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TWENTY-SECOND SESSION
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SIXTH COMMITTEE, 979th MEETING

Tuesday, 24 October 1967, at 10.50 a.m.

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CONTENTS

Chairman: Mr. Edvard HAMBRO (Norway).

In the absence of the Chairman, Mr. Seaton (United Republic of Tanzania), Vice-Chairman, took the Chair.

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, A/C.6/L.623)

1. Mr. YANKOV (Bulgaria) said that, while reiterating the views expressed in the written comments submitted by his Government (see A/6827/Add.1, pp. 4-7), his delegation would like to make some further preliminary observations on the text of the draft articles on the law of treaties contained in the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1, part II, chap. II).

2. In his delegation's opinion, the draft articles represented a satisfactory basis for future consideration by the conference of plenipotentiaries on the law of treaties. The Commission had completed a monumental work, and the codification of the law of treaties would have a far-reaching impact on the whole body of modern international law. The kind of international treaties dealt with in the draft articles were the main source of international law and the main instrument of inter-State relations. Furthermore, the draft articles touched directly or indirectly on fundamental issues of international law which had much broader significance and implications. The Bulgarian Government attached great importance to the final drafting and adopting of a convention on the law of treaties, which would be an important contribution to the strengthening of the rule of law and to the promotion of international peace and co-operation.

3. Turning to the substance of the draft articles, he said that their scope should be defined more precisely. In general, his delegation agreed with the limitations and reservations on the scope of the draft articles, as set forth in articles 1, 2 and 3, but it felt that, if the proper object of the draft articles was, ratione materiae, only the written treaties concluded between States, that should be stated in article 1, which dealt specifically with the scope of the draft articles, thus bringing that article into conformity with the definition of a treaty contained in article 2 (1) (a) and with article 3 (b) concerning international agreements not within the scope of the present draft articles. Although their scope extended only to written treaties, some particular references to the rule of tacit or implied consent which produced legal effects under certain conditions were to be found, for example, in article 17 (5), article 26 (3), article 38, and article 62 (2). It should, therefore, be made clear that, although the draft articles did not relate to unwritten agreements or to different forms of tacit consent which might produce legal effects, they did not affect the legal force of such agreements or the legal effects of implied consent.

4. He wished to stress his delegation's firm adherence to the principle that general multilateral treaties should be open to signature and accession by all States, without any discrimination whatsoever. The principle of sovereign equality, embodied in article 5 and also in articles 48 and 49, implied such universality, and an explicit provision that every State might become a party to a general multilateral treaty should be included in the draft articles. The application of that principle would lead to the widest possible participation in multilateral treaties, thus increasing their effectiveness as important instruments of international co-operation.

5. The definition of the term "reservation" in article 2 (1) (d) should be expanded and made more precise. It should be stated explicitly that a reservation was a unilateral statement which purported to exclude, to limit or to vary the legal effect of certain provisions of the treaty concerned and their application to the State making the reservation. The provisions relating to reservations constituted an important attempt to achieve more flexibility in accommodating the requirements and interests of the broadest possible range of States.

6. The trend towards flexibility was well balanced by the provisions relating to the observance of treaties by the parties. The rule pacta sunt servanda, which constituted the corner-stone and the fundamental principle of the law of treaties as a whole, was rightly stressed in the draft with the authority of a peremptory norm of international law. The rule that treaties were binding upon the parties and must be performed by them in good faith was a safeguard against any unjustified recourse to the rebus sic stantibus clause. The procedure provided in article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspen-

sion of the operation of a treaty) was another way of protecting the stability of treaties and preventing the misuse of the doctrine of rebus sic stantibus. However, it was undeniable that the international community sometimes experienced very deep and radical changes which inevitably affected the application of treaties, and although a great degree of restraint must be exercised in invoking a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty, as provided by article 59, the fundamental rule pacta sunt servanda could not and must not serve as a protection with regard, for instance, to unequal colonial treaties.

7. In its written comments, his Government had already referred to the important issue of jus cogens (see A/6827/Add.1, pp. 6 and 7). Some delegations had expressed concern and doubts about the scope to be given to the peremptory norms of general international law, their effect on the validity of treaties and their formulation. While his delegation agreed that the application of jus cogens required great caution and precision, since, as the Special Rapporteur had said at the 964th meeting, it related to "difficult and delicate questions", it did not feel that the identification of the peremptory norms would prove an impossible task. Peremptory norms of international law originated in the common consent of States, which constituted the legal basis of any rule of international law. Examples of generally recognized rules admitting of no derogation were to be found, first of all, embodied in the United Nations Charter as fundamental guiding principles of the Organization. Those principles were well known and were generally recognized as the basic tenets for the conduct of States in their international relations. The direct reference, in the draft articles, to peremptory norms of general international law as prevailing over a conflicting treaty marked an important step in the evolution of modern international law. The broader the scope and application of jus cogens, the greater would be the stability of the international legal order.

8. The draft articles on the law of treaties had been the subject of thorough study and elaboration by the International Law Commission over the past seventeen years, and the final draft had been under consideration for two years. A number of Governments had presented their written comments, and the United Nations Secretariat had also done valuable preparatory work. His delegation hoped that, as a result, the 1968 conference of plenipotentiaries would be able to contribute effectively to the successful adoption of a convention on the law of treaties in 1969.

9. Mr. RAO (India) said that the final text of the draft articles on the law of treaties prepared by the International Law Commission was still under active consideration by the Government of India, which therefore had so far refrained from submitting any written comments on them. His delegation wished, however, to express its admiration for the ability, skill, industry and devotion shown by the Commission in the completion of its monumental work.

10. Because treaties were the most important source of international law in the modern world and a widely used means of regulating bilateral or multilateral relations between members of the international community, the law of treaties was a subject which depicted, better than most others, the scope and evolution of international law. The drafting of a uniform set of rules to govern in all its manifestations an instrument performing so many and varied functions was a most difficult task. The formulation of the draft articles in the Commission had been possible only as the result of a series of compromises on the controversial aspects of the law of treaties and the total exclusion from their scope of some of the difficult aspects, such as oral agreements between States, agreements between States and international organizations, and questions regarding State accession. Nevertheless, if the forthcoming conference of plenipotentiaries succeeded in completing the Commission's work by concluding a convention on the law of treaties on the basis of the draft articles, it would be an outstanding achievement in the codification and progressive development of international law. Such a convention would be a unique contribution to the growing volume of conventional international law which—as opposed to customary international law—was gradually becoming the very backbone of modern international law.

11. The general debate in the Committee had revealed a number of differences of opinion between States on many of the more important draft articles recommended by the Commission, and some of those differences might not be very easy to reconcile. However, his delegation felt that that should not deter States from making an honest and sincere effort towards the realization of a goal which had been envisaged since 1949. The failure of the United Nations Conference on the Law of the Sea in 1958 and the Second United Nations Conference on the Law of the Sea in 1960 to codify the law on the breadth of the territorial sea and fishery limits had not deterred efforts towards the codification and progressive development of international law, and the United Nations Conferences on Diplomatic Intercourse and Immunities and on Consular Relations had resulted in the successful conclusion of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations respectively. Only at the forthcoming conference of plenipotentiaries, when the present text was subjected to article-by-article consideration, would it become known whether or not it was possible to resolve existing divergences of views and to frame a generally acceptable international convention on the law of treaties.

12. The draft articles reflected the ideas on the law of treaties which were generally accepted in contemporary international law. In particular, they rightly recognized the need to protect newly independent States against the tyranny which might result from excessive and unqualified reliance on the principle pacta sunt servanda. Article 23, which dealt with that subject, concerned only treaties in force and stipulated that they must be performed "in good faith". It was gratifying to find the principle of good faith firmly entrenched in the Commission's draft. In article 23, and in such articles as article 48

on the invalidity of treaties concluded under coercion of a State by the threat or use of force, the Commission had recognized that the principle pacta sunt servanda should not be used as a means of insisting on the implementation of obsolete, unjust, invidiously discriminatory or otherwise objectionable treaty rights.

13. Differences of opinion existed about the scope and the wording, in the draft articles, of the rules on reservations, interpretation, rights and obligations of third States, invalidity due to error, fraud and coercion, conflict with jus cogens, denunciation of treaties containing no provision regarding termination, supervening impossibility of performance, fundamental change of circumstances, and the procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty. Admittedly, the draft articles were by no means perfect, because of the imperfections existing in customary international law and State practice in that regard. The Commission had tried to make its draft reflect new developments and, on the whole, it had struck a judicious balance between lex lata and lex ferenda. For example, in article 59 (Fundamental change of circumstances) it had recognized the existence of a rule on rebus sic stantibus, but it had also recognized the fact that the rule could not affect boundary treaties. In controversial matters, the Commission had stated a rule in general terms, to the extent that it was found acceptable to a majority of States, and had left its full content and application to be worked out by State practice and decisions of international tribunals.

14. In the time remaining before the 1968 conference, Governments should see how the Commission's text could be improved—for instance, by defining more specifically the concepts of fraud and jus cogens. It would also be useful to have suggestions on how the procedure laid down in article 62 could be improved, so as to prevent States from using the convention to evade treaty obligations which they had freely undertaken.

15. No constructive progress towards the adoption of a convention on the law of treaties could be made until the conference of plenipotentiaries was held. Attention should not be devoted to the organization of the conference. His delegation felt that it would be futile and time-consuming to hold another general debate on the draft articles at the conference. It endorsed the Secretariat's suggestion that the conference should have at least two main committees,1/ if it was to complete its task in nine weeks.

16. His delegation was in general agreement with draft resolution A/C.6/L.623 but wondered whether it was necessary, in operative paragraph 1, to repeat the decision to convene the first session of the conference, which had already been taken by the General Assembly in its resolution 2166 (XXI). The last preambular paragraph and operative paragraph 1 could perhaps be combined.

Mr. Hambro (Norway) took the Chair.

17. Mr. IBRAHIM (Ethiopia), supported by Mr. SEATON (United Republic of Tanzania), said that discussion of the draft resolution (A/C.6/L.623) should be postponed until it had been formally introduced.

18. Mr. ENGO (Cameroon) announced that his delegation had become a sponsor of the draft resolution.

Organization of the work of the Committee

19. The CHAIRMAN drew attention to a letter from the President of the General Assembly (A/C.6/380) indicating that he was referring to the Sixth Committee, in accordance with rule 164 of the rules of procedure of the General Assembly and part 1, paragraph 1 (c), of annex II to the rules, a proposed amendment to the rules of procedure submitted by Mexico in connexion with agenda item 25 (Installation of mechanical means of voting: report of the Secretary-General). Delegations should bear in mind that an additional item had thus been placed on the Committee's agenda.

The meeting rose at 11.50 a.m.

1/ See Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 84, document A/C.6/371, para. 16.

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