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Chairman: Mr. Gonzalo ORTIZ MARTIN (Costa Rica).

AGENDA ITEM 65

Report of the International Law Commission on the work of its twelfth session (A/4425) (continued)

1. The CHAIRMAN said that he would call on the representatives who had asked to speak on the first item of the Committee's agenda and would then revert to the question raised by the Czechoslovak representative at the 655th meeting.

2. Mr. SUCHARITKUL (Thailand) said that, before considering the report of the International Law Commission, he would like to comment on the course which the Sixth Committee's work was taking.

3. It was a fact that the number of items referred to the Sixth Committee was decreasing year by year. It had been said that the reason was that the Committee's debates on juridical questions were becoming political rather than professional, with the result that the General Committee's and the General Assembly's confidence in the Sixth Committee was waning. If that was the case, it was the moral and professional duty of every delegation to do all that it could to restore the prestige and dignity of the Committee. To that end, it had been proposed to increase the number of items on its agenda. Rule 99 of the rules of procedure of the General Assembly (A/3660), however, precluded Committees from introducing new items on their own initiative. That rule applied to the Sixth Committee as well as to the others. Nevertheless, paragraph 22 of the "Recommendations and suggestions of the Special Committee on Methods and Procedures approved by the General Assembly"—contained in annex I to the rules of procedure—stipulated that "questions which may be considered as falling within the competence of two or more committees, should preferably be referred to the committee with the lightest agenda." It was obviously the Sixth Committee which had the lightest agenda, yet it would hardly be appropriate for the Committee itself to request that an item included in the agenda of another Committee should be referred to it, since, in accordance with part 1, paragraph 1 (d) of annex II to the rules of procedure, it was for the other committee to take that initiative. He therefore could not agree with the representatives of Bolivia (652nd meeting), Spain (653rd meeting) and Italy (656th meeting) that the Sixth Committee should ask for the item on the right of asylum, which had been referred to the Third Committee. The Third Committee itself, on the other hand, might refer the question to the Sixth Committee, since the right of asylum, while it was a social and political right possessed by every individual, also related to the rights, duties and responsibilities of States as governed by certain fundamental principles of international law. His delegation, moreover, did not think it would be desirable for the Sixth Committee to be seized of the item at its current session, since it had not made the requisite preparations; he would, however, support any proposal to include the right of asylum in the Committee's agenda at the next session.

4. He was by no means convinced that the diminution of the Sixth Committee's activity was due to a lack of confidence on the part of United Nations bodies. The work of the Legal Committee was indissolubly linked to that of the International Law Commission, which had perhaps slackened the pace of its own work. However that might be, the International Law Commission was to be congratulated on the work it had accomplished to date; the subjects which it examined called for a serious and comprehensive study and could not be submitted to the Sixth Committee until a working text or a report had been prepared. For example, his delegation shared the view of the delegations of the United Kingdom (652nd meeting) and Japan (655th meeting) that it would be premature to debate the question of the responsibility of States. That subject was on the agenda of the International Law Commission's thirteenth session and the Sixth Committee would probably be seized of it at the sixteenth session of the General Assembly. It was not for political reasons or for lack of any rule of international law concerning the subject that the International Law Commission had deferred consideration of it until then.

5. Turning to the International Law Commission's report (A/4425), he congratulated that body on its contribution to the progressive development of international law. His delegation approved of the general considerations (ibid., paras. 19-27) which had served as a basis for the draft articles on consular intercourse and immunities (ibid., para. 28), as also the proposed form of the final text. A multilateral convention should be acceptable to the greatest possible number of States and should be so conceived that the States acceding to it would have little need to conclude special bilateral agreements. Such agreements should not derogate from the fundamental rules embodied in the multilateral convention. Even if the convention was endorsed by only a few States as an international instrument, it could still serve as a model for bilateral agreements.

6. His delegation approved of the principle of reciprocity, which should exist not only in theory but also in practice. That was important in connexion with the privileges accorded to consuls and honarary consuls, particularly in the case of the under-developed countries, which were less prosperous than their industrialized neighbours. His delegation was accord-

ingly in favour of the principle of restrictive immunity, whereby privileges were granted on the basis of strict reciprocity and only if they were absolutely essential to the efficient performance of consular functions.

7. His delegation approved of the incorporation of the principle of non-discrimination in article 64, for non-discrimination was the sine qua non of friendly consular relations. In modern times, no State had the right to maintain a double standard in its consular relations with other States, one applicable to developed countries and the other to those that were less developed.

8. In the study of consular relations made by the Special Rapporteur of the International Law Commission[1/] one subject had been neglected, namely, the system of capitulations under which a consul enjoyed, in the territory of another sovereign and independent State, full legislative, executive and even judicial powers with regard to the nationals of his own country. The system had not been abolished until the twentieth century and then only after prolonged negotiations preceded by territorial sacrifices euphemistically called "frontier rectifications".

9. With regard to the draft articles on special missions (ibid., para. 38), his delegation endorsed the proposal to refer them to the United Nations Conference on Diplomatic Intercourse and Immunities to be held at Vienna in 1961. As diplomatic and consular immunities were part of the immunities of the State, a more comprehensive study of the latter subject should be undertaken after the Vienna Conference.

10. Concerning the question of the geographical distribution of posts in the Office of Legal Affairs, he thought that the concept of nationality should not enter into consideration, for the equitable representation of the different juridical systems existing in the world was far more important, as the representative of the Union of South Africa had said (654th meeting, para. 16). To the examples which that speaker had mentioned he would add the Latin American system, the African tribal system and the Hindu, Koranic and Buddhist systems of law. His delegation would like to see those legal systems represented in the Office of Legal Affairs.

11. Mr. BUCETA (Argentina) said that, as the draft articles on consular intercourse and immunities were provisional, a full discussion would be out of place, especially as the draft had been sent to Governments for their comments. However, his delegation preferred the first text proposed by the International Law Commission for article 65, as it seemed to be more in keeping with the spirit of the proposed convention.

12. Consular institutions were governed both by international law and by the domestic law of States. In one of his works, the Brazilian jurist, Mr. Nascimento e Silva[2/] had stated that the principal sources of consular law were international treaties, the laws and regulations of States, international usages and customs, and the works of learned authorities. That list corresponded with the sources mentioned by the Special Rapporteur in paragraph 23 of the International Law Commission's report, and the Argentine delegation must congratulate the Commission on its work.

13. As for the draft articles on special missions, his delegation approved the International Law Commission's recommendation that the draft, as an exceptional measure, should be referred to the Conference to be held at Vienna in 1961. They were justified in making that exception, as a chapter on that aspect of diplomacy could be incorporated in the convention to be drawn up at Vienna.

14. On the whole, the Argentine delegation approved the International Law Commission's report.

15. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said he was satisfied with the work of the International Law Commission, but was concerned at the inaction of the Sixth Committee and of the Office of Legal Affairs in the matter of codifying international law. The Sixth Committee's activities were not in keeping with its position as one of the Main Committees of the General Assembly. In principle, the mainspring of its work should be the importance accorded to international law in relations between States and in the activities of the United Nations, but, at present, it seemed to depend on the work of the International Law Commission. Yet, the Sixth Committee was not even supposed to discuss the substance of the International Law Commission's report. The main cause of that inaction was the contempt in which international law was held in the United Nations. If the Sixth Committee was to be revitalized, therefore, international law must be given its rightful place, particularly in the United Nations. International law played an important part in furthering peaceful co-existence and friendly relations among States, and was one of the best instruments for peace, because it gave the necessary guidance in international relations. It was international law which set standards of respect for sovereignty, territorial integrity, and the right of peoples to self-determination. Without it, co-operation and peace were impossible.

16. Many delegations had held that international law was ineffective unless it was supranational, but he did not share that opinion. The basis of international law was agreement between sovereign States, and supranationality was a denial of sovereignty.

17. If international law was not receiving the attention it warranted, it was because of the contempt in which it was held by the imperialist Powers in general, and by the United States in particular, as could be seen from their policy in the United Nations. The Legal Counsel had said (651st meeting, para. 12) that it was not for him to submit legal questions for consideration by the Sixth Committee, and that, furthermore, he did not see what questions he could submit. That was a sign of his incompetence or his unwillingness to advance international law. Moreover, the geographical distribution in the Office of Legal Affairs left much to be desired. To avoid unilateral decisions, the world's three political blocs should be represented in that Office, and the preference given to certain countries ended. It had been said that the question of geographical distribution was within the competence of the Fifth Committee, not of the Sixth, but the Legal Committee should ensure that the various legal systems were represented in the United Nations.

18. He felt that the suggestion for revitalizing the Sixth Committee by referring to it questions at present

1/ Yearbook of the International Law Commission, 1957, vol. II (United Nations publication, Sales No.: 57.V.5, vol. II), document A/CN.4/108, paras. 1-65.

2/ Geraldo Eulalio do Nascimento e Silva, Manual de Derecho Consular (Rosario, Argentina, Talleres Gráficos de Juan Perelló y Hnos., 1952).

under consideration by other Committees, such as the draft International Covenants on Human Rights, might infringe rule 99 of the rules of procedure, which stated: "Items relating to the same category of subjects shall be referred to the committee or committees dealing with that category of subjects. Committees shall not introduce new items on their own initiative". The Sixth Committee could find enough problems of international law requiring study, without needing to encroach on the province of other Committees. To that end, a new list of subjects for discussion, taking into account the needs of the modern world, should be prepared. As the head of his delegation had said in the General Assembly (885th plenary meeting), the whole world would owe a debt of gratitude to the United Nations if it succeeded in obtaining universal respect for the concept of peaceful coexistence. Since the end of the Second World War, that concept had been the cornerstone of international law, imposing on every State an obligation to have recourse to peaceful and amicable methods in its relations with other States. The concept, the application of which had become imperative, had already acquired a legal character, as it was embodied in a number of legal instruments, such as the Sino-Indian Declaration of 24 April 1954 on the five principles of peaceful coexistence, the Final Communiqué of the Bandung Conference,[3] and various bilateral conventions signed by the USSR with other countries; those documents could serve as a basis for the codification of the subject.

19. The draft articles on consular intercourse and immunities were, on the whole, satisfactory. Article 2, however, which was otherwise particularly happily worded, should be completed by the addition of a clause stating: "The establishment of diplomatic relations includes the establishment of consular relations", which would bring it into line with actual practice. Also, the wording of sub-paragraph 1 (b) of article 4, stating the functions of a consul to be "to help and assist nationals of the sending State", was not sufficiently detailed, and there should be, as originally proposed by the Special Rapporteur,[4] an enumeration of the exact functions of a consul which were internationally recognized. There should be separate articles dealing with the privileges and immunities of honorary consuls, as distinct from career consuls. Although the International Law Commission had felt that those privileges and immunities should not be so wide as in the case of career consuls, the privileges and immunities recognized for honorary consuls in chapter III of the report, on ad hoc diplomacy, were much greater than those which they actually enjoyed in practice.

20. The progress achieved by the International Law Commission on the question of State responsibility was very unsatisfactory; it had considered only the question of compensation for damages suffered by aliens. The Commission should codify the rules applicable to all acts involving State responsibility, including political, legal, penal and any other responsibility. The Soviet Union, for example, was entitled to demand that the United States should take political responsibility for acts of aggression, such as the dispatch of aircraft on spying missions over Soviet territory. Unlike the United Kingdom representative (652nd meeting, para. 1), he did not think it premature to consider that question, as there had already been five reports on it; and the comments made in the Sixth Committee would enable the International Law Commission to reconsider its views on that question. The Commission should give the matter priority at its thirteenth session, not only from the angle from which it had so far been considered, but under its other aspects, for instance, the responsibility of the State for acts of aggression, for breaches of the sovereignty or territorial integrity of other States, and for interference in their internal affairs. The International Law Commission should submit to the General Assembly, at its sixteenth session, a report on the principles which should govern discussion of that matter.

21. It was impossible to separate legal questions from political questions, because law was one form of politics, and modern international law must embody the rules applied in the various political systems. It was important, however, that rules of international law should be applied only in support of policies which respected the principle of legality.

22. Lastly, the Office of Legal Affairs should show itself worthy of its task, which went beyond the strictly technical field and which consisted in contributing to the development of international law.

23. Mr. NINCIC (Yugoslavia) announced that his delegation, with several others, would present a draft resolution on the activities of the United Nations in general, and of the Sixth Committee in particular, in the field of international law and the codification of its rules. The sponsors reserved the right to explain their text in greater detail at a later stage.

24. Mr. MOROZOV (Union of Soviet Socialist Republics), exercising his right of reply, said that, contrary to the allegation of the representative of the United Kingdom (ibid.), repeated by other representatives, he had not made any "rather political statement", at the 651st meeting, unrelated to the problems of international law. The representative of the United Kingdom had felt obliged to insist that the Sixth Committee should not concern itself with non-legal questions and had refused to examine thoroughly the questions raised by the delegation of the Soviet Union, such as that of defining aggression; that attitude was all the more unjustified inasmuch as most of the delegations from the Arab, African, Asian and Latin American countries had always believed that it would be very helpful to define aggression, and the General Assembly had already urged in several resolutions that that should be done. Thus, by refusing to study the concrete questions raised by the delegation of the Soviet Union, the representative of the United Kingdom sought to impose a minority point of view on the Sixth Committee.

25. He wished to reaffirm his belief that the Sixth Committee should at last set about studying questions which were of vital importance for the future of mankind and declared that, while he had not the least intention of having it duplicate needlessly the work of the First Committee and the Special Political Committee, the Sixth Committee must take urgent steps to codify the international norms with respect to the sovereignty of States, the right of peoples to self-determination, the right of countries to exploit freely their national resources, etc. He was glad that many other delegations had expressed the desire that the Sixth Commit-

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[3] Asian-African Conference, held at Bandung from 18-24 April 1955.

[4] Yearbook of the International Law Commission, 1957, vol. II (United Nations publication, Sales No.: 57.V.5, Vol. II), document A/CN.4/108, part II, chapter I, article 13.

tee should state to the General Assembly what the Committee's role should be and had expressed their interest in the establishment of progressive rules which would be binding upon all States, whatever their political systems, in their international relations; that point of view would indeed be expressed in a draft resolution due to be presented by numerous delegations, which would be the best reply to those who were unwilling to recognize that the Sixth Committee should play anything more than a technical role. The Soviet delegation, for its part, would oppose any attempt to prevent the Sixth Committee from performing its duties, which were to seek solutions for the principal problems confronting the world with due regard for the existence of different legal systems, for the position of the socialist countries and for the aspirations of the neutral countries.

26. Turning to the so-called incident brought up at the preceding meeting regarding the conduct of an official of the Secretariat, he said that the matter was in reality only one of detail, but of great importance with regard to the decisions to be taken of the organization of the work of the Secretariat and the International Law Commission, which was a subsidiary body of the General Assembly.

27. No one would deny that it was the duty of the Secretariat to act objectively, giving due consideration to the points of view of all the States represented in the United Nations. The facts cited at the previous meeting both by the Secretary-General's representative, Mr. Stavropoulos, and by the representative of Czechoslovakia clearly proved that, without having received instructions to that effect from the International Law Commission, the Office of Legal Affairs of the Secretariat had asked the Harvard Law School to present to the International Law Commission a draft on State responsibility.[5] Obviously, such a draft could reflect only the reactionary views of its parent institution. There would have been nothing reprehensible in the Harvard Law School addressing that document to the Secretary-General on its own authority, but it was inadmissible for the Secretariat to have taken the initiative in asking for it. Likewise, it would have been quite understandable had the Secretariat consulted simultaneously the universities of several countries having different legal systems—although, strictly speaking, the instructions of the International Law Commission would have been required—but its request had been directed to one institution only. Although the Secretary of the International Law Commission had expressed hopes that "before long the Commission would have available similar works for comparison,"[6] he had made no attempt to get in touch with universities in other parts of the world. Moreover, the introduction of the Harvard draft acknowledged that the official in question had participated actively in that entirely one-sided work.

28. Efforts had also been made to persuade the Sixth Committee that the Harvard draft had been enthusiastically welcomed by the International Law Commission, whereas of the ten members of the Commission who had taken part in the debates on the draft, at its eleventh session, eight had criticized the text vigorously. Only the courtesy which characterized that body had prevented questions of principle being raised on that occasion. In any event, the General Assembly could not tolerate members of the Secretariat taking initiatives which violated the provisions of Article 100, paragraph 1, of the Charter.

29. Moreover, that was not the only time that the Secretariat had prepared a document reflecting the viewpoint of the United States alone. He therefore urged once more that equitable representation should be given, in all departments of the Secretariat, to the countries of Eastern Europe, Africa, Asia and Latin America.

30. He wished to take the opportunity to protest against the arrest, by order of the United States State Department, of one of the few Soviet citizens who occupied an important post in the Secretariat; that action was clearly a shameful political provocation on the part of the United States. The USSR delegation demanded the immediate release of the official in question and drew attention to the strange coincidence, pointed out by The New York Times of 28 October between that police operation and the criticisms made by the USSR and other Member States regarding the recruitment of Secretariat staff. The Soviet delegation was amazed that the Secretary-General had not yet taken the necessary measures, in accordance with his responsibilities under the Charter, to stop that unlawful action.

31. Finally, it was to be hoped that the Office of Legal Affairs would recommend that the General Assembly include in the Sixth Committee's agenda important legal questions coming within its competence. He suggested that the International Law Commission study as a matter of priority State responsibility, adopting a wider approach to that question, and revise its programme of work to include certain questions connected with the maintenance of international peace and security. The Sixth Committee would then study the revised programme at the sixteenth session. In any event, the Committee could not be content with merely taking note of the decline in the legal activity of the United Nations and the lack of respect paid to international law, and must do all in its power to see that the principles proclaimed by the United Nations Charter were upheld.

32. Mr. VALIAT (United Kingdom), exercising his right of reply, stated that, if the USSR representative's statement at the 651st meeting had been comparable in tone and content with the reply he had just given to the statement of the United Kingdom representative (652nd meeting), the latter would not have considered it an unduly political statement.

33. Mr. ROSENBAUM (United States of America), speaking on a point of order, referred to the statement of the Soviet representative regarding the indictment of a Soviet citizen for the crime of conspiring to obtain information concerning the national defence installations of the United States and intending to transmit such information to the Soviet Union. He observed that it was improper to comment on the guilt or innocence of a person indicted until the person concerned had been duly brought to trial with all the guarantees provided by the United States Constitution. He criticized the effort of the Soviet representative to transform the Sixth Committee—into a court of law.

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[5] Harvard Law School, Convention on the International Responsibility of States for Injuries to Aliens (Preliminary Draft with Explanatory Notes), Harvard Law School, 1959.

[6] Yearbook of the International Law Commission, 1959, vol. I (United Nations publication, Sales No.: 59.V.1, Vol. I), 512th meeting, para. 43.

34. Should the official in question be guilty of violating the rule embodied in Article 100, paragraph 1, of the Charter which forbade officials of the Secretariat from seeking or receiving instructions from any Government, it would be an almost unique case in the annals of the United Nations.

35. Mr. GLASER (Romania) said that he did not see how the United States representative's intervention could be described as raising a point of order, and he wondered whether that representative had simply exercised his right of reply, or had abused it.

36. Some delegations, during the consideration of the International Law Commission's report, had tried to discover the causes of the weaknesses revealed by the Commission's work and believed that they were to be found in a one-sided approach in the activities of certain Secretariat departments, an approach contrary to the spirit and letter of the Charter. To support their assertions, they had cited certain facts such as the biased conduct of a certain international official, whom the Secretariat had supported, and the extremely grave criminal charge which the host country of the United Nations had once again brought against a Secretariat official, who was the citizen of a country not equitably represented in the executive body of the United Nations.

37. In the latter case, the Secretary-General had not thought fit to inquire whether the action taken had been regular or whether it had been politically inspired.

38. The CHAIRMAN asked the Romanian representative to refrain from discussing a judicial matter which only concerned the two parties at issue and which was connected neither with the item under discussion nor with the criticisms levelled against the behaviour of a Secretariat official.

39. Mr. GLASER (Romania) observed that he had intervened to explain that the point of order on which the United States representative had asked to speak had in fact not been a point of order.

40. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had not addressed his remarks to the United States representative and held that the latter's intervention could in no way be classed as raising a point of order. He again requested the Secretary-General immediately to take the necessary action to ensure that the arrested official of Soviet nationality was released.

41. Furthermore, he disputed the good faith of a judge who declared an accused man to be guilty before the trial had even begun, and considered that the coincidence between that arrest and the criticisms made regarding the recruitment of Soviet staff to the Secretariat left no room for doubt concerning the conspiracy which had been plotted by the United States State Department.

42. Mr. MOLINA LANDAETA (Venezuela), speaking under rule 119 of the rules of procedure, proposed the adjournment of the meeting.

The Venezuelan representative's proposal was adopted by 26 votes to 20, with 11 abstentions.

The meeting rose at 1.30 p.m.

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