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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

AGENDA ITEM 86

Report of the International Law Commission on the work
of its twenty-first session (*continued*) (A/7610 and Corr.1)

AGENDA ITEM 94

Declaration and resolutions adopted by the United Nations
Conference on the Law of Treaties:

(b) Resolution relating to article 1 of the Vienna Conven-
tion on the Law of Treaties (*continued*) (A/7592;
A/C.6/L.743)

1. Mr. ESPEJO (Philippines) said that the International Law Commission had indeed made satisfactory progress during its twenty-first session. Without committing his Government, which would no doubt be submitting in due course any comments it might wish to make on the twenty-nine draft articles on representatives of States to international organizations, as contained in chapter II of the Commission's report (A/7610 and Corr.1), he wished to make a few preliminary observations.

2. He was glad to note that the draft articles were being transmitted to the Secretariat of the United Nations, the secretariats of the specialized agencies and the International Atomic Energy Agency, and to the Government of Switzerland; and he welcomed the Commission's decision to consider at its twenty-second session draft articles on permanent observers of non-member States and on delegations to sessions of organs of international organizations and to conferences convened by such organizations. His delegation believed that the Commission was right in basing the draft articles on the provisions of the Vienna Conventions on Diplomatic and on Consular Relations, and in departing from the texts of those Conventions only where it was necessary to do so, in view of the special characteristics of permanent missions to international organizations. The familiarity of Governments with the provisions of the

two Conventions would perhaps facilitate the study of the new articles.

3. He was doubtful whether sub-paragraph (d) of paragraph 1 of draft article 32 should be retained. Although the provision contained in that sub-paragraph might be appropriate in a convention on special missions, it would be out of place in a convention on relations between States and international organizations. Special missions were a form of *ad hoc* diplomacy, whereas permanent missions, but for the concepts of reciprocity, *persona non grata* and *agrement*, were for all practical purposes regular diplomatic missions.

4. Turning to the question of the succession of States and Governments, he said that, as the topic of acquired rights was extremely controversial, the Commission had done well to instruct its Special Rapporteur to prepare another report containing draft articles on succession of States in respect of economic and financial matters, concentrating on public property and public debts. Its decisions to instruct the Special Rapporteur on State responsibility to submit a report containing draft articles relating to definition of the conditions for imputing to a State the violation of its obligations under international law, and to request the Special Rapporteur on the most-favoured-nation clause to prepare a wider study based on international practice since the Second World War, were equally sound.

5. With regard to the proposal that the term of office of members of the Commission should be extended to seven years, he felt that such an extension would, for too long a period, deprive many States of the opportunity of being represented on the Commission. Perhaps the very reasonable requirement of continuity could be met by re-electing existing members when necessary. However, rotation of membership was in general desirable.

6. His delegation agreed with the recommendation of the United Nations Conference on the Law of Treaties that the General Assembly should refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations.

7. On the subject of the Seminar on International Law, he said his delegation was grateful to the Governments of developed countries which had already offered scholarships for participants from the developing countries, including his own and he hoped that other developed countries would follow suit and that the Seminar would be continued. His own Government had very recently acted as host for the second Regional Refresher Training Course in International Law, for participants from Asia. Two of the main points made at the opening ceremony by the guest speaker, Chief Justice Roberto Concepción of the Philippine Supreme

Court, were that the future of the world depended to a large measure on youth and that it was important to foster a global outlook in both Government and university milieux.

8. Mr. DELEAU (France), commenting on the draft articles on relations between States and international organizations, recalled the part played by the International Law Commission and by the representatives of Governments in the General Assembly or in plenipotentiary conferences, and said that his delegation attached particular importance to the provisions of draft articles 4 and 5.¹ The International Law Commission should, in fact, base itself as far as possible on existing agreements on privileges and immunities rather than adopt a doctrinaire approach. It should not attempt to apply the provisions of the Vienna Convention on Diplomatic Relations to situations which were basically different and for which States had already succeeded in devising solutions of their own. Further, the privileges and immunities to be accorded to international organizations should be related to the functional requirements they were designed to serve.

9. Though he appreciated the high quality of the work already done by the Commission, he wondered whether the Commission had been right to embark on its study of permanent missions without first considering what status should be accorded to international organizations of the type under consideration. As his delegation had suggested in the Sixth Committee at the twenty-third session of the General Assembly (see 1031st meeting), the draft articles should apply only to major organizations of a universal character, and not to all organizations of a universal character, as implied in draft article 2, paragraph 1.

10. Turning to specific draft articles, he thought that article 24 might induce organizations to intervene in relationships between sending States and host States in cases where no real problem concerning privileges and immunities had arisen. Article 50 might prejudice a possible solution to the problems of settling disputes, notwithstanding the limitations expressed in the commentary; and it might also prejudice the reply to the question as to which organ of the organization would be responsible for ensuring respect for the privileges and immunities granted. One outcome of the provision contained in draft article 50 might be that the secretariat of the organization concerned might find itself invested with authority that could not rightly be acquired except in virtue of the organization's constitutional instruments. His delegation had previously indicated its disagreement with the principle—referred to in the commentary to article 24—that the Organization itself was a party to the Convention on the Privileges and Immunities of the United Nations. A distinction should be made between multilateral conventions to which only States were parties, and headquarters agreements to which organizations could become parties. In his view, further consideration should be given to draft articles 24 and 50, and efforts should be made to devise formulas which would enable the host State to take any measures required in the interests of its own security and the maintenance of public

order, and which would at the same time guarantee the independence of the organization.

11. His delegation was not altogether satisfied with draft article 45. As the text stood, the host State could not even request the recall of a person enjoying immunity when the latter had committed a crime within the premises of a permanent mission. It was surprising that the draft articles contained no provision for the possible expulsion of persons enjoying immunity. If the Commission intended to add such a provision later, it would find several examples in existing agreements.

12. He noted that draft article 44 was to be removed to the end of the whole draft and it was therefore not necessary to discuss it at the present stage. If, however, the Commission subsequently decided to examine certain exceptional circumstances, such as the participation in an organization of States that were not recognized, it would find that the rule had sometimes been varied on grounds of the lack of reciprocity.

13. In addition to draft articles 24, 44, 45 and 50, draft articles 40 and 42 should also be examined closely by Governments.

14. With regard to draft article 28, on freedom of movement, his delegation believed that—like article 27 of the draft Convention on Special Missions—it should be restricted to movement that was necessary in the performance of the functions of the mission, and there was no need to extend it to families. He wondered, too, whether draft article 39, on exemption from laws concerning acquisition of nationality, was compatible with legislation which allowed persons to avoid the application of the law by an act of personal will (option or repudiation).

15. In draft article 12 and elsewhere in the draft articles the words “diplomatic staff” had been used. His delegation believed that that expression was inaccurate except in the context of an embassy.

16. Draft article 41, paragraph 1, contained a drafting mistake which had appeared in the French text of the 1961 Vienna Convention on Diplomatic Relations, and had been corrected in 1963. It should be stated in the French text that the persons concerned “*ne bénéficient que de l'immunité de juridiction et de l'inviolabilité pour les actes officiels accomplis dans l'exercice de leurs fonctions*”.

17. Turning to chapter III of the report (Succession of States and Governments), he said he was sorry that the Special Rapporteur on succession in respect of matters other than treaties had taken little account, in the report entitled “Economic and financial acquired rights and State succession”,³ of the observations made by the French delegation, and he approved the Commission's decision that the study of public property and public debts should take priority over any further work on the subject of acquired rights.

18. State responsibility, which was dealt with in chapter IV of the report, was a subject which had needed

¹ See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9*, chapter II.

² *Ibid.*

³ A/CN.4/216/Rev.1.

codification for several decades. His delegation approved the Commission's intention to begin by considering responsibility for internationally illicit acts.

19. With regard to the most-favoured-nation clause, the Commission's decision to approve the proposal by its Special Rapporteur for completing the preparatory study on the major fields of application of the clause should enable it to obtain an objective picture of the rules prevailing on the matter.

20. The proposal to extend the term of office of members of the Commission would have the disadvantage of slowing down the rotation of members and would not help to ensure representation in the Commission of different trends of legal thought. In his view, it would be better to see to it that the Commission's work programme could in fact be completed during the term of office of its members. That would also have the advantage of eliminating the need for extra sessions, which were incompatible with the desire of his own and other delegations for sound financial management and limitations on the Organization's expenditure.

21. His delegation was opposed to Mr. Ago's suggestion for speeding up the process of ratification of international conventions.⁴ The question whether a State was or was not going to ratify a convention was exclusively a matter for the State concerned and any interference by an international organization in the exercise of that sovereign right was inadmissible.

22. With regard to the recommendation by the United Nations Conference on the Law of Treaties that the General Assembly should refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation believed that it would be premature to start such a study before knowing what was to happen to the Vienna Convention on the Law of Treaties itself. The question should not be considered until a later stage, when the Commission was making proposals regarding its future work programme.

23. In conclusion, he expressed his delegation's appreciation of the work of the fifth session of the Seminar on International Law and said he hoped that further sessions would be held.

24. Mr. ALVAREZ TABIO (Cuba) said that the last sentence in article 25, paragraph 1, of the draft articles on representatives of States to international organizations established a dangerous limitation on the principle of the inviolability of the premises of the permanent mission, a limitation which might lead to virtual negation of the principle. An objective and concrete legal prerogative was made dependent on the subjective judgement of the authorities of the host State as to what constituted "fire or other disaster that seriously endangers public safety". The term "other disaster" was particularly vague and left a wide margin for arbitrary interpretation. In addition, the phrase "only in the event that it has not been possible to obtain the express consent of the permanent representative" could

be interpreted to mean that the premises of the permanent mission could be broken into even against the wishes of the permanent representative. The efficient functioning of the permanent mission would thus depend on the subjective opinion of an official whose conduct would be influenced by the attitude of his country towards the sending State.

25. In its present vague wording, draft article 45, paragraph 1, would seem to mean that the statutory provisions in force in the host State could prevail over the régime of privileges and immunities established in the draft articles. Although it would seem obvious that the rule in question would not apply when the privileges and immunities of the member of the mission conferred exemption from it, the rule might be misinterpreted to mean that failure by a member of the permanent mission to respect the laws and regulations of the host State would absolve that State from the obligation to respect the immunity which he enjoyed. The Cuban delegation did not agree with the International Law Commission that it was unnecessary to include in draft article 45, paragraph 3, the phrase "as laid down in the present Convention". The inclusion of that phrase would lessen the risk of arbitrary interpretations by the authorities of the host State, particularly in view of the general reservation contained in article 4 of the draft. Its omission would imply the prevalence of the headquarters agreements concluded between the host State and the organization.

26. With regard to the succession of States and Governments, his delegation agreed with the Special Rapporteur on succession in respect of matters other than treaties that acquired rights could not have a legal basis in a transfer of sovereignty from the predecessor State to the successor State entailing a transfer of obligations and that under international law the sovereignty of a successor State was an attribute of its statehood. It also agreed with other delegations on the need to safeguard the right of new States to nationalize and exploit their natural resources as they saw fit for their economic development. As stated by the Special Rapporteur, the notion of unjust enrichment was impracticable in the context of decolonization.

27. In connexion with State responsibility, Cuba welcomed the intention of the Commission to continue its study on the subject in order to evolve a more precise definition of internationally illicit acts and responsibility for them. At a time when international relations were characterized by examples of aggression committed with complete impunity, it was particularly important to achieve an exhaustive, mandatory and egalitarian definition.

28. In his delegation's view, the extension of the term of office of the members of the Commission would impair the flexibility of the existing system, whereby the membership was renewed every five years and new trends in the progressive development of international law could thus be represented.

29. The Commission had rightly decided to give priority, in its future work, to the topics of State responsibility and the succession of States and Governments. The Cuban delegation did not think that the question of treaties concluded between States and international organizations or between two or more international organizations should be given priority over the other fundamental questions on the Commission's programme.

⁴ See A/CN.4/205/Rev.1.

30. Mr. ENGO (Cameroon) praised the excellent work done by the International Law Commission, whose conclusions and recommendations should not be lightly dismissed. Requests from the Commission, such as the request for an extension of the term of office of its members, should be viewed with sympathy and understanding. The Cameroonian delegation had not been convinced by the arguments against an extension of the members' term of office. In its view, what mattered was not that as many individual States as possible should be members of the Commission but that all shades of legal and political opinion should be represented. Admittedly it was important for the Commission to try to conclude its work on a particular topic before its membership changed; however, it was impossible to foresee how long it would take to codify the various topics. In any case, there was no urgency, since the term of office of the current members was not due to expire yet. Further study and consultations would be required before a decision was reached.

31. His delegation endorsed the Commission's future programme of work and welcomed its intention to bring up to date its long-term programme of work and complete the study of relations between States and international organizations before the expiry of the term of office of its present members. It was to be hoped that the referral to the Commission of the question of treaties concluded between States and international organizations or between two or more international organizations would not alter the existing order of priorities, which should be decided by the Commission itself.

32. The Cameroonian delegation was particularly interested in the problem of the succession of States and Governments and shared the view of the Special Rapporteur that acquired rights could not have a legal basis in a transfer of sovereignty from the predecessor State to the successor State. It was important to study all modes of State succession and existing practice in that regard. It should be remembered that the phenomenon of colonialism still existed and that the newly independent States faced problems of State succession which were seriously hampering their development. The inherent rights of peoples to self-determination should not be fettered by any economic, political or other illegalities.

33. The General Assembly should recommend the continuation of work on the most-favoured-nation clause. The application of that clause should not affect preferential treatment granted to the developing countries and should be consistent with the over-all aims and principles of the United Nations. The work to be done by the Commission on that topic would be most helpful to the United Nations Commission on International Trade Law.

34. The recent session of the Seminar on International Law, at which the lectures given had been of an extremely high standard, had greatly benefited the participants from developing countries. It was to be hoped that other Governments would follow the example of those which had already offered scholarships for the Seminar.

35. Mr. TSURUOKA (Japan) noted that, in preparing the draft articles on representatives of States to international organizations, the Commission and its Special Rapporteur

had proceeded on the assumption that the provisions of the Vienna Convention on Diplomatic Relations could be applied *mutatis mutandis* to a convention on relations between States and international organizations. However, the primary concern should be to draft a convention which would command the widest possible acceptance and two factors should be borne in mind in that connexion.

36. The first factor was the diversity of the tasks performed by international organizations. If the basis of the privileges and immunities of permanent missions to international organizations was functional necessity, the level of the privileges and immunities to be granted to the permanent missions should vary according to the functions which they performed. It would therefore seem appropriate for the convention to cover only those privileges and immunities regarded as essential, and to leave the others to be agreed between the host States and the organization concerned. Furthermore, although the draft articles were intended to apply to international organizations of a universal character, they would be used as models for headquarters agreements of international organizations not of a universal character.

37. The other factor to be taken into account was that a permanent mission to an international organization did not represent the sending State before the host State. Since the principle of reciprocity was thus not applicable, it would seem wise not to impose too heavy a burden on the host State with regard to the privileges and immunities to be accorded to permanent missions from other States. That was particularly important in view of the tendency of international organizations to congregate in a limited number of States with suitable conditions for their efficient functioning. A realistic attitude should be adopted and the protection afforded to the permanent mission should not extend beyond what was functionally necessary.

38. If articles concerning the establishment of permanent observers with their privileges and immunities were to be the subject of a new legislative effort parallel with those concerning permanent missions, the elaboration of the provisions formalizing the status of permanent observers should give adequate attention to the special position of the host State. Thus, it would be proper to expect that a State should send observers to a particular organization at the invitation of that organization and that thereby the legitimate interests of the host State should be duly reflected in some way or other. For instance, the Commission might consider cases in which the host State was not a member of the international organization concerned and would therefore have no say in deciding whether a State which it did not recognize should be invited as an observer. Cases might also arise in which the host State was not willing to grant all the privileges and immunities specified in the draft articles, especially when they were very far-reaching. The provisions in draft article 50 concerning tripartite consultations might not be adequate to resolve such cases.

39. In connexion with the succession of States and Governments, his delegation believed it was essential, in any attempt at codification of the topic, to reflect to the maximum extent possible the views and interests of States in order to ensure general acceptance in the international

community. The difficulties involved might be particularly great, in view both of the problems arising from the decolonization process and of the economic and financial implications which would arise. However, his delegation attached great importance to a codification of law which would be of general and lasting validity, just and equitable in nature and representing the general interests of the international community as a whole, rather than partial interests. In dealing with matters of such a complex nature, a spirit of pragmatism as well as a sense of equity was essential.

40. With regard to the proposal for an extension of the term of office of members of the Commission from five to seven years, his delegation fully appreciated the time-consuming nature of the codification process and the desirability of ensuring greater continuity in the discussion of subjects dealt with by the Commission, but wished to stress that the problem should be approached with great care before a final decision was made.

41. With regard to agenda item 94 (*b*), he recalled that the question of treaties concluded between States and international organizations or between two or more international organizations did not fall within the scope of the United Nations Conference on the Law of Treaties, which had therefore decided to recommend to the General Assembly that it refer the question to the Commission for further study. His delegation agreed with that approach and hoped that the question would be given ample examination by the Commission.

42. Mr. CUMBERBATCH (Trinidad and Tobago) said his delegation appreciated the contribution made by the International Law Commission to the codification and progressive development of international law. However, the Commission could continue to be effective only if it was made more representative of the contemporary world community, and his delegation did not therefore support an extension of the present term of office of members of the Commission.

43. The Commission's report on its twenty-first session was useful and informative. He welcomed the fact that the Commission had to a large extent been guided by the "functional necessity" theory in drawing up the draft articles on representatives of States to international organizations.

44. His delegation agreed in principle with the emphasis placed by the Special Rapporteur in chapter III of the report on the problems of succession arising from decolonization. In particular, it agreed with the view expressed in paragraph 38 that there was no legal basis for the theory of acquired rights, that the successor State was not bound by the acquired rights granted by the predecessor State, and that it was so bound only if it acknowledged those rights of its own free will or if its competence was restricted by treaty. The successor State must not, however, depart at any time from the rules of conduct governing inter-State relations.

45. His delegation also agreed with the view expressed by some members, referred to in paragraph 41 of the report, that the circumstances surrounding certain cases of succe-

sion, in particular cases of independence resulting from a freely accepted agreement, should not be overlooked. Priority in the matter of succession should be given to those rules whose operation could influence the general economic situation of a new State, and his delegation was therefore glad that the Commission had requested the Special Rapporteur to concentrate his next report on the question of public property and public debts.

46. Mr. GARCIA ORTIZ (Ecuador) said his delegation supported the retention of article 32, paragraph 1 (*d*) of the draft articles on representatives of States to international organizations. It dealt with a justified exception to the rule of immunity from criminal jurisdiction established in accordance with the precedent of the Vienna Convention on Diplomatic Relations. It was clear that the victims of a traffic accident caused by a person enjoying immunity must be protected, and his delegation therefore wished to suggest that the sub-paragraph should be completed by a sentence along the lines of the provision contained in article 34, to the effect that the sending State should use its best endeavours to bring about a just settlement of such claims, but without the necessity for waiving immunity as provided for in article 34.

47. In connexion with the succession of States and Governments, a number of comments had been made on the question of acquired rights. His delegation believed that the principle of acquired rights should be maintained, at least where public rights were concerned, not so much because of the principle of transfer of sovereignty as in order to ensure equity and good faith, which were essential to international legal order. If the principle of acquired rights were to be completely eliminated, there would be risk of affecting the other fundamental principle of the legal world, that of security. Legal certainty was equal in importance to the progressive development of law, and a balance must be maintained between the two. His delegation was convinced that the International Law Commission was admirably suited to conduct an exhaustive study of the question of acquired rights as it related to the problem of the succession of States and Governments.

48. His delegation supported the Seminar on International Law, whose sessions had been held at Geneva, and hoped that they would continue on an annual basis. It also supported the extension of the term of office of members of the Commission to seven years, since it was obviously desirable for them to have the longest possible period at their disposal in order to carry out their activities.

49. Mr. EL-ATTRASH (Syria) said he agreed with other speakers that there was some ambiguity in the words "other disaster" in article 25, paragraph 1, of the draft articles on representatives of States to international organizations. In a sense, those words left it to the discretion of the authorities of the host State to decide when they could assume the right of entry into the premises of the mission. In his delegation's view, that interpretation would be a flagrant violation of the generally and internationally accepted principle of the inviolability of the premises of permanent missions.

50. Article 40 dealt with the privileges and immunities of persons other than the permanent representative and the

members of the diplomatic staff. Experience in Syria had shown that it was desirable to state that the privileges and immunities granted must be used for the sole purpose of assisting the persons enjoying them in the performance of their duties, and that any possibility of using such privileges or immunities for lucrative or other purposes extraneous to the requirements of the mission as such should be excluded.

51. His delegation welcomed the intention to submit the complete draft of fifty articles on representatives of States to international organizations to the Governments of Member States for comment.

52. In connexion with the succession of States and Governments, the representative of Thailand had made an excellent statement (1106th meeting) on the distinction to be drawn between the various types of treaty. His delegation would nevertheless confine its present remarks to the subject of the report provided by the Special Rapporteur, who had stated that the first concern in codifying the topic should be for economic and financial acquired rights. The succession of States and Governments raised as a matter of urgency the question of rights acquired under treaties signed by the predecessor State, which might constitute a heavy burden on the successor State, since they had been concluded not in its interests but in those of the predecessor.

53. In that connexion, he wished to recall the statement by the representative of the Netherlands (1104th meeting), whose delegation had put forward the idea of a develop-

ment charter, that from that point of view the enrichment of new States should be welcomed rather than discouraged.

54. His delegation shared the view of most members of the Commission that an empirical method should be adopted for the codification of succession in respect of economic and financial matters. It would even go further and suggest the inclusion of specific provisions stipulating that financial indemnities and substantial aid should be granted to the successor State.

55. The Commission had barely begun the studies referred to in chapters IV and V of the report, which dealt with the important questions of State responsibility and the most-favoured-nation clause. His delegation would welcome the opportunity to study the reports of the Special Rapporteurs on those questions, and believed that the question of armed aggression might form a part of the general subject of State responsibility.

56. His delegation supported the extension of the term of office of members of the Commission from five to seven years, and also supported the proposals for the organization of future work of the Commission, as set out in paragraphs 92 and 93 of the report. It likewise associated itself with the recommendation that there should be close and permanent co-operation between the Commission and the International Court of Justice.

The meeting rose at 1.5 p.m.