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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443) (continued)

1. Mr. URQUIA (El Salvador) said that his delegation was satisfied with the explanations contained in the International Law Commission's report (A/4169), as further amplified by the Commission's Chairman in his statement (601st meeting), regarding the reasons which had prevented the Commission from concluding at its eleventh session its work on the three principal topics on its agenda: consular intercourse and immunities, the law of treaties, and State responsibility.

2. So far as the law of treaties was concerned, the report stated in paragraph 18 that, on the recommendation of the Special Rapporteur, and without prejudice to any eventual decision to be taken by the Commission or by the General Assembly, the Commission had not thus far envisaged its work on the law of treaties as taking the form of one or more international conventions or of a treaty, but rather as a code of a general character. His delegation would not yet take any final position on that point, but it thought that, in principle, the reasons adduced in support of that thesis seemed acceptable. There certainly seemed to be reasonable grounds for the contention that the various provisions, rules and declaratory and explanatory matter relating to the law of treaties should be incorporated in a code.

3. His delegation agreed with the Chairman of the International Law Commission that, as the Commission's report was purely provisional, the Sixth Committee might confine itself to taking note of the progress made in the work on the law of treaties and consular immunities. A detailed study of the various draft articles would be both more logically and more usefully undertaken when the two drafts were complete. His delegation nevertheless reserved its right to speak on the substance of various articles if the Committee should decide to proceed to such a study of the partial drafts in the report.

4. As was indicated in chapter IV, section I, of the Commission's report, the Commission intended to devote its 1960 session to the continuation of the study and preparation of drafts on consular intercourse and immunities, on the law of treaties and on State responsibility, giving the highest priority to the

first of those topics. The Commission also proposed to study the subject of *ad hoc* diplomacy, which constituted one form of diplomatic relations between States, since the Commission had limited its draft articles on diplomatic intercourse and immunities, which had been submitted to the General Assembly in 1958, to permanent diplomatic missions.

5. In that connexion, his delegation had no wish to disturb the plan adopted by the Commission, but it also had special instructions to present for the Committee's consideration a draft resolution concerning the right of asylum. As the members of the Committee would recall, the International Law Commission had included that topic among the fourteen originally selected for codification in 1949 (A/925, para. 16). The selection of those topics had later been approved by the General Assembly in resolution 373 (IV) of 6 December 1949.

6. Already during the preparation of the Draft Declaration on Rights and Duties of States, at the Commission's first session, several members had proposed the inclusion of an article on the right of asylum. Such an article had in fact been provisionally approved, but it was subsequently decided that the question was too complex to be covered in a single provision and the provisional article had been deleted. ^{1/} The Commission's decision had also been influenced by the fact that the dispute then pending between Peru and Colombia, in the Haya de la Torre case, had not yet been resolved by the International Court of Justice.

7. The question of the right of asylum had not been considered again by the Commission since that time, but a brief discussion on the subject had taken place in the Sixth Committee, during the General Assembly's seventh session, in connexion with a Yugoslav proposal that priority should be given to the codification of diplomatic intercourse and immunities. The Colombian delegation had presented an amendment ^{2/} to the Yugoslav draft resolution, asking the Commission to give priority to the codification of not only diplomatic intercourse and immunities but also the right of asylum. That amendment had not been approved, the prevailing opinion being that the right of asylum constituted a separate topic on the Commission's general programme.

8. In those circumstances, his delegation hoped that the General Assembly would ask the Commission to undertake, as soon as might seem advisable, the codification of the principles and rules of international law governing the right of asylum. In making that proposal during the discussion on the Commission's report, his delegation was merely following the

^{1/} Yearbook of the International Law Commission, 1949 (United Nations publication, Sales No.: 1957.V.1), 6th, 16th and 20th meetings.

^{2/} See Official Records of the General Assembly, Seventh Session, Annexes, agenda item 58, document A/C.6/L.251.

precedent established at the General Assembly's eighth session, when the Cuban delegation had called for consideration by the Commission, as soon as it considered it possible, of the principles of international law governing State responsibility. ^{3/} That proposal had been approved by General Assembly resolution 799 (VIII).

9. The right of asylum, with its twin aspects of territorial asylum and diplomatic asylum, was an ancient institution, accepted and applied in many parts of the world. The law governing diplomatic asylum had developed most in Latin America, where several conventions on the subject had long been in existence. Several instances in which the right had been invoked had admittedly occurred recently in Hungary, as well as in Australia, Burma, Canada and the United States, and diplomatic asylum had been sought on many occasions in Spain during the Civil War. But when all those cases were considered, it was clear that, outside the Latin American countries, practice in the matter of diplomatic asylum had not yet reached adequate uniformity. Consequently, as in the case of consular intercourse and immunities, the International Law Commission's work would have to consist both of codification and of the progressive development of international law, within the meaning given to those expressions in article 15 of the Commission's Statute.

10. In conclusion, he formally submitted draft resolution A/C.6/L.443.

11. Mr. USTOR (Hungary) said that he agreed with the Commission's Chairman that the only action which the Sixth Committee was called upon to take on the Commission's report (A/4169) was to take note of the progress of its work. His delegation, however, had certain comments to make in connexion with chapter II of the report, concerning the law of treaties. In paragraph 18, the report stated that the Commission had not at present envisaged its work on the law of treaties as taking the form of one or more international conventions or as taking the form of a treaty, but rather as a code of a general character. From the same paragraph, it was clear that that statement had been made on the recommendation of the Special Rapporteur and without prejudice to any eventual decision to be taken by the Commission or by the General Assembly. In support of his recommendation, the Special Rapporteur had advanced three reasons: the first was that it seemed inappropriate that a code on the law of treaties should itself take the form of a treaty, or rather that it seemed more appropriate that it should have an independent basis. To the Hungarian delegation that argument seemed not clear enough and perhaps a revival of the natural law doctrine; surely the consent of States was the only and ultimate source of international law. It seemed paradoxical to abandon the form of a convention at the very moment when the principles of treaty-making were going to be adopted. The second reason given by the Special Rapporteur referred to the difficulties of expression and language involved; but without denying that such difficulties might exist, his delegation did not consider that that in itself constituted a very weighty argument. The third reason was the fear that if a convention embodied rules of customary international law, that might create doubt as to the binding force of that law on States not parties to the convention. In his delega-

tion's opinion, that problem went to the very roots of the theory of international law, namely, the binding force of customary international law and the relation of the latter to international conventions.

12. Concerning the forms which codification should take, there were two prevailing schools of thought. One advocated the restatement of the law, a method which had been adopted by the Special Rapporteur in connexion with the law of treaties. The other had found expression in 1947 in the Committee on the Progressive Development of International Law and its Codification. The latter's views could be summarized as follows: the nations awaited the consolidation of legality in international relations; legality demanded precise forms; the only method by which that could be achieved was the conclusion of international conventions. Even the late Professor Brierly, one of the advocates of the method of restatement, had admitted that "a concluded convention would be better and more satisfactory than a mere scientific restatement of the law which had no actual authority". ^{4/}

13. However, as had been pointed out by the Commission's Secretary in 1956, ^{5/} the question was not so much one of form, since the Commission, though bound under article 20 of its Statute to prepare its draft in the form of articles, was perfectly free to call a set of articles a "code". The real question was the action to be taken with regard to the "code", a comment which clearly referred to article 23 of the Commission's Statute. Under that provision, the Commission might recommend to the General Assembly: (a) to take no action, the report having already been published; (b) to take note of or adopt the report by resolution; (c) to recommend the draft to Members with a view to the conclusion of a convention; or (d) to convoke a conference to conclude a convention.

14. While the Commission's records for 1956 indicated that at that time its members might have favoured the course now recommended by the Special Rapporteur, its records for 1959 did not, in his opinion, warrant that conclusion. It was even questionable whether such a conclusion could be drawn from the fact that the Commission had adopted paragraph 18 of the report: it had done so under circumstances which made it perfectly clear that the matter would be taken up again at a later stage. Moreover, since 1956, three important events had taken place which might induce the Commission to reconsider its position in the matter: General Assembly resolution 1105 (XI) concerning the international conference of plenipotentiaries to examine the law of the sea; the four Geneva conventions on the law of the sea of April 1958; ^{6/} and General Assembly resolution 1288 (XIII), pronouncing in favour of a convention on diplomatic intercourse and immunities. From those examples, it appeared that in at least two important spheres, the United Nations had not been averse to codifying by conventions fields of international law which were already widely covered by rules of customary international law. For those

^{4/} See Survey of International Law (United Nations publication, Sales No.: 1948.V.1), p. 18.

^{5/} See Yearbook of the International Law Commission, 1956, Vol. I (United Nations publication, Sales No.: 1956.V.3, Vol. I), 369th meeting, para. 64.

^{6/} United Nations Conference on the Law of the Sea, Official Records, Volume II: Plenary Meetings (United Nations publication, Sales No. 58.V.4, Vol. II), annexes, pp. 132-143.

^{3/} Ibid., Eighth Session, Annexes, agenda item 53, document A/C.6/L.311.

reasons, he felt that the Special Rapporteur's principal arguments against the conclusion of a convention on the law of treaties had lost much of their cogency.

15. Nevertheless, his delegation was unwilling to make any definite pronouncement in the matter until the International Law Commission had subjected it to thorough study. He accordingly suggested that the Commission should, before deciding what action to propose to the General Assembly under article 23 of its Statute, again examine the problem in detail. Such a study would be extremely useful to the Sixth Committee and to the General Assembly when it eventually took a decision on the law of treaties. It could also serve as guidance in the future work of codifying international law.

16. Mr. NISOT (Belgium) asked what, in the view of the International Law Commission, was the legal effect of the "provisional consent" mentioned in article 14 of the draft articles on the law of treaties (A/4169, para. 20).

17. Sir Gerald FITZMAURICE (Chairman of the International Law Commission) replied that the reason for including article 14 in the text was to show that signature did not, save in exceptional circumstances, operate as a final consent by a State. In normal circumstances, however, a country could only ratify a treaty if it had already signed it. Signature was thus an essential preliminary to ratification.

18. Mr. CHARDIET (Cuba) expressed great interest in the Salvadorian representative's proposal. The International Law Commission should study the possibility of codifying the right of asylum, and in so doing should take great care to distinguish between political offenders and common criminals. Such a distinction was important because a State, having once granted asylum, might find it difficult to revise its attitude and allow extradition.

19. Mr. HERAVI (Iran) recommended that as the International Law Commission had unfortunately been unable to complete its work on the draft articles on consular intercourse and immunities, speakers should avoid matters of substance in discussing the Commission's report. It was also regrettable that the Committee would not have the final draft on consular intercourse and immunities to hand when discussing the closely related subject of diplomatic intercourse and immunities.

20. Mr. DADZIE (Ghana) said that the International Law Commission was to be commended on the work it had done at its recent session. In view, however, of the remarks contained in chapter II, paragraph 13, and chapter III, paragraph 41, of the Commission's report, he supported the proposal made by the representative of El Salvador. Consideration of the substance of the matters referred to in those chapters should be deferred until the fifteenth session of the General Assembly.

The meeting rose at 11.45 a.m.

United Nations
**GENERAL
 ASSEMBLY**

FOURTEENTH SESSION
 Official Records



**SIXTH COMMITTEE, 603rd
 MEETING**

Tuesday, 29 September 1959,
 at 11 a.m.

NEW YORK

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Chairman: Mr. Alberto HERRARTE (Guatemala),

Tribute to the memory of Mr. S. W. R. D. Bandaranaike,
 Prime Minister of Ceylon

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. S. W. R. D. Bandaranaike, Prime Minister of Ceylon.

1. Mr. PERERA (Ceylon) said that Mr. Bandaranaike had long been devoted to the cause of the United Nations and had showed particular interest in the legal problems confronting the Sixth Committee. He thanked the Committee for its tribute, which would be gratefully appreciated by his Government, his people and the family of the deceased.

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443) (continued)

2. Mr. CHOWDHURY (Pakistan) expressed his delegation's appreciation for the work accomplished by the International Law Commission at its eleventh session. He realized that, as the Commission's Chairman had pointed out (601st meeting, para. 3), the present report (A/4169) was of a purely interim character, but the circumstances which had prevented the completion of the drafts on the law of treaties and consular intercourse and immunities had been unavoidable and he was confident that the Commission would be able to present the General Assembly with a complete draft after its next session.

3. With respect to the form which the codification of the law of treaties should take, he preferred a code to a convention. The code was a form of legal codification which had been favoured by jurists since the eighteenth century, when Bentham had expressed the idea that the formulation of the laws governing international affairs might prove to be the foundation of everlasting peace. That idea had also been expressed, although unfortunately without any fruitful results, in a resolution of the French National Convention in 1792. The principle of codification had achieved its most outstanding successes at The Hague Peace Conferences of 1899 and 1907, concerning the pacific settlement of international disputes and the laws and customs of war on land, and in the Geneva Conventions of 1929 relative to the

treatment of prisoners of war and for the amelioration of the condition of the wounded and sick in armies in the field. A code embodying the law of treaties, formulated with the common consent of the Members of the United Nations, would represent an important step towards creating a better world. Under such a code, nations would have a clear idea of their respective rights and obligations. Some doubt had been expressed, in the course of the discussion, as to the sanctions which would serve to enforce such a code, but for his part he was convinced that the common interest of all independent and sovereign States in the preservation of world peace would in itself be a sufficient sanction.

4. With regard to the question of the right of asylum, his delegation felt that it was desirable to standardize the application of the principles and rules relating to the right of asylum and that that important branch of international law should receive the serious consideration of the International Law Commission.

5. Mr. LACHS (Poland) said that during the discussion, at the thirteenth session of the General Assembly, of the work of the International Law Commission covering the past ten years, suggestions had been made for expediting the Commission's work. One proposal had been that Governments should be allowed two years instead of one year to submit their comments on drafts prepared by the Commission. That had been an excellent suggestion and he had been glad to learn from the Commission's Chairman that it was now being put into effect.

6. At its eleventh session the Commission had unfortunately, for the reasons given by its Chairman, been unable to prepare a full report on any of the subjects it had studied. Accordingly, members of the Committee were not called upon to discuss the substance of the report. However the report did raise some problems concerning the law of treaties which deserved comment.

7. The Special Rapporteur, Sir Gerald Fitzmaurice, had been quite correct in stating that the law of treaties lent itself to different methods of arrangement, two of which in particular, the procedural and substantive, should be singled out. As the report indicated (A/4169, para. 14), the Commission had provisionally adopted the idea of including a first chapter in a code on treaty law based on the concept of validity and divided into three parts, covering formal validity, essential or substantive validity and temporal validity.

8. Validity could be considered the guiding principle of the whole work on the law of treaties, as it might cover all aspects of treaties. It applied both to the substantive and the formal aspects and might be qualified by subjective or temporal criteria and by the special criterion of time of peace or time of war. Validity might determine the form in which the will of the parties was expressed, as well as the various

forms of co-operation envisaged. Indeed, validity was even broader in scope, for it covered the essence of obligations entered into by the parties, and also their character, namely whether they were identical or complementary. It constituted a criterion of the will of the parties and was thus closely related to interpretation, for there might be an interpretation which was valid and another which could not prevail. Validity might thus be all embracing.

9. From the wider point of view of time, it might be said that the form of treaties had been shaped by custom and practice, while their substance had been and was still greatly affected by the historical development of international relations and particularly by general principles of law which had become an inherent part of international law.

10. The subject matter of treaties was constantly expanding as increasing numbers of problems were regulated by treaty as a result of nations living in closer association with each other. At the same time, however, freedom of choice by any State as regards acquisition of rights and the acceptance of obligations was becoming ever more limited. Bluntschli had insisted seventy years before that only a few types of treaty were illegal and therefore invalid: those had included treaties introducing or maintaining slavery, those refusing all rights to aliens, and those contrary to the principle of freedom of the seas. Today the list of illegal treaties was considerably longer. In clarifying the law of treaties due consideration must be given to that fact. Indeed, it constituted one aspect of the whole problem of validity.

11. Consequently, validity applied to form and substance, as it was only when both met the requirements of law that any instrument could be regarded as a treaty in the true sense of the word.

12. The proposed work of the International Law Commission should not only provide a reply to the question whether a treaty was valid, but should also state what that validity amounted to.

13. The Special Rapporteur had stated (A/4169, para. 18) that in his view the rules governing the law of treaties were not suitable for framing in conventional form and that a code would be much more suitable, since the law of treaties was not itself dependent on treaty but was part of general customary international law. That consideration brought up the question of the relationship between customary and treaty law in international relations. Treaties bearing the signatures of a large number of States frequently dealt with matters for which firm and long-standing solutions had been found. That often meant that principles or practice whose binding force exceeded treaty stipulations had already been embodied in written law. In such cases the purpose of a treaty was to confirm and give more precision to what had in fact been law prior to its conclusion. In other treaties, however, new ground was covered as part of the progressive development of international law. A treaty on the law of treaties would raise a problem of a special kind, as it would constitute a generally binding directive with respect to other treaties.

14. If, however, it was decided that the law of treaties should not itself be a treaty, but a code, that code would fall under paragraph 1 b and not paragraph 1 a of Article 38 of the Statute of the International Court

of Justice. However, no solution to the problem would be needed until the whole report had been submitted to the Committee.

15. He suggested that the Committee should simply take note of the report of the International Law Commission.

16. Mr. ALONSO LIMA (Guatemala) said that his delegation had read the Commission's report with great interest and accepted the explanation of its contents offered by the Commission's Chairman. The Sixth Committee should therefore confine itself to taking note of the work done by the Commission on consular intercourse and immunities and on the law of treaties, and to an expression of satisfaction with the Commission's progress.

17. With reference to the proposal submitted by El Salvador on the right of asylum (A/C.6/L.443), he recalled the fruitful development of that ancient institution in Latin America, where it had been recognized and confirmed in numerous conventions. Guatemala's age-old respect for the principles governing the right of asylum was reflected in an explicit stipulation thereon in the Guatemalan Constitution. Accordingly, his delegation would support the Salvadorian proposal wholeheartedly.

18. Mr. BARNES (Liberia) said that he deeply regretted the difficulties which the Commission had encountered at its eleventh session and which had prevented it from duly completing the drafts on consular intercourse and immunities and on the law of treaties. In the case of such complex subjects, however, even a first draft was not easy to produce, and consequently the partial texts already prepared could be regarded as highly constructive.

19. In considering the Commission's report, the Sixth Committee should also bear in mind article 17, paragraph 2 (c), of the Commission's Statute, which expressly authorized the making of an interim report of the very kind submitted. An immediate discussion on the substance of the draft articles would nevertheless be premature. The Committee should therefore simply take note of the progress made and commend the Commission on its diligent work.

20. Mr. ICAZA TIJERINO (Nicaragua) agreed with the Commission's Chairman that a detailed discussion of the partial drafts might be inadvisable. An important question arose, however, in connexion with Sir Gerald's reference to the form which the eventual body of rules on the law of treaties should assume. The Commission apparently thought that a general code was preferable to a formal convention, since the latter might be regarded as binding only on the States which ratified it. But even if rules were embodied in a general code, their acceptance was similarly always subject to the will of each nation. That fact was amply demonstrated by the Bustamante Code, which had been accepted by numerous States but was nevertheless not recognized as universally binding.

21. His delegation believed that, in principle, the suggestion that the rules on the law of treaties should take the form of a code was sound. Such a presentation of those rules, however, need not preclude States from arriving at some general convention which would give more than a purely persuasive force to all works of codification elaborated by the International Law Commission. If a code remained merely part of "the

general principles of law recognized by civilized nations", it would only enjoy third priority in the body of law which the International Court of Justice was required to apply under Article 38, paragraph 1, of its Statute. And since such rules clearly deserved the highest priority, some means should be found of giving them the binding force of conventional law and thus ensuring their application under Article 38, paragraph 1 a.

22. In conclusion, he strongly supported the draft resolution presented by El Salvador (A/C.6/L.443). For the Spanish-American countries the question of the right of asylum was of unceasing importance, and a clear codification of the relevant principles would greatly assist the solution of any supervening problems.

The meeting rose at 12 noon.

United Nations
**GENERAL
ASSEMBLY**

FOURTEENTH SESSION
Official Records



**SIXTH COMMITTEE, 604th
MEETING**

Wednesday, 30 September 1959,
at 3.20 p.m.

NEW YORK

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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443) (continued)

1. Mr. MONACO (Italy) said he would confine his comments to a few points in the International Law Commission's report (A/4169).
2. The codification of the law of treaties was an important task which could not be carried out quickly and at a single stroke. In that respect, the explanations offered by the Commission were fully justified.
3. The method of work suggested in paragraph 13 of the report, namely to subdivide the study of the question into several parts, appeared to be sound and should save time, provided that the General Assembly's decisions on the various parts did not come at unduly long intervals and that changes of substance did not have to be made when the final drafting was done.
4. With regard to the form of the text to be adopted, his delegation agreed with the Special Rapporteur that a code of general character should be envisaged rather than one or more international conventions, both for the reasons given by the Commission in paragraph 18 of its report and because the law of treaties was made up primarily of purely instrumental rules which should be subject to exceptions. In the case of international instruments, substance was more important than form. Moreover, there were precedents—the London Declaration concerning the laws of naval warfare, and the Oxford Manual on the laws of war on land—which proved that voluntary rules could be applied as broadly as conventions of a binding character.
5. In connexion with the Commission's draft articles, he pointed out that the procedure for the authentication of treaties provided for in article 9, paragraph 1 (c), would in reality have a much stronger effect in the case of a text adopted by an international organization, in conformity with paragraph 4 (d) of draft article 6, since the incorporation of the text in a resolution of the organization would give it binding force and render its acceptance final. Agreements emanating directly from international organizations were a new field which should be given special study by the Commission.
6. The extent of the task the Commission had already taken upon itself was clear from the outline of the work in progress it had given at the end of its report (A/4169, chap. IV, sect. 1); at the same time, the num-

ber of fields in which codification was needed continued to grow, as the Salvadorian delegation had pointed out, in the case of the right of asylum, in its draft resolution (A/C.6/L.443). Italy, which gave political asylum a prominent place in its Constitution, was greatly interested in the proposal. However, before preparing a draft resolution it was important to consider whether the subject of the right of asylum could be codified, and to what extent such codification was desirable. In that connexion, it might be useful to recall the work done by the Institute of International Law at its 1950 session at Bath, England. On that occasion, Professor Perassi of Italy had submitted a report and draft articles on the right of asylum which represented the most important statement of present-day theory. Leaving regional practices out of account, the Institute of International Law had recognized that existing practice was not uniform, and that general rules could not match the maximum standards which might exist in a particular region. The Commission would therefore have to solve the problem of the existence of two different sets of standards, side by side.

7. With regard to international jurisprudence on the subject, he would only refer to the decision made by the International Court of Justice in the recent Haya de la Torre case, involving a dispute between Colombia and Peru. The Court had noted on that occasion that it had been unable to find a constant and uniform practice which was accepted as law.

8. The purpose of his remarks had been solely to point out to the Committee the difficulties involved in codifying the rules relating to the right of asylum. But by undertaking a preliminary study as quickly as possible the Commission might give the subject an order and clarity it did not as yet possess.

9. Mr. MESSINA (Dominican Republic), referring in particular to chapters II and III of the Commission's report (Law of treaties and Consular intercourse and immunities), said that the provisional rules prepared by the Commission would be of great assistance in the preparation of final drafts. In spite of all difficulties, the Commission continued to contribute to the formation and codification of positive international law, which perhaps before long would regulate the relations between States on a binding basis.

10. At the present stage of the Commission's work, it would be preferable, as several representatives had said, for the Sixth Committee simply to take note of the Commission's report and to express its gratitude for the work the Commission had done.

11. His delegation regretted that it was unable to support the Salvadorian proposal (A/C.6/L.443) concerning codification of the rules of international law relating to the right of asylum, first because his country had denounced the regional conventions on diplomatic asylum concluded at Havana in 1928 and at Montevideo in 1933, and secondly because the question

seemed too controversial to be the subject of general codification within the meaning of article 15 of the Commission's Statute.

12. U MAUNG MAUNG (Burma) said that in spite of the difficulties noted by its Chairman, the International Law Commission had succeeded in making a further contribution to the progressive development of international law.

13. Since the draft articles on the law of treaties and on consular intercourse and immunities had not yet been completed, the Committee should, as had been said, confine itself for the time being to taking note of the report, and postpone a discussion of substance to a later date. In the meantime, it might perhaps be advisable to provide for closer co-operation between Governments and the Commission and its Special Rapporteur. If Governments could be induced to take a larger part in preparing the draft articles, the final discussions would be shortened and it would then be easier to reach unanimous agreement. The practical means for achieving that co-operation remained to be studied.

14. Lastly, his delegation wished to associate itself with the views expressed by the representatives of El Salvador and Cuba at the 602nd meeting concerning codification by the Commission of the principles relating to the right of asylum. As new States were born, the problem of asylum and extradition would take on new dimensions, and it was important to define and, if possible, codify the relevant legal principles generally accepted, even if the problems involved often had political implications.

15. Mr. CACHO ZABALZA (Spain) thanked Sir Gerald Fitzmaurice for his explanations concerning the difficulties the Commission had encountered at its eleventh session. It must be recognized that very little progress had been made with the two studies undertaken on the law of treaties and on consular intercourse and immunities. It seemed that the Sixth Committee could do no more than take note of the Commission's report.

16. Although the work done so far on the law of treaties covered only a few articles, the question immediately arose whether codification of the subject should take the form of a code or a draft convention. While the first Special Rapporteur had advocated a draft convention, the Commission had now decided in favour of a code. It would be very useful to ascertain the opinion of Governments on that important question. Consideration should also be given without delay to means by which the Commission might overcome its difficulties and advance its work. It might, for example, submit to Governments the parts of a draft it had already completed, without waiting to complete its study of the subject.

17. At the twelfth session of the General Assembly the members of the Sixth Committee had expressed the hope that the highest priority would be given to the question of consular intercourse and immunities, but it had not yet been possible to submit the final text of the draft articles to Governments; time would be saved if questionnaires on the specific points on which additional information was needed were submitted to Governments.

18. His delegation welcomed the Salvadorian proposal (A/C.6/L.443), and would be happy to support it.

19. Mr. VELAZQUEZ (Uruguay) said that his delegation greatly regretted the difficulties which the International Law Commission had encountered during its previous session, and which had considerably slowed down its rate of progress. Nevertheless, quality was much more important than speed, and his delegation found the progress achieved gratifying.

20. He shared the view that the Sixth Committee should confine itself to taking note of the progress made by the Commission, and should refrain from embarking on a discussion of the question whether the codification of a topic such as the law of treaties should take the form of a code or a draft convention. Although it might be interesting from the point of view of theory, such a discussion would be more appropriate when the Committee had before it a preliminary draft in a definitive form. It was true that all codification work involved a legislative element which fell within the province of the progressive development of international law, and that Article 13 of the United Nations Charter did not restrict the competence of the General Assembly to the formulation of a mere routine statement of the law in force, but it was equally true that, despite the practical difficulties which might be encountered in separating the two functions provided for by the Charter, codification consisted essentially in declaring that the laws existed. The advocates of a law of treaties code argued that such matters were governed by customary international law. Their contention could only be proved, and a decision made as to the desirability of a code, when at least the essential parts, if not the full text, of the draft articles were available.

21. His delegation welcomed the proposal of El Salvador that the Commission should be requested to undertake the codification of the principles and rules of international law relating to the right of asylum. It was primarily the Latin American countries which had drafted the relevant rules, but those rules had not always been received with favour and understanding by European jurists. Uruguay had attained political maturity, despite all its difficulties; it fully respected human rights and individual freedoms and was fortunately innocent of both genocide and racial discrimination. It therefore welcomed a move which would enable the study of that important matter to be entrusted to jurists among whom were representatives of countries where the concept of the right of asylum had perhaps lost much of its pristine vigour. Many of those countries enjoyed an atmosphere of peace and political calm, and the right of asylum might seem to them an unnecessary institution. It was well to remember, however, that the right of asylum had been instituted as a safeguard, at least as important as *habeas corpus*, that situations believed to have disappeared forever had a tendency to recur in many parts of the world, and that for many countries, particularly those of Latin America, the granting of political asylum was a duty, stemming from the solidarity of mankind.

22. Emphasizing that the codification proposed by El Salvador was not in any way likely to weaken the institution of the right of asylum, which would retain all its essential features, he pointed out the importance of the contribution which the Latin American countries could make in that connexion to the development of international law.

23. Mr. GUZMAN (Ecuador) found the International Law Commission's report most encouraging, in view of the difficulties encountered by the Commission. Like

several other representatives, he was in favour of waiting until the Commission had completed the drafts it was preparing, before discussing them in the Sixth Committee.

24. With regard to the future work of the Commission, his delegation would support the Salvadorian draft resolution on the right of asylum (A/C.6/L.443). As the Uruguayan representative had rightly pointed out, the right of asylum was an institution particularly cherished in Latin American countries. It had been in existence since the founding of the Latin American Republics, or for more than a century, and was rooted in the very essence of their legal and political institutions. That humanitarian legal institution had been instrumental in saving many lives and the peace of countless homes. In proof of that, he referred to the memorandum on foreign affairs which had been submitted to the nation by the Ecuadorian Minister of Foreign Affairs on 10 August 1959. In the last twelve months, Ecuadorian diplomatic missions had granted asylum to 123 nationals of various American countries. He did not propose to go into the history of the right of asylum, but it was sufficient to recall that regulations governing asylum had been included in some of the first agreements entered into by the Spanish American countries, for example in those adopted at the American Congress at Lima (1847) and in the Continental Convention of Santiago de Chile (1856). It was true that there was still discussion among the Spanish American States respecting questions of substance, but on the whole the institution had been respected and practised by them since the beginning of their sovereign existence. Even the United States of America, which did not recognize the right of asylum as a legal institution, had signed inter-American conventions on the subject and on repeated occasions had, in practice, waived its own reservation; even in very recent times, it had granted asylum not only in America by also in Europe. On the other hand, since Latin America was not the most politically disturbed area in the world, the right of asylum which was of Western origin would acquire new strength through the arrangement and standardization of the rules or practices prevalent also outside America. That would constitute a new contribution by the American continent to the progress of international law and would thus help to maintain world peace. His delegation, therefore, believed that the codification proposed by El Salvador would be a useful achievement and deserved support.

25. Mr. MAURTUA (Peru), referring to certain views expressed by the Italian representative, stated that the International Court of Justice had given a considered judgement in the dispute between Colombia and Peru; the weakness of that judgement lay, not in any lack of treaties, but in the fact that existing treaties had not been ratified. The dispute was settled, not exclusively by the judgement of the Court, but also as a result of agreement between Colombia and Peru.

26. On the American continent, the right of asylum was a regular institution and the subject of several conventions; it was also mentioned in the Universal Declaration of Human Rights. It was regarded as a moral duty and a universal obligation, which went beyond the scope of multilateral conventions. The difficulty lay in the designation of offences. The Montevideo Convention of 1933 had granted the right to define an offence to the country granting asylum. The problem for the Sixth Committee was to decide to what extent the two forms of asylum—political and diplomatic asylum, and territorial asylum—had been accepted. It would also have to decide the extent to which the International Law Commission should concern itself with the status of the political refugee.

27. In view of the importance of the right of asylum, his delegation would support the Salvadorian draft resolution.

28. Mr. SAHOVIC (Yugoslavia) said that while he was aware of the difficulties encountered by the International Law Commission during the past year, he hoped that its programme of work would enable it to submit to the Assembly at its fifteenth session the full text of its draft articles on consular intercourse and immunities.

29. His delegation had noted with satisfaction that at its eleventh session the Commission had resumed its consideration of the law of treaties. While codification was not of particular urgency, it seemed desirable to continue the study of that branch of international law without further delay, since the practice of States following the Second World War, as well as United Nations practice, had introduced many new factors worthy of appraisal and codification. A discussion on the methods of codification would be much more fruitful at a later stage, when the Committee had a complete draft before it.

30. Quoting paragraph 46 of the Commission's report, he expressed the fervent hope that the Commission would consider, at its twelfth session, the possibility of sending an observer to a future session of the Asian-African Legal Consultative Committee. Such a step was in conformity with the objectives of the International Law Commission, and would give expression to the Commission's wish to keep more closely in touch with current trends in the development of international law in regions which had undergone profound political and social changes in recent years.

31. The Yugoslav delegation, like many others, felt that the General Assembly should confine itself to taking note of the International Law Commission's report.

The meeting rose at 4.30 p.m.



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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

**Report of the International Law Commission on the work
of its eleventh session (A/4169, A/C.6/L.443, 444)
(continued)**

1. Mr. SUAREZ (Chile) said that it was clear from the International Law Commission's report covering the work of its eleventh session (A/4169) that useful progress had been made in the preparation of the drafts on consular intercourse and immunities and the law of treaties. At the present stage, however, the Committee should do no more than recommend that the General Assembly should take note of the report. Accordingly, he was fully prepared to support the joint draft resolution (A/C.6/L.444).

2. He believed that the right of asylum was a matter that should be included in the provisional list of topics of international law selected for codification and he would therefore support the Salvadorian draft resolution (A/C.6/L.443). It was to be hoped that those countries which did not agree that codification of that topic was important would later recognize its significance.

3. Mr. ROSENNE (Israel) said that one of the most important functions of the Sixth Committee was to provide a link between the Members of the United Nations and the technical work of codification and progressive development of international law undertaken by the International Law Commission. The Sixth Committee and the Commission itself had on several occasions discussed the Commission's method of work. His delegation had repeatedly stated that how the Commission conducted its work was not the Sixth Committee's affair, and he maintained that point of view. However, referring to Sir Gerald Fitzmaurice's observations at the 601st meeting, his delegation endorsed what had been said on the question of the Special Rapporteurs. Nevertheless, though recognizing that the Commission had been prevented by circumstances beyond its control from implementing its programme for the current year, he would recommend that it should re-examine its plans and projects in order to ensure that, if a similar situation arose in the future, the flow of completed drafts, if only in provisional form, would not be interrupted.

4. As far as the law of treaties was concerned, his delegation did not fully understand the implications

of chapter II, paragraph 13, of the Commission's report. In his view the law of treaties could only be adequately codified as a whole, and while various branches of the subject might be dealt with by the Commission in parts, it would still not be possible for the Sixth Committee to take final action until the whole text was available. If paragraph 13 meant that the Commission intended to present a series of interim reports on different branches of the law of treaties without prejudice to final action, when the work of codification was complete, his delegation would consider that procedure appropriate. As the law of treaties as a whole was being rapidly modified under the influence of expanding international relations, it would be useful for those engaged in treaty work to have a series of interim codifications of various aspects of the law of treaties produced by the Commission, a body which as a whole was representative of the principal legal systems of the world. Accordingly, his delegation hoped that the Commission would devote a part of all its forthcoming sessions to the topic.

5. Some speakers had referred to the question of the final form that the codified law of treaties should take, with particular reference to the views set forth in paragraph 18 of the report. Doubts had been expressed on the subject, owing to the provisions of Article 38 of the Statute of the International Court of Justice, which laid down what law it was that the Court was to apply in deciding disputes submitted to it. To his delegation it did not seem of any great moment whether a given text fell under the provisions of sub-paragraph (a) or sub-paragraph (b) of Article 38, paragraph 1, of the Court's Statute, and it appeared hardly practical to attempt to classify a text in relation to that article a priori and in the abstract. He was not aware that that article had given rise to real difficulties in practice, and it should not therefore be a determining factor when the Commission came to take its final decision. On the other hand it had to be recognized that there was a problem arising out of possible conflict of treaty obligations. Article 103 of the United Nations Charter dealt with one aspect of that problem. As it seemed, however, that the Special Rapporteur on the law of treaties had envisaged that the completed text would deal with the problems of the interpretation of treaty texts, he would no doubt include some material on the interpretation of conflicting treaty obligations. Subject to those observations, his delegation was prepared to support the joint draft resolution.

6. His delegation felt that, subject to certain clarifications, the draft resolution submitted by El Salvador (A/C.6/L.443) was acceptable. It was, however, somewhat broadly worded and that fact might be a source of confusion. Discussion of the right of asylum had a long history in various United Nations organs, and on 25 March 1959 the Commission on Human Rights had adopted a resolution by which it had decided to undertake at its 1960 session the drafting of a Decla-

ration on the Right of Asylum.^{1/} In the meantime, a revised preliminary draft was being circulated to Governments as well as to interested non-governmental organizations. Some clarification was needed regarding the respective functions of the Commission on Human Rights and the Economic and Social Council on the one hand, and of the International Law Commission and the General Assembly on the other, with regard to the right of asylum.

7. His own delegation's view on the matter was that the function of the Commission on Human Rights was defined by article 14 of the Universal Declaration of Human Rights: that function was to deal with the materialization of the right of asylum as laid down in general terms in the Universal Declaration. Work along those lines might well ultimately lead to the creation of new rules of international law in an area with which international law had little to do hitherto. The International Law Commission, for its part, should confine itself at the present stage to the codification and progressive development of that aspect of the right of asylum which was already regulated, to some extent at least, by international law, namely, the question of diplomatic asylum.

8. Much had been heard regarding certain regional concepts of the right of asylum as developed by the Latin American States. There were other concepts of asylum. In his delegation's view, if asylum was to be satisfactory it must be matched by an adequate system of extradition to ensure that genuine cases of asylum would not be confused with what was mere criminality, and the codification of the law of asylum should take that into account. Since Israel's independence in 1948, the Israel Government had been paying great attention to the establishment of a proper system of extradition designed to safeguard the rights of all concerned. In 1954 a new extradition law had been passed providing that any criminal, regardless of nationality, could be extradited from Israel provided there existed an extradition treaty with the requesting State, and his Government was vigorously pursuing the policy of concluding extradition agreements with the greatest possible number of States. On the other hand extradition, which was under judicial control, would not be granted if the courts were satisfied that its purpose was to try the accused for a political offence, or if the request for extradition was motivated on grounds of religious or racial persecution.

9. Subject to those observations, his delegation was prepared to support the draft resolution contained in document A/C.6/L.443.

10. Mr. PECHOTA (Czechoslovakia) said that the codification of both consular intercourse and immunities and the law of treaties was a complex task, demanding great experience, a sense of political reality and lasting patience. The International Law Commission was therefore entirely correct in appointing special rapporteurs to deal with individual questions.

11. In his opening statement (601st meeting), the Commission's Chairman had said that the Commission had intended to submit a completed draft on consular intercourse and immunities to the General Assembly at its fourteenth session and it had, according to the Chairman, been the Special Rapporteur's absence

during part of the session which had prevented the Commission from so doing. It should, however, be realized that there was nothing unusual in members of the Commission, who were recognized experts in international law, being entrusted with other important tasks connected with international matters, including the work of the International Court of Justice. Mr. Zourek, the Special Rapporteur on consular intercourse and immunities, had been required to act as an *ad hoc* judge at the International Court of Justice during part of the session of the International Law Commission. The Special Rapporteur had, however, returned to Geneva in time to allow the Commission five weeks of discussion on consular intercourse and immunities in his presence. At its tenth session the Commission had decided to devote no more than five weeks of its eleventh session to the question of consular intercourse and immunities (A/3859, paras. 57 and 64). That decision had been taken in view of the similarity of that topic to the subject of diplomatic intercourse and immunities, and it had been hoped that the Special Rapporteur's report could be disposed of summarily in the manner described in chapter V, section I, of the Commission's report covering the work of its tenth session. However, when the Commission had begun its consideration of the subject, it had decided that the method of summary procedure could not be used because the topic had been taken up only in the fifth week of the session and not at the beginning as originally contemplated. The reasons for that decision were difficult to understand, as the Commission could still have devoted the originally scheduled five weeks to discussion of the topic. In addition, the Commission had devoted considerable time in plenary session to details of a purely drafting nature which could well have been entrusted to a drafting sub-committee.

12. However, it was not the intention of his delegation to blame the Commission for that apparent delay in its work, and it still maintained that the Commission should be allowed to decide on such measures as would help it to achieve even better results. His delegation noted the present report of the Commission with satisfaction.

13. In his statement to the Committee at its 601st meeting, the Commission's Chairman had said that the urgency of the task of completing a draft on consular intercourse and immunities was all the greater because of the understandable desire of the Sixth Committee to consider the subject along with the closely related subject of diplomatic intercourse and immunities. As the International Law Commission had mentioned no such relationship in its report, his delegation interpreted that reference as a personal expression of opinion by the Chairman of the Commission. The report of the Sixth Committee to the thirteenth session of the General Assembly (A/4007, paras. 27 and 33) had made it clear that a majority of representatives felt that the subject of diplomatic intercourse and immunities was ripe for codification and that the draft prepared by the Commission provided a suitable basis for a convention, while a minority of delegations believed that final consideration of that draft should await the completion of drafts on other closely related subjects, including consular intercourse and immunities. His delegation assumed that the view of the majority in the Sixth Committee as adopted by the General Assembly and expressed in resolution 1288 (XIII) was the view that should prevail.

^{1/} See Official Records of the Economic and Social Council, Twenty-eighth Session, Supplement No. 8, chap. III, para. 74.

14. The Czechoslovak delegation held that diplomatic intercourse and immunities and consular intercourse and immunities were two separate subjects. Indeed, they had been considered for several years as separate items by the International Law Commission. A demand for joint consideration of the two questions would mean postponing further work on the codification of diplomatic law for several years, since the draft on consular intercourse and immunities might well not be submitted to the General Assembly before 1961, even if work proceeded smoothly. In addition, consular intercourse and immunities was a more complex question which would undoubtedly give rise to a large number of differences. Accordingly, a longer period might well be required for its consideration both by the International Law Commission and the General Assembly.

15. In conclusion, he wished to commend the International Law Commission on its work and he was fully prepared to support the joint draft resolution (A/C.6/L.444).

16. Mr. CHARDIET (Cuba) said that, since the drafts on the law of treaties and on consular intercourse and immunities were incomplete, for the reasons explained by the Commission's Chairman, it would be both premature and unreasonable for the Sixth Committee to begin any detailed analysis of individual articles. The better course would be to wait for the Commission to finish the draft and for Governments to communicate their observations. So far as the law of treaties was concerned, however, his delegation could already say that it accepted the reasons mentioned by the Special Rapporteur for giving the final work the form of a code. Not only would the text have to contain abstract rules and general principles, but the very idea of giving a set of rules on the law of treaties the form of a convention seemed paradoxical.

17. His delegation had already voiced its approval of the Salvadorian proposal at the 602nd meeting, for it believed that a codification of the principles governing the right of asylum was truly necessary. The Cuban delegation also believed that, whatever obstacles had to be overcome in dealing with that controversial subject, understanding and harmony would prevail. At the 604th meeting the Italian representative had rightly said that the rules on that subject could never be rigid and imperative. But neither should they be so general and flexible as to leave each State free to interpret them according to its own views. The fact that the rules could not be obligatory was even unfortunate, for the community of nations should be vested with sufficient coercive power to be able to punish States which violated international conventions and trampled on the law of nations.

18. The basic problem was to give a clear definition of a political offence in order to distinguish it from ordinary crimes. For that purpose an analysis of the nature was not enough to render an offence truly itself sufficient; the motives and purpose behind the offender's action were even more important. For as had been stressed by Jiménez de Azúa, the mere fact that the offender's motive was of a political or social nature was not enough to render an offence truly political. Such an offence also had to be designed as a contribution to the establishment of a progressive political or social régime. To be classified as "evolutive" an offence had to be a step along the "road to perfection". Consequently, wrongful acts inspired by

regressive designs could not properly be classified as political and social offences, and asylum should never be extended to criminals who had committed abominable acts solely in order to retain power. That was why the International Law Commission should, at the very outset, clarify the exact nature of a political offence. Otherwise, the determination of the nature of an offence would continue to depend on the State granting political asylum, which, as experience had shown, often extended it without justification. His delegation had the utmost faith in the International Law Commission's ability to discharge its task properly.

19. Mr. HU (China) said that, despite all the delays and frustrations, the progress achieved by the Commission at its eleventh session remained very impressive and deserved commendation. Both the sets of draft articles in the report (A/4169, chaps. II and III) being incomplete, however, he felt that only general remarks were called for.

20. So far as the law of treaties was concerned, the Special Rapporteur believed that the final text should take the form of a code. The arguments advanced in support of that view were clear and forceful, and his delegation's first reaction was certainly favourable. His delegation felt, however, that no firm stand should be taken on that point at such an early stage. It would be better to wait until the draft had been completed and Governments had been given an opportunity to study it.

21. The Chinese delegation was somewhat disappointed by the Commission's inability to complete the draft articles on consular intercourse and immunities. It adhered to the belief that the question of diplomatic intercourse and immunities and that of consular intercourse and immunities were closely interrelated and should be taken up at the same time, or at least with the possibility of cross-reference. His delegation also believed that the draft articles on *ad hoc* diplomacy could well be made an integral part of the convention on diplomatic intercourse and immunities. If a complete draft on those two subjects could be prepared in good time, the Committee's discussions would still be greatly facilitated.

22. With reference to the draft resolution submitted by El Salvador (A/C.6/L.443), he recalled that, at the General Assembly's thirteenth session, the Chinese delegation had expressed its regret at the Commission's failure to include provisions on the right of asylum in the draft articles on diplomatic intercourse and immunities (572nd meeting, para. 19). It would therefore naturally support the Salvadorian proposal.

23. Mr. COCKE (United States of America) said that the United States delegation fully agreed with the Chairman of the International Law Commission that the report before the Committee did not require detailed substantive discussion. But the comments of several representatives on paragraph 18 of the report (A/4169), dealing with the type of instrument in which the codification of the law of treaties should be embodied, had raised basic questions which required comment.

24. The Commission's function, as stated in article 1 of its Statute, was the promotion of the progressive development of international law and its codification. The distinction between those two terms, as expressed by article 15, was based on the extent to which the

subject under consideration was regulated by well-developed rules of international law. Whether there existed a sufficient body of State practice, precedent and doctrine on any given subject to warrant considering that subject ripe for codification involved a complex assessment of the state of the law. Even where codification was decided upon, the Commission was still required, under article 23 of its Statute, to recommend the type of instrument in which that codification should be embodied. His delegation recognized the complexity inherent in any such recommendation, and was confident that the matter would be thoroughly considered before any recommendation was made regarding the codification of the law of treaties, just as the past practice of the Commission indicated that careful study had preceded other recommendations of that nature.

25. His delegation would not express a final view on the provisional conclusion set forth by the Special Rapporteur in paragraph 18 of the report. However, it considered the Special Rapporteur's comments highly persuasive.

26. In connexion with paragraph 18, several representatives had stressed that the final basis of all international law was the consent of States. That consent could be manifested, of course, by practice as well as by formal agreements. Where the practice of States overwhelmingly recognized the existence of a rule of international law, a State was not free to follow a conflicting course of action. That was the essence of the concept of customary international law.

27. It had been suggested that one of the dangers inherent in the practice of submitting in the form of a convention codifications on topics well-established in customary international law was that the binding nature of that law might thus be made uncertain with regard to States which did not become parties to the convention or became parties only with reservations. The avoidance of that danger might not be the decisive factor in each case, but it should be disregarded by the Commission in making its recommendation under article 23 of its Statute or by the General Assembly in deciding whether to follow that recommendation.

28. With regard to the draft resolution submitted by El Salvador, it was gratifying that the sponsor, while indicating a desire for expedition, had left it to the Commission to determine when that question should be taken up. That decision had undoubtedly been made in contemplation of the work currently being done on the question of the right of asylum by the Commission on Human Rights. A comprehensive declaration on the subject was now under consideration by that body, and his delegation assumed that the International Law Commission, in planning its study of the item, would take that fact into account.

29. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said that the International Law Commission should be commended for the valuable work it had done in recent years. One of its major achievements was the preparation of the draft articles on diplomatic intercourse and immunities. In that connexion, the Ukrainian delegation agreed with the representative of Czechoslovakia that those draft articles should be considered separately, and not in conjunction with subjects such as the draft articles on consular intercourse and immunities and *ad hoc* diplomacy, consideration of which was less far advanced.

30. Completion of the work on the draft articles on diplomatic intercourse and immunities either at a diplomatic conference or by the Sixth Committee, would be an important achievement on the part of the United Nations, which would serve as a useful precedent for other similar instruments and guide the International Law Commission in its work, especially with regard to consular intercourse and immunities and *ad hoc* diplomacy. The Commission could not consider the results of its work to be final because international law was created by the States themselves. The Commission was therefore very much interested in the reaction of States to the instruments it produced. However, in the case of the draft articles on diplomatic intercourse and immunities, the views of States could only be made known in the appropriate international body appointed to consider them in final form. Hence, it was essential that the work on the draft articles should be completed as early as possible and that could only be done if they were considered separately. Moreover, the General Assembly itself, in resolution 1288 (XIII), had referred to the "early conclusion" of a convention on diplomatic intercourse and immunities. The only question remaining was whether it should be concluded at an international conference or in the Sixth Committee. That decision should not be delayed pending completion of other instruments.

31. With regard to the other matters dealt with in the report of the International Law Commission, in particular the draft articles on the law of treaties and on consular intercourse and immunities, no final position could be taken since the Commission's work had not been completed. However, a few comments might be made to guide the Commission in its future consideration of those topics. For instance, article 2 of the proposed code on the law of treaties was somewhat confusing because it referred to an international agreement as being an agreement concluded between two or more States, or other subjects of international law, possessed of treaty-making capacity. It was explained in the commentary that the expression "treaty-making capacity" qualified the term "States" as well as the phrase "other subjects of international law", which seemed to give the impression that some States might not be possessed of treaty-making capacity. While that might be true of international organizations, it was not true of States which, by virtue of their sovereignty, had the right to conclude treaties. The point should be clarified, particularly since the Commission admitted in the report that it had not been fully discussed, and there were conflicting views within the Commission itself.

32. It appeared that even those who recognized the abstract right of States to enter into international agreements restricted that right to multilateral treaties. Others felt that the restriction was unwarranted. The Ukrainian delegation believed that the document on the law of treaties should make it clear that every State had the inalienable right to conclude treaties. A clear statement to that effect would confirm the principle that international relations must be based on the sovereignty and equality of States. That sovereignty was at the very root of international relations.

33. In connexion with its future programme of work, the Commission would do well to revert to the methods adopted at its tenth session (A/3859, chap. V) on the basis of the report of the Special Rapporteur, Mr. Zourek. Those methods had proved successful and

would enable the Commission to expedite its work in the future.

34. In conclusion, the Ukrainian delegation would be glad to vote in favour of the joint draft resolution on the report of the International Law Commission (A/C.6/L.444).

35. Mr. NUGROHO (Indonesia) recalled that, at the thirteenth session, the Indonesian delegation had expressed the hope at the 576th meeting of the Sixth Committee that the International Law Commission would complete its work on the draft articles on consular intercourse and immunities at its eleventh session, so that the Sixth Committee might have the full text available when discussing the closely related subject of diplomatic intercourse and immunities. He fully appreciated, however, the difficulties which the Commission had faced. Accordingly, his delegation agreed that the Committee should refrain from discussing the substance of the report and confine itself to taking note of the progress made, as formally proposed in the joint draft resolution.

36. Without prejudice to the discussion on the second item on the Committee's agenda, the Indonesian delegation thought that the question of reservations to multilateral conventions fell within the scope of the first section of the draft on the law of treaties, especially the articles dealing with "Elements of the text" and "Authentication of the text". He had been assured by the Commission's Chairman that the Commission would study the possibility of including some provisions on the subject of reservations in the draft code. That assurance was welcome, for the inclusion of the item on the Sixth Committee's agenda, as well as the letter of the Permanent Representative of the USSR to the Secretary-General of 24 September 1959 and the Secretary-General's letter of 27 August 1959, clearly showed that there was some uncertainty regarding the effect of reservations made at the time of signature or ratification of certain instruments. At the same time, the Commission might consider the possibility of studying the closely connected question of the duties of the depositary of instruments of ratification and accession.

37. A welcome feature of the Commission's report was contained in paragraph 45, which showed that the Commission was continuing co-operation with other bodies, especially the Inter-American Council of Jurists and the Asian-African Legal Consultative Committee. The new nations in Asia and Africa were constantly searching for correct expressions of their national aspirations and identities, not only in the political, economic and cultural fields but also in the field of law. It would be most regrettable if, in that search, they were to drift away from the main stream of world juridical practice, or if authorities outside those countries were not to be informed of the new trends in legal doctrine developing among the new nations.

38. Mr. NISOT (Belgium) endorsed the United States representative's view. The International Law Commission should not begin a study of the right of asylum until the Commission on Human Rights had completed its work on the subject.

39. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the debate in the Committee had centred on two main points: the method of work of the International Law Commission, including the manner

in which it should present its recommendations to the General Assembly, and the move to revise a previous decision of the General Assembly and delay the work on the draft articles on diplomatic intercourse and immunities. On the first point, the suggestion had been made in the Commission's report that the codification of the law of treaties should take the form of a code. Some delegations, including that of the United States, had interpreted that to mean that all the Commission's recommendations on any topic should be presented in the form of a code rather than of a draft international convention. That was certainly not the Commission's intention. The Soviet Union, for one, believed that the best way for the Commission to present most of its recommendations was in the form of draft international conventions to be considered in the United Nations or at international conferences. Such a process would contribute to the progressive development of international law and its codification. The United States representative had referred to the danger of reservations being entered to conventions. The real danger lay in a lack of clarity in the drafting of legal texts. Thus, a State which did not wish to accept its obligations under a convention might find it less difficult to do so if the instrument was open to various interpretations. However, that danger was not great enough to warrant replacing conventions by codes in every instance. In the case of the draft articles on arbitral procedure, for instance, many delegations had felt that the Commission had drafted a series of articles that were not based on generally accepted rules of international law. The Commission could not ignore the attitude of the Members of the United Nations to its work. Whichever of the two methods it adopted, its recommendations were subject to the approval of the Members of the United Nations. Adoption of its recommendations implied recognition of its views by at least a majority of the Members. Bearing that fact in mind, it appeared that the best course would be for the Commission to present its recommendations in the form of draft international conventions. That method had been used in the past and should be applied again in the future. However, in certain specific cases it might be better to limit action to the codification of rules already adequately developed in international law. With respect to the law of treaties in particular, it was too early to recommend a specific method of action because there was not enough information to justify a decision at the present stage.

40. While the Soviet Union delegation strongly opposed a reversal of the General Assembly's decision regarding the subject of diplomatic intercourse and immunities, along the lines apparently favoured by some delegations; it took the view that the question should not be discussed immediately but should be deferred until the Committee considered the agenda item on diplomatic intercourse and immunities.

41. The Soviet delegation associated itself with the tributes paid to the Commission on its most valuable work and would be glad to vote in favour of the joint draft resolution expressing appreciation of that work.

42. Mr. PERERA (Ceylon) said that he had been authorized by the Cuban delegation to announce Cuba's co-sponsorship of the joint draft resolution (A/C.6/L.444).

The meeting rose at 12.45 p.m.



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Chairman: Mr. Alberto HERRARTE (Guatemala),

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443, 444 and Add.1, A/C.6/L.445) (continued)

1. Mr. LIANG (Secretary of the Committee) drew the Committee's attention to the report of the second session of the Asian-African Legal Consultative Committee, held at Cairo from 1 October to 13 October 1958, copies of which he had just received from the secretary of that Committee and had circulated to members. That document contained the final report of the Committee on Functions, Privileges and Immunities of Diplomatic Envoys or Agents, which would be of interest to the Sixth Committee in connexion with the subject of diplomatic intercourse and immunities.

2. Mr. Maxwell COHEN (Canada) said that he wished to deal with four questions: first, certain general problems arising out of the history and operations of the International Law Commission; secondly, the report of the Commission covering the work of its eleventh session (A/4169); thirdly, the Salvadorian draft resolution (A/C.6/L.443); and fourthly, some general comments on the work and significance of the Sixth Committee itself.

3. With respect to the Commission's work, he felt that the delays in completing the draft on consular intercourse and immunities and the recent discussion in the Committee suggested certain ways in which that work might be accelerated. For example, there appeared to be nothing in the Commission's Statute to prevent the employment of outside rapporteurs who were not members of the Commission. Indeed, part B, articles 18 to 23, dealing with codification, made no reference whatever to the appointment of rapporteurs or to any requirement that rapporteurs, if appointed, should be limited to members of the Commission. It was true that in part A, dealing with the progressive development of international law, article 16 (a) said that the Commission should appoint one of its members to be rapporteur, but even that language would probably not prevent the Commission from appointing persons to assist the rapporteur in his research or to provide interim associate rapporteurs whenever other duties made it impossible for the regular rapporteur to complete his assignment. A second method of expediting the Commission's work might be to divide the Commission into chambers so that two or more

projects could be considered at the same time rather than seriatim, as was necessarily the case at present, when the Commission operated as a committee of the whole. He realized that that proposal had been discussed before and that there had been some reluctance to divide the Commission's membership in a way that would prevent any of its members from sharing in the Commission's studies and recommendations. That difficulty, however, might be overcome by having the work of each chamber submitted to the Commission as a whole, whose corporate sense would in most cases lead to a general attitude of critical approval of the work of any one of its two chambers.

4. With regard to the Commission's report, his delegation shared the view that it would not be desirable to discuss in detail the substantive questions raised by the articles in chapters II and III. The subject of consular intercourse and immunities, in particular, should not be discussed by the Committee until the complete draft was before it. He would go even further and suggest that that draft, when completed, should be discussed together with the draft on diplomatic intercourse and immunities, since it was no longer possible, in view of the present practice of many States, to make a sharp distinction between those two fields. Indeed, there would be many advantages, of both an intellectual and technical nature, if those two drafts could also be discussed at the same time as the subject of ad hoc diplomacy and any studies which might result from the Salvadorian draft resolution respecting the right of asylum.

5. Concerning the question of the final form to be taken by the codification of the law of treaties, he hoped that the Committee would preserve an open mind on the question of code versus convention. There might well be a third possibility, namely, that of expressing the purely formal articles on negotiation, authentication, signing and the like in the form of a multilateral convention, while inserting the articles dealing with the meaning and interpretation of treaties, and possibly questions of validity, in a declaratory code. In view of the functional differences between those two categories of articles, such a division might prove more advantageous than a rigid insistence on either a declaratory code of principles on the one hand or a detailed multilateral convention on the other. In that connexion, he had been surprised to hear the Hungarian representative make statements (602nd meeting) which seemed to imply that the most desirable form of international law was that based upon the positive consent of States expressed in the form of a binding treaty. It was his understanding that a large part of the private law of Hungary, until recently at least, had been based upon a combination of mediaeval Roman law, customary Hungarian law and individual statutes and that although an attempt had been made early in the century to codify that law, the proposed code had not, to his knowledge, been adopted. If codification could present such difficulties for a municipal legal order having all the advantages of direct law-creating agencies, surely

customary law was a desirable source to be retained in the much more fluid and loosely organized international legal order. No one who had lived with both the common law and the civil law—and his country was fortunate to have both systems—could fail to accept the proposition that there was a flexibility and dynamism in "common" or "customary" law which could create a living, mature body of rules and a successful legal order.

6. With respect to the Salvadorian draft resolution (A/C.6/L.443), he wished to reserve his delegation's final position; as he had already indicated, there were reasons why the right of asylum might best be discussed in conjunction with consular intercourse and immunities, diplomatic intercourse and immunities and *ad hoc* diplomacy. If that draft resolution were adopted, he hoped that the Commission would seek to benefit by the results of the discussion of that subject in the Commission on Human Rights and in the Third Committee.

7. Lastly, he turned to the work and significance of the Sixth Committee itself. After reviewing in detail the Committee's agendas for the past ten sessions, he expressed regret at the fact that the number of items on its annual agendas appeared to be steadily declining and that many topics which were of peculiarly legal importance were handled exclusively by other committees. As the United Nations became more mature as an Organization, it was to be hoped that it would resort increasingly to legal procedures. A step in that direction would be the employment of joint committee studies whenever the subject-matter before other committees involved some legal element of importance. The day may still be far distant when the rule of law automatically governed the behaviour of States, but more rapid progress towards that ideal could be made if Member States would be willing to risk more law in their affairs rather than less.

8. Mr. de la GUARDIA (Argentina) said that his delegation would vote in favour of the proposal in the joint draft resolution (A/C.6/L.444 and Add.1) that the General Assembly should take note of the International Law Commission's report (A/4169) and express appreciation of its work.

9. With respect to the final form to be taken by a codification of the law of treaties, he agreed fully with the view expressed in paragraph 18 of the report that much of the law relating to treaties was not suitable for framing in the form of a convention containing a strict statement of obligation. Difficulties would also arise if some States failed to sign or ratify such a convention, or subsequently denounced it. On the other hand, the legal validity of a code which had not obtained the consent of States might be questioned. It might be asked whether the validity it would have would be that of customary law. Although codification work by the International Law Commission on subjects belonging essentially to customary law, such as the law of the sea and diplomatic intercourse and immunities, had already taken and might in the future take the form of binding conventions, it had proved impossible to transform a subject of conventional international law, arbitral procedure, into a convention and it had remained a statement of doctrine without legal binding force. The representative of Nicaragua had referred (603rd meeting, para. 20) to the Bustamante Code, but that Code derived its force from a convention signed at the Havana Conference in 1928 by fifteen Latin

American countries, and the countries which, like Argentina, had not ratified it were not bound by it.

10. With regard to the Salvadorian draft resolution (A/C.6/L.443), it should be noted that the question of territorial asylum was already under study in the Commission on Human Rights. The right of diplomatic asylum for its part was something peculiar to Latin America, where there existed a body of practice, of custom, in the matter and various conventions on the subject were in force. The subject had been referred to at the recent meeting, in August 1959, of the Inter-American Council of Jurists at Santiago, Chile, and would undoubtedly come up again at the next Inter-American Conference at Quito. While it was true that some countries which did not recognize the right of asylum had occasionally granted it, such precedents had not been sufficient to constitute a practice such as existed in Latin America. The representative of Italy had expressed doubt (604th meeting) whether the matter was ready for consideration on a world-wide scale, and it seemed reasonable that before being codified, the law on the subject should be recognized by many States which did not recognize it at present. Under articles 15 and 20 of its Statute, the International Law Commission was required, in its work of codification, to take account of the extent of agreement on each point in the practice of all States and not simply a regional group of States.

11. It was, however, encouraging that many representatives of non-Latin American countries in the Committee had expressed their support of the draft resolution, so that a positive result could be expected. Accordingly, the Argentine delegation would also vote in its favour.

12. Mr. GLASER (Romania) said that as neither of the drafts on which the International Law Commission had started work at its eleventh session had been completed, it would be premature to express any final views on them. Indeed, the Commission might yet alter their content and might also see fit to change its interpretation of some of their provisions after drafting the remainder of the texts.

13. The Canadian representative had appealed to all Member States to be "willing to risk more law in their affairs rather than less", and elsewhere in his speech had said that there were good reasons for considering the draft on consular intercourse and immunities in conjunction with that on diplomatic intercourse and immunities. Such an attitude was highly inconsistent, and would not make for the speedy development of international law. The General Assembly, in resolution 1288 (XIII), had already decided to consider the question of diplomatic intercourse and immunities separately from consular intercourse and immunities. To take up the Canadian representative's suggestion would amount to reversing a decision already taken, and indeed, any reference to diplomatic intercourse and immunities at the present stage of discussion was irrelevant, as the subject would be dealt with as the third item on the Sixth Committee's agenda.

14. Without prejudice to its final decision regarding the form that the draft articles on the law of treaties and consular intercourse and immunities should take, his delegation would express its preference for codification with a view to embodiment in a convention. Codification could mean the preparation in precise terms of law of rules already established; it might

also include new elements, thereby making for the progressive development of international law. In fact, codification had always involved an element of innovation and necessarily led to certain changes in international law by the establishment of new rules. That was true of international law in general and of the law of treaties in particular.

15. There were many spheres of international law in which States did not agree on matters of principle. For example, as regards the conclusion of treaties, it had been widely acknowledged that there were no unanimously recognized rules regarding reservations to multilateral conventions, either as regards the States entitled to make objections to reservations, or as regards the juridical effect of those objections when some of the signatory States accepted the reservations and others did not.

16. There were also wide divergencies, as the representative of the Ukrainian SSR had rightly pointed out (605th meeting), regarding the qualifications of States to conclude international treaties. In his view any State, by virtue of its sovereignty, was entitled to conclude international treaties; but according to the draft articles on the law of treaties it seemed that there might be cases in which some States were not entitled to do so.

17. The validity of treaties was also a question of great importance. A "diktat" was by its form a treaty, but was it binding upon the State which had been forced to sign it? In international law a convention whose aim was contrary to the imperative rules of law was null and void *ob turpem causam*. What then was the validity of a treaty whose purpose was unlawful, contrary for instance to the principle of non-aggression or the right of self-determination? Authors and governments held extremely divergent positions on the subject, although in his view it was clear from Article 103 of the United Nations Charter that such treaties were null and void.

18. Another important question was whether treaties could affect States that were not parties to them. In that connexion, as Professor Hoyt had noted, a Secretary of State of the United States had declared on behalf of his Government that although the 1901 treaty between the United States and the United Kingdom concerning the Panama Canal provided that the Canal should be open and free to ships of all flags, other States not parties to the treaty had no rights under it. He was unable to agree with such an assertion. Many other examples could be given of questions on which there was no agreement at present between States.

19. Some maintained that international law was, as Brierly had said, like a cake with different slices and that only some of those slices were suitable for embodiment in international conventions. That meant that some subjects could not be codified and must remain as part of customary law. That view was, however, being disproved daily as an increasing number of rules of international law and matters which had in the past been regulated by custom were being incorporated in international conventions, dealing as much with general matters of international law as with special matters. Accordingly, general matters were just as suitable for codification and progressive development as special matters, despite Sir Gerald Fitzmaurice's assertion to the contrary. His delegation believed that all international law was suitable for codification and embodiment in international conventions. Indeed Article 38 of

the Statute of the International Court of Justice implied that it was possible to regulate matters of general international law by means of conventions. That was in his delegation's view the proper interpretation of the reference to general conventions in the text of the Article.

20. Some maintained that it would be dangerous to conclude conventions on matters of general international law because it might be held that States which did not sign such instruments were not bound by them. Practice had shown, however, that general principles of international law could be successfully embodied in treaties, and in that connexion the provisions of Article 2, paragraph 6, of the Charter should be borne in mind. Moreover, if rules of conduct included in an international convention were drafted in such a way as to satisfy the legitimate interests of States, even States which were not signatories to that convention would certainly recognize and respect those rules. There was also a real danger in failing to conclude formal conventions, duly signed and ratified, for in the case of codes or declarations States could contend that the rules they contained had no binding force.

21. If it was finally agreed that the draft articles on the law of treaties should be embodied in a convention, they would have to be drafted in a somewhat different form from those at present submitted to the Committee. There would, however, be ample opportunity for re-drafting them at a later stage.

22. His delegation wished to express its appreciation of the Commission's work and was fully prepared to support the joint draft resolution (A/C.6/L.444 and Add.1).

23. Mr. BHADRAVADI (Thailand) said that, in view of the purely interim character of the Commission's report, he agreed with the sponsors of the joint draft resolution that the General Assembly should only take note thereof and express its appreciation of the Commission's work. A special tribute was also due to the Commission's Chairman, for his account of the difficulties under which the Commission had had to work. In that connexion, he agreed that more time should be allowed to Governments for the submission of their comments on first drafts. For texts of that nature requiring careful study, two years was certainly not too long a period.

24. With reference to the Salvadorian draft resolution, he said that Thailand accepted the principle of codification for international as well as internal laws. His delegation accordingly accepted the Salvadorian proposal in principle, confident that every aspect of the question would be duly studied by the Commission.

25. Mr. SARAIVA GUERREIRO (Brazil) said that while it was not pleasant for the Committee and the General Assembly to have their programme of work somewhat disturbed, the Commission's inability to complete its draft on consular intercourse and immunities need not prove too serious. That work of codification was admittedly desirable, but it could hardly be regarded as very urgent. In fact, even the Commission's proposal to make up for lost time by allowing States only one year for the submission of their comments seemed unnecessary. The Brazilian delegation nevertheless believed that the questions of diplomatic intercourse and immunities and consular intercourse and immunities, although clearly interrelated, could be dealt with separately. Consistency in

terminology could be assured without examining the two texts at one time, and perhaps it might even be preferable to finalize the text on diplomatic immunities before proceeding to final consideration of the text on consular law.

26. The preparation of the drafts on the law of treaties, which was the second substantive matter raised in the Commission's report, was a long-term task of fundamental importance. It would occupy the Commission's time for several years and, if it was to serve any useful purpose, the final product would have to be as nearly perfect as possible. The rules governing the conclusion and effect of treaties were, in a way, the cornerstone of positive international law. By defining international custom they represented, so to speak, a constitution of international society, and had at least as vital a bearing on the legal relationships between subjects of international law as the rules governing the structure of the United Nations. By their very nature, therefore, they should be among the least controversial and most stable of international standards. But a distinction should be drawn between principles the observance of which was indispensable to the creation of any conventional bond between States and the more technical and procedural rules which permitted of greater flexibility. The draft articles before the Committee tended to juxtapose those two sets of rules, which perhaps explained why they read more like a textbook for students and practitioners than like an international treaty. Such a comprehensive and didactic manner of presenting the material had indeed been the Special Rapporteur's express aim, the Commission's provisional intention being that the text should not serve as the basis for one or more conventions.

27. The reason advanced against a convention was that criticisms voiced during its preparation and the eventual non-adherence of many States might weaken the force of the rules embodied in it. But it was precisely and need for universality and binding force which seemed to militate against a general code adopted by a General Assembly resolution. Furthermore, the adoption of any such code would have to be preceded by a discussion every bit as detailed as during the preparation of a convention at a diplomatic conference; and the psychological effects of a resolution approved against the wishes of a substantial minority would be as undesirable as the failure of some States to ratify one or more multilateral instruments.

28. Since a final decision on that point was not required immediately, the Brazilian delegation believed that the Sixth Committee should withhold judgement until it had received the final draft on the law of treaties as a whole. Possibly the most flexible and generally acceptable solution might then prove to be the separation of the material into two instruments: one containing the principles which a vast majority of States accepted as essential to the existence of conventional relationships, the other containing provisions more in the nature of regulations, regarding which differences of view might be possible. The first would thus be a constitutional text, the second more of a practical manual.

29. In conclusion, the Brazilian delegation had certain doubts regarding the Salvadorian proposal on the right of asylum, fearing that it might adversely affect Latin America's own interests. A world body could hardly approach that problem in the same spirit as prevailed in the Latin American region. Bearing in mind, how-

ever, the support already voiced for that proposal by several Latin American delegations, the Brazilian delegation would vote in its favour.

30. Mr. SALAMANCA (Bolivia) said that since the Commission's report was incomplete, it would be premature for the Sixth Committee to discuss its substance.

31. At its eleventh session the Commission had reviewed all the work accomplished at its first ten sessions. That review clearly showed that of all the texts presented by the Commission in final form, only the one on the law of the sea had led to the signing of international conventions. The reason seemed to be that many of the topics discussed by the Commission had never been likely to yield concrete results. Among those could be listed the formulation of the Nürnberg Principles, the question of international criminal jurisdiction, the Draft Code of Offences against the Peace and Security of Mankind, the question of defining aggression and the Draft Convention on the Elimination of Future Statelessness.

32. The results of the United Nations Conference on the Law of the Sea nevertheless showed that, despite certain tensions in international relations, it was still possible to find material suitable for codification. Every State should consequently strive to facilitate the Commission's work by proposing codifiable topics. The Commission would then be able, while working on complex and difficult subjects such as State responsibility and the law of treaties, to entrust one or more of its members with the simultaneous study of more readily codifiable material. In suggesting that, he was in no way seeking to belittle the importance of the topics currently under study, but it seemed that some of them, such as the two he had mentioned, would still require several years' work. The only items on which immediate results might be obtained were diplomatic and consular intercourse and immunities.

33. The Commission's recent experience also showed that it was necessary to have several projects pending at the same time in order that the Commission might present texts to the Assembly regularly, even if a special rapporteur on a priority topic was unavoidably absent. The Commission, Governments and the General Assembly would thus be able to ensure constant progress with codification work.

34. One topic of considerable interest, to which the International Law Association had drawn attention in 1956 and in 1958 and which had also been extensively studied by various inter-American and specialized bodies, was that of the use and exploitation of international or inter-State waterways. Believing in the importance of that subject and also of the related one of navigation on such waterways, his delegation would formally submit a draft resolution (A/C.6/L.445), calling for the codification of the relevant principles by the International Law Commission and requesting the Secretary-General to compile, classify and analyse the necessary material. The Commission would, of course, be free to treat the two subjects either jointly or separately.

35. So far as the Salvadorian proposal was concerned, the Bolivian Government had always recognized the great regional importance of the right of diplomatic territorial asylum. It was not certain, however, whether the topic could be codified in universally acceptable terms. As the institution was recognized

by Latin American conventions and practice, there was indeed little likelihood of its being either improved or clarified by codification. On the other hand, in other areas of the world, political considerations might place the problem in a different perspective.

36. Despite those doubts, if the Committee should wish to include the question of the right of asylum in the Commission's programme of work, the Bolivian delegation would not oppose such inclusion.

37. Mr. ESCOBAR (Colombia) said that the Committee had before it certain articles designed to form part of a code on the law of treaties. For various reasons, however, which it was not necessary for the Committee to analyse, those articles did not represent a finished work. Moreover, it was not even possible to envisage the finished product, since various points which came to mind would only be studied by the International Law Commission at a later stage. He hoped, however, that the Commission would prepare the final draft in such a manner that it could be considered as a single text, on which States might take up clear positions.

38. Several representatives had spoken of the possibility of embodying the law of treaties either in a code or in multilateral conventions. That issue might be of great academic interest, but in practice there would be nothing strange in approving a code which would present the relevant rules in orderly form and indicate the guiding principles which might later serve to render international law more uniform. Such a procedure seemed particularly appropriate in the case of rules regulating relations between States or between States on the one hand and international organizations on the other. A set of such guiding principles would present no danger whatever, especially if its adoption required the prior approval of the General Assembly. In any event, however, States would be able to submit their views as the preparation of the draft articles progressed.

39. Colombia's international position in the matter of asylum was well known. The Salvadorian representative himself, in submitting his draft resolution on that subject, had referred to a case in which Colombia had been a party. In the democratic American countries, with their respect for *habeas corpus* and representative republican institutions, the right of asylum had long been a recognized fact. That was because the basis of that right was the desire to give real and effective protection to the rights of the human person, in full accordance with the United Nations Charter. Asylum was not an abstract notion, but an institution supported by doctrine and firmly rooted in the Christian and civilized traditions of the Latin American peoples. Such a guarantee of human life encouraged the community to respect all rights and thus created mutual confidence between its individual members. In such an atmosphere any country resorting to arbitrary action for political considerations would inevitably come to grief.

40. Having always upheld the right of asylum, Colombia naturally welcomed the proposal that the relevant principles and rules of international law should be codified. In that connexion, it should be remembered

that the right of asylum was not a regional right. As was proved by its gradual acceptance in countries outside Latin America, it stemmed from the intrinsic nature of the law of nations. The fact that it was not wholly accepted in some of those other countries could never destroy its international character. He therefore hoped that the draft resolution would be approved unanimously, on the clear understanding that what was sought was not a doctrinal definition but a co-ordination of scattered conventions, judicial rulings and authoritative commentaries. The right of asylum would thus be clarified and, consequently, more generally understood.

41. In conclusion, the Colombian delegation also warmly supported the joint draft resolution (A/C.6/L.444 and Add. 1).

42. Mr. CACHO ZABALZA (Spain) said that he was prepared to support the Salvadorian draft resolution (A/C.6/L.443). It should, however, be made clear that the expression "right of asylum", at least in some countries, included both diplomatic asylum and territorial asylum. He assumed that the Salvadorian draft resolution was concerned with diplomatic asylum, as the Commission on Human Rights had already for some time been considering the question of territorial asylum and had submitted a draft declaration on the subject to Governments for consideration. To avoid duplication of work, it should be made abundantly clear that the Sixth Committee was concerned with the right of diplomatic asylum, although the representative of El Salvador, in introducing his resolution, had referred to both types of asylum. The Salvadorian representative would, he hoped, be prepared to make his position clear in that respect.

43. The need for codification of the principles of diplomatic asylum had long been felt. Various treaties on the matter had been concluded, mainly between Latin American countries, and their provisions would be a valuable precedent in developing work on the subject. Other precedents could be found in technical juridical studies which had been made on the subject. It had also been considered by the Institute of International Law, which had adopted resolutions on the right of asylum at a session held in September 1950. Spanish jurists had taken part in many international meetings where the right of asylum had been discussed and they had, on those occasions, taken the opportunity to state their views, as diplomatic asylum had long been recognized and respected by Spain.

44. Mr. USTOR (Hungary) said that the Canadian representative had wrongly stated that Hungarian private law was still mostly uncodified. That had admittedly been true in the past, the Hungarian legal system having long somewhat resembled the "common law" system. But the situation had recently changed, since a codification of the civil law had obtained parliamentary approval in July 1959 and was expected to enter into force during 1960. In the light of those developments, his earlier statement might not seem as surprising as the Canadian representative had suggested.

The meeting rose at 5.40 p.m.



Tuesday, 6 October 1959,
at 10.50 a.m.

NEW YORK

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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443, 444 and Add.1, A/C.6/L.445) (continued)

1. Mr. GAMBOA (Philippines) observed that one of the most important functions of the General Assembly was the encouragement of the progressive development of international law and its codification, as provided for under Article 13, paragraph 1 a, of the United Nations Charter, to ensure that relations among States were governed, and their disputes settled, by the rule of law. While it was true that differences between States could be divided into two categories—legal and political—and that political questions could not appropriately be adjusted by international law, the history of international arbitration proved that gaps in international law could be filled by the application of the general principles of law recognized by civilized nations or by decisions rendered *ex aequo et bono* as provided for in Article 38, paragraph 2, of the Statute of the International Court of Justice.

2. With regard to the report of the International Law Commission (A/4169), particularly chapter II on the law of treaties, the rules governing treaties still lacked clarity and uniformity, in spite of the importance of that branch of international law as indicated by the large number of treaties signed. While codification of the law of treaties as envisaged by the International Law Commission might paralyse its natural development, such a step would have the advantage of rendering the law clear, specific and more easily accessible. It might in due course serve as the basis for an international convention on the law of treaties.

3. In view of the provisional character of the report, substantive discussion of the articles was premature. The Philippine delegation therefore supported the joint draft resolution (A/C.6/L.444 and Add. 1) under which the General Assembly would take note of the report of the International Law Commission and express its appreciation of the work done by the Commission.

4. With respect to the draft resolution on codification of the rules relating to the right of asylum submitted by the delegation of El Salvador (A/C.6/L.443), the practice of States on the subject varied widely. Some States recognized both the right of diplomatic asylum and the right of territorial asylum, whereas others recognized only the right of territorial asylum. It was precisely because the practice varied so greatly that

examination and codification of the rules relating to asylum would be most useful. The Philippine delegation would therefore vote in favour of the draft resolution submitted by El Salvador on the understanding that its affirmative vote should not be construed as affecting the current policy of the Philippines in respect of the right to diplomatic asylum.

5. Mr. CHOBANOV (Bulgaria) said he had been very much interested in the report of the International Law Commission and the statement made by its Chairman, Sir Gerald Fitzmaurice (601st meeting). While he would not deal with the substance of the drafts on the law of treaties and on consular intercourse and immunities, he agreed with the representative of Czechoslovakia, who had said (605th meeting), that it would be inadvisable to postpone consideration of the draft on diplomatic intercourse and immunities until examination of the draft on consular intercourse and immunities had been concluded. A postponement would only delay consideration of the draft on diplomatic intercourse and immunities without contributing in any way to improve the regulations governing both matters.

6. On the question whether the instrument on the law of treaties should be in the form of one or more conventions or a code, the International Law Commission appeared to favour the latter course. That was a departure from its previous position. In fact, the Commission had hitherto done more than engage in research, compilation and standardization; it had conceived its task to be a creative one and had sought to formulate its own rules where practice had been either non-existent or lacking in unity and consistency and where legal theory was uncertain or divided. The Bulgarian delegation felt that the Commission should not depart from that creative role. If the international community failed within a reasonable time limit to adopt conventions or treaties governing relations between States, it would take centuries for a body of customary law to be created. An understanding on common rules that scrupulously respected national sovereignty was perfectly feasible in spite of ideological, social and political differences among States.

7. Mr. CHAYET (France) said that the French Government held the International Law Commission and its Chairman, Sir Gerald Fitzmaurice, in high esteem. The French delegation supported the joint draft resolution (A/C.6/L.444 and Add. 1) since the two drafts prepared by the Commission were not yet ready for final comments.

8. On the question of the presentation of the work on the law of treaties, it might be best to endorse the view expressed by the Commission in its report (A/4169, para. 18) in favour of simple codification. All that had to be done in the matter was to prepare, for the benefit of experts, a guide to the practices followed. The arguments adduced in favour of a convention did not seem very convincing in the case of a subject the substance of which was so directly within the competence of States.

9. With regard to the draft resolution submitted by El Salvador (A/C.6/L.443), he recalled that, on the question of territorial asylum, the Commission on Human Rights, at its fifteenth session, had adopted a resolution^{1/} in which it had decided to draft a declaration on the question at its sixteenth session. The International Law Commission could therefore not undertake a codification before the results of the study by the Commission on Human Rights were available. However, on the understanding that the Salvadorian draft resolution did not affect that study or the work provided for in paragraph 44 of the report of the International Law Commission, there was no reason to object to the inclusion of the question in the Commission's programme of work at a later stage.

10. The International Court of Justice, in its judgment, on the "Haya de la Torre" case, had found that practice with respect to diplomatic asylum was not very clear. The French delegation doubted that the topic lent itself to codification.

11. With regard to the Bolivian draft resolution (A/C.6/L.445) no position could be taken at the present session on operative paragraph 1 for lack of essential data. On the other hand the Sixth Committee might, subject to the views of the Secretary-General, take a decision on operative paragraph 2, which was of a more practical nature.

12. Mr. ZEMANEK (Austria) congratulated the International Law Commission on the work it had done at its eleventh session in spite of the many difficulties it had had to overcome. The Austrian delegation would support the joint draft resolution (A/C.6/L.444 and Add. 1).

13. With regard to the law of treaties and the draft on consular intercourse and immunities, his delegation felt, as did many others, that it would be advisable to wait until the articles were drafted in their final form before discussing them in detail. He would like, nevertheless, to comment on two points immediately.

14. The first concerned the form in which the draft articles on the law of treaties should be presented to States. The International Law Commission had suggested either an international convention or a code. The Austrian delegation felt that the Commission, before making any recommendation to the General Assembly, should reconsider the question in the light of the statements made in the Sixth Committee. While Austria could not take a final position as yet, it thought that the two alternatives did not have the same legal value. Codification in itself was not a source of international law and had no legal force if it did not result in an instrument which in itself was a source of law. A code would therefore merely set forth the existing customary law and would have no binding effect upon States. It was open to doubt whether the Commission had really been set up to engage in such purely theoretical work or whether its task was not rather the progressive development of international law. Moreover, some of the articles already drafted, such as article 6, paragraph 4, and article 17, paragraph 2 (c), constituted development of international law and could hardly be embodied in a mere code. On the other hand, if the draft articles were embodied in a multilateral convention some States might either not become parties to it, or might do so subject to certain reservations, or

might become parties to it only to denounce it later. That argument, incidentally, was not restricted to the law of treaties. The danger of existing customary law being only partly observed might perhaps be even greater in the case of a code that was intended merely to restate that law than in the case of an international convention which, being a separate source, would leave customary law untouched.

15. The second point concerned *ad hoc* diplomacy and relations between States and international organizations. The Austrian delegation noted with satisfaction the inclusion of those topics in the Commission's agenda, since it considered them to be of the utmost importance. Consideration of those matters would contribute greatly to the development of international law. The Commission should ensure that the drafts conformed in structure to those already prepared.

16. The Austrian delegation would vote in favour of the Salvadorian draft resolution (A/C.6/L.443). It would state its position on the Bolivian draft resolution (A/C.6/L.445) at a later stage. However, it would like to know why reference was made in operative paragraph 1 to "international or inter-State waterways and navigation thereon" and in operative paragraph 2 to "the use of international or inter-State rivers", and also whether the Secretariat was expected to provide the funds for the work.

17. Mr. PATHAK (India) said that his delegation was in general agreement with the methods adopted by the International Law Commission. In particular, it endorsed the views expressed by the Commission in paragraph 13 of its report. Even though the work of the different branches of the law of treaties might subsequently have to be reviewed and adjustments made, the various subdivisions could be dealt with separately without awaiting completion of the work on the whole subject. However, as the draft articles in chapter II of the report were purely provisional, comment at the present stage would be premature. Without wishing to prejudge the Commission's decision on the form which codification of the law of treaties should take, the Indian delegation was inclined to favour a code rather than a draft convention.

18. He paid a tribute to the work done by the Commission and the Special Rapporteur on the subject of consular intercourse and immunities, and he noted with satisfaction that the Commission would give priority to the topic at its next session. The Indian delegation would comment on the subject at the appropriate time.

19. The Commission's inability to have an observer attend the meetings of the Asian-African Legal Consultative Committee was regrettable, and it was to be hoped that informal consultations between the Chairman of the Commission and the members of that Committee attending the current session of the General Assembly would lead to arrangements which would facilitate closer consultation between the two organs.

20. In conclusion, the Indian delegation would vote in favour of the joint draft resolution (A/C.6/L.444 and Add. 1) and the draft resolution submitted by El Salvador (A/C.6/L.443). In connexion with the latter, the work to be entrusted to the Commission was closely related to the work already done by the Commission on Human Rights on the subject. The International Law Commission would undoubtedly take into consideration the results of that work. The Indian delegation reserved the right to comment on the Bolivian draft resolution (A/C.6/L.445) at a later stage.

^{1/}See Official Records of the Economic and Social Council, Twenty-eighth Session, Supplement No. 8, chap. III, para. 74.

21. Mr. SILVA (Venezuela) said he would support the joint resolution, while reserving the right to come back later to the substance of the questions discussed in the International Law Commission's report.

22. As the representative of a Latin American country, he was happy to note the interest shown by the Member States in the question of the right of asylum. His delegation would vote in favour of the Salvadorian draft resolution.

23. As the document containing the Bolivian draft resolution (A/C.6/L.445) had not been received until that morning, the Venezuelan delegation had not had time to study it and reserved the right to state its position on that subject at a later meeting.

24. Mr. TUNCEL (Turkey) thanked Sir Gerald Fitzmaurice for his very interesting report to the Sixth Committee on the work done by the International Law Commission at its eleventh session. He noted from that report that it had not been possible to complete the draft on consular intercourse and immunities in time for the current session of the General Assembly, because of the absence of the Special Rapporteur of the International Law Commission. He did not dispute the importance of the personal role of the Rapporteur, but he felt that the Commission could find suitable means of preventing similar situations from recurring in the future. In that connexion, the proposal made at the 606th meeting by the representative of Canada for the appointment of assistant rapporteurs was worthy of consideration.

25. With reference to article 16 (e) of the Statute of the International Law Commission, which provided that the Commission "may consult with scientific institutions and individual experts", he suggested that the International Law Commission should seek the advice of diplomats for the preparation of the draft on consular intercourse and immunities. The work of the International Law Commission would be even more satisfactory if it were based on the experience of diplomats in that field.

26. The question had been asked whether or not the draft articles on diplomatic intercourse and immunities and the draft articles on consular intercourse and immunities should be examined separately. The debates in the Sixth Committee, at both the preceding and the current sessions, showed that the attitude of States was influenced by the administrative regulations existing in each individual State. Brazil, for example, where consular and diplomatic functions were separate, had requested at the 606th meeting that the two drafts should be considered separately. That was an understandable question of principle, but States should not be guided solely by their own administrative systems; it would be better for them to adopt a conciliatory attitude which would make some progress in the matter possible. His delegation was in favour of the joint examination, at the same conference, of all texts dealing with immunities. In that respect, he expressed his satisfaction with the suggestion made by the Chairman of the International Law Commission not to postpone until 1961 the preparation of a final draft on consular intercourse and immunities but to submit the draft to Governments at its next session, so that the final examination of the draft could take place in 1961.

27. His delegation had also noted with satisfaction the progress achieved by the International Law Commission in *ad hoc* diplomacy (A/4169, para. 44). In

particular, it drew attention to the Special Rapporteur's statement to the effect that he would be able to submit his report to the International Law Commission at its next session. His delegation endorsed the joint draft resolution (A/C.6/L.444 and Add. 1) though it felt that some mention should be made therein of the progress achieved with regard to the law of treaties and to consular intercourse and immunities.

28. With reference to the Salvadorian draft resolution (A/C.6/L.443), he recalled that at its seventh session, the General Assembly had requested the International Law Commission to give priority to the codification of the topic of diplomatic intercourse and immunities (resolution 685 (VII)). That decision had been taken on the initiative of the Yugoslav delegation, which on that occasion had pointed out a specific instance of violation of the premises of a diplomatic mission. The circumstances in which the relevant decision had been taken indicated that the draft prepared by the International Law Commission would contain a provision guaranteeing the inviolability of the Embassy building in the event of diplomatic asylum. The Commission, however, had considered it advisable not to include such a provision in the draft, but had stated in paragraph (4) of its commentary on article 40 (A/3859, page 26) that among the agreements referred to in paragraph 3 of that article there were certain treaties governing the right to grant asylum in mission premises which were valid as between the parties to them. It would appear that that decision by the Commission not to deal with the question of asylum in its draft was in contradiction with its programme of work. Any draft on diplomatic intercourse and immunities should contain, among the provisions concerning the inviolability of the mission premises, a clause concerning the right of asylum. The University of Istanbul, which had studied the draft, had recommended that the Turkish Government should propose at the next conference that that significant gap should be filled. To those who asserted, in opposition to the codification of the right of asylum, that the custom in the matter was hardly uniform outside Latin America, he would point out that a well-established custom was in existence in most of the European countries. Moreover, territorial asylum had already been studied by the Commission on Human Rights; the point at issue there was the co-operation between the two Commissions, and it was clear that the International Law Commission would keep itself informed of the achievements of the Commission on Human Rights.

29. With reference to the Bolivian draft resolution (A/C.6/L.445), he pointed out that the International Law Commission was required, under article 18 of its Statute, to survey the whole field of international law with a view to selecting topics for codification and, when it considered that the codification of a particular topic was necessary and desirable, to submit its recommendations to the General Assembly. His delegation felt that it would be better for the Assembly to leave it to the International Law Commission to decide whether the question of international rivers was an appropriate subject for codification, than to take the initiative of requesting the Commission to include that question in its programme of work.

30. Mr. MATSUDAIRA (Japan) said that his delegation had been highly satisfied by the quality of the work done at its eleventh session by the International Law Commission, and had been happy to join several other delegations in proposing that the General Assembly

should congratulate the Commission and take note of its report. He also stated that his delegation would vote in favour of the Salvadorian draft resolution.

31. Mr. SARAIVA GUERREIRO (Brazil) pointed out to the representative of Turkey that in Brazil there was only one foreign service career for the members of the diplomatic and the consular corps, which were governed by the same rules. However, the same officer when posted in a diplomatic mission enjoyed diplomatic status, but when transferred to a consular post would have a different status. The Brazilian delegation's position on the advisability of examining together or separately the two sets of draft articles prepared by the International Law Commission was in no way dictated by the internal organization of the Brazilian diplomatic and consular service, but rather by considerations of a practical nature.

32. Mr. SAHOVIC (Yugoslavia) pointed out, for the benefit of the representative of Turkey, that when the Yugoslav delegation had proposed at the seventh session of the General Assembly that the International Law Commission should be requested to give priority to the codification of diplomatic intercourse and immunities,^{2/}

^{2/}See Official Records of the General Assembly, Seventh Session, Annexes, agenda item 58, document A/2252, para. 1.

it had had in mind, not the question of diplomatic asylum, but the codification of rules applicable to such intercourse and immunities, with a view to the preparation of a convention reflecting the current state of international law. He also recalled that during that same session a proposal for codification of the right of asylum had been rejected by a large majority.

33. Mr. TUNCEL (Turkey) recalled in that connexion the summary records of the 313th to 316th meetings of the Sixth Committee. At the 313th meeting, the representative of Yugoslavia, in submitting his Government's proposal, had mentioned violations of the premises of legations or embassies and of apartments occupied by diplomats; he had also given a concrete example.

34. Mr. ESCOBAR (Colombia) confirmed that at the seventh session his delegation had requested the International Law Commission to give priority to the codification of the right of asylum;^{3/} but he wished to point out that that request had been rejected not as a result of an examination of the substance, but for procedural reasons, as it had been judged inadmissible within the framework of the Yugoslav proposal.

The meeting rose at 12.25 p.m.

^{3/}Ibid., document A/C.6/L.251.



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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the works
of its eleventh session (A/4169, A/C.6/L.443, 444 and
Add.1, A/C.6/L.445) (continued)

1. Mr. PERERA (Ceylon) said it was not clear to him what the intention of the Salvadorian draft resolution (A/C.6/L.443) was. Reference to the Commission's past activity showed that since its first session it had included the right of political asylum in the list of topics selected for codification (A/925, para. 16). That list was reproduced in the Commission's report covering the work of its tenth session (A/3859, footnote 41). For some reason, the Commission had not yet seen fit to embark on the study of that question or to submit its recommendations to the General Assembly in accordance with article 18 of its Statute. He would therefore like to know whether the Salvadorian resolution was intended to request priority for the right of asylum and whether there was any need to discuss the substance of the draft resolution in its present form.

2. The Bolivian draft resolution (A/C.6/L.445) and the Belgian amendments to it (A/C.6/L.446) seemed acceptable to his delegation, but it reserved the right to discuss them in detail at a later stage.

3. Explaining why his delegation had wished to be included among the sponsors of the joint draft resolution (A/C.6/L.444 and Add.1), which expressed appreciation of the Commission's work, he pointed out that codification had undoubtedly been the question which had received the most attention during the current general debate. Some, like the Romanian representative (see 606th meeting), believed that all topics of international law could be codified; others did not share that opinion. Even if all topics were codifiable, however, there were always various obstacles to the process of codification, including political factors, as the Canadian representative had rightly pointed out (*ibid.*). For example, a codification of the principle of the right of peoples to self-determination would have been premature ten years before. Other topics were ready for codification, but the International Law Commission was competent to decide on its own programme of work and the Sixth Committee should be careful not to exceed its powers. It should confine itself to assisting the International Law Commission in its work; its concern was with the progressive development of international law, whereas codification

should be the task of the Commission. The latter's accomplishments to date had been remarkable, since it had already codified fifteen topics despite the difficulties it had had to overcome. The Commission should, however, consider the suggestion made the preceding year that it should consult other bodies of jurists such as the Asian-African Legal Consultative Committee, and should keep itself informed of their work. While European law seemed to have prevailed in the world for the past three or four centuries there might, as Mr. Nehru had said, also be an Asian angle to international law. What was now needed was a universal law, a common law of mankind.

4. Mr. PEREIRA (Portugal) said that as the texts submitted by the International Law Commission were provisional and incomplete, his delegation believed that the time was not yet ripe to take up the substance of the question. With regard to the form of codification, it favoured a draft convention rather than a code, which the Commission apparently preferred. As codification was merely a systematization of existing rules of international law, it was not a formal source of law. At the present stage, that source lay in the wishes of States and a code could be applied only with their consent. It would, therefore, be of limited application unless it was supported by a convention. The Commission opposed that view on the ground that States might not become parties to a convention or might subsequently denounce it. That danger would be even greater, however, in the case of a code, for some States might declare that they did not recognize a given rule of the code as an established rule of international law. Consequently, a code would merely constitute a body of legal principles; a convention would bind States much more effectively.

5. His delegation would vote for the joint draft resolution (A/C.6/L.444 and Add.1). It was prepared to support the Salvadorian draft resolution (A/C.6/L.443) but believed that the word "codification" in the operative part was not appropriate since it assumed the existence of generally recognized principles of international law relating to the right of asylum. That question would have to be settled by the International Law Commission, which would undoubtedly also take account of the work of the Commission on Human Rights on the question of territorial asylum.

6. His delegation would vote for the Bolivian draft resolution (A/C.6/L.445) as modified by the Belgian amendments (A/C.6/L.446).

7. Mr. EL-ERIAN (United Arab Republic) was gratified to note that despite the difficulties which the International Law Commission had encountered at its last session, it had been able to submit to the General Assembly draft articles on two important topics, accompanied by a very interesting commentary. As those texts were incomplete and provisional and would have to be submitted to Governments for their observations, his delegation would confine its comments

to the question of the type of instrument in which the codification of treaty law should be embodied.

8. Generally speaking, it considered that the Commission should always attempt to present its texts in the form of a draft convention. The Commission's primary function with regard to codification was to prepare drafts for submission to Governments with a view to the conclusion of agreements which would be binding on the signatory States. The question of legislation at the international level through the conclusion of conventions should cause no misgivings. International legislation was a fact to which the work of Manley O. Hudson, entitled *International Legislation*,^{1/} was a living testimony. As Professor Jessup had pointed out, even if the recent conventions on the law of the sea were not signed or ratified by the great majority of States, they were nevertheless of real value in that they clarified the relevant rules of customary international law. Moreover, the form which the codification of a topic should take could not be determined in advance; that question could not be decided until the final text had been adopted.

9. So far as treaty law was concerned, his delegation recognized that the topic could be dealt with in various ways. The Special Rapporteur had recommended the preparation of a code on the ground that that solution would have the advantage of permitting the inclusion of declaratory and explanatory material in a way that would not be possible in a statement of obligations. The International Law Commission, which customarily gave serious consideration to the views of its special rapporteurs in such matters, had accepted that recommendation and had decided provisionally that its work would take the form of a code of general character. The delegation of the United Arab Republic took note of that decision, on the understanding, however, that it was a temporary arrangement, adopted for reasons of practical convenience, which would permit the inclusion of declaratory or explanatory material in the body of the text and that a final decision would not be taken until work had been completed on the other aspects of the topic.

10. With respect to the draft articles on consular intercourse and immunities, he was glad to see that the text was in concordance, both in regard to methods and terminology, with the draft articles on diplomatic intercourse and immunities. The provisions of articles 2 and 8 provided examples.

11. The delegation of the United Arab Republic would vote in favour of the joint draft resolution (A/C.6/L.444 and Add.1). It was willing to give sympathetic consideration to the Salvadorian proposal (A/C.6/L.443) requesting codification of the topic of the right of asylum. It wished to point out, however, as it had done before, that the International Law Commission had already singled out that topic for codification and that it might prefer to await the results of the work on territorial asylum undertaken by the Commission on Human Rights.

12. His delegation would indicate its position on the Bolivian draft resolution (A/C.6/L.445) and the relevant Belgian amendments (A/C.6/L.446) at a later stage. It wished to point out, however, that the draft resolution related to international and inter-State waterways, whereas the work done by the International

Law Association, referred to at the 606th meeting by the Bolivian representative, dealt with international rivers. In his (Mr. El-Erian's) opinion, the proposed topic of codification should be more precisely defined. In any case, a gradual and careful approach was required; a study by the Secretariat would no doubt facilitate a decision as to whether the question should be referred to the International Law Commission.

13. Mr. CASTANEDA (Mexico) said that he would confine himself to two points: the type of instrument in which the law of treaties should be embodied and the question of the right of asylum.

14. On the first point, the Mexican delegation took the same view as the Special Rapporteur and for the same reasons, namely, that the law of treaties should take the form of a general code rather than of a convention. It was not a question of a choice of principle between those two methods. In the particular case with which the Committee was concerned, there was a body of comparatively coherent customary rules. Those rules did not require incorporation in a treaty in order to become binding, since they were already binding, being customary rules; nevertheless, to facilitate their application, it was necessary to formulate them more precisely and to define their scope clearly. A convention would have the disadvantage, as the United States delegation had already pointed out (605th meeting), of raising doubts as to the binding nature of those rules with regard to States which did not become parties to the convention or became parties only with reservations. The Romanian representative's argument (see 606th meeting) that a convention embodying recognized customary rules would also bind States that had not ratified it was valid as a general thesis, but the argument could not be carried to the absurd length of denying the legal effect of ratification, since in that case a State which had ratified a convention and one which had not would be in the same legal position. A code, on the other hand, would have the advantage of establishing and clarifying existing customary rules without imposing any new obligations on States.

15. With respect to the legal value of such a code, it would be wrong to attribute greater value to rules laid down in conventions than to customary rules incorporated in a code, since according to the majority of learned authorities, the first three sources of law listed in Article 38, paragraph 1, sub-paragraphs *a*, *b* and *c*, of the Statute of the International Court of Justice, should be accorded the same status. With respect to the legal basis of the binding force of the rules contained in the code, it could be pointed out that that binding force derived from the fact that they were customary rules, and, in the final analysis, derived from the will of the States. It had already been held by Grotius that custom could be regarded as a tacit pact among States and, hence, as having binding force. Furthermore, the legal value of a codified customary rule depended upon the authority of the body by which it was undertaken. But in the case of a code which had received the approval of the General Assembly, that authority could not be impugned. A decision by the Assembly that a certain code contained customary rules or general principles of law would have considerable legal value, and possibly even binding force.

16. On the question of the right of asylum, he appreciated the motives underlying the Salvadorian proposal

^{1/} Vols. I-IX (Washington, D.C., Carnegie Endowment for International Peace, 1931-1950).

(A/C.6/L.443), but had a number of reservations concerning the possibility of devising a universal codification of the principles and rules of law relating to the right of asylum.

17. Firstly, although asylum was an institution which had long existed in other parts of the world, it was most highly developed in Latin America by reason of certain political and social conditions peculiar to the countries of that area. Asylum no doubt had its roots in humanitarian consideration of a universal character, but the extent of its development in Latin America was also attributable to the existence of dictatorial régimes and to the instability or lack of political maturity which caused frequent and violent changes of government. It should further be borne in mind that asylum constituted an exception to the principle of a State's sovereignty over its own territory. The institution of asylum could operate only within a regional community possessing a fairly well-established common tradition. It seemed hardly likely that, so far as the world as a whole was concerned, States whose interests, legal philosophies and political systems were often conflicting would willingly accept the interference of other countries in their domestic affairs.

18. Mexico's opposition to a universal codification of rules relating to the right of asylum did not imply any opposition to the institution as such. Although the right was rarely invoked by Mexican owing to the political stability of their countries, many persons requested asylum every year in the various Mexican embassies, which never turned them away. However, a universal codification might endanger the very existence of the institution.

19. The Mexican delegation felt it was essential to uphold the basic principle underlying diplomatic asylum, as defined in the Caracas Convention of 1954, namely, that the State granting asylum should have the unconditional and unrestricted right to decide whether or not the offence with which the person requesting asylum was charged was political in nature and whether or not asylum should be granted. To deny that right to the State granting asylum would be to endanger the corner-stone of the whole institution. Hence, that discretionary power of the State would have to be replaced by a universally acceptable definition of a political offence, i.e. of the cases in which a State might grant asylum, which was by no means an easy task; it would also be necessary to establish an international judicial authority to settle disputed cases. In those circumstances, States would probably hesitate to perform what was a purely humanitarian and disinterested act for fear of becoming involved in an international controversy.

20. Lastly, the Mexican delegation feared that a universal codification of the right of asylum might adversely affect the Convention already in force in Latin America, which it regarded as highly satisfactory. It was in favour of obtaining recognition of that regional institution by the world community, but not of its universal extension. Such recognition was, moreover, implicit, as the Turkish representative had pointed out (607th meeting), in the last two phrases of article 40 of the draft articles on diplomatic intercourse and immunities (A/3859, para. 53), which made provision for rules of international law authorizing the use of the premises of a diplomatic mission for special purposes. It was unnecessary to go any further.

21. On the question of territorial asylum, he agreed with several other members of the Committee that it was better to await the outcome of the work being done by the Commission on Human Rights recommending the codification of that topic to the International Law Commission.

22. The Mexican delegation was not yet in a position to give its views on the Bolivian draft resolution (A/C.6/L.445), as amended by Belgium (A/C.6/L.446).

23. Mr. Benjamín COHEN (Chile), referring to the comments made by the representative of Canada at the 606th meeting, said that the discussion of legal questions by bodies other than the Sixth Committee was not a phenomenon peculiar to that Committee. For instance, the First Committee and the Special Political Committee were also dealing with problems that were technically within the competence of the Fourth Committee. It was necessary to remember that the United Nations was essentially a political organization and that, in the case of questions with both a political and a technical aspect, the former took precedence.

24. His delegation had already had occasion to express its approval of the Salvadorian draft resolution (A/C.6/L.443). It was, however, important to ensure that the codification advocated by El Salvador did not weaken, on the regional level, the practice which had developed so extensively in Latin America. From personal experience he knew that when someone requested diplomatic asylum, humanitarian principles automatically outweighed any legal consideration.

25. Hence, while supporting the draft resolution his delegation reserved the right to offer its comments when the resolution came up for detailed examination.

26. On the subject of territorial asylum, he thought that the International Law Commission should await the results of the work in that field undertaken by the Commission on Human Rights, in order to prevent duplication or conflicts of principle.

27. Referring to the Bolivian draft resolution (A/C.6/L.445), he said that the study of water resources was an extremely important factor in the economic progress and development of an area; it helped to raise the standard of living of the populations concerned and contributed to the improvement of international relations. Hence, all the regional economic commissions of the United Nations were concerning themselves with the problems of waterways and, through the agency of other bodies, were studying the utilization and exploitation of international waters. His delegation attached great value to the Bolivian draft resolution, but felt that, for the moment, it would be preferable for the Committee to confine itself to the proposal in operative paragraph 2 of the draft resolution.

28. After stressing the importance of co-operation among the various bodies concerned with the codification and progressive development of international law, he gave a detailed account of the co-operation between the International Law Commission and the Inter-American Council of Jurists on questions dealt with by both bodies, one within the framework of the United Nations and the other within the framework of the Organization of American States. On the proposal of its Latin American members, the International Law Commission had unanimously requested the Secretary-General of the United Nations to authorize the Secretary of the Commission to attend,

in the capacity of an observer, the fourth meeting of the Inter-American Council of Jurists (A/3859, para. 72). On the strength of that authorization Mr. Liang had attended the fourth meeting of the Council in Santiago, Chile, in August and September 1959, and had closely followed the Council's proceedings which had concerned, *inter alia*, two questions of interest to the International Law Commission, namely, reservations to multilateral conventions and the international responsibility of States. The Inter-American Council of Jurists had also considered a draft convention on human rights which it had transmitted to the Council of the Organization of American States for communication to Governments, and a draft convention on extradition which had been prepared by the Inter-American Juridical Committee in pursuance of a

resolution of the Tenth Inter-American Conference. Lastly, the Inter-American Council of Jurists had studied the question of diplomatic asylum, which had been placed on its agenda on the proposal of Colombia, with a view to clarifying and ultimately to amending, the conventions in effect in that field.

29. His delegation welcomed any proposal that would ensure close co-operation among bodies working for the development of international law. It would therefore support the suggestion that an observer of the International Law Commission should attend the sessions of the Asian-African Legal Consultative Committee.

The meeting rose at 12.55 p.m.



Thursday, 8 October 1959,
at 3.15 p.m.

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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the work of
its eleventh session (A/4169, A/C.6/L.443, 444 and
Add.1 and 2, A/C.6/L.445/Rev.1) (continued)

1. Mr. NISOT (Belgium) said that, in view of the sub-
mission of a revised version of the Bolivian draft
resolution (A/C.6/L.445/Rev.1), his delegation wished
to withdraw the amendments (A/C.6/L.446) which it
had proposed to the original Bolivian text. That with-
drawal, however, should not be construed to imply
the adoption by his delegation of any position on the
revised version.

2. Mr. ZEPOS (Greece) agreed with the Canadian
representative, who had stated (606th meeting) that
an expansion of the Sixth Committee's role would
undoubtedly help to promote the aims of the United
Nations. So far as the International Law Commission's
report (A/4169) was concerned, his delegation was
satisfied both with the explanations contained in the
report itself and with the statement by the Commis-
sion's Chairman regarding the reasons which had
prevented the Commission from completing its work.
He was confident that before the Assembly's fifteenth
session the Commission would submit at least a com-
plete draft on consular intercourse and immunities,
as well as a study on ad hoc diplomacy. Those topics
deserved preferential treatment not only because first
priority had already been given to consular intercourse
and immunities by the Commission itself, but also out
of consideration for the view of delegations which
believed that no final action should be taken on the
existing draft on diplomatic immunities until the com-
pleted draft on consular immunities was also avail-
able.

3. With reference to the type of instrument in which
the codification on the law of treaties should be em-
bodied, paragraph 18 of the Commission's report
was clearly of an interim character. His delegation
therefore reserved its right to take a position after
a final decision had been reached by the Commission
also in the light of the opinions expressed in the Sixth
Committee. On the report as a whole, he would sup-
port the joint draft resolution (A/C.6/L.444 and Add.1
and 2).

4. In dealing with the question of asylum, the Com-
mittee might recall that both the term and the con-
ception were of Greek origin. Moreover, although the
granting of asylum was currently regarded as mostly

a Latin American practice, some known instances of
it had also occurred in non-Latin American countries
only a few years before the Haya de la Torre case.
For example, asylum had been granted in September
1941 by the Legation of Japan at Teheran to the Grand
Mufti of Jerusalem, in April 1944 by the Legation of
Turkey at Budapest to de Kallay, former Prime
Minister of Hungary, and in March 1945 by the British
Legation at Bucharest to General Radescu, former
Prime Minister of Romania. Those examples showed
that the right of asylum, even if not wholly accepted
by all countries, was a recognized institution in many
States outside the Latin American region. That fact
was also borne out by the support which many non-
Latin American representatives had already voiced
for the Salvadorian draft resolution (A/C.6/L.443).
Consequently, it could not be admitted that the right
of asylum was only of regional interest and not of an
international character.

5. The question of asylum was still of vital interest
because certain basic humanitarian standards had not
yet gained universal acceptance. That was why the
matter had already been discussed in various United
Nations organs and why a comprehensive declaration
on the subject was under consideration by the Com-
mission on Human Rights. The Greek delegation was
well aware of the difficulties involved in codifying the
relevant rules in universally acceptable terms, but
the matter of diplomatic asylum was of sufficient
importance to warrant referring it to the International
Law Commission for consideration, at a time to be
determined by the Commission itself. The adoption
of the Salvadorian proposal would at least help to
clarify the whole subject.

6. As to the Bolivian revised draft resolution (A/
C.6/L.445/Rev.1), the Greek delegation understood
the reasons which had prompted its sponsor to sub-
mit it. But adding such a complicated topic to the
Commission's programme would only tend to prevent
the Commission from completing its current work
for a long time to come. The Commission was dealing
not only with the draft on consular law but also with
the law of treaties and State responsibility. If the
subject selected by Bolivia was also added, no complete
draft on any of those topics would be produced for at
least five or seven years. Nor were his delegation's
fears dispelled by the Belgian amendments (A/C.6/
L.446), for the suggestion that the Commission should
deal with the matter at such time as it considered
suitable could apply equally well to every other branch
of public international law. His delegation therefore
regretted that it would be unable to support the
Bolivian draft resolution.

7. Mr. TABIBI (Afghanistan) recalled that the Com-
mission's difficulties during its eleventh session had
been mainly caused by the absence of the Special
Rapporteur on consular intercourse and immunities.
That Special Rapporteur had been detained at The
Hague as an ad hoc judge on the International Court

of Justice, and the Commission had been unable to proceed with the draft until his arrival at Geneva. In order to avoid those difficulties in the future, the Statute of the Commission might be reframed so as to allow for two rapporteurs to be assigned to each topic: one responsible for preparing the draft, the other as an associate who could perform the necessary functions whenever the special rapporteur was unable to attend meetings. He hoped that the Commission would give some thought to that suggestion at its next session.

8. In order to expedite the Commission's work, Governments could be asked for their views on partially completed projects. For example, the partial texts on the law of treaties and on consular intercourse and immunities could be circulated immediately. Moreover, since the Commission's membership had been increased from fifteen to twenty-one members, the Commission could perhaps establish sub-committees for the discussion of various topics. The Commission's attention had been called to that possibility in previous years, and he would be glad to hear how the Commission had reacted to those suggestions.

9. With reference to the Commission's work in pursuance of Article 13 of the United Nations Charter, he shared the views expressed by the representatives of Canada and Ceylon. Progress in international law was not as rapid as elsewhere, but it could be speeded by the co-ordinated efforts of the Sixth Committee, the International Law Commission and the Secretariat. The Secretariat should prepare more reports and propose new items each year; the Commission should reconsider its methods of work, meeting schedules and selection of topics; and the Sixth Committee should always remain alert to its great responsibility.

10. Chapter II of the Commission's report (A/4169) encouraged the hope that the entire draft on the law of treaties might be completed shortly. After its completion, the draft would no doubt be circulated to Governments for their comments, and that would be the time to decide on the final form which the work should take. That decision could be taken either by a special conference or by the General Assembly.

11. His delegation also hoped that the study on *ad hoc* diplomacy and on relations between international organizations and States would be completed as soon as possible. Those matters were becoming constantly more important and traditional international law afforded no guidance on them.

12. With reference to the Salvadorian draft resolution, he noted that the right of asylum had been one of the fourteen topics originally selected for codification (A/925, para. 16). The institution was accepted and applied in almost all parts of the world, but was not uniformly practised. That fact had been recognized by the International Court in the *Haya de la Torre* case. Consequently the codification of the topic by the Commission would greatly clarify the picture. It should be borne in mind, however, that the Commission on Human Rights was also studying that subject and care should be taken to avoid a duplication of effort.

✓ 13. His delegation would also welcome the attempt, envisaged by the Bolivian representative, to compile the rules relating to the use and exploitation of international rivers. Efforts in that direction had already been made by many learned societies, but the formulation of universally acceptable principles had proved

difficult. The latest attempt had been made by the International Law Association in 1958, the four principles then adopted relying primarily on direct negotiations between the riparian States. Experience showed, therefore, that no uniform rules on the subject could possibly be found. So far as international rivers were concerned, it was difficult to separate juridical rights from policy. None of the relevant material available was of great assistance, and in certain countries the traditional principle of the supremacy of navigational rights had been overshadowed by the needs of irrigation. His delegation therefore believed that an attempt to codify the relevant principles would be premature and could do more harm than good. All that could be done, for the time, was to take the action proposed in operative paragraph 2 of the Bolivian draft resolution (A/C.6/L.445/Rev.1). It had rightly been stated that a study should be made of the available materials in order to understand the actual problems presented by international river systems and to analyse the tendencies of international practice; the question of law would be closely involved with questions of history, geography, strategy, economics and politics. Instead of premature codification, therefore, it would be better if international rivers were used both for navigation and for irrigation on the basis of local arrangements, arrived at after an evaluation of actual needs in the light of scientific data and with due respect for sovereign rights. So far as Afghanistan was concerned, irrigation was more important than navigation. In the absence of agreement, however, it would always be willing to call on the services of bodies whose impartiality and scientific knowledge were both beyond question. The Afghan delegation attached special importance to that subject and would state its views to any organ dealing with it at the proper time.

14. In conclusion, he agreed with the representatives of India, Indonesia, Yugoslavia and Ceylon regarding the importance of the work of the Asian-African Legal Consultative Committee. A close relationship should be established between that body and the International Law Commission, and either the Chairman or the Secretary of the Commission should attend the Committee's annual meeting.

15. Mr. NISOT (Belgium) pointed out that some delegations seemed to have forgotten that he had formally withdrawn the Belgian amendments (A/C.6/L.446) to the Bolivian draft resolution. He again stressed that that withdrawal did not imply the assumption of any position on the Bolivian revised draft.

16. Mr. ORTIZ MARTIN (Costa Rica) said that the right of asylum, being an established institution of American international law, required proper doctrinal development. He could not accept the argument that it would be inadvisable to codify in universal terms rules which were of a purely regional character. In the first place, whatever was accepted as a humanitarian principle by some should be similarly accepted by all; and secondly, the institution was by no means purely regional but was widely accepted throughout the world. The institution's growth in Latin America was merely the result of that area's constant rebellion against any oppression of liberty.

17. Costa Rica had recently been confronted with a new problem relating to the right of asylum. A group of revolutionaries against the Nicaraguan Government who had been brought back to San José had sought and

obtained asylum in foreign embassies. The Costa Rican Government had expressed its surprise, for the question of asylum could hardly arise in a country where there had not been even a suspicion of persecution. That had led to confusion and misunderstanding, but all the difficulties had been overcome in the traditional American spirit of compromise. That incident showed the need for juridical regulation of the institution on a universal basis.

18. Mr. BELACHEW ASRAT (Ethiopia) said that, after the explanations that had been furnished, his delegation was satisfied with the Commission's progress. The Commission's Chairman had rightly stated that the report was of an interim character and there was no need to comment on its substance. His delegation reserved its right, however, to make such comments at the appropriate time.

19. With reference to the form of instrument in which the law of treaties should be embodied, he felt that the view expressed in paragraph 18 of the Commission's report seemed reasonable. However, until the complete text was available, any detailed observations on that point would be premature. His delegation would therefore support the joint draft resolution (A/C.6/L.444 and Add.1 and 2).

20. The Salvadorian draft resolution also appeared acceptable, and, there again, his delegation would express its views on the substance of the subject after the Commission had submitted its study. The Commission itself should be left to decide when that study should be initiated.

21. The question raised in the Bolivian draft resolution was of direct interest to Ethiopia. He would consequently support the initiation of the study envisaged in that proposal.

22. In conclusion, he agreed with the Canadian representative that it was necessary to affirm the rule of law in international relations. Positive efforts to that end should be made both by the International Law Commission and by the General Assembly.

23. Mr. CACHO ZABALZA (Spain) said that the summary records of his earlier statements wrongly implied that he had used the term "Latin American". He disliked that expression and had always been careful to refer to the sister States in the Americas as "Iberian-American".

24. In the matter referred to in the Bolivian revised draft resolution (A/C.6/L.445/Rev.1), Spain had always followed a well-defined road. As the Permanent Representative of Spain had said at the 822nd plenary meeting of the General Assembly on 6 October 1959, the Spanish delegation hoped that the second United Nations Conference on the Law of the Sea would reach international agreement on the question of the breadth of the territorial sea and related problems. He had added that Spain attached paramount importance to respect for the traditional principle of the freedom of the seas and could not approve any individual action designed to bring about changes in the limits of territorial waters.

25. In order to consolidate all the work previously done on the law of the sea, the General Assembly, by its resolution 1105 (XI) adopted in February 1957, had decided to call the first Conference on the Law of the Sea. That Conference had not reached complete agreement, for reasons sufficiently well known. A

further debate had accordingly taken place in the Sixth Committee at the thirteenth session of the Assembly, when the delegations of Indonesia (588th meeting) and Ceylon (593rd meeting) had advanced claims which, in his opinion, seemed contrary to customary international law.

26. The Spanish delegation believed in the principles established by the founders of the law of nations, among them the principle that the benefits to be derived from the sea were for the common welfare of all mankind. That applied equally to the land-locked countries, which were as entitled as the maritime States to reasonable enjoyment of the seas.

27. After the debate in the Sixth Committee at the thirteenth session, the General Assembly, by its resolution 1307 (XIII), had decided that a second conference on the law of the sea should be held at Geneva in the spring of 1960, soon after the eleventh Inter-American Conference due to be held shortly at Quito. The questions envisaged in the Bolivian draft resolution should therefore be discussed at the second Geneva Conference, where, as at the first Conference, States would inevitably display a sincere desire to arrive at positive rules governing all questions relating to the sea. In that connexion, he again wished to stress that Spain would never consider itself bound to recognize any unilateral measures whereby a State might seek to extend its territorial sea beyond the limit which Spain had set off its own shores.

28. For those reasons, his delegation would normally have voted against the Bolivian draft resolution. Bearing in mind, however, that that text had been submitted by a sister nation, he would abstain from voting.

29. Mr. SHIELDS (Ireland) said that, in view of the unusual difficulties and frustrations which the Commission had faced in 1959, the Commission's achievements appeared decidedly commendable. The progressive development and codification of international law were of necessity slow and time-consuming processes, and the Commission should continue to decline to sacrifice the quality of its work in favour of quantity. In view of the interim character of the Commission's report the Sixth Committee was not called upon to discuss the substance of the draft articles it contained, and accordingly his delegation would support the joint draft resolution (A/C.6/L.444 and Add.1 and 2).

30. The question of the final form that the codification of the law of treaties should take might be more appropriately discussed at a later stage, after the full draft had been completed. His delegation was confident that the Commission would carefully consider the Canadian representative's suggestion that the problem of "code versus convention" might best be resolved by dividing the articles and enshrining the formal articles in a multilateral treaty while placing the articles which related to the meaning and interpretation of treaties in a code declaratory of general principles.

31. With reference to the Salvadorian proposal, he stressed that the principle of the right of asylum in no way involved or implied the right of an individual to demand admission to a State, but consisted solely in the right to seek asylum, as referred to in article 14 (1) of the Universal Declaration of Human Rights, and in the right of the State to grant or deny the asylum so sought. On that basis, his delegation was

prepared to support the draft resolution. He felt that, if the proposal was adopted, the Commission would no doubt wish to benefit by the results of the discussion on the relevant draft declaration in the Commission on Human Rights, and in the Third Committee.

32. The Irish delegation had not yet completed a study of the revised Bolivian draft resolution, and accordingly reserved its right to give its views on that text at a later stage.

33. Mr. DADZIE (Ghana) said that, so far as the issue of code versus multilateral convention was concerned, in connexion with the law of treaties, the objective of the International Law Commission, as stated in article 1 of its Statute, was the promotion of the progressive development of international law and its codification. It would appear, therefore, that a topic was normally only referred to the Commission when the object of so doing was both its progressive development and its codification. His delegation consequently had no difficulty in understanding the Commission's recommendation concerning the draft articles on the law of treaties. He also agreed with the explanation offered by the special Rapporteur for the subject. And in any event, the Commission's recommendations would in no way preclude the General Assembly from convening a conference to conclude a convention. If such a further step was deemed necessary, consideration might be given to it after the Commission's draft had been completed.

34. With reference to the question of the appointment of special rapporteurs, his delegation thought that the matter should be left entirely to the discretion of the Commission. The Sixth Committee would, of course, always be in a position to take action against any abuse of that discretion.

35. In those circumstances, his delegation fully supported the joint draft resolution and would willingly join in as co-sponsoring it.

36. The question of the relationship between consular intercourse and immunities diplomatic intercourse and immunities and *ad hoc* diplomacy had been sufficiently elaborated by the Canadian representative. There was currently little practical difference between the rules applied to persons performing functions in any of those three fields. That was especially true in the diplomatic and consular practice of the smaller States. In view of those factors, his delegation believed that the three topics should be treated together.

37. On the question of the right of asylum, his delegation understood the Salvadorian proposal as merely a request to the Commission that it should study the topic and make recommendations to the General Assembly. On that understanding, he would certainly support the draft resolution. The Commission would then study and codify the rules of territorial asylum and of diplomatic asylum from the strictly legal viewpoint alone. Such work need in no way overlap with that in progress in the Commission on Human Rights, which was understandably more concerned with the humanitarian aspect of the question. The International Law Commission would, in any event, study the progress made by its sister body.

38. His Government believed that the proper place for the rules governing diplomatic asylum would be in the instrument on diplomatic intercourse and immunities. He had been expressly instructed to recommend, therefore, that the text relating to the right

of asylum, when approved, should be included in the final instrument governing diplomatic law.

39. In conclusion, he said that his delegation had not had time for a full study of the revised Bolivian draft resolution. It accordingly reserved its right to refer to that topic at a later stage.

40. Mr. HOLMBACK (Sweden) said that the subject of the utilization and exploitation of international rivers referred to in the Bolivian revised draft resolution (A/C.6/L.445/Rev.1) was one of far-reaching scope, since besides navigation it comprised such problems as irrigation, drainage and the use of rivers for waterpower, the generation of electric power and the like. In the light of his personal experience in dealing with those complex problems in Sweden, he questioned whether the International Law Commission was the appropriate body to undertake such a study, which would necessarily require a profound knowledge of the many technological, mineralogical, meteorological and other factors involved. The study could perhaps better be undertaken by a special committee set up for that specific task. In any case, it would be preferable to wait a year or two and ponder the matter carefully before reaching a final decision.

41. He could not accept operative paragraph 2 of the revised draft resolution, which requested the Secretary-General to undertake, in collaboration with the International Law Commission, the task of compiling, classifying and analysing the available information on that question. In his opinion, it was inappropriate to ask the Secretariat to make such studies and enter into such collaboration before the item had been submitted to the Commission. It was also questionable whether the Secretariat possessed the necessary financial resources to undertake that task. Lastly, it should be borne in mind that the International Law Association had already compiled much useful information on the subject of international rivers, and that material should perhaps be carefully evaluated before any new work of compilation was carried out. For those reasons, his delegation felt that any action on the proposal contained in the Bolivian revised draft resolution should be postponed to a later stage.

42. Mr. URQUIA (El Salvador) said that his delegation was prepared to support the joint draft resolution (A/C.6/L.444 and Add.1 and 2). He reserved his delegation's position with respect to the Bolivian revised draft resolution (A/C.6/L.445/Rev.1).

43. He then turned to various points which had been raised by representatives in connexion with the Salvadorian draft resolution (A/C.6/L.443). The United States representative had attributed the fact that the draft resolution left it to the Commission to determine when the question of the right of asylum should be taken up to a desire to take into consideration the work currently being done on the question by the Commission on Human Rights (605th meeting). He wished to point out that he had used the words "as soon as it considers advisable" not out of deference to the important work of the Commission on Human Rights but because he had thought that the International Law Commission should be given complete freedom to decide its final plan of work. The Israel representative had said (605th meeting) that some clarification was needed regarding the respective functions of the Commission on Human Rights and the Economic and Social Council on the one hand, and of the International Law Commission and the General Assembly on the other

with regard to the right of asylum. The representative of Spain had said that in introducing his resolution the Salvadorian representative had referred to both diplomatic and territorial asylum, but that as the Commission on Human Rights had already for some time been considering the question of territorial asylum, it should be made clear that the Sixth Committee was concerned with the right of diplomatic asylum.

44. To answer the questions raised by the representatives of Israel and Spain, he reviewed in detail the work which had been done on the right of asylum in the Commission on Human Rights since 1947. The first general statement on the subject was to be found in article 14 (1) of the Universal Declaration of Human Rights, which read: "Everyone has the right to seek and to enjoy in other countries asylum from persecution". In his opinion, that principle was more forcefully expressed in article XXVII of the American Declaration of the Rights and Duties of Man of 1948, which he read out. Progress had been slow from 1949 to 1957, when the subject of the right of asylum had received new impetus from the Commission's resolution requesting Governments, through the Secretary-General, to comment on the question whether a United Nations declaration laying down the principles which should govern the actual grant of asylum would not in itself be of value.^{1/} By the first few months of 1959, however, replies had been received from only twenty-three Governments. An excellent summary of the present state of affairs was to be found in paragraphs 57, 59 and 60 of the report of the Commission on Human Rights on its fifteenth session,^{2/} the text of which he read.

45. On the basis of the Commission's work to date, the following conclusions could be drawn: first, the study now before the Commission was concerned exclusively with territorial asylum; secondly, the Commission had already decided that it would prepare a declaration on territorial asylum; and thirdly, that declaration would only be an expansion of, or an explanatory supplement to, article 14 of the Universal Declaration of Human Rights. Representatives would, he was sure, agree that despite its value, the work already accomplished by the Commission on Human Rights in that field was very far from meeting the aspirations of States with respect to the possible codification and progressive development of the international law concerning the right of asylum. Since it was perfectly apparent that the Universal Declaration of Human Rights did not impose a legal obligation on States, an explanatory supplement to that Declaration would not impose any obligation either.

46. With the exception of the delegations of Mexico and Ceylon, all the previous speakers had supported the Salvadorian draft resolution (A/C.6/L.443), on the understanding, of course, that the International Law Commission would be free to decide, first, the opportune time to undertake a study of both territorial and diplomatic asylum, and secondly, whether or not it should wait until the Commission on Human Rights had completed its own work on territorial asylum before considering that aspect of the question itself.

47. In referring to the Salvadorian proposal, the representative of Mexico had ascribed the particular

^{1/} See Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 4, chap. VIII, para. 214, resolution X.

^{2/} *Ibid.*, Twenty-eighth Session, Supplement No. 8, chap. III.

development of the right of asylum in Latin America in part to the existence in that area of dictatorial régimes and to an instability or lack of political maturity which had caused frequent and violent changes of government (608th meeting). He (Mr. Urquía) could not, however, agree that Latin America possessed a monopoly of dictatorships, instability and political immaturity, since those phenomena were equally to be observed in other parts of the world. And that the right of diplomatic asylum was favoured not only in Latin America was evident from the fact that the Salvadorian draft resolution had been welcomed in the Sixth Committee by eminent jurists from such non-Latin American countries as Italy, Spain, Austria, Israel, Burma, China, Pakistan, Japan, Philippines, Thailand, Greece Afghanistan and Ghana.

48. The need for the progressive development and codification, on a world level, of the law concerning the right of diplomatic asylum had been pointed up by the unfortunate results of the only judgement which had yet been pronounced in the matter by the International Court of Justice, in the Haya de la Torre case. A careful study of the rules of positive and customary law governing the right of diplomatic asylum would do much to prevent such errors in the future. Both types of rules existed in Latin America, while the rules of customary law were to be found in general international law. With respect to positive law, several speakers had already referred to the various conventions on the subject which had been concluded in Latin America, the most recent of which had been the Convention on asylum concluded at Havana in 1928, the Convention on political asylum concluded at Montevideo in 1933 and the Convention on diplomatic asylum concluded at Caracas in 1954. A characteristic feature of the law of asylum in Latin America was the unilateral right accorded to the State granting asylum to decide whether or not the crime in question was of a political nature. That right had been clearly recognized by the Seventh International Conference of American States, held at Montevideo in 1933, and by the Inter-American Council of Jurists at its fourth meeting, held at Santiago, Chile, in August and September 1959. The draft additional protocol prepared by the latter body would be submitted to the eleventh Inter-American Conference which was to be held at Quito, and he hoped that it would meet with the approval it deserved.

49. In conclusion, he wished to reply to the representative of Ceylon, who had intimated that it was pointless to request the International Law Commission to undertake the codification of the principles and rules of international law relating to the right of asylum unless the Commission was also specifically asked at the same time to give priority to that question. His own view was that the use of the courteous phrase "as soon as it considers advisable" was in itself sufficient to induce the Commission or any similar body to attempt to meet the Assembly's wishes.

50. Mr. SALAMANCA (Bolivia), explaining his revised draft resolution and replying to the Swedish representative, said that he had been anxious only to draw attention to a subject that was suitable for codification and had not wished to force the matter to an issue. It should, however, be realized that no international body which had discussed questions connected with international waters had studied the legal aspects of non-maritime waters. The subject had been one that had been within the terms of reference of the League

of Nations, and the economic but not the legal aspects of matters connected with international rivers had been discussed by the Second Committee of the General Assembly and the Economic and Social Council. However, the difference between the approach to the problem in that body and a legal approach was considerable.

51. The problem demanded urgent solution because, with the population of the world increasing daily, half the world's arable land remained unworked for lack of water. In making its proposal, his delegation was not prompted by any partisan interest, as his country was one that suffered no lack of water.

52. In proposing a study of the possibility of codifying current laws on the use and exploitation of international rivers, he had wished simply to assist in the clarification of a matter that was at present governed by customary rules. As the matter had not been studied before, preliminary work would be required, and Governments' views would have to be sought. In conclusion, he drew attention to the Declaration of Dubrovnik, adopted in 1956 by the International Law Association, which proposed a number of rules for the peaceful solution of the problem.

53. Mr. ERADES (Netherlands) observed that his country was one which had many waterways and lakes and was thus extremely interested in the matter raised in the Bolivian draft resolution. He was, however, inclined to support the views of the Swedish representative, particularly as he had no instructions from his Government on the subject and would be unable to receive any in time for the present discussion. He therefore suggested that no decision should be taken during the current session and that Governments should be given an opportunity to study the matter in detail; it could then be taken up, if necessary, at the fifteenth session of the General Assembly.

54. Mr. GLASER (Romania), in reply to the Greek representative, wished to point out that the Radescu case had not been an instance of the granting of diplomatic asylum.

55. Mr. NUGROHO (Indonesia) said, in reply to the representative of Spain, that many countries now claimed more than three miles of territorial waters; that had been made clear by the discussions at the United Nations Conference on the Law of the Sea held at Geneva in 1958. Moreover, the International Court of Justice had decided that special rules should apply to archipelagos. In any case, as the three-mile limit was no longer universally accepted, it was to be hoped that a satisfactory solution would be found in the future.

56. He had now received instructions from his Government regarding the Salvadorian draft resolution and he was pleased to announce that he could support it.

57. Mr. HOMBACK (Sweden) said, in reply to the Bolivian representative, that he wished to stress three points. The first was that the Bolivian representative had said that the question of the use and exploitation of international rivers was extremely important. On that point he concurred. Secondly, he had not intended to hinder discussion of the question but had simply asked whether the International Law Commission was the most appropriate body to discuss it. His third point was in connexion with what the Bolivian representative had called the urgency of the

matter. If the matter was urgent, then it should not be referred to the International Law Commission, as that body had a great deal of work before it, and would be unable to take up the question for several years, while the date of completion of its study would be a matter of pure speculation.

58. Mr. ROSENNE (Israel) said that, in the light of the explanation given by the Salvadorian representative, he was now able to support the draft resolution sponsored by El Salvador (A/C.6/L.443).

59. In connexion with the right of asylum, many speakers had made points of some considerable importance, and if the International Law Commission did study the question, it might derive some benefit from having the proceedings of the present discussion in the Sixth Committee available to it at that time.

60. Mr. MOROZOV (Union of Soviet Socialist Republics) said that while he was fully prepared to support the Joint draft resolution (A/C.6/L.444 and Add.1 and 2), he would be unable to support either of the other two draft resolutions before the Committee (A/C.6/L.443 and A/C.6/L.445/Rev.1). Neither of those texts raised problems of sufficient importance to warrant a change in the International Law Commission's programme of work, or to justify overburdening it with the study of a new question. A long list might well be made of the subjects which the Commission could profitably discuss, and that list might include subjects for whose discussion there would be more justification than for the two proposed. Normally, however, no changes should be made in the Commission's programme of work and no new subjects should be proposed for its consideration unless they were really of exceptional importance, particularly as any decision to the effect that the Commission should study a new item on the recommendation of the Sixth Committee would amount to adding a further item to the agenda of the General Assembly. The questions raised were not of sufficient importance to warrant special study, and members should exercise restraint by not recommending any changes in the Commission's work programme.

61. Earlier speakers, indeed, had expressed doubts regarding the real importance of the two draft resolutions concerned. The very fact that the Bolivian draft resolution had been amended indicated that its sponsor was not sure that he had good reasons for recommending it for study to the Commission. The Bolivian representative's arguments in favour of his draft had been very interesting, but the regional problems of any one area of the world were not of sufficient importance to warrant a world-wide study. If the problem was important regionally it could be settled by regional agreement.

62. He suggested that the Bolivian representative should reconsider his position and reframe his arguments for presentation at the fifteenth session of the General Assembly if he still considered it desirable to do so.

63. With reference to the Salvadorian draft resolution (A/C.6/L.443), he said that the Salvadorian representative, in referring to the discussion on the right of asylum at the fifteenth session of the Commission on Human Rights,^{3/} had made no mention of a proposal to include an article on the right of asylum in the draft International Covenants on Human Rights.

^{3/} See footnote 2.

Such an article would be legally binding on the signatory States. The USSR delegation had made that proposal,^{4/} and he believed that a State should guarantee the right of asylum to all persons persecuted in defence of democracy, in scientific work and in the struggle for national freedom. The USSR delegation now proposed to put the same proposal before the Third Committee of the General Assembly at the present session, and if that proposal was accepted, any State which signed the Covenant on Civil and Political Rights would be undertaking a legal obligation with respect to the right of asylum.

64. As the Third Committee of the General Assembly was about to study the question of the right of asylum it seemed somewhat pointless at the present stage to make a recommendation that the question should be studied by the International Law Commission.

65. A further objection to the Salvadorian draft resolution was that the question of the right of asylum already appeared on the International Law Commission's programme of work, and the Commission would thus be studying the matter irrespective of any decision that the Committee might now take on the Salvadorian proposal. That proposal in fact amounted to giving priority to the study of the matter; but as the Salvadorian representative had said that he did not insist on immediate study of the question by the Commission, it would seem that the practical outcome of the draft resolution would be almost nil. Indeed, the only purpose that would be served by putting the proposals in the two draft resolutions under consideration before the International Law Commission would be to disrupt its programme of work as already approved by the Sixth Committee.

66. As for the question of the so-called right of diplomatic asylum, he disagreed completely, for reasons of principle, with everything the representative of El Salvador had said in that regard. The right of asylum, as a rule of international law, could be formulated only within the framework, and on the basis of recognition of the so-called right of territorial asylum. In addition, the Salvadorian representative, in listing the delegations which had apparently supported his draft resolution, seemed to have included among them those delegations which had spoken without stating any views on the subject, and which he had therefore simply supposed to support his proposal.

67. Mr. URQUIA (El Salvador) said that the USSR representative had at the beginning of his speech accused him and the Bolivian representative of trying to introduce new items into the Commission's programme of work. In so far as the right of asylum was concerned, that item was already part of the Com-

mission's programme, as the USSR representative had himself recognized later in his speech.

68. The USSR representative had also accused him of listing among the countries which supported the Salvadorian draft resolution those which had stated no views on the subject. Such an assertion was entirely without foundation as he had himself taken the names of all those delegations which in their statements had supported his draft resolution from the records of the previous meetings of the Committee.

69. He welcomed the USSR representative's statement that the Soviet delegation intended to propose in the Third Committee the inclusion of an article on the right of asylum in the draft Covenant on Civil and Political Rights. He believed, however, that the Third Committee would be discussing territorial rather than diplomatic asylum, and as had already been made abundantly clear, the Salvadorian draft resolution covered both types of asylum. He had already stated his willingness to agree that any study that the International Law Commission might make of the subject should await the outcome of the work by the Commission on Human Rights. It seemed, however, that the Commission on Human Rights would prepare only one article on the subject, which in his view was entirely inadequate. Indeed, more than one article would be required for each type of asylum.

70. Mr. MOROZOV (Union of Soviet Socialist Republics) said that if the International Law Commission were to await completion of the discussion of the right of asylum in the Third Committee before taking the matter up itself, no time would in fact be lost, because it would be two years before the Commission would be able to deal with the topic, in view of its present programme of work. There was therefore no need to take an immediate decision.

71. If he had involuntarily given the impression that the question of the right of asylum was not already on the International Law Commission's programme of work, he wished to apologize for any misunderstanding to which that might have given rise.

72. Mr. SALAMANCA (Bolivia), in reply to the USSR representative, said that the problem of international rivers could not be treated as if it were a purely artificial problem. Nor was it a purely regional problem peculiar to his part of South America. In fact, he had already made it clear that his country had no personal interest in the matter.

73. It had not been his delegation's intention to attempt to impose a study of any particular subject upon the International Law Commission but simply to draw attention to a problem that was of great importance and of world-wide significance.

The meeting rose at 6.20 p.m.

^{4/} See Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4, chap. IV, para. 202.



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Chairman: Mr. Alberto HERRARTE (Guatemala),

*In the absence of the Chairman, Mr. Monaco (Italy),
Vice-Chairman, took the Chair.*

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443, 444 and Add.1 and 2, A/C.6/L.445/Rev.1) (continued)

1. The CHAIRMAN invited representatives who wished to do so to exercise their right of reply.
2. Mr. ZEPOS (Greece), replying to the Romanian representative, who had said at the 609th meeting that the case, which he himself had cited earlier, of the asylum granted to General Radescu by the United Kingdom Legation at Bucharest in March 1945 was not a case of diplomatic asylum, explained that it had been mentioned as an example of diplomatic asylum by Professor Rousseau in his treatise on public international law. The disagreement on the matter between that author and the Romanian representative was an additional argument in favour of the Salvadorian draft resolution (A/C.6/L.443).
3. Mr. CACHO ZABALZA (Spain), replying to the representative of Indonesia, assured that representative that his delegation's statement at the 609th meeting had not been intended as a polemic; his delegation had merely referred to the case of Indonesia in passing because it had been one of the main subjects of the Committee's discussions at the thirteenth session of the General Assembly. With regard to maritime questions, Spain had always adhered to the same principles.
4. The Indonesian representative might rest assured that if, in due course, he had any proposal to submit, the Spanish delegation would consider it with the greatest interest.
5. Mr. SALAMANCA (Bolivia) wished, before making use of his right of reply, to comment on his delegation's revised draft resolution (A/C.6/L.445/Rev.1) concerning the rules applied in connexion with the utilization and exploitation of international rivers.
6. He recalled that the importance of that problem had been emphasized on several occasions by the Economic and Social Council, in its resolutions 417 (XIV), 533 (XVIII), 599 (XXI) and 675 (XXV).
7. In its resolution 675 I (XXV) of 2 May 1958, the Council had commended the Panel of Experts (including Mr. Zvonkov of the USSR) for its report entitled

"Integrated River Basin Development".^{1/} The seriousness of the problem raised by the steady increase of the world's population and the inadequacy of agricultural resources was repeatedly stressed in the report. The authors emphasized (chap. 1, paras. 64, 65 and 66) the urgent need for large-scale river-basin development which would soon pay for itself.

8. From the legal standpoint, the utilization and exploitation of inland waters were not governed by any international statute. In that connexion the law applied was purely customary, ill-defined and lacking in uniformity. There was accordingly a pressing need for an over-all study on the subject to prepare the way for a subsequent, more thorough study, and only the Secretary-General possessed the necessary technical resources for such a task.

9. There was no need to demonstrate the importance of the question, both inside and outside the United Nations. Several United Nations organs, and the International Law Association, the Institute of International Law, and the Inter-American Bar Association had taken the matter up. In that connexion, in the report of the Panel of Experts, approved by the Economic and Social Council, the section entitled "Inadequacy of Relevant International Law" should be read. It contained, *inter alia*, the statement of principles adopted by the International Law Association at its meeting at Dubrovnik, Yugoslavia, in 1956,^{2/} the observance of which, particularly principle V, would go far to aid adjustment of international water disputes. Of course those principles were only tentative, but they were a valuable point of departure and could serve as a basis for a provisional decision by the Council.

10. After a brief review of the various theories in that field of international law, he admitted that the question was complex, that regional practices differed and that complete codification was not possible. But such complexity was inevitable in international law. There was hope of achieving a practical solution in two respects, i.e., rules could be prepared concerning, on the one hand, the conservation and utilization of water resources and, on the other, the peaceful settlement of disputes.

11. He then went on to answer some of the comments which had been made on his draft resolution (A/C.6/L.445/Rev.1).

12. He explained that the new form of words used in operative paragraph 1 met the objections made by those delegations, including the French delegation (607th meeting) which had expressed doubts regarding the possibility of codifying the subject. In any case, only a preliminary survey was intended.

13. In reply to the Swedish representative, who had asked how the expression "utilization and exploitation" was to be understood (609th meeting), he said that in

^{1/}United Nations publication, Sales No.: 58.II.B.3.
^{2/}*Ibid.*, chap. 4, para. 14.

previous studies of the question the expression had been used to cover, inter alia, municipal usage, navigation, irrigation, hydro-electric works, fisheries, tourism, drainage and flood control. Moreover, the reason why the word "navigation" did not appear in the operative part although it occurred in the preamble, a fact which had surprised the Swedish representative, was simply that the question of navigation was already covered by treaties and consequently required no further study.

14. He was surprised that the USSR representative had questioned the importance of the problem, and had gone so far as to describe it as artificial (609th meeting). The USSR, as a member of the Economic and Social Council, had been one of the sponsors of resolution 675 (XXV), in which the Council called the report of the Panel of Experts to the attention of Governments of Member States and noted with interest the efforts being made to formulate legal principles applicable to users of international rivers. The USSR delegation was thus contradicting itself. Moreover, the USSR representative had expressed the view that the International Law Commission should not be asked to take up any new questions. But the Chairman of the Commission himself had said that it should have several questions under consideration at the same time. The USSR representative had also suggested that there were other subjects more deserving of the Commission's attention. He himself did not see what other subjects would lend themselves to codification.

15. In conclusion, he said that the revised draft resolution took into account the comments made by members of the Sixth Committee. Although operative paragraph 1 might give rise to some objections, the value of operative paragraph 2 was beyond question. He recalled that the study to which that paragraph referred could not be undertaken without the collaboration of the Secretary-General.

16. Sir Gerald FITZMAURICE (Chairman of the International Law Commission) expressed, on behalf of the Commission, his gratitude for the understanding shown by the Sixth Committee. He recalled the close relations which the Commission had always maintained with the Sixth Committee, owing partly to the fact that the same persons had often sat on both bodies.

17. Turning to the comments which had been made during the discussion on the report, he said that he would first consider the procedural points.

18. Referring to the remarks of the Czechoslovak representative (605th meeting), he pointed out that such situations as those in which the Commission had found itself at its eleventh session could be avoided if Governments bore in mind that its members held their offices in a personal capacity and could not nominate substitutes; whereas in the case of other offices, if one person a Government thought of appointing could not serve, another could be appointed instead. He agreed that the Commission might possibly have completed the draft on consular intercourse and immunities if it could have started it at the beginning of the session. For procedural and administrative reasons that was not possible in the second half of the session. It had also then been too late to initiate a new method of work.

Mr. Herrarte (Guatemala) took the Chair.

19. Sir Gerald FITZMAURICE (Chairman of the International Law Commission), replying to delegations, including those of Burma, Ceylon and India, which wished

the Commission to maintain closer contacts with Governments and with other bodies having an interest in international law, observed that it would be difficult for members of the Commission, between its sessions, to attend further conferences and meetings, perhaps at fairly long intervals. However, except arrangements could be made for the Commission's Secretary to attend the meeting of the Inter-American Council of Jurists at Santiago, Chile, and the meeting of the Asian-Afro-Legal Consultative Committee, provided that the latter did not coincide with the session of the General Assembly. The Commission was already in correspondence with the Consultative Committee.

20. Several delegations, in particular those of Canada, Turkey and Ceylon, which were anxious to speed up the Commission's work, had suggested the appointment of special rapporteurs who would not be members of the Commission; they had pointed out that the Commission's Statute did not specify that only members of the Commission could act as rapporteurs. But the main difficulty was not to find members of the Commission competent to be rapporteurs; it arose rather because the Special Rapporteur's other obligations sometimes kept him away when the Commission's work required his presence. In such circumstances it would not serve any useful purpose to appoint a rapporteur *ad hoc* since, however expert he might be, he would neither be familiar with the work so far done and with the reports already submitted by the regular Special Rapporteur. Moreover, the Special Rapporteur had to be able to participate fully in the Commission's discussions. In any case a special rapporteur who was not a member of the Commission would have no right to vote. Such a procedure should therefore not be resorted to except in extreme circumstances.

21. The same remarks would apply to a deputy rapporteur. In that case, moreover, the two rapporteurs would have to have identical views on the subject under study. Since it would be necessary to hear and reply to them both, the result might well be to prolong the Commission's discussions. The possibility of such an arrangement should not, however, be ruled out entirely.

22. The Canadian representative had suggested (606th meeting) that the Commission might be divided into groups which could examine two or more drafts at the same time. That suggestion had been made before and had been thoroughly gone into. It would give rise to budgetary and technical difficulties. On the one side the secretarial, translation and interpreting staff would have to be increased and, on the other, the drafts prepared by the groups would have to be approved by the Commission in plenary session and that would lead to further discussions and to a loss of time rather than to any saving.

23. Several delegations had stressed the importance which they attached to questions of *ad hoc* diplomacy and relations between States and international organizations. The Commission would take account of their remarks and would deal with those questions as soon as it could.

24. He then turned to treaty law. As stated in paragraph 13 of the Commission's report covering the work of its eleventh session (A/4169), the Commission had considered that the nature of the subject would allow it to draft articles on different parts of treaty law and to submit them in stages to the Assembly subject to eventual adjustment in the light of the completed code.

25. Some delegations, in particular those of Brazil and Canada (606th meeting), had suggested that the articles of the future codes should be divided into two sections, one theoretical, the other practical. That hardly seemed feasible; theory and practice were so inextricably bound up with one another that the Commission would meet with serious drafting difficulties.

26. The Indonesian representative had referred to the question of reservations (605th meeting). That question was already included in the Commission's programme. He would also draw the Commission's attention to the question of depositaries.

27. With respect to the present text of the articles included in the Commission's report (A/4169), the Belgian representative had pointed to the omission of several articles on the legal effects of signature in those cases in which signature did not of itself bring a treaty into force (602nd meeting). The reason for that was explained in paragraph 17 of the report.

28. The Italian representative had pointed out (604th meeting) that the procedure for the authentication of treaties provided for in article 9, paragraph 1 (c), would give binding force to a text incorporated in the resolution of an international organization. He considered that the Commission should review that point, although the text as it stood appeared to him to be correct. It was not, in general, true to say that the inclusion of a text in the resolution of an international organization gave binding force to that text. For instance, General Assembly resolution 260 (III) concerning the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide was in fact an authentication. The same was true of the ILO Conventions.

29. In chapter II of the report, in paragraph (5) of the commentary on draft article 2 on the law of treaties, the Commission had given an explanation of the expression "States ... possessed of treaty-making capacity" in that article, to which the Ukrainian representative had drawn attention (605th meeting). In drafting that article the Commission had been thinking of States which were not fully sovereign or independent. The text could, however, be amended to read for example, that all States had treaty-making capacity in principle but that in the case of some that capacity might be limited by particular agreements or by the legal situation applicable to such States.

30. The next question was whether the draft should be prepared in the form of a code or a convention. As the Hungarian representative had pointed out (602nd meeting), the Commission had not yet reached a decision in the matter. It would certainly take full account, at the appropriate time, of what had been said in the Sixth Committee and follow the General Assembly's recommendations. He assured the USSR representative that the Commission had no set practice in that respect and based its decisions on the merits of each case. The representative of the United Arab Republic had been right in making a distinction between the general question of the form which the Commission's drafts should normally take and the particular case of the form of any given draft (608th meeting).

31. The various arguments that had been put forward in favour of the one form or the other appeared to be premature, but he considered it appropriate to answer them. The Committee was talking, not about the formulation of new rules of international law, but about

a draft that codified existing, and generally recognized, law, already having binding force. It was from that fact that a code secured its authority, and no one could pretend that it would lose that authority unless it was embodied in a convention. Naturally, a merely private venture would not have that effect, but as the International Law Commission was an official organ of the General Assembly, the Assembly was in the position to confer its *imprimatur* on drafts sent to it by the Commission. He was in agreement with most of what the representative of Mexico had said on the subject (608th meeting). At the same time he did not believe that, if a draft code were approved and recommended by a resolution of the General Assembly, it would then, as such, become obligatory. Nevertheless, such a resolution would constitute recognition of the fact that the code was declaratory of generally binding rules of international law.

32. He felt that there would be dangers in embodying the law of treaties in a convention which would not be ratified by all States or which would be ratified and subsequently denounced by some States; the fact that those States would still be bound by the provisions of the convention embodying rules of customary international law would give rise to a certain amount of confusion. Such a possibility would admittedly arise regardless of the subject codified; but in the case of a subject so basic as the law of treaties, it ought not to be risked.

33. On the question of consent as the source of the international law obligations of States, which had also been raised during the debate, he observed that it was of course unnecessary to have recourse to any doctrine of natural law in order to postulate the binding force of the rules of customary international law, whether or not they had been embodied in a convention. The consent of States could be given in other forms than the explicit one, sanctioned by signature of a convention; it could also be implied, and, as had been pointed out by the representative of the United States (605th meeting), a general practice of States which supported the existence of a rule of international law was binding on all members of the international community. But it was not enough to say that consent, regardless of its form, was the formal source of the obligatory force of the individual concrete rules to which the States conformed; one had to ask what it was that gave to consent the power to create obligations. It could not be the actual consent of the parties, since in that case there would be a vicious circle. If obligations could arise from consent, it was because international law already made consent a source of obligation.

34. Acts, decrees, international conventions and other instruments which constituted the immediate and proximate sources of law expressed legal ideas, but did not create them. Indeed, those ideas must already be in existence, if only in the mind of the lawgiver, before they could be embodied in such instruments. And where the existing texts did not permit of an answer to a legal problem, as was often the case in international law, one had to go back to the first principles of law. Those were not normally found in formal texts; and underlying all statutes and conventions was a substratum that constituted the ultimate source of most of the rules on which legal systems were founded. Some sources called it natural law, and others, as in Article 38 of the Statute of the International Court of Justice, spoke of the general principles of law recognized by civilized nations. While it would be undesirable to

exaggerate the importance of that substratum, or attribute to it effects which it did not have, it should not be rejected nor should its existence be denied, for jurists could not do without it.

35. It had been argued that if the law of treaties were to be codified in the form of a convention, that field of international law would be transferred from the category mentioned in Article 38, paragraph 1 b, of the Statute of the International Court of Justice to the allegedly higher category referred to in paragraph 1 a. He found it difficult to accept that view. Like the representative of Mexico, he did not believe that Article 38 established any priority as between the various categories listed in the four sub-paragraphs of paragraph 1; the only hierarchy was that which followed from a general principle of law, namely that the particular should prevail over the general. The representative of Mexico had also rightly observed that too much insistence on the value of consent given in the form of a convention was likely to cast doubt on the validity of any rule of customary international law not embodied in a convention. No one would seriously dispute the validity of such rules as those relating to the exercise of a State's jurisdiction over persons who were present in its territory, or over its nationals wherever they happened to be, merely because those rules were not the subject of international conventions. Of course, the task of the International Court of Justice would be simplified if certain rules of customary international law had been given conventional form and if the States in dispute were both parties to the convention, but it had to be borne in mind that that task would be correspondingly more complicated if the dispute was one between a State which was and a State which was not a party to the convention.

36. It was, however, for reasons less of principle than of drafting and presentation that, in his capacity of Special Rapporteur, he favoured the codification of treaty law in the form of a code rather than of a convention. Unlike such subjects as diplomatic intercourse and immunities, the law of treaties did not lend itself to codification consisting of a series of obligations and prohibitions. On that subject, a statement of abstract principles seemed more appropriate than a listing of acts which States must, might or might not perform. Some time might be gained if the General Assembly took a basic decision on that point before the final formulation of the text. Perhaps it would be able to do so when the full text of the first part of the law of treaties was submitted to it. The suggestion made by the Nicaraguan delegation in that connexion (603rd meeting) was very interesting and deserved consideration. A code might be drafted and annexed to a convention whereby the parties would undertake, not to apply each provision of the code, but, whenever they concluded treaties, to act in a manner compatible with the provisions of the code. Such a solution would permit great flexibility in the drafting of the code, and would combine the advantages of the two methods of codification.

37. He then said that he would like to make a few remarks on the draft resolutions submitted by El Salvador (A/C.6/L.443) and by Bolivia (A/C.6/L.445/Rev.1). With regard to the first draft resolution, it was true that the question of the right of asylum was already included among the subjects which the International Law Commission had selected for codification, and, in so far as the draft resolution did not call on the Commission to give priority to that question, it

might appear superfluous. But, while not regarding itself as bound to assign absolute priority to consideration of the question of the right of asylum, the International Law Commission would certainly attach much weight to an Assembly resolution drafted in the terms of the Salvadorian proposal. It was, incidentally, rather unlikely that the International Law Commission would be able to undertake codification of that question in the near future, for many of the Commission's members felt it necessary to make progress with certain subjects which had been on the agenda for several years before undertaking new tasks. Simultaneous work on several subjects would, nevertheless, be possible.

38. To those who feared that the absence, from the draft articles on diplomatic intercourse and immunities, of the proposals relating to the right of asylum might impair the principle of the inviolability of mission premises, he gave an assurance that the International Law Commission regarded that principle as a hard and fast rule, admitting of no reservation whatsoever. If the receiving State had not recognized the right of the sending State to grant asylum on its mission premises, it might consider that the latter had acted illegally by sheltering a refugee in its Embassy, and the question would have to be settled through diplomatic channels; but there would be no justification for violating the mission premises. Furthermore, the International Law Commission had not dealt with the right of asylum in the draft on diplomatic intercourse and immunities because it had considered it undesirable to introduce, into that subject, a controversial element which went beyond the subject's normal scope and was governed, in the countries where it most frequently arose, by established practices and by a number of conventions.

39. The International Law Commission would not fail to take into account the comments made in the Sixth Committee with regard to the work on territorial asylum undertaken by the Commission on Human Rights. It was very unlikely, moreover, that it would take up the question of the right of asylum before the Commission on Human Rights had completed its own work. It should be pointed out in that connexion that very few legal issues arose in the matter of the right of territorial asylum, which mainly involved questions of a political nature. Under existing customary international law, a State had a right to receive political refugees, but was not compelled to do so; in other words, each State was free to grant or to refuse asylum, as it wished. It seemed therefore that the International Law Commission might have very little to say on the subject of territorial asylum, and that its work should deal mainly with diplomatic asylum.

40. With regard to the Bolivian draft resolution concerning international rivers (A/C.6/L.445/Rev.1), he thought that the word "navigation" might be examined more thoroughly, despite the explanation given by the Bolivian representative. In that connexion the words "introducing uniformity" created serious difficulty. In fact, there were already a number of international conventions regulating navigation on international rivers. They had been specially drafted for certain particular rivers, and it would be impossible to standardize them in regard to navigation. As regards utilization on the other hand, the International Law Commission could try to codify existing rules of international law having general validity. However, the Commission probably could not take up the question

for some time—until after it had considered the right of asylum, and in any case not before the Secretariat had carried out a preliminary study. Moreover, that study might show that the International Law Commission could proceed to codify the current laws, and not merely to "study the possibility" of codifying them.

41. Lastly, he wished to pay tribute to the members of the International Law Commission. The credit for its work was shared by all of them; and representing as they did all geographical areas of the world and the principal systems of law, they made possible a fruitful co-operation with the Sixth Committee and the General Assembly. One-third of the members of the Commission had collaborated in its work from the outset, and the work had greatly benefited from the principle of continuity to which the General Assembly had attached considerable importance when filling seats that had become vacant. He also wished to thank the Secretariat staff, and particularly Mr. Liang, for the valuable services rendered to the Commission.

42. In conclusion, he assured the members of the Committee that the International Law Commission was very conscious of its responsibilities, as an instrument created by the General Assembly to assist

it in carrying out the task assigned to it under Article 13 of the Charter—the progressive development of international law and its codification. It was in the discharge of that task that jurists were able to make their essential contribution to the cause of peace which they all had so much at heart.

43. Mr. MOROZOV (Union of Soviet Socialist Republics) wished to state that, contrary to the belief of the Bolivian representative, there was no contradiction between the attitude of the USSR delegation in the Economic and Social Council and its attitude in the Sixth Committee. Both in the Council and in the Committee the USSR delegation had recognized the economic importance of the problem of the exploitation and utilization of international rivers; but the legal aspect of that problem had not been brought up in the Council, where there had never been any question of the codification of current international law on the subject. His delegation continued to think that there was no reason to take at the present session a decision which would commit both the International Law Commission and the General Assembly.

The meeting rose at 6 p.m.

United Nations
**GENERAL
ASSEMBLY**

FOURTEENTH SESSION
Official Records



**SIXTH COMMITTEE, 611th
MEETING**

Tuesday, 13 October 1959,
at 11 a.m.

NEW YORK

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Chairman: Mr. Alberto HERRARTE (Guatemala),

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443, 444 and Add.1 and 2, A/C.6/L.445/Rev.1) (continued)

1. Mr. PERERA (Ceylon), supported by Mr. NISOT (Belgium) and Mr. TUNCEL (Turkey), asked that a vote should be taken first on the joint draft resolution (A/C.6/L.444 and Add.1 and 2), as the reply by the Chairman of the International Law Commission at the previous meeting to points raised by members had excited discussion of the subject.

2. The CHAIRMAN put the joint draft resolution contained in document A/C.6/L.444 and Add.1 and 2 to the vote.

The joint draft resolution was adopted unanimously.

3. Mr. CHOWDHURY (Pakistan) said that the purpose of the Bolivian revised draft resolution (A/C.6/L.445/Rev.1) was to collect and systematize the customary law governing a particular aspect of international affairs, and thereby to advance the cause of world peace and security; as such it was fully acceptable to his delegation. The resolution did not call for the elaboration of any new laws; it simply envisaged the possibility of codifying existing customary law on the matter. Though it was claimed by some that disputes connected with international rivers could be solved by negotiation, prevention was always better than cure and the collection and possible codification of existing legislation would go a long way towards eliminating conflict in such matters. His delegation would welcome any move to promote a better understanding of the problems involved, as it had in the past supported every proposal within the United Nations on the subject.

4. In 1953 the Secretary-General had stated that the United Nations would welcome any work on the question by any non-profit and non-governmental body that was independent of the United Nations. As a result, the International Law Association had in 1954 set up a committee on the uses of waters of international rivers. At its conference at Dubrovnik in 1956, the Association had adopted a resolution containing a formulation submitted by the committee which was regarded as a sound basis for the further development of rules of international law on that subject. At the Association's conference held in New York in 1958 a statement of principles of existing international law and a number

of recommendations had been drawn up. Other bodies had also worked on the formulation of principles governing the use of international rivers.

5. The Economic and Social Council, in its resolution 675 IV (XXV), had requested "the Secretary-General to take appropriate measures for the establishment, within the Secretariat, of a centre to promote co-ordinated efforts for the development of water resources and, for that purpose, to facilitate co-ordination in the collection of information on such resources and their uses". The United Nations Office of Public Information had later stated that the centre established under that resolution would promote efforts towards the formulation of principles of international law applicable to water resources development and would foster the dissemination of relevant information among Governments and interested organizations.

6. The Bolivian draft resolution would afford opportunities of co-ordinating efforts even among United Nations organs, and the Secretary-General in classifying available information would undoubtedly collaborate not only with the International Law Commission but also with the centre set up pursuant to the Economic and Social Council resolution.

7. There was now unanimous agreement on the fundamental principles of customary international law governing international rivers, and attempts were being made to amplify those principles. It was most desirable that the International Law Commission should be requested to keep abreast of those developments.

8. Although the Bolivian draft resolution left the question whether the Commission should seek to draft a code to be decided by the Commission itself, it must be realized that codification was a slow process and the need for recognition of existing customary law was so urgent that codification could not keep pace. Fortunately, there existed excellent formulations of the rules of law as applicable to international rivers. In supporting the Bolivian proposal, his delegation was confident that existing rules of customary law governing international rivers would be respected while those rules were being reduced to a code.

9. Some speakers had agreed in principle that the International Law Commission should study the question, but had maintained that it could not do so as it was already overburdened with work. However, even if the matter could not be given priority, a start should be made; rejection of the draft resolution would be equivalent to stating that the Commission should not study the question at all.

10. Mr. MONACO (Italy) said that, so far as the Bolivian draft resolution was concerned, the two points to consider were, first, the scope of the subject matter and, secondly, the text of the proposal.

11. With regard to the subject matter, it should be clearly established what was desired and what could currently be undertaken. The draft resolution, even

in its revised form, referred both to the exploitation of international rivers and to navigation thereon. The two subjects thus envisaged being clearly distinct, the question immediately arose whether they should both be studied together. The answer to that question had been greatly facilitated by the statement made at the preceding meeting by the Chairman of the International Law Commission. Navigation on international rivers was already regulated by several bilateral or multi-lateral conventions, concluded between States which had a direct or indirect interest in specific waterways. Those conventions had established special systems of international law, which generally reflected the political, economic and social requirements of the river area in question. In fact, the application of regulations specially adapted to regional requirements seemed to constitute the general rule. The only useful contribution, therefore, which might be made, from the point of view of the progressive development of the relevant law, would be to search that body of rules of special law for certain common principles. That process, however, would plainly yield such modest results that the special systems would remain not only necessary but indeed preponderant. Clearly, then, the question of navigation on international rivers should be left aside and the Committee should confine its attention to the utilization of international waters.

12. The desirability of establishing rules of international law governing the utilization of certain international waters had long been recognized. The basis of any legal notion in that connexion was that the alteration by a State of natural features on its territory in a manner prejudicial to other States would constitute abuse of territorial power. That fundamental idea needed developing into a system of legal rules which would allow the coexistence of interests that did not always coincide. That need had been recognized by the Institute of International Law as early as 1911, and a convention on the development of hydraulic power of concern to more than one State had been signed at Geneva in 1923 by seventeen States. From the very outset it had been recognized that international waters must be viewed, in that context, as sources of power and as resources of potential benefit to agriculture. The problem had been exhaustively considered by certain learned authors, particularly Smith in his fundamental treatise published in 1931 and Sauser-Hall in 1953, but even the latter had only been able to establish two points, neither of which was as yet a rule of general international law: that the international law governing relations between neighbours applied also to the industrial use of international waterways and that the two riparian States exercised a condominium over the hydraulic power obtainable from a frontier river.

13. Valuable work on the question had also been done by the International Law Association, even though the scope and complexity of the problem had thus far prevented it from formulating any definite conclusions. The basis for subsequent research was admittedly provided by the Dubrovnik resolution of 1956 and by the New York resolution of 1958. But even the latter listed only a very limited number of recognized principles of international law, accompanied by an expression of hope that the United Nations and the specialized agencies would undertake the collection, exchange and dissemination of the relevant legal information. In that connexion, important work had also been done by the Economic Commission for Europe, in its study of the "Legal

Aspects of the Hydro-electric Development of Rivers and Lakes of Common Interest".^{1/}

14. With reference to the text of the Bolivian draft resolution, he believed that the preamble should speak of "international waters" rather than of "international rivers". The wider expression would also cover lakes and other masses of water capable of exploitation or use by several States in common. Nor was there any need for the preamble to speak of both international and "inter-Statal" waterways, as had been suggested in the withdrawn Belgian amendments (A/C.6/L.446). Such an elaboration, perhaps designed to indicate waters forming the frontier between two States, seemed somehow superfluous. The preamble also seemed to go too far in speaking of the "desirability of introducing uniformity and order". Such an expression suggested that codification was already considered possible and desirable, although the General Assembly was still in no position to decide that point. The formula used in the Belgian amendment, which did not prejudge the issue, seemed preferable. And in any event, the words "in practice" should be deleted, for the only rules which could currently be studied or later codified were juridical rules.

15. Lastly, the Italian delegation believed that the order of the two operative paragraphs should be reversed. The first task was research and classification, in the absence of which the International Law Commission could take little action. For the same reason, the Secretary-General should be requested to undertake his task of research without any mention being made in the request of "collaboration with the International Law Commission". Nor should he be asked to analyse the material, for analysis implied critical appreciation. The draft resolution should end with the paragraph requesting the Commission to study the possibility of codifying the subject, the paragraph being worded in the manner suggested in the Belgian amendment.

16. Mr. SALAMANCA (Bolivia) said that his delegation would submit a second revised text of its draft resolution. That text would take into account all the views expressed by delegations and should therefore meet all valid objections.

17. Mr. CHARDIET (Cuba) said that the reasons which had prompted the Cuban amendment (A/C.6/L.447) to the Salvadorian draft resolution (A/C.6/L.443) should be self-evident. He had supported the Salvadorian draft resolution from the outset, firmly convinced that the institution to which it referred had to be both safeguarded and perfected. In that connexion, it had been gratifying to see the support voiced for the Salvadorian proposal by States with relatively little practical experience of asylum, which nevertheless recognized the urgent importance attached by the Latin American countries to the codification of the relevant rules.

18. Some delegations which had spoken in favour of the right of asylum had voiced certain reservations. At the 608th meeting the Mexican representative, for example, had expressed the fear that rendering the institution universal might greatly weaken it. That could never happen, however, for codification had to be designed to safeguard the interests of peoples and the International Law Commission would certainly as-

^{1/}Economic Commission for Europe, document E/ECE/136.

certain what those interests really were. The institution could only be weakened by abuse, if common crimes were qualified as political offences. There was admittedly the basic difficulty of finding a universally acceptable definition of a political offence, on which his delegation's views were already known. In that connexion, the Mexican representative's idea of a small arbitral tribunal, which would rule in cases of disagreement on the nature of the offence committed, certainly seemed worthy of consideration. On the other hand, a clear definition of a political offence would make such a tribunal superfluous. It was equally obvious that when the last dictatorships disappeared, both in Latin America and elsewhere, the causes for the exercise of the right of asylum would also cease to be.

19. The USSR representative had, at the 609th meeting, opposed the Salvadorian proposal on both procedural and substantive grounds. In the first context, he had contended that the proposal was unnecessary, as the right of asylum was already included on the provisional list of topics for codification. The Cuban delegation believed, however, that a courteous and necessary reminder to the International Law Commission would violate no procedural rule whatever. And not only the basic proposal but also the Cuban amendment, suggesting that the question of the right of asylum should be given priority, was clearly without prejudice to the prior completion of the drafts already before the Commission. On the other hand, the question deserved urgent treatment, for any legislator's most sacred duty was to protect human life. That principle was as applicable in the international as in the national sphere. The Sixth Committee in fact seemed to be largely in agreement on that humanitarian aspect of the problem.

20. As to the objection raised by the representatives of the United States and the Soviet Union that the Commission on Human Rights was studying territorial asylum, it was admittedly only reasonable that the International Law Commission should take that work into consideration. It seemed doubtful, however, whether the entire law concerning territorial asylum could be magically condensed into a single article.

21. In conclusion, therefore, the Cuban delegation still believed that the codification in question was necessary and deserved priority. But in order not to weaken the support which should be forthcoming for the Salvadorian proposal, the Cuban amendment (A/C.6/L.447) would be withdrawn.

22. Mr. TUNCEL (Turkey) pointed out that the Salvadorian draft resolution clearly envisaged the codification of both the territorial and the diplomatic aspects of the right of asylum. Many delegations had stated, however, that territorial asylum was more of a human rights question and thus essentially within the competence of the Commission on Human Rights. That Commission was in fact already preparing a detailed draft declaration on the subject. The Sixth Committee might accordingly decide to leave that aspect of the question aside and to concentrate solely on diplomatic asylum.

23. In considering whether diplomatic asylum was a matter calling for urgent action by the International Law Commission, his delegation had been struck by one very important point: as was clear from the statements of their representatives, the Iberian-American countries attributed to the question a much wider scope

than that accepted in standard European doctrine. For example, they included in the problem matters such as safe conduct, or asylum on warships or foreign military bases. In European doctrine and practice, on the other hand, the subject was generally restricted to asylum on the premises of a diplomatic mission, and the right of asylum was deemed to derive from the inviolability of such premises.

24. The difference between those two schools of thought was very important, for the Iberian-American view rendered the subject so wide that it could only be regulated—as indeed it was among the Iberian-American States themselves—by a series of special conventions. On the other hand, if the more limited view was accepted, the relevant provisions could only properly appear in the expected convention on diplomatic intercourse and immunities. In that connexion, he recalled that stipulations relating to the question of asylum had been proposed by two members of the International Law Commission during the Commission's discussion on the draft article on inviolability of the mission premises.^{2/} On that occasion the Commission had decided not to include any such provision, because the topic was already on the Commission's programme of work. The Turkish delegation believed, however, that the final convention on diplomatic law should contain some stipulations on the subject, and other States also would no doubt make proposals to that effect when the final text of the convention came to be prepared. Only if that initiative proved unsuccessful would it be necessary for the Commission to consider the question as a separate topic.

25. Mr. ERADES (Netherlands) inquired whether the representative of the Secretary-General could give the Committee a rough estimate of the cost of implementing operative paragraph 2 of the Bolivian revised draft resolution (A/C.6/L.445/Rev.1).

26. Mr. STAVROPOULOS (Legal Counsel) said that in view of the fact that the Bolivian delegation was planning to circulate a second revised draft resolution, it would be premature for the Secretariat to give any estimate at that time. In his opinion, however, any action on the part of the Secretariat which would be involved in the Bolivian plan could be absorbed in the regular work of the Office of Legal Affairs and would not call for any additional expenditures.

27. Mr. YASSEEN (Iraq) said that as the International Law Commission at its first session had included the right of asylum in the provisional list of topics of international law selected for codification (A/925, para. 16), the Salvadorian draft resolution (A/C.6/L.443) was, in a sense, unnecessary. However, since the codification of that branch of the law was obviously important, the draft resolution might constitute a useful reminder to the Commission and for that reason his delegation was prepared to support it. He could not agree to the Cuban amendment (A/C.6/L.447) to the Salvadorian draft resolution, since to request the Commission to give priority to the topic of the right of asylum would inevitably delay the Commission's work on other, and perhaps equally important, topics.

28. Mr. ESCOBAR (Colombia) observed that although it might be true that, as some had argued, the development of the law on the right of asylum could be at-

^{2/}Yearbook of the International Law Commission, 1957, Vol. I (United Nations publication, Sales No.: 1957.V.5, Vol. I), 394th meeting.

tributed in part to the existence of dictatorships and the lack of political maturity in certain nations, the philosophic roots of the right of asylum were to be sought less in such purely external factors than in fundamental Christian principles and in the idea of respect for the human person. The problem was one of universal interest and the codification of the prevailing rules on the right of asylum would help to give all nations a more precise knowledge of their obligations with respect to that right. He could not accept the argument that since the topic was already on the Commission's agenda, it was unnecessary to adopt a special resolution requesting the Commission to undertake its codification. If the subject was one of importance, and if the Commission was called upon to consider it eventually in any case, he could not see why the Commission should not consider it now. Nor could he agree with the Soviet representative that the Sixth Committee should postpone any decision on the matter until the Commission on Human Rights had completed its consideration of the right of territorial asylum. While fully appreciating the fact that the Soviet delegation itself proposed to include an article on the right of asylum in the draft International Covenants on Human Rights, he believed that the International Law Commission should lose no time in going ahead with its own study. He again urged the Committee to support the Salvadorian draft resolution.

29. Mr. NISOT (Belgium) said that, in his interpretation, the aim of the draft resolution was the codification of general rules of international law on the matter and not of rules which were peculiar to certain States or groups of States. He asked whether the Chairman of the International Law Commission shared that view.

30. Sir Gerald FITZMAURICE (Chairman of the International Law Commission) said that he could only reply to that question in his personal capacity, as the Commission would necessarily take its own position in the matter. In its work of codification, the Commission, of course codified general rules of international law and not any purely local practices. Nevertheless, with regard to method, the Commission considered itself free to study all possible sources of international law which might prove useful in its work of codification; thus, if a certain practice in international law was highly developed in one particular part of the world and had become more or less codified on a regional level, the Commission would certainly take it fully into account. He naturally could not say to what extent the Commission would adopt it as representing the general practice in international law.

31. Mr. URQUIA (El Salvador) recalled that the Soviet representative had pointed out, as an argument against

the Salvadorian draft resolution, that the topic of the right of asylum was already under discussion in the Commission on Human Rights and that the Soviet delegation proposed to include an article on the right of asylum in the draft International Covenants on Human Rights. To that argument he would reply, firstly, that the Commission on Human Rights was concerned only with the right of territorial asylum, whereas the right of diplomatic asylum was of equal importance, and, secondly, that the one article which the Soviet delegation proposed to devote to the right of asylum would hardly be sufficient adequately to cover such a comprehensive subject. Moreover, in view of the slow progress made in the drafting of the Covenant on Civil and Political Rights, it was only too likely that the adoption of that one article would be put off indefinitely.

32. He could not share the Turkish representative's view that it would be more prudent to postpone consideration of the right of diplomatic asylum until it could be included in a convention on diplomatic intercourse and immunities. The important and complex subject of the right of diplomatic asylum, which constituted an independent legal institution in its own right, could not properly be codified within such a convention. What was urgently needed was a general, world-wide regulation of the right of asylum in both its diplomatic and its territorial aspects. For that purpose neither a convention nor a mere declaration would be enough. He pressed for an early and favourable vote on the Salvadorian draft resolution.

33. Mr. CHAMANDY (Yemen) said that owing to divergencies of opinion concerning the existing law, the principles and rules relating to the right of asylum often gave rise to confusion, misinterpretation and even abuse. It was common knowledge that there had been cases where common criminals had been able to find refuge by invoking the right of asylum. In view of the growing belief that a universal code clearly defining the right of asylum should be formulated as soon as the International Law Commission considered it advisable, his delegation would support the Salvadorian draft resolution (A/C.6/L.443).

34. With respect to the Bolivian revised draft resolution (A/C.6/L.445/Rev.1), he reserved his delegation's position.

35. Mr. PERERA (Ceylon) moved the adjournment of the meeting.

The motion for adjournment was carried by 33 votes to 22, with 6 abstentions.

The meeting rose at 1.10 p.m.



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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 55

Report of the International Law Commission on the work of its eleventh session (A/4169, A/C.6/L.443, A/C.6/L.445/Rev.2) (continued)

1. The CHAIRMAN invited the Committee to continue discussion of the Salvadorian draft resolution (A/C.6/L.443). He announced that the Committee would take up the Bolivian revised draft resolution (A/C.6/L.445/Rev.2) after the vote on the Salvadorian text.

2. Mr. PERERA (Ceylon) expressed his delegation's view that the Committee, instead of pressing the International Law Commission to undertake a particular task, should leave the Commission entirely free to decide when was the appropriate time to begin the codification of a given subject. He would, however, be happy to vote for the Salvadorian draft resolution, as he fully approved the principle of the codification of the right of asylum.

3. Mr. TABIBI (Afghanistan) supported the views of the representative of Ceylon. It hardly seemed necessary to adopt a resolution on the lines proposed by the Salvadorian delegation. Not only was the right of asylum already on the list of topics that the International Law Commission had selected for codification, but the Commission's Chairman, who was taking part in the discussion on the agenda item under consideration, could very well inform the Commission of the Salvadorian Government's wishes and of the views expressed on the subject in the Sixth Committee. Moreover, in view of the lively interest that asylum aroused in Latin America, it might be awkward for certain countries of that region if they were called upon to vote on the draft resolution.

4. Mr. WOODARD (Australia) considered that it needed to be established whether the adoption of the Salvadorian draft resolution would or would not have the effect in practice of inducing the International Law Commission to give some measure of priority to the codification of the right of asylum.

5. Mr. GUZMAN (Ecuador) said that in its three versions the text of the draft resolution in question was perfectly clear and left the Commission completely free to determine when the new task should be undertaken.

6. Asylum was an institution which went beyond the confines of Latin America and was steadily increasing in importance. As the Colombian representative had pointed out, it was regrettable that one of the great Powers, the USSR, had not contributed to the interest-

ing general debate on the subject. The Latin American countries considered that, having regard to the experience obtained with respect to the two forms of asylum and to the state of customary law in the matter, it was possible to codify that noble institution which was based on the principle of human solidarity. Codification would help to temper the passions engendered by political struggles and to alleviate the sufferings of those who became the victims of those struggles, and would therefore serve a just cause. It should be noted, moreover, that the Latin American countries were, in fact, the countries that had the least to gain by codification, since they had well-established customs and practices, not to speak of the conventions actually in force. Asylum, however, was not an institution that was peculiar to Latin America; it was practised in other regions of the world and, to take the purely utilitarian point of view, the rulers of today should remember that it was not impossible for them to become victims of persecution tomorrow. It would thus be in their own interest to support the proposal of the Salvadorian delegation.

7. The Chairman of the International Law Commission had said (610th meeting) that the question of the right of asylum should be studied independently of that of diplomatic intercourse and immunities. The Ecuadorian delegation entirely agreed. Indeed, it considered that diplomatic asylum and territorial asylum should form the subject of two separate studies. Diplomatic asylum derived from the principle of the inviolability of the premises of diplomatic missions, which had always been applied in international relations. Public opinion, moreover, had always regarded the granting of asylum and the non-violation of the premises of diplomatic missions as evidence of a country's degree of civilization. Ecuador, which had signed the Havana Convention in 1928 and which had opened its doors wide to the victims of ideological struggles, would vote in favour of the Salvadorian draft resolution.

8. Mr. NISOT (Belgium) pointed out that there was no longer any justification for fearing that the International Law Commission might accord undue priority to the codification of the right of asylum, since the Cuban delegation had withdrawn its amendment (A/C.6/L.447).

9. Mr. PARRY (Canada) said that his delegation would vote for the draft resolution on the clear understanding that the International Law Commission would be completely free to decide not only when it would undertake the new task, but also whether the subject was ripe for international codification. His delegation wished to associate itself with the remarks that had been made about the need to take into account the work on territorial asylum on which the Commission on Human Rights was at present engaged.

10. Mr. TUNCEL (Turkey) said that it was extremely important, if the Salvadorian draft resolution was adopted, that the International Law Commission should

know in what circumstances and with what reservations it had been approved. His delegation was prepared to support the draft resolution if the Sixth Committee's report set out in detail the different views expressed in the course of the debate.

11. He recalled that at its first session the International Law Commission had requested one of its members, Mr. Yepes, to prepare a working paper on the right of asylum (A/925, para. 23). When, at the Commission's second session, Mr. Yepes had declared that he would prefer to postpone presentation of the paper he had prepared in view of the fact that a case concerning the right of asylum was pending before the International Court of Justice, the Commission had decided not to place the question on its agenda (A/1316, para. 12). As the decision in the *Haya de la Torre* case was now known to the International Law Commission, the latter might perhaps decide—if it agreed with its Chairman that there was much to be gained by working on several subjects simultaneously—to appoint a special rapporteur to consider the question pending a decision as to when it would begin the proposed work of codification.

12. Mr. DOUC RASY (Cambodia) pointed out that international law made a classic distinction between diplomatic asylum and territorial asylum, the former being an exception to the sovereignty of a State over its territory and the latter an exception to the sovereignty of a State over its nationals. Inasmuch as the right of asylum was a right that could be considered either from the viewpoint of the person requesting asylum, or from the viewpoint of the relations between the State granting asylum and the State by which the person requesting asylum was sought, it might perhaps be more prudent, instead of entrusting the study of territorial asylum to the Commission on Human Rights and that of diplomatic asylum to the International Law Commission, to disregard the classic distinction and to assign the study of the first aspect of the right of asylum generally to the Commission on Human Rights, and that of the second aspect to the International Law Commission.

13. Mr. GONZALEZ (Mexico) explained that his delegation would abstain from voting because it had serious doubts about the advisability of undertaking the international codification of the right of asylum. Furthermore, while appreciating the reasons which had led the delegation of El Salvador to submit its proposal, the Mexican delegation feared that, in practice, the proposed codification might make Governments hesitate to grant asylum freely and thus undermine that laudable institution.

14. Mr. HERAVI (Iran) said that he would vote in favour of the draft resolution as his delegation considered it desirable that that important branch of international law should be considered by the International Law Commission. Nevertheless he hoped that, if the draft resolution were adopted, the International Law Commission would take full account of the work currently being done by the Commission on Human Rights on the question of territorial asylum.

15. Mr. MESSINA (Dominican Republic) said that his delegation would vote against the draft resolution, firstly because the Dominican Republic had, some years previously, denounced the regional agreements of Havana (1928) and Montevideo (1933) on diplomatic asylum and was not bound in that matter by any other international instrument and, secondly, because it felt

that the question was still so controversial, within the American continent as well as in other parts of the world, that it was not ripe for universal codification in the sense of article 15 of the Statute of the International Law Commission.

16. Had the draft sought merely to encourage the progressive development of international law on territorial asylum by means of the conclusion of a general convention, his delegation would have been happy to support it, for it was clear from the statement of the grounds on which the decision of the International Court of Justice^{1/} was based that that form of asylum had a different basis in law than diplomatic asylum and, in his Government's opinion, it would not infringe the sovereignty of States or trespass on their jurisdictional competence.

17. Mr. URQUIA (El Salvador) thanked those representatives who had announced their intention of supporting his draft resolution (A/C.6/L.443).

18. He reminded the Committee that at the seventh session of the General Assembly in 1952 the Yugoslav delegation had submitted to the Sixth Committee a draft resolution^{2/} which sought to give priority to the codification of the topic "Diplomatic intercourse and immunities". During the discussion on that draft the Colombian representative, supported by the Bolivian representative (315th meeting, para. 34), had proposed an amendment^{3/} requesting the International Law Commission also to treat as a priority topic the "Right of asylum". The Chairman of the Sixth Committee and Sir Gerald Fitzmaurice, the representative of the United Kingdom at that time, had rightly emphasized that, although the question of the right of asylum was in many respects linked to the question of diplomatic intercourse and immunities, it was a separate item on the agenda of the International Law Commission; the Colombian amendment had then been rejected.

19. It was interesting to note in that connexion that at that time the representative of the Dominican Republic had stated (316th meeting, para. 13) that his country was sensible of the humanitarian considerations on which the institution of *bona fide* diplomatic asylum was based but that, in order not to create confusion in the process of codification between diplomatic immunities and diplomatic asylum, he would abstain from voting on the Colombian amendment, however closely related the two questions might be.

20. With regard to the wording of the Salvadorian draft resolution (A/C.6/L.433), he emphasized that he had introduced nothing new. In the operative paragraph he had merely taken the formula in resolution 799 (VIII) which the General Assembly had adopted at its eighth session on the initiative of the Cuban delegation. The International Law Commission had never considered that the Assembly was attempting to use that formula to bring pressure to bear on it and the fears which had been expressed in that connexion were not justified.

21. He therefore hoped that the Sixth Committee would adopt the draft resolution before it.

^{1/} Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950, p. 266.

^{2/} Official Records of the General Assembly, Seventh Session, Annexes, agenda item 58, document A/C.6/L.248.

^{3/} *Ibid.*, document A/C.6/L.251.

22. Mr. MESSINA (Dominican Republic), replying to the representative of El Salvador, explained that the Dominican Republic had abstained from voting on the Colombian amendment in 1952 simply because, at that time, it had not yet denounced the regional agreements of Havana and Montevideo. Having subsequently done so, however, because the institution of diplomatic asylum had on many occasions been used as a political tool and as a means of intervening in the internal affairs of States, it would have to vote against the Salvadorian draft resolution. Moreover, there was no justification for that text, since, as the International Court of Justice had recognized in its decision of 20 November 1950, there was no consistent and uniform custom with respect to diplomatic asylum which was accepted as law.

23. Mr. SALAMANCA (Bolivia) pointed out that in 1952 his delegation had been anxious that the International Law Commission should examine the question of the right of asylum in order to settle the doubts raised by the judgement of the International Court of Justice. Bolivia being a Latin American country, its approval of the institution of asylum was beyond doubt and it had no intention of opposing any attempt to codify the rules relating to asylum. His delegation would therefore vote in favour of the draft resolution but it still believed that codification was possible only if all Member States, and first and foremost the great Powers, accepted the principle of diplomatic asylum, which was not the case.

24. Mr. PERERA (Ceylon), speaking on a point of order, asked for the closure of the debate in accordance with rule 120 (d) of the Assembly's rules of procedure.

The Ceylonese motion was rejected by 47 votes to 7, with 18 abstentions.

25. Mr. URQUIA (El Salvador) drew the attention of the representative of the Dominican Republic to the fact that custom was also a source of international law. The right of asylum had always been recognized by the Latin American States and the fact that the Dominican Republic had denounced the agreements on the question should not absolve it from any commitments in the matter.

26. He asked for a vote by roll-call on his draft resolution.

27. The CHAIRMAN requested the Committee to vote by roll-call on the Salvadorian draft resolution (A/C.6/L.443).

Thailand, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Thailand, Tunisia, Turkey, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Argentina, Austria, Belgium, Bolivia, Brazil, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Lebanon, Liberia, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Saudi Arabia, Spain, Sudan, Sweden.

Against: Dominican Republic.

Abstaining: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Australia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Czechoslovakia, Hungary, Mexico, Poland, Romania.

The draft resolution submitted by El Salvador (A/C.6/L.443) was adopted by 63 votes to 1, with 12 abstentions.

28. The CHAIRMAN invited the Committee to consider the new revised text of the Bolivian draft resolution (A/C.6/L.445/Rev.2) on international rivers.

29. Mr. SALAMANCA (Bolivia) explained that the revised draft took into account comments made at previous meetings by various delegations, to whom he expressed his thanks.

30. The will of Governments was of unquestionable importance in any attempt at codification. Many of the members of the Sixth Committee were legal advisers to their respective Governments. It would therefore be extremely useful to hold a discussion on the draft resolution even if the latter were not eventually adopted, for it would indicate what the chances of codification were.

31. Replying to the criticisms voiced by the representative of El Salvador and Cambodia, he emphasized that the new text was based on the desire to find a common denominator and represented the outcome of consultations with several other members of the Committee.

32. Mr. LACHS (Poland) acknowledged that the new revised text represented a definite improvement on the earlier texts. There were, however, some amendments he would like its sponsor to make.

33. He proposed that operative paragraph 1 (b) should be deleted, since it was too early to provide for the inclusion of the question in the agenda of a future session of the General Assembly. A proposal to that effect could always be made later on, if necessary.

34. Paragraph 2 was also unnecessary. The Secretary-General himself should decide whether he wished to call upon the Member States for the information he would need.

35. Subject to those changes, the Polish delegation was ready to support the Bolivian draft resolution.

36. Mr. NISOT (Belgium) and Mr. ERADES (Netherlands) associated themselves with the views expressed by the Polish representative, agreeing with him that paragraph 1 (b) and paragraph 2 of the operative part should be deleted.

37. Mr. CACHO ZABALZA (Spain) observed that the text before the Committee was a new draft resolution rather than a simple revision. The passage referring to the exploitation of international or inter-State waterways and navigation thereon (A/C.6/L.445), which had prompted the Spanish delegation to reaffirm its position on maritime problems, had been deleted altogether. The text now dealt with only one particular case, that of international rivers.

38. The representative of Sweden had pointed out the difficult problems raised by the first revision of the draft (A/C.6/L.445/Rev.1). His delegation was pleased to find that the present draft seemed entirely satisfactory. The problems referred to in it were worthy of the attention of the International Law Commission, and

the proposed study could be undertaken by the Secretariat as part of its regular assignments. The revised draft resolution was also drafted in much less categorical terms than the original one.

39. His delegation would therefore be happy to vote in favour of the revised draft resolution submitted by Bolivia (A/C.6/L.445/Rev.2).

40. Mr. HOLMBACK (Sweden) said that his delegation would also vote in favour of that draft, as it took into account the objections to the original text which his delegation had expressed during the general debate.

41. Like its predecessors, the new text contained the expression "international rivers". In his view, that expression should manifestly include not only inter-State rivers in the strict sense, but also lakes forming part of an inter-State hydrographic system.

42. Mr. PARRY (Canada) also expressed satisfaction with the new Bolivian text. Canada was very familiar in practice with the legal problems connected with the utilization and use of international rivers, and in his delegation's opinion, a simple study of the possibility of codifying the legal rules involved presented very great difficulties. Moreover, such a study must not be prejudicial to existing regional treaties.

43. Nor must it be forgotten that several private institutions had carried out studies of world-wide scope on the subject. Duke University and New York University, the Canadian branch of the International Law Association, the Institute of International Law and the Inter-American Bar Association were actively concerned with the problem. In drafting the report he was asked to make, the Secretary-General should take due account of the work already accomplished.

44. It would also seem advisable to wait until that report had been completed and circulated to Governments before contemplating the inclusion of the question in the agenda of a General Assembly session.

45. His delegation would be glad if the representative of the Secretary-General could provide some detailed information regarding the financial implications and technical aspects of the proposed report, the preparation of which would undoubtedly require considerable work.

46. Mr. PAYSSE REYES (Uruguay) said that his delegation was in favour of the establishment of international rules governing international waterways and international rivers, and accordingly welcomed the Bolivian initiative.

47. With regard to the text of the draft resolution (A/C.6/L.445/Rev.2), he agreed with the representative of Poland that operative paragraph 2 was unnecessary, since it seemed to be a repetition of paragraph 1 (a) (i). He also considered that paragraph 1 (b) should be deleted, since it was premature to ask for the inclusion of a question in the agenda of a future session of the General Assembly.

48. As the representative of Sweden had pointed out, the term "international rivers" in the preamble was too restrictive. It should be replaced by "waters in international use" or "international waterways and rivers".

49. The draft resolution requested the Secretary-General to prepare a report containing, *inter alia*, an analysis of existing bilateral and multilateral treaties and an analysis of decisions of international tribunals.

However, since the emphasis was on the legal aspect of the question, it was the International Law Commission rather than the Secretariat that was competent to undertake the study. Accordingly, if it was agreeable to the Bolivian representative, the words "the Secretary-General" in operative paragraph 1 should be replaced by "the International Law Commission".

50. In conclusion, he wished to state that although his delegation would vote in favour of the draft resolution, that vote did not imply that his country was in favour of a codification of the subject.

51. Mr. TABIBI (Afghanistan) considered that the subject was very complicated and that it would be difficult both for the United Nations Secretariat and for the International Law Commission to study it inasmuch as no uniform rules in the matter existed. Several non-governmental institutions and learned societies had already dealt with the subject, but the studies they had published had tended to be technical. Accordingly, in preparing his report, the Secretary-General should carefully adhere to his terms of reference and deal only with the legal aspect of the question.

52. Mr. PERERA (Ceylon) was gratified to note that in drafting his revised draft resolution, the representative of Bolivia had taken into consideration the remarks made by the Chairman of the International Law Commission, to the effect that the Commission could not deal with the question until the Secretariat had made the preliminary study. He approved the preamble unreservedly but agreed with other representatives that operative paragraph 2, being a repetition of paragraph 1 (i), should be deleted. Moreover, everyone was aware that although the verb "invite" was used in diplomatic language, it in fact imposed an obligation. He also considered that paragraph 1 (b) was not appropriate.

53. Mr. ZEMANEK (Austria) asked whether the remarks made by the preceding speakers were suggestions only or formal amendments. If they were formal amendments, it would not be appropriate to delete paragraph 2, since the Secretary-General could not collect the information his report was to contain pursuant to paragraph 1 (i) without the co-operation of Member States.

54. Mr. SALAMANCA (Bolivia) said that he would make no further revisions to the text of his draft resolution. If the members of the Committee wished to submit amendments to it, they could do so orally or in writing in accordance with the usual procedure and the Committee would decide whether or not to accept them. For his part, he would confine himself to taking note of the various opinions expressed and would reply to them later.

55. Mr. EL-ERIAN (United Arab Republic) congratulated the Bolivian representative on the conciliatory spirit he had shown in preparing the revised text of his draft resolution. He had no objection to the preamble, which was very clear. When the "preliminary studies" had been made, Governments could decide on the measures to be taken.

56. Unfortunately, the operative part was not so clear as the preamble. He agreed with the Polish representative that paragraph 1 (b) should be deleted as the future could not be prejudged. Nor did he approve of paragraph 2. It was customary to ask Governments to submit their comments on a specific project; it would accordingly be advisable to make the preliminary

studies first and then submit them to Governments for comments. For those reasons his delegation would be unable to vote for the draft resolution as it stood.

57. Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic) associated himself with the opinions expressed by those representatives who had proposed the deletion of paragraphs 1 (b) and 2. The provisions in those paragraphs were out of place in the draft resolution. The text was not logically arranged.

58. The Bolivian representative asked that amendments to his draft resolution should be submitted in writing, although he had revised the text several times since the debate had started. Why was he not prepared to do so again?

59. Mr. SALAMANCA (Bolivia) speaking on a point of order, replied that he could not go on submitting revised drafts to incorporate all opinions. He urged that any amendments should be submitted orally or in writing, so that the Committee could take a decision on them.

60. Mr. MAURTUA (Peru) felt that it would be inadvisable to replace the words "the Secretary-General" by "the International Law Commission" in paragraph 1 as proposed by the Uruguayan representative, since the latter appeared to be attributing functions to the International Law Commission which it did not possess. He also thought that it would be undesirable to substitute the vague expression "international waters" for the term "international rivers".

61. In that connexion he asked the Bolivian representative what the judicial consequences would be of an analysis of existing bilateral and multilateral treaties. Would that analysis include conclusions or not? If it did, the principles accepted by some States might be found not to have sufficient legal validity for codification. It would be better therefore if the Secretary-General merely collected information which would make it possible to determine whether the subject was appropriate for codification.

62. Mr. RIZK (Lebanon) said that he did not think that there was a pressing need to undertake preliminary studies relating to the legal problems in connexion with the utilization and use of international rivers with a view to determining whether the subject was appropriate for codification. Other United Nations organs had already undertaken a similar study and it would be advisable to await the results. His delegation was nevertheless prepared to support the draft resolution with certain reservations. Sub-paragraphs (ii), (iii) and (iv) of operative paragraph 1 were perfectly acceptable, but sub-paragraph (i) was not. It would be inappropriate to include in the Secretary-General's report information concerning the unilateral legislation and practice of individual States in connexion with the utilization of international rivers, particularly those laws and practices which were not shared or were contested by other interested States. The purpose of the draft resolution was to ascertain whether "international" rules and practice were appropriate for codification. The text should accordingly be amended as follows: "Information provided by Member

States regarding legislation which is common to them and practice which is generally accepted by them in the matter". He was proposing that amendment formally.

63. His delegation would also associate itself with the opinion expressed by the Polish representative and the other representatives who had taken the same view.

64. The CHAIRMAN requested the Lebanese representative to submit his amendment in writing at the next meeting.

65. Sir Gerald FITZMAURICE (Chairman of the International Law Commission) said that if the General Assembly adopted the Bolivian draft resolution the International Law Commission might some day have the question before it. In that case, the Commission would be grateful for any information it could get. It would therefore instinctively prefer that paragraph 2 should be retained. However, the substance of that paragraph was implicit in paragraph 1 (i), and no difficulty would therefore result if paragraph 2 were deleted. What, however, would the situation be if the amendment proposed by the Lebanese representative was adopted? As Chairman of the International Law Commission, he could not approve that amendment. International law was based on the practice of States. In the process of codification, it was useful to know the practice of each State in order to deduce the general practice. The Secretariat had already compiled extensive documentation on the practices of individual States and the material had been used as a basis for the work of the International Law Commission, notably in the preparation of the draft articles on diplomatic intercourse and immunities (A/3859, para. 53). That was the very stuff out of which international law was made.

66. A proposal had been made for the deletion of paragraph 1 (b), on the grounds that there was nothing to prevent Member States from requesting that the item should be included in the General Assembly's agenda. That was true, but Member States must be provided with information on the question and as their only source of information was Governments if paragraph 1 (b) was deleted, paragraph 1 (a) should therefore provide that the Secretary-General's report should be transmitted to Member States. The text might read: "1. Requests the Secretary-General: (a) to prepare and circulate to Member States a report containing etc."

67. Mr. Benjamín COHEN (Chile) associated himself with those views.

68. In order to remove the difficulty mentioned by the Uruguayan representative, the word "analysis" in paragraph 1 (ii) and (iii) might be replaced by the word "digest".

69. He agreed that paragraph 1 (b) should be deleted. If the General Assembly adopted the draft resolution, the Secretary-General would have to circulate his report to Member States and include the question on the agenda of the next session. Paragraph 2 was also superfluous, because the subject matter was already covered by paragraph 1 (i).

The meeting rose at 5.50 p.m.