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CONTENTS

Chairman: Mr. Edvard HAMBRO (Norway).

AGENDA ITEM 86

Law of treaties (continued)* (A/6309/Rev.1, A/6827 and Corr.1 and Add.1 and 2, A/C.6/376, A/C.6/L.619)

1. Mr. DARWIN (United Kingdom) said that the International Law Commission's method of work on the law of treaties had been admirable; the practice of appointing special rapporteurs who could pilot the draft through rigorous treatment, including detailed consideration and full comments by Governments, had been amply vindicated. His Government thanked the series of four British Special Rapporteurs and all the members of the Commission whose work had led up to the excellent results achieved.

2. Because of the great importance of the subject, treaties being the main tool of international co-operation, the conference which was to prepare a convention on the law of treaties must be a success. A failure, like that of the Conference for the Codification of International Law held at The Hague in 1930 which failed over a large part of its field, could have a most serious effect on the future development of international law and the conduct of international relations. His Government, for its part, would do everything in its power to ensure the success of the conference, which would give impetus to the development and codification of international law in other fields. The policy which it had adopted had two aims: first, to bring about the maximum codification of the parts of the law which were ripe for codification, and secondly, to maintain the stability of treaties.

3. In order to achieve the first aim, it might be necessary to leave on one side topics where the state of the law did not yet make it possible to formulate written rules, especially where views were deeply divided. Where State practice had not fully developed or where it was dealing with situations which had rarely arisen, the conference might have no firm basis on which to lay down legal provisions, and might create defective rules because of lack of actual experience. That did not mean that his Government was against the progressive development of international law. On the contrary, it might well be that a clearly established rule of international law ought to be altered or an uncertain question ought to be resolved by a convention appropriate to contemporary conditions. But the progressive development of international law should still be based on a study of State practice. In that respect, his delegation considered that some of the draft articles on the law of treaties (A/6309/Rev.1, part II, chap. II), covered fields which had not been much explored in State practice and might not therefore be ripe for codification; he referred, for example, to articles 30 to 34 (Treaties and third States) and article 41 (Separability of treaty provisions). The second aim, no less important than the first, namely, to maintain the stability of treaties, was an essential element in the just and orderly conduct of international relations.

4. While there was much in the articles adopted by the Commission which had his delegation's unqualified approval, there were certain areas to which the conference would have to pay particular attention. First, it would have to consider with especial care articles 16 to 20 (Reservations to multilateral treaties). Article 16 on formulation of reservations gave great weight to the test of the compatibility of the reservation with the object and purpose of the treaty, but that was a test of which there was little experience in State practice and which was subjective in its content and uncertain in its application. In addition, there were unanswered questions as to the relationship between article 16 and article 17 on acceptance of an objection to reservations. With regard to the subject of invalidity, termination and suspension of the operation of treaties, special attention would have to be given to article 50, which concerned treaties conflicting with a peremptory norm of general international law (jus cogens), for the fact that there was no general consent as to the content of peremptory norms and the absence of an agreed definition suggested that the concept of jus cogens was still so little developed that it was not ripe for inclusion in the codification of the law of treaties. The incorporation of that concept, with the uncertain effects which would result, would be a danger to the stability of treaties. Moreover, the retroactive effect of the operation claimed for those norms was uncertain, as was the relationship between article 50 on the peremptory norms and Article 103 of the Charter of the United Nations. Indeed, Article 103 seemed to eliminate the need for any further assertion of the rule of jus cogens in respect of the obligations contained in the Charter.

5. Secondly, as to the question of the means by which the convention would be interpreted—unilateral interpretation or objective and independent means of interpretation—while his delegation did not say that the only

*Resumed from the 964th meeting.

possible solution was that matters of interpretation should be adjudicated on a compulsory basis, in the last resort, by the International Court of Justice, it considered that the success of the conference would be jeopardized if some means of objective and independent interpretation was not laid down in the convention.

6. Thirdly, as to the scope of the convention and the treaties to which it would extend, his delegation would like to see the convention extended to cover international organizations, but would not want it to interfere with the practices and procedures of those organizations—a point covered by article 4.

7. Fourthly and lastly, the conference should devote particular attention to the unification of the terms used in the articles. While the Commission had given much attention to that point, there were still inconsistencies, for example, in the use which had been made of the terms "invalidity", "void", "invalidating ... consent" and "without ... legal effect" in part V.

8. As to the organization of the work of the forthcoming conference, even if there was no general debate the nine weeks foreseen for the first session would suffice only if articles were adopted at the rate of one a day. Some articles, such as article 26 (Application of successive treaties relating to the same subject-matter), which dealt with a very complex subject and where the adequacy of the wording at present proposed was by no means clear, were of a much more difficult character. If there were fundamental criticisms of individual articles or a number of amendments to them, the committee of the whole might be held up for a number of days, which on the present time-table it could not afford.

9. For those reasons it was essential, first, that all possible administrative assistance should be made available to the delegations participating in the conference. As to administrative services, the United Nations was much indebted to the Austrian Government for its generous offer to act as host to the conference. Next, it was essential that there should be sufficient time for adequate preparations by delegations, particularly for informal consultations before the conference opened, such as had been held before the United Nations Conference on the Law of the Sea in pursuance of General Assembly resolution 1105 (XI), of 21 February 1957. The success of that Conference had in large measure been due to the preliminary exchanges of views recommended in paragraph 11 of that resolution. His delegation for its part very much felt the need for wider international consultations before the Conference on the Law of Treaties opened, but had grave doubts whether sufficient time remained before the proposed date of March 1968 to make the necessary preparations.

10. The success of this most important conference would be a significant step forward in international law and international relations. A failure would have equally grave consequences. The United Kingdom would do its best to ensure effective preparations before the conference and would support any action at this session to that end.

11. Mr. VEROSTA (Austria) said he would profit by Sir Humphrey Waldock's presence to ask him two questions about the peremptory rules of international law. Article 50 of the draft articles on the law of treaties provided:

> "A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

It could be inferred from that article and from the commentary on it that a peremptory rule of international law was a rule from which States could not derogate at all by a treaty arrangement, but the International Law Commission had rightly decided not to give examples, explaining that if it were to attempt to draw up, even on a selective basis, a list of the rules of international law which should be regarded as having a peremptory character, it might find itself engaged in a prolonged study of matters which fell outside the scope of the draft articles. He nevertheless wished to know whether there were any peremptory rules of international law which fell within the scope of the present codification; and in addition, his delegation would be glad if Sir Humphrey would say which of the rules in the draft he would be inclined to regard as peremptory, since the International Law Commission had given no indication on that point in its draft articles.

12. Mr. YASSEEN (Iraq) thought that there was a basic misunderstanding over the International Law Commission's approach to the question of rules forming part of jus cogens. The International Law Commission had been asked to prepare draft articles for a convention on the law of treaties, and one of its tasks had been to study whether it would be possible for States to conclude treaties which did not conflict with certain rules within the system of international law. It had not been asked to express an opinion on the substance of the rules of jus cogens, but only to determine the implications of the existence of those rules for the law of treaties.

13. In drawing up the provisions of the draft articles having reference to jus cogens, the International Law Commission had drawn the inevitable conclusions from the existence of such peremptory rules, had taken up the question of the order of precedence of international rules, and had given an affirmative answer to the question whether there were rules of international law from which States could not derogate, even by a convention. It was an undoubted fact that in international affairs there were rules of such importance that any derogation from them was impossible; only two examples need be mentioned—the rule prohibiting slavery and that outlawing the use of force. The International Law Commission had recognized that fact and had duly taken it into account.

14. On the other hand, the Commission had not been required, and would not have been able, to express an opinion on the substance of the rules of jus cogens, still less to seek a criterion for distinguishing between dispositive and peremptory rules. That was a theoretical point of general international law and had no place in a draft on the law of treaties.

15. The CHAIRMAN suggested that the discussion on the law of treaties should be continued on the following day, when Sir Humphrey Waldock would begin by

answering the questions put to him by the representative of Austria.

It was so decided.

AGENDA ITEM 85

Report of the International Law Commission on the work of its nineteenth session (continued) (A/6709/Rev.1 and Corr.1, A/C.6/L.617/Rev.1, A/C.6/L.618)

16. Mr. OGUNDERE (Nigeria) read out the amendments to be incorporated in the revised text of the draft resolution submitted by Bulgaria, Colombia, Ecuador, Guatemala and Nigeria (A/C.6/L.617/Rev.1) on the report of the International Law Commission. Those amendments were as follows: the end of the second preambular paragraph had been amended to read: "... continue its work of codification and progressive development of the law of succession of States and Governments, relations between States and inter-governmental organizations, and State responsibility,"; in the last preambular paragraph the phrase "that five Governments offered scholarships" had been replaced by the phrase "that more scholarships were made available"; lastly, in operative paragraph 4 (c), the phrase "and take it up at the earliest opportunity" had been deleted.1/

The meeting rose at 11.40 a.m.

1/ The new revised text was circulated under the symbol A/C.6/L.617/Rev.2.

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