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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FIRST SESSION

Report of the Sixth Committee

Rapporteur: Mr. Guillaume PAMBOU-TCHIVOUNDA (Gabon)

I. INTRODUCTION

1. At its 3rd plenary meeting, on 22 September 1989, the General Assembly, on the recommendation of the General Committee, decided to include in its agenda the item entitled "Report of the International Law Commission on the work of its forty-first session" and to allocate it to the Sixth Committee.

2. In connection with the item, the Sixth Committee had before it the following documents:

(a) Report of the International Law Commission on the work of its forty-first session; 1/

(b) Note by the Secretary-General containing the text of the draft articles adopted by the International Law Commission on topics considered at its forty-first session (A/44/475);

(c) Letter dated 19 July 1989 from the Chargé d'affaires a.i. of the Permanent Mission of Zimbabwe to the United Nations addressed to the Secretary-General (A/44/409-S/20743).

1/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10).

3. The Sixth Committee considered the item at its 24th to 38th meetings and at its 44th meeting, held from 25 October to 10 November and on 21 November 1989. The summary records of those meetings (A/C.6/44/SR.24-38 and 44) contain the views of the representatives who spoke on the item.

4. At the 24th meeting, on 25 October, Mr. Bernhard Graefrath, Chairman of the International Law Commission at its forty-first session, introduced the Commission's report on the work of that session. At the 38th meeting, on 10 November, the Chairman of the Commission made a closing statement.

II. CONSIDERATION OF DRAFT RESOLUTIONS

A. Draft resolution A/C.6/44/L.13

5. At the 44th meeting, on 21 November 1989, the representative of Austria introduced a draft resolution entitled "Report of the International Law Commission on the work of its forty-first session" (A/C.6/44/L.13), sponsored by Algeria, Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, Cyprus, Czechoslovakia, Denmark, Egypt, Ethiopia, Finland, France, the German Democratic Republic, Germany, Federal Republic of, Greece, Guinea, Ireland, Italy, Japan, Morocco, New Zealand, Norway, Peru, Senegal, Turkey, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and Venezuela, later joined by China, Iceland, India, Jamaica, Mexico, Romania, Spain, Sweden, Tunisia, Viet Nam and Yugoslavia.

6. At the same meeting, the Committee was orally informed of the programme budget implications of the draft resolution. The Chairman also made a statement on paragraph 14 of the draft resolution.

7. Also at that meeting, the Committee adopted draft resolution A/C.6/44/L.13 without a vote (see para. 11, draft resolution I).

B. Draft resolution A/C.6/44/L.14

8. At the 44th meeting, on 21 November 1989, the representative of Austria introduced a draft resolution entitled "Consideration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto" (A/C.6/44/L.14), sponsored by Austria, Brazil, Chile, Cyprus, Czechoslovakia, the German Democratic Republic, Germany, Federal Republic of, Ireland, Peru, the Union of Soviet Socialist Republics and Venezuela, later joined by Argentina, Bulgaria, China, Gabon, India, Jamaica, Mali, Mexico, Poland, Spain and Viet Nam.

9. At the same meeting, the Committee adopted draft resolution A/C.6/44/L.14 without a vote (see para. 11, draft resolution II).

10. The representative of the United States of America made a statement in explanation of his position.

III. RECOMMENDATIONS OF THE SIXTH COMMITTEE

11. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

Report of the International Law Commission on the work of its forty-first session

The General Assembly,

Having considered the report of the International Law Commission on the work of its forty-first session, 2/

Emphasizing the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 3/ and to give increased importance to its role in relations among States,

Recognizing the importance of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission, and of enabling the Sixth Committee and the Commission further to enhance their contributions to the progressive development of international law and its codification,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Considering that experience has demonstrated the usefulness of structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention on each of the main topics dealt with in the report, and that this process is facilitated when the Commission indicates specific issues on which expressions of views by Governments are of particular interest for the continuation of its work,

2/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10).

3/ Resolution 2625 (XXV), annex.

1. Takes note of the report of the International Law Commission on the work of its forty-first session;

2. Recommends that, taking into account the comments of Governments, whether in writing or expressed orally in debates in the General Assembly, the International Law Commission should continue its work on the topics in its current programme, listed as items 2, 3 and 5 to 8 in paragraph 7 of its report;

3. Expresses its appreciation for the efforts of the International Law Commission to improve its procedures and methods of work and to formulate proposals on its future programme of work;

4. Requests the International Law Commission:

(a) To keep under review the planning of its activities for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;

(b) To consider further its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee;

(c) To pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work;

5. Invites the International Law Commission, when circumstances so warrant, to ask a special rapporteur to attend the session of the General Assembly during the discussion of the topic for which that special rapporteur is responsible and requests the Secretary-General to make the necessary arrangements within existing resources;

6. Recommends the continuation of efforts to improve the ways in which the report of the International Law Commission is considered in the Sixth Committee, with a view to providing effective guidance for the Commission in its work;

7. Decides that the Sixth Committee, in structuring its debate on the report of the International Law Commission at the forty-fifth session of the General Assembly, should continue to bear in mind the possibility of reserving time for informal exchanges of views on matters relating to the work of the Commission;

8. Recommends that the debate on the report of the International Law Commission at the forty-fifth session of the General Assembly commence on 29 October 1990;

9. Takes note of the comments of the International Law Commission on the question of the duration of its session, as presented in paragraph 743 of its report, and expresses the view that the requirements of the work for the progressive development of international law and its codification and the magnitude and complexity of the subjects on the agenda of the Commission make it desirable that the usual duration of its sessions be maintained;

10. Reaffirms its previous decisions concerning the increased role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the summary records and other documentation of the International Law Commission;

11. Urges Governments and, as appropriate, international organizations to respond in writing as fully and expeditiously as possible to the requests of the International Law Commission for comments, observations and replies to questionnaires and for materials on topics in its programme of work;

12. Reaffirms its wish that the International Law Commission continue to enhance its co-operation with intergovernmental legal bodies whose work is of interest for the progressive development of international law and its codification;

13. Once again expresses the wish that seminars will continue to be held in conjunction with the sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars, appeals to States that can do so to make the voluntary contributions that are urgently needed for the holding of the seminars, and expresses the hope that every effort will continue to be made by the Secretary-General, within existing resources, to provide the seminars with adequate services, including interpretation, as required;

14. Requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the forty-fourth session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate.

DRAFT RESOLUTION II

Consideration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto

The General Assembly,

Noting that the International Law Commission, taking into account the written comments of Governments as well as views expressed in debates in the Assembly, completed at its forty-first session the second reading of the draft

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articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and also prepared a draft optional protocol on the status of the courier and the bag of special missions and a draft optional protocol on the status of the courier and the bag of international organizations of a universal character, 4/

Noting also the recommendation of the International Law Commission that the General Assembly convene an international conference of plenipotentiaries to study the draft articles concerned and the draft optional protocols thereto and to conclude a convention on the subject, 5/

1. Expresses its appreciation to the International Law Commission for its valuable work on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and to the Special Rapporteur on the topic for his contribution to this work;

2. Decides to hold informal consultations at the forty-fifth session of the General Assembly to study the draft articles concerned and the draft optional protocols thereto, as well as the question of how to deal further with these draft instruments with a view to facilitating the reaching of a generally acceptable decision in the latter respect;

3. Also decides to include in the provisional agenda of its forty-fifth session an item entitled "Consideration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto".

4/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10), chap. II.

5/ Ibid., para. 66.