponding article of the Vienna Convention on Diplomatic Relations, and provides for freedom of communication of the consulate with its Government and with diplomatic missions and consulates of the sending State, wherever situated, for the inviolability of the consular bag, etc.

The changes made in the draft article on personal inviolability of consular officials merit attention. In the new version, this article provides that consular officials may not be liable to arrest or detention pending trial except in cases where they have committed a "grave crime". The Commission rejected the variant of this article included in the first draft, under which consular officials might be liable to arrest in cases where they had committed an offence punishable by a maximum sentence of not less than five years' imprisonment. The Commission based this decision on the consideration that, in view of the differences in their legislation, States were not likely to accept the establishment of any fixed term, but would prefer a general formula. The Commission also approved the addition of a phrase to provide that consular officials should be liable to arrest or detention for commission of a grave crime only pursuant to a decision by the competent judicial authority.

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On the question whether a consular official may be arrested in execution of a judicial decision, the new draft provides, without any limitations, that consular officials may be committed to prison in execution of a judicial decision of final effect.

The new draft retains the provision in the 1960 draft to the effect that members of the consulate shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

6. Several changes have also been made in the part of the draft dealing with the legal status of honorary consuls. Under the new text, the premises of a consulate headed by an honorary consul have the same inviolability as the premises of a consulate headed by a career consul, provided that they are used exclusively for the exercise of consular functions. The chapter has also been supplemented by the addition of an article providing for the exemption from taxation of consular premises used by honorary consuls exclusively for the exercise of consular functions.

7. On completing the preparation of the draft articles on consular intercourse and immunities, the Commission decided to take up the subject of the law of treaties at its next session, unless, of course, it received other instructions from the General Assembly.

The question of the codification of the law of treaties has been on the agenda of the Commission since its formation. It has been studied in turn by three Special Rapporteurs, who have submitted a total of ten reports. The first two Special Rapporteurs, Professor Brierly and Professor Lauterpacht, prepared draft articles intended to serve as the basis for a convention; the third Special Rapporteur, Sir Gerald Fitzmaurice, began, with the tacit consent of the Commission, to prepare articles intended to form a code, in the English sense of the word.

Under these circumstances, the Commission, having appointed Sir Humphrey Waldock as the new Special Rapporteur for the law of treaties, considered that it should take a formal decision on the direction to be taken by the work in this field. The Commission decided that its aim would be to prepare draft articles on the law of treaties intended to serve as the basis for a convention. The Special Rapporteur was requested to re-examine from this point of view the work previously done in this field by the Commission and its Special Rapporteurs, if possible covering the whole subject in two years.

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8. The question of State responsibility, which is also on the Commission's agenda and on which several reports have been submitted, was not considered at the thirteenth session owing to lack of time.

9. The Commission also held a general discussion in connexion with the General Assembly resolution 1505 (XV) of 12 December 1960 relating to future work in the field of the codification and progressive development of international law, with a view to giving the members of the Commission the opportunity of placing their opinions on this question on record. This discussion will be found in the summary records of the 614th, 615th and 616th meetings of the Commission, to which I should like to draw your attention.

10. In conclusion, I should like to state that the work of the thirteenth session of the International Law Commission was conducted in the atmosphere of co-operation and mutual understanding, which has become the praiseworthy tradition of the Commission, and was marked by the desire to make the greatest possible contribution to the work of codification and progressive development of international law and thus to the growth of friendly relations between States.
