United Nations
GENERAL ASSEMBLY
FOURTEENTH SESSION
Official Records

SIXTH COMMITTEE, 603rd MEETING

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

NEW YORK

CONTENTS

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 whole-heartedly.

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.

Litho in U.N. 77601-November 1959-1,975