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CONTENTS

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. Mr. KIRCHSCHLAEGER (Austria) said that, in his opinion, the agenda of the twelfth session of the International Law Commission, as set out in the Commission's report (A/4425 para. 6), had been in accordance with the Commission's Statute which the General Assembly had adopted on 21 November 1947 in its resolution 174 (II).

2. The Commission's ability to carry out the task of codifying international law had been demonstrated yet again by the draft articles on consular intercourse and immunities contained in chapter II of the report. His delegation held the view that consular intercourse and immunities should be governed by a convention, since the existence of such an international instrument would make it unnecessary for Governments to conclude a great number of bilateral agreements. In order to secure the ratification of the convention by the greatest possible number of States and, also, to forestall disputes on the admissibility of reservations, the articles subject to reservations and those which might be excluded from the application of the convention should be explicitly enumerated. Such a provision was necessary, for instance, because some States did not recognize the institutions of consular agents or honorary consuls.

3. With regard to the relationship between an international convention embodying the draft articles on consular intercourse and immunities and the bilateral, or even multilateral, conventions already in force or still to be concluded, the Austrian delegation considered that bilateral conventions were usually the best suited to the relations between the two countries concerned. The principle according to which contractus specialis derogat generali should therefore be maintained. There should also be room, however, for multilateral consular conventions between countries with particularly close ties, such as the European consular convention being drafted within the framework of the Council of Europe. The Austrian delegation therefore preferred the second text of article 65, suitably amended so as to refer to multilateral and not only to bilateral conventions.

4. While a provision for the continuance of bilateral and multilateral conventions was desirable, it was to be hoped that—in the future—their conclusion would be limited to cases where special arrangements between countries would have to meet particular circumstances not covered by the universal convention.

5. His Government reserved the right to comment on individual articles at a later stage. As time was short, it was to be hoped that the International Law Commission would take into account the results of the United Nations Conference on Diplomatic Intercourse and Immunities to be held at Vienna in preparing the draft articles in their final form. Countries such as Austria, where international conventions were sometimes part of the law of the land, attached great importance to that point.

6. With regard to ad hoc diplomacy, the Austrian delegation shared the view repeatedly expressed in the Committee to the effect that the matter should be submitted to the Vienna Conference. The scope of the existing draft articles should be expanded, and they should be incorporated in the instrument in which the draft articles on diplomatic intercourse and immunities would find expression. The Austrian delegation agreed with the opinion expressed by the International Law Commission (ibid., para. 32) that the question of "diplomatic conferences" should properly be dealt with only in connexion with the subject of "relations between States and international organizations". A number of significant questions—such as whether the host country of an international organization was obliged to grant specific privileges to the members of a permanent mission to that organization even if its own diplomatic personnel in the State sending the permanent mission did not enjoy identical privileges—had arisen in that field and their study by such a highly qualified body as the International Law Commission would be of particular importance.

7. In his delegation's view, the International Law Commission had done exceedingly valuable work in preparing the draft articles on consular intercourse and immunities, and the Committee's appreciation of that work should be expressed in a resolution.

8. While he shared the view put forward by a number of speakers that the contraction in the Committee's agenda was to be deplored, there was no room for undue pessimism, as legal matters were now being dealt with in other Committees as well. The purposes and principles of the United Nations would be well served if the norms of international law were reflected also in debates which did not concern purely legal problems, and if the principles of international justice were affirmed in all the spheres of international and national life. That should not be taken to mean, however, that the work of codifying essential parts of international law should be relaxed, and the consideration of political questions in the Sixth Committee was prejudicial to the attainment of the desired goal. While he was aware that divergent opinions had been expressed as to whether certain discussions in the Committee were of a political or a legal nature, he held the view

that they concerned political issues. Specifically, there was no connexion between the attacks directed at the Office of Legal Affairs of the Secretariat and individual members of that Office on the one hand and the Committee's agenda on the other hand. The Austrian delegation had full confidence in the Secretariat and in the staff of the Office of Legal Affairs and was convinced that every official of that Office had been carrying out his duties with absolute integrity, independence and impartiality, as required by the United Nations Charter and the Staff Regulations and Staff Rules.

9. Mr. PERERA (Ceylon), referring first to chapter II of the report of the International Law Commission, wished to express his delegation's gratitude to Mr. Žourek, the Special Rapporteur, who deserved the major share of credit for providing the comprehensive and useful draft articles on consular intercourse and immunities. Paragraphs 19 to 25 of the report constituted a masterly introduction to the method adopted by the Commission in arriving at the present draft, and the commentaries seriatim compensated for the absence of an historical introduction.

10. The Polish delegate had said (656th meeting) that the line distinguishing consular from diplomatic functions was not always very clear. He would suggest that the distinction was that between courtesy and law, and that the application of that distinction had given rise to controversy and ambiguity. The draft articles were, therefore, to be welcomed, since they codified what was accepted and desirable. In the past, judges and jurists had been deeply concerned by the ambiguous and sometimes invidious position of consular agents, but, because of national legislation, the courts had been unable to remedy the situation. The present draft articles, however, were based on the concept that consuls should enjoy the personal immunities which rendered it possible for them to perform their consular duties.

11. Paragraph 25 of the report indicated the Commission's desire to bring the provisional draft articles on consular intercourse and immunities into line with the draft articles on diplomatic intercourse and immunities (A/3859, para. 53); while the Vienna Conference might not find it practicable to consider the provisional draft articles, the members of the Conference would be in a position to compare the two drafts. He accepted the Special Rapporteur's assumption (A/4425, para. 24) that the draft articles would form the basis of a convention.

12. As for chapter III, the three draft articles on special missions, while perhaps not comprehensive, nevertheless formed a basis on which the Vienna Conference could consider that aspect of diplomatic intercourse and immunities.

13. Chapter IV raised the important questions of the future of the Sixth Committee, the Office of Legal Affairs and the International Law Commission. He wished to deal, first, with the organizational aspect and, second, with the future of the Committee's work in the light of Article 13, paragraph 1, of the Charter. The recent statement of the Chairman of the Council of Ministers of the USSR that the United Nations was at the cross-roads, applied with even greater force with regard to the Sixth Committee, Indeed, no representative would deny that a critical turning point had been reached in the Committee's affairs. Some might even suggest that the Committee should be allowed to die. But the members of the Sixth Committee had an obligation to their Governments, to their peoples and, above all, to the United Nations to examine the fundamental issues involved and to find the remedies. In that context, it was his delegation's view that the questions raised and the observations made by the representative of the USSR (657th meeting) merited the Committee's careful consideration. The Committee should be doing the United Nations a disservice if, at that critical juncture in its affairs, it took the position that codification and progressive development of international law had never been in a better state.

14. Not only had there been a decline in the work of the Sixth Committee, but there had been a tendency to surrender its rights and responsibilities on the ground that political tensions existed or that the time was not ripe for codification. Thus, the project to define aggression, which, if it had come to fruition, might have helped to solve some current problems, had been abandoned during the General Assembly's twelfth session. In fact, Article 10 of the Charter made it clear that the Committee had a right to discuss all politico-legal matters, including the organizational aspect of the Office of Legal Affairs, despite the fact that such items were also on the agenda of the Fifth Committee. He wished to remind the United Kingdom representative that the Fifth Committee, for its part, had, at the fourteenth session of the General Assembly, begun to consider the proposed amendments to certain provisions of the Pension Scheme Regulations of the International Court of Justice. The dividing line between the matters for which the various Committees were competent was very thin, and the co-ordination expected by the General Assembly could be achieved only if Committees discussed all matters of concern to them.

15. He reminded the Committee that, when proposals were made, it had a duty to examine them carefully. He could not agree with the Colombian representative (654th meeting) that the proposals made by the USSR representative, or those made in a wider context in the General Assembly, should be dismissed out of hand. The proposal of the Chairman of the Council of Ministers of the USSR made in the General Assembly (869th plenary meeting, paras. 284 and 285) that the Secretariat be made a tripartite body was not startlingly new, as the history of the Consulate in France at the close of the eighteenth century showed. Furthermore, the personnel of the Office of Legal Affairs should not view any of those proposals or criticisms as attacks on their personal integrity. The matter should be considered from an institutional rather than a personal point of view. He recalled what the Romanian representative had once said, namely, that the Secretary-General, like Caesar's wife, must be above suspicion; in the same way, the Office of Legal Affairs must be fair to all sides. The duty of the Sixth Committee was not only to preserve the integrity of the Office, but to encourage, advise and warn. Close co-ordination between the Sixth Committee and the Office of Legal Affairs would ultimately help to improve the situation.

16. It would be presumptuous for him to attempt to improve on the interpretation given by the Polish representative of Articles 100 and 101 of the Charter (656th meeting, para. 7). He entirely subscribed to the views expressed by Mr. Lachs on that point. Rather than regard the situation in the Office of Legal Affairs as unchangeable, the Secretary-General should con-

sider restaffing in order to redress the balance. Many new African and Asian States had been admitted to membership since 1945, and they would not long be satisfied with crumbs from the table.

17. Turning to the question of the future of the Committee's work, he proposed to restate the basic assumptions on which the United Nations legal organs functioned and to examine the role of the United Nations in the development of international law. Very profound and basic changes had taken place in the development of international law since 1939. International law had taken, and would have to take in the future, much greater cognizance of politics. Political power would always be one of the facts of national and international life; and it was for international lawyers to humanize and transform that power. Despite different political and philosophic views, lawyers throughout the world had in common a training, methods and habits of thought peculiar to themselves. International law, which had been necessary in the past, would be indispensable in the future, because conflicts today immediately became conflicts between States; without the reconstruction, revival and revitalization of international law, there could be no security or peace. Accordingly, it was no longer sufficient merely to restate principles of international law recognized by nations; regard must be had to the great changes which had occurred in international life, and the principles must be adapted accordingly; and, indeed, if no principles existed covering a given question, new principles must be created to conform to the new conditions.

18. Certain consequences followed from that attitude. First, international law was based on the acceptance by States of the United Nations as an international organization based on the principle of the sovereign equality of all its Members. The legal character of the Charter was derived from Article 1, paragraph 1, Article 2, paragraphs 3 and 4, and Article 13, paragraph 1 a. In the exercise of its law-development function, the General Assembly had created the International Law Commission, had, by resolution 95 (I), affirmed the existence of certain principles of international law, such as the Charter and Judgement of the Nürnberg Tribunal, and had undertaken the preparation of draft agreements for submission to Member States. Second, the new concept of neutrality, embodied in the five principles, known under the name of Pancha Shila, the principles adopted at the Bandung Conference and the basic principle of coexistence, had to be recognized. The notion of a purely European family of nations had been eclipsed by a truly universal code, based not on a super-State but on the coexistence of States. Whereas, in the past, small countries had had little influence in the making of international law, today the small State, and especially the uncommitted State, was playing a more important part. Indeed, it was the smaller States which stood to gain the most by the codification and development of international law through United Nations organs.

19. The decline in the Sixth Committee's work had surely not been due to a paucity of topics. There were two topics which, in his view, were particularly suitable for codification or for embodiment in an international agreement: State responsibility and the law of neutrality. By the former, he meant State responsibility in the widest sense, consistent with the maxim cujus est solum ejus est usque ad coelum et ad inferos. The law of neutrality had, in the past, been governed by the Hague Conventions; today, however, neutrality had become one of the forms which peaceful coexistence could take. Neutrality could thus contribute to ensuring respect by Member States of their duty under the Charter to maintain peaceful relations and to refrain not only from the use of force but also from any threat to use force.

20. Neutrality no longer found expression only in the form of multilateral international agreements; it could also take the form of a unilateral declaration of neutrality. The new form of neutrality raised many new problems. For example, a Member State's obligations under the Charter took precedence over its obligations under other international agreements, including obligations of neutrality. It was therefore necessary to determine what rules of positive international law concerning neutrality were still in force, what rules it seemed impossible to maintain, and what rules had been affected by changes in content and meaning. Moreover, as international conventions of neutrality were merely intended to govern the legal position of States which were determined not to take part in armed conflict, it was essential to create rules governing the rights of neutrals to meet the use of force other than armed force, for example, coercive economic measures. Other questions arose with regard to the neutral State's duties in the event of action or inaction by the Security Council, the applicability of the Hague Conventions, and the possibility of maintaining the rule that a neutral State was not obliged to ensure the neutral attitude of individuals residing in its territory. Furthermore, it was essential that the behaviour of the neutral State be such as to contribute to the maintenance of peace to the greatest extent possible. Finally, the military, economic and political duties of States enjoying the status of permanent neutrality should be defined.

21. In conclusion, he stressed that international law was essential to the attainment of one of the basic purposes of the United Nations—stated in Article 1, paragraph 4, of the Charter—the harmonizing of actions of nations in the attainment of international peace and security, friendly relations among nations and international co-operation.

22. Mr. CHAYET (France) said that the report of the International Law Commission (A/4425) did not call for much comment. The draft articles on consular intercourse and immunities were in fact provisional in form and were subject to comments by Governments. Moreover, the International Law Commission had requested information on the practice of States regarding questions dealt with in particular in draft articles 12, 38, 54 and 60.

23. His Government entertained serious doubts as to the usefulness of codifying consular intercourse and immunities. That subject had, in the past, been governed quite satisfactorily by numerous bilateral agreements. For the same reason, his Government preferred the second text of article 65 which would maintain in force the previously existing bilateral conventions between the Contracting Parties. Uniform rules on consular intercourse and immunities would not necessarily apply to the particular relations two States might wish to entertain.

24. With regard to the draft articles on special missions, his delegation shared the opinion expressed by the Chairman of the International Law Commission

namely that they should be referred to the Conference to be held at Vienna in the spring of 1961.

25. The Sixth Committee should keep strictly to its agenda and should refrain from discussing questions not allocated to it by the General Assembly. It should, however, avoid introducing any element of political controversy in its discussions of legal questions. The French delegation disagreed therefore entirely with the views put forward by the representative of the USSR in his first statement (651st meeting). Both the Charter and the rules of procedure contained provisions governing the inclusion of items in the agenda of the Assembly, and nothing could justify a departure by the Sixth Committee from those rules. It would also be unfortunate if the Sixth Committee were to insist that the Third Committee transmit to it for advice the draft Declaration on the Right of Asylum (A/4452), in which the humanitarian element predominated over the purely legal one. On the other hand, the Sixth Committee could not usefully give advice to the International Law Commission regarding the order in which it should take up the various items on its agenda.

26. Finally, the French delegation could not accept the suggestions aiming at a tripartite organization of the Secretariat in general and of the Office of Legal Affairs in particular. The United Nations structure could not be adapted mathematically to the pattern of regional organizations. The example given by the representative of Ceylon, recalling the period of the Consulate (see para. 15 above), in support of his opinion that such organizations had worked successfully, was not a convincing by one.

27. Mr. TODOROV (Bulgaria) welcomed the new members of the Committee representing sixteen African States and the Republic of Cyprus, and wished them fruitful work both in the field of international law and in the development of their young countries. International law should adapt itself to the rapid changes now taking place in Africa and should help the new States consolidate their independence and develop their economies. All outdated conceptions and the influence of obsolete legal systems, which hindered the development of the new States and their relations with other States, should be removed from international law.

28. The fifteenth session of the General Assembly was one of the most important of its sessions so far. Many urgent questions which called for settlement were on its agenda, and it was for that reason that so many Heads of State had attended its first meetings. Historic changes were taking place in the world. Millions of people who had until recently suffered under colonialism had emerged to freedom and were seeking to consolidate their political and economic independence. The new developments had left their mark on the work of the General Assembly and of five of its main Committees. That was not true, unfortunately, of the work of the Sixth Committee, the importance of which was steadily declining. Yet, some of the most important problems in the relations between States were undoubtedly, to a greater or lesser degree, problems of international law.

29. The Sixth Committee, consisting as it did of prominent jurists and experts on international law from all over the world, ought not to stand aside from the urgent issues of the day, but ought rather to try to make its contribution to their solution. It was pertinent, therefore, to raise the question of the role of the Committee and the value of its work. The alarm expressed in that connexion by a number of delegations was, he believed, fully justified. There were many reasons for the decline in the Committee's importance. One of them, in his delegation's view, lay in the stifling of law by imperialism, which sought to solve problems by force. Some States made the violation of rules of international law the keystone of their foreign policies and they were naturally loath to accord the Sixth Committee the authority due to it because they did not want to be hampered in their imperialist, colonialist and aggressive actions by the affirmation of strict principles of international law. He quoted Senator Fulbright, Chairman of the United States Senate Committee on Foreign Relations, in connexion with the U-2 plane incident, who had said that it would be impossible to conduct orderly international affairs if the Heads of State began the practice of personally admitting the violation of each other's sovereignty. That was why, for example, it had been impossible to reach agreement on a definition of aggression or to take a decision on the broad and many-sided right to self-determination. Members of the United Nations ought not to tolerate such a situation, and the Sixth Committee should take decisive steps to correct it.

30. The attitude of the United Nations Secretariat, and especially its Office of Legal Affairs, was another factor in the growing stagnation of the work of the Sixth Committee. In response to criticism, the Legal Counsel had maintained (651st meeting, para. 12) that the Office was not called upon to initiate studies in the field of international law but simply to undertake them when requested. His delegation could not accept that position. The publication Organization of the Secretariat (ST/SGB/123, part II, section 2, I) explicitly stated that one of the functions of the Office was "to encourage the progressive development of international law and its codification". However, according to rule 13 (g) of the rules of procedure of the General Assembly, the Secretary-General was entitled to place on the Assembly's provisional agenda any items he deemed necessary. It was surely the responsibility of the Office of Legal Affairs to prompt the Secretary-General's initiative in that matter and to prepare for placement on the provisional agenda questions of a legal character and questions concerning current matters of international law. He would like to know what initiative the Secretary-General had taken to date in the matter of placing questions of international law on the agenda and what assistance he had received in that respect from the Office of Legal Affairs.

31. It was reasonable to ask why the Secretariat underrated the importance of problems of international law. It was no accident, in his delegation's view, that its attitude in that matter coincided with that of certain Western Powers. The reason lay, quite obviously, in the composition of the Office of Legal Affairs, the majority of whose staff were citizens of the United States, of countries members of NATO and other Western military alliances, while the countries of Asia, Africa, Latin America and the socialist countries were not represented. Article 101 of the Charter required that due regard should be paid to the importance of recruiting the staff on as wide a geographical basis as possible. That principle ought especially to be applied in the recruitment of staff for the Office of Legal Affairs, for it was essential that the basic legal systems of the world should be ade-

quately represented in it and on an equal footing. Since so many members of the Committee had shown that they did not share the optimistic view of the head of that Office, it was to be hoped that a real improvement in the situation would have been effected by the General Assembly's next session.

32. He would like to support the request of other delegations for a statement of the legal opinions given by the Office in the performance of its task of advising the Secretariat and other organs of the United Nations on legal and constitutional questions. His delegation was particularly interested to know what legal advice, if any, the Office had given the Secretary-General with respect to his actions in the Congo and what part it had played in the legal interpretation of the situation regarding the occupation of the Iraqi seat in the Security Council by a representative of the revolutionary Government of Iraq. The positions adopted by the Secretary-General in both those matters were not, in his delegation's opinion, designed to assist in the progressive development of international law.

33. Many delegations had urged, in the interests of improving the work of the Sixth Committee, that a detailed study should be made of State responsibility. His delegation supported that suggestion. The question was one of vital importance at the present time and it should be approached, not one-sidedly as in the past, but comprehensively and completely. The study should deal with such important matters as State responsibility for the violations of State sovereignty, of the rights of peoples of self-determination, of the right of every nation freely to exploit its natural riches and resources, and so on. His delegation believed with others that the Sixth Committee had the right, and indeed the duty, to instruct the International Law Commission in that respect. There were other matters affecting international law which had been discussed by various regional organizations and might well be taken into consideration by the Sixth Committee in its future work. The Afro-Asian Conference of Jurists held at Damascus in 1957, for example, had discussed such problems as those of nationalization in the light of international law, imperialism and colonialism, pacts and military bases, unjust treaties, positive neutrality, and aggression and its legal consequences.

34. Some had interpreted the comments of various delegations on the waning role of the Sixth Committee and on the failure to give due importance to the subject of international law as an attempt to introduce a political element into the work of a "technical" committee. But legal problems, although technical ratione materiae, were political so far as concerned the positions taken on them by individual States. All problems had their political aspects. The General Assembly itself was a political organ and the Sixth Committee was an organ thereof dealing with Assembly matters in a special field. Nor could delegations be prevented, while debating the technical aspects of problems, from being guided by political considerations and taking a stand in accordance with those considerations.

35. He expressed his delegation's appreciation of the report of the International Law Commission, which contained valuable material; the draft articles on consular intercourse and immunities, contained in chapter II, were a particularly useful contribution. It would, of course, be far more difficult to draft articles on consular intercourse and immunities than those on diplomatic intercourse and immunities, since the materials were to be found variously in multilateral and bilateral agreements, in international practice and in the domestic legislations of States. His delegation was nevertheless of the opinion that a multilateral international convention was the best form on which to embody the draft articles, and it believed that such a convention would help towards a general understanding among nations and the development of friendly relations between countries with different social and economic systems. The draft articles themselves, although preliminary, represented a serious achievement. The General Assembly would be able to discuss them in detail at its next session when it had the final draft from the Commission and the comments of Governments. His delegation agreed that the three draft articles on special missions, contained in chapter III of the report, should be sent to Governments, to be borne in mind by them in their preparations for the Conference to be held at Vienna in 1961. The Bulgarian delegation was glad to note, from chapter IV of the report, the extension of co-operation between the International Law Commission and regional organizations, such as the Inter-American Council of Jurists and the Asian-African Legal Consultative Committee, particularly as it had suggested such co-operation in the Sixth Committee (512th meeting, para. 36) at the Assembly's twelfth session.

36. Finally, he wished to state the Bulgarian delegation's reading of the facts and the explanations given by the Legal Counsel (656th meeting) with regard to the presentation of the Harvard draft on the question of State responsibility to the International Law Commission. In the first place, it was clear that, without due authority and on its own initiative, the Secretariat had requested the Harvard Law School to prepare a study on State responsibility for submission to the International Law Commission to help it in its work on that subject. No similar contact had been made with any other law school or institution in any other country representing a different legal system, either socialist, Asian, African or Latin American. The regular relations and contacts which the International Law Commission maintained with some regional organizations could in no way be compared with the contact which the Secretariat had established with the Harvard Law School. Furthermore, an official from the Office of Legal Affairs of the Secretariat had taken an active part in the work of the Consultative Committee at the Harvard Law School while the draft on State responsibility was being prepared. Article 100, paragraph 1, of the United Nations Charter had clearly been violated. The Secretariat should therefore take appropriate organizational measures to prevent a recurrence of such acts.

The meeting rose at 1 p.m.

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