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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 I of the Vienna Conven-
tion on the Law of Treaties (*continued*) (A/7592;
A/C.6/L.743)

1. Mr. JAHODA (Czechoslovakia) said that his Govern-
ment highly appreciated the work of the International Law
Commission in the codification and progressive develop-
ment of international law: the promotion of international
legality was one of the chief means of strengthening
international peace and co-operation among States. His
delegation noted with satisfaction the considerable progress
made in the elaboration of draft articles on representatives
of States to international organizations. That area of
international law dealt with relations more complicated
than those involved in the case of permanent diplomatic
missions, special missions and consular missions, and it was
in the interest of the international community as a whole to
ensure the effective and undisturbed operation of interna-
tional organizations. His delegation consequently supported
the Commission's decision at its 992nd meeting that the
draft should also contain articles regulating the legal status
of permanent observers of non-member States to interna-
tional organizations and delegations to sessions of organs of
international organizations.

2. With regard to the twenty-nine new draft articles now
before the Committee, his delegation felt that, in view of
the legal character and functions of a permanent mission,
there was no reason why the inviolability of its premises
should not be regulated by provisions similar to those

contained in the Vienna Convention on Diplomatic Rela-
tions. Likewise, in the case of an action for damages arising
out of an accident caused by a vehicle used outside the
official functions of a member of the mission, the corre-
sponding provisions of the Vienna Convention constituted a
far better solution than that contained in article 32,
paragraph 1 (d), of the present draft.

3. His delegation fully supported the provisions of draft
article 44 on non-discrimination and the view contained in
the "Study of the Secretariat", referred to in the Commis-
sion's commentary on that article that the privileges and
immunities granted should generally be those afforded to
the diplomatic corps as a whole, and should not be subject
to particular conditions imposed, on a basis of reciprocity,
upon the diplomatic missions of particular States.

4. The report of the Special Rapporteur on succession in
respect of matters other than treaties, entitled "Economic
and financial acquired rights and State succession", took in
substance a correct approach to that question; in view of
the special interest of the topic to States recently liberated
from the colonial yoke, it should be given priority in the
Commission's work programme. The report of the Special
Rapporteur on State responsibility constituted a starting
point for further elaboration of the whole complex of
problems involved. Lastly, the report of the Special
Rapporteur on the most-favoured-nation clause represented
a further step towards the codification of an area of crucial
importance for economic relations among States.

5. He welcomed the Commission's decision to bring up to
date in 1970 or 1971 its long-term programme of work and
believed that the Commission, when considering the inter-
national community's current needs in the field of codifica-
tion, should focus primarily on questions which occupied
an important place in the deliberations of United Nations
organs, particularly the General Assembly, the Sixth Com-
mittee and the Special Committees of the General Assem-
bly. The selected topics should be as concrete as possible,
and a time-table for their gradual elaboration should be
drawn up at the time of selection.

6. With regard to the proposal to extend the term of office
of the members of the Commission, his delegation agreed
that the Commission should be given all the means and
facilities necessary for the sound and expeditious organiza-
tion of its work. It did not, however, believe that the
extension of the term of office of its members or the
proposed additional or extended session would be an
appropriate solution. He noted with satisfaction the success
of the 1969 session of the Seminar on International Law at
Geneva and supported the Commission's recommendation
to organize another session of the Seminar in 1970.

7. With regard to the recommendation of the United Nations Conference on the Law of Treaties concerning article 1 of the Vienna Convention on the Law of Treaties, his delegation considered that that question should be studied by the Commission and, therefore, included in its long-term programme of work.

8. Mr. CASTRÉN (Finland) said that although some of the Commission's work at its last session was of a preliminary nature, it would provide a useful and sound basis for future study. He commended the lucid reports submitted by the Special Rapporteur on the topic of the most-favoured-nation clause. The discussion on the report of the Special Rapporteur on State responsibility showed a large measure of agreement in the Commission concerning the way in which that topic should be approached, and he welcomed the news that the Special Rapporteur was to submit a first set of draft articles to the Commission at its twenty-second session.

9. Although there had been some divergence of views in the Commission on a number of fundamental issues mentioned in the report of the Special Rapporteur on the succession of States in respect of matters other than treaties, both the report and the discussion had shed considerable light on the important question of the succession of States in respect of public property and public debt and the financial and economic rights and obligations of the predecessor State.

10. At a first reading, the twenty-nine new draft articles on representatives of States to international organizations seemed generally acceptable. The interests of international organizations required that the necessary rights and freedoms be accorded to permanent missions, and, as a general rule, the status of such missions should be assimilated to that of permanent diplomatic missions. However, there were certain basic differences between permanent missions accredited to international organizations and regular permanent diplomatic missions, since in the case of the former, as the Netherlands representative had pointed out (1104th meeting), the principles of reciprocity and *agrément* and the concept of *persona non grata* did not apply. The Commission had been correct in attempting from time to time to draw on the 1963 Vienna Convention on Consular Relations and the draft Convention on Special Missions. Article 50 of the present text, concerning consultations between the sending State, the host State and the international organization, was especially useful. It should, however, include special provisions for the settlement by an impartial body of disputes arising out of the interpretation and the application of the articles. The provisions of draft articles 34 and 39 were judicious and necessary. Draft article 45 was the result of a compromise in the Commission and had the merits and defects of any compromise.

11. As his delegation had stated at the twenty-third session of the General Assembly (1034th meeting), it was in favour of extending the term of office of the members of the Commission and also felt that a winter or an extended session of the Commission in 1970 would be extremely useful. The main argument adduced against the extension of the term of office of Commission members was that it would delay access to membership of those States which had not had an opportunity to participate in the work of

the Commission. But it should be borne in mind that the members of the Commission held office as individuals, as did the judges of the International Court of Justice; the latter had a nine-year term of office and were only fifteen in number, and, moreover, the same individuals were not infrequently re-elected.

12. With regard to the resolution of the United Nations Conference on the Law of Treaties relating to article 1 of the Vienna Convention on the Law of Treaties, his delegation considered that the General Assembly should follow the recommendation contained therein and instruct the Commission to undertake the proposed study. Regarding the priority to be accorded to that topic, it should be borne in mind that the Commission already had a number of urgent topics on its agenda, of which it should complete consideration as soon as possible.

13. Mr. SIDDIQ (Afghanistan) said that the Commission's adoption of twenty-nine new draft articles on representatives of States to international organizations represented an important advance in the codification and progressive development of international law. His delegation would express its views on those articles in writing in due course, as necessary.

14. His delegation fully agreed with the approach taken by the Special Rapporteur on succession of States in respect of matters other than treaties, based on the view that the theory of acquired rights could only be studied taking into account the basic principles of international law and especially the principle of sovereign equality of States in respect of their rights and obligations and the principle of self-determination. Political independence and self-determination would not be complete unless supplemented by economic self-determination. His delegation had always supported the basic principle of the permanent sovereignty of States over their natural resources and, accordingly, supported the view referred to in paragraph 52 of the Commission's report that "all so-called economic and financial acquired rights were void". In his delegation's view, the Declaration of the recent United Nations Conference on the Law of Treaties on the prohibition of military, political or economic coercion in the conclusion of treaties was very relevant in that connexion, because many of the acquired rights claimed by predecessor States had been secured by coercion and were thus illegal.

15. On the question of the succession of States in respect of treaties, his delegation believed that colonial treaties which had been imposed by military force were invalid and that succession in respect of such treaties did not take place without the express concern of all the parties concerned. He hoped that the Commission's study of that topic in the future would cover the essential elements necessary for solving some of the present difficulties arising as a result of colonialism and the imposition of territorial and boundary changes in violation of the fundamental right of self-determination.

16. His delegation commended the Commission for commencing its consideration of the important topics of State responsibility and the most-favoured-nation clause and fully approved the Commission's decision regarding the future study of those topics by the Special Rapporteurs. Regard-

ing the organization of the Commission's future work and the extension of the term of office of its members, he would prefer to hear the views of other members of the Committee before making any comments.

17. His delegation approved 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. However, it should be left to the Commission itself to take up the study of that topic whenever it deemed it appropriate.

18. Mr. MARTINEZ CARO (Spain) welcomed the fact that the discussion on the report of the International Law Commission had become the occasion for an annual review of the progress made by the United Nations in the codification of international law. A great effort was needed today to codify and progressively develop the rules governing relations between States. Neither purely technical or mechanical methods nor reliance on the principle of absolute sovereignty of States would lead to a solution of the problems involved. At the present time, small and medium-sized countries were becoming increasingly aware of their rights and obligations in international relations, and there was therefore a need to bring the applicable rules and principles up to date. Many international organizations were engaged in the necessary work of codification and development of international law, but central among them was the United Nations, which, with its various organs, provided the institutional machinery for the task.

19. In the field of international law at present under consideration, the prime codifying force was the International Law Commission, which had submitted a draft convention to the United Nations Conference on the Law of Treaties. Thanks to the objectivity, juridical perfection and healthily progressive spirit of the draft, the Conference had adopted the Convention in the spring of 1969, and it was to be hoped that it would soon become general international law on the subject.

20. His Government would in due course submit detailed observations on the draft articles on representatives of States to international organizations, but he wished at present to indicate his delegation's general approval of the basic principles underlying them. It was obviously in the interests of all States that the legal status of international organizations and representatives of Governments to them should be quite clear, so that nothing might interfere with the performance of their functions.

21. On the topics of the succession of States in respect of matters other than treaties and State responsibility, he considered it essential that equitable and viable rules should be formulated to regulate matters such as international investment, the sovereignty of States over their natural resources, the rights of aliens, respect for commitments freely entered into and the settlement of disputes in those fields. That was, of course, a difficult and complex task involving important economic interests and very delicate political situations, but a solution must be found, and he hoped that, despite the divergence of views reflected in the report of the International Law Commission, one or other

of the possible compromise arrangements that were hinted at in the report would be moulded into a general agreement based on equity and justice.

22. The closer ties that were being developed between the International Court of Justice and other United Nations organs, particularly the Sixth Committee, were most welcome. Many believed that the time might have come to take a new look at some of the fundamental characteristics of the Court with a view to adapting them, where necessary, to the needs of the day. A truly representative Court, open to new law and enjoying the confidence of all States, had an essential part to play in the development of just and peaceful relations among States.

23. Mr. OGUNDERE (Nigeria) praised the work of the International Law Commission during its twenty-first session, and said that his Government would in due course submit its comments on the twenty-nine new draft articles on representatives of States to international organizations. His delegation considered that the Commission had wisely applied the theory of extraterritoriality to the premises occupied by permanent missions, the "representative character" theory to the privileges and immunities of a permanent representative when he personified the sending State, and the "functional necessity" theory to those privileges and immunities which were necessary to enable a mission to perform its duties. Paragraphs 1 and 2 of Article 105 of the Charter of the United Nations were thus complied with.

24. Turning to chapter III of the Commission's report, on the succession of States and Governments, he said that it was imperative that the work on succession in respect of treaties should be expedited and completed before 1971; he therefore hoped that draft articles would be submitted at an early date. The question of succession in respect of matters other than treaties was extremely important, since the economic and financial matters involved affected millions of people. The Commission was therefore right to proceed cautiously. When it came to consider the Special Rapporteur's next report, on public property and public debts, and the draft articles he would ultimately submit, it would, he hoped, give a proper balance to the principles of acquired rights and the right of a State freely to dispose of its natural resources. In that connexion, General Assembly resolution 1803 (XVII) on permanent sovereignty over natural resources deserved an important place in the new draft articles.

25. His delegation could not agree with those jurists who attempted to dismiss the complexities of succession arising from decolonization as a temporary problem that would disappear when the decolonization process was complete. Since the application and interpretation of hundreds of treaties were involved, the problem would require prolonged attention. While succession arising from merger and dismemberment was undoubtedly important, succession arising from decolonization affected the interests of the vast majority of States, and should therefore be given all the attention it deserved.

26. With regard to the report on the Commission's work on the topic of State responsibility, his delegation noted

with concern that past work on the subject had laid emphasis only on questions relating to the responsibility of a State for injuries caused in its territory to the person or property of aliens, including international protection of acquired rights, expropriation in general, contractual rights and reparation. Unfortunately, the Commission had ignored the responsibility of a State for the acts of mercenaries who were its citizens against the national security and territorial integrity of another State. His delegation believed that the State of which the mercenary was a citizen should be held responsible for his activities under international law; the question of reparations to the injured state should also be considered by the Commission. Another matter for its consideration was whether a permanently neutral State which had incurred international responsibility for the mercenary activities of its nationals should retain its neutral status. The new nations of the world would watch the Commission's progress on that topic with interest.

27. His delegation had already stated its views (1036th meeting) on the proposed extension of the term of office of members of the Commission. Opportunity for re-election was a democratic guarantee of continuity in the work of the Commission.

28. The fifth session of the Seminar on International Law for young jurists from the developing world had been a great success and he hoped that the series would be continued.

29. Lastly, his delegation supported the recommendation made to the General Assembly by the United Nations Conference on the Law of Treaties that it 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.

30. Mr. EL-ARABY (United Arab Republic) said that, since multilateral diplomacy had become one of the principal features of relations between members of the international community, it was gratifying that the International Law Commission had accorded international organizations their rightful place in the codification and progressive development of international law. The provisions of the Vienna Convention on Diplomatic Relations had wisely been used as a basis for the new draft articles on representatives of States to international organizations; however, such features as reciprocity, *agrément* and *persona non grata* had no place in the new articles and, very properly the Vienna Convention had not been followed slavishly.

31. His delegation was glad that the Secretary-General had requested the inclusion in the agenda of the resolution of the United Nations Conference on the Law of Treaties relating to article 1 of the Vienna Convention on the Law of Treaties, because that resolution was directly connected with the Committee's consideration of the report of the Commission on the work of its twenty-first session. It agreed that the topic should be referred to the Commission, provided that it did not take precedence over the questions of the succession of States and Governments and State responsibility.

32. His delegation had noted with respect the useful study prepared by the United Nations Institute for Training and Research on the wider acceptance of multilateral treaties.¹

33. In view of the recent emergence of a large number of new States, the question of succession was particularly timely, and his delegation was glad that the Commission had given prominence to the problems of those States and to the decolonization process in general.

34. With regard to chapter IV of the Commission's report, on State responsibility, his delegation had noted with great interest that the Commission had agreed in recognizing the importance, alongside that of responsibility for internationally illicit acts, of the so-called responsibility for risk arising out of the performance of certain lawful activities, such as spatial and nuclear activities. With the development of science and technology, such activities were potentially harmful to humanity and it was essential that they should be regulated and controlled in good time. His delegation therefore hoped that, when the Commission considered that aspect of State responsibility, it would accord it great importance. On the question of the most-favoured-nation clause, he was confident that the forthcoming study would be both relevant and comprehensive.

35. Turning to the review of the Commission's programme and methods of work mentioned in paragraphs 90 and 91 of the report, he stressed the confidence of his delegation in the wisdom of the Commission's decisions. He noted that the Commission had not taken up a definite position on the subject of the proposed extension of the term of office of its members to seven years. Since the extension was not intended to apply to the present membership and since no elections were to be held until 1971, no action would need be taken on the proposal at the current session, and he suggested that the Committee's report should contain the following paragraph: "The Sixth Committee has taken note of the proposal to extend the term of office of the members of the International Law Commission, contained in paragraph 90 of the Commission's report, intends to take up this question at a future session and invites the Commission to give further consideration to the different alternatives relating to the term of office of its membership."

36. Mr. KOSTOV (Bulgaria) reiterated his delegation's interest in the codification and progressive development of contemporary international law, which should be made more democratic and universal, since that would help to strengthen international legality and intensify co-operation among States with different political systems.

37. The Bulgarian delegation endorsed the decision of the International Law Commission to include in the draft articles on representatives of States to international organizations provisions dealing with permanent observers of non-member States to international organizations. It was to be hoped that the formulation of legal rules on that subject would eliminate certain anomalies and discrimination in the current practice of international organizations. Despite the

¹ United Nations Institute for Training and Research, *Wider Acceptance of Multilateral Treaties* (New York, 1969), UNITAR Series No. 2.

complex and delicate nature of the questions relating to the absence of recognition, absence or severance of diplomatic relations and armed conflict, it would be desirable for the Commission to resume examination of those questions in the near future and work out satisfactory solutions.

38. Article 25 of the draft articles unfortunately contained a provision which undermined an essential principle of diplomatic activity—the inviolability of the premises of the permanent mission. Failure to observe that principle was a constant source of friction between States and an obstacle to the normal performance of the mission's functions. The Argentine amendment to article 25 of the draft articles on special missions,² on which the provision in question was based, had referred to a different situation—the fact that special missions often had their seats in hotels. The situation of permanent missions, on the other hand, was no different from that of embassies and the corresponding provisions of the Vienna Convention on Diplomatic Relations should therefore be followed.

39. Article 32, paragraph 1 (*d*), was also based on an inappropriate analogy with special missions and would result in an unwarranted restriction of the permanent representative's immunity from jurisdiction. While it was perhaps true that in the case of special missions, which were of a temporary nature, difficulties might arise in settling an action for damages arising out of an accident caused by a vehicle, the same argument did not apply to permanent missions. The draft articles contained adequate guarantees to cover such a situation—for example, the provisions of articles 34, 45 and 50—and existing practice did not appear to have raised insurmountable difficulties. The Bulgarian delegation welcomed the inclusion of the provisions in article 50; tripartite consultations were the most appropriate method of solving any disputes which might arise.

40. In the context of the topic of the succession of States and Governments, special attention should be devoted to decolonization and the problems facing the newly independent countries. The juridical implications of decolonization should be studied in the light of the fundamental principles of contemporary international law and the relevant declarations recently adopted by the General Assembly. His delegation agreed with the Special Rapporteur that decolonization was not a momentary phenomenon but a lengthy process during which the structural changes involved had to be examined in the specific context of State succession. The study of all questions relating to succession, including acquired rights, should take into account the sovereign right of peoples and nations to their wealth and natural resources and the right of nationalization as an attribute of sovereignty.

41. His delegation endorsed the method of work proposed for the study of the topic of State responsibility, to which priority should be given. It also attached considerable importance to the codification of the most-favoured-nation clause, which would help to eliminate discrimination in international trade.

42. The Commission's review of its long-term programme of work would be most useful and, in that context, the Commission should consider the question of treaties concluded between States and international organizations. The Bulgarian delegation was not convinced of the need for an extension of the term of office of the Commission's members. It felt that the need to accelerate the work of the Commission could best be met not by extending the members' term of office or holding additional sessions but by improving the Commission's methods of work.

43. In conclusion, he welcomed the successful organization of the fifth session of the Seminar on International Law, which afforded young jurists an opportunity to acquaint themselves with the work of the Commission.

44. Mr. LIANG (China) noted that the pessimistic predictions of publicists such as Julius Stone³ concerning the role of the International Law Commission and the contribution of the United Nations codification conferences to the solution of the problems of international law had proved unfounded, by their authors' own admission.

45. With reference to the draft articles approved by the International Law Commission on the subject of permanent missions to international organizations, the French representative had rightly drawn attention (1108th meeting) to the differences between the provisions of the draft articles and existing agreements or practice and the need to study current State practice in that regard. Despite the statement in article 4⁴ to the effect that the provisions of the articles were without prejudice to other international agreements in force, problems of incompatibility with existing instruments or practices might arise. As could be seen from the United Nations *Legislative Series*,⁵ more than 100 legal instruments already existed on the subject of relations between States and international organizations. Despite the apparent similarity which existed, that subject was quite different from the other two related subjects of diplomatic relations and special missions. In relations between States and international organizations, the functional element was more important than that of diplomacy.

46. Originally, the Commission had correctly limited its study of State responsibility to responsibility of the State for injuries caused in its territory to aliens. The topic had subsequently been expanded and difficulties of a theoretical nature had delayed the work of the Commission. It had then been decided that the starting-point would be "imputability". That meant, however, that the State would be considered as an abstraction—a viewpoint which was shared by few modern jurists. The first draft to be produced by the Special Rapporteur would therefore be eagerly awaited.

47. At the 1969 session of the Institute of International Law, he had expressed the view that the most-favoured-nation clause was a subject for progressive development rather than codification, because of the paucity of customary law on the question. However, the Special Rapporteur

³ See *Columbia Law Review* (New York, Columbia Law Review Association, Inc., 1957), vol. LVII, pp. 48 and 49.

⁴ See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9, chapter II*.

⁵ See United Nations, *Legislative Series*, ST/LEG/SER/B/10 and 11 (United Nations publications, Sales Nos.: 60. V. 2 and 60. V. 3).

² See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 85, document A/7375, para. 189.

teur would adopt the broadest possible approach and deal with both multilateral and bilateral applications of the clause.

48. The efficiency of the International Law Commission would be enhanced not so much by extending the term of

office of its members as by scheduling its sessions at a time when no other important United Nations meetings were being held at Geneva, in order to ensure that the Commission's sessions were fully attended.

The meeting rose at 1 p.m.