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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. DABIRI (Iran) said that, while the International Law Commission had continued at its twenty-first session to make progress on all the topics under study, the most positive results had been achieved on the subject of relations between States and international organizations. The adoption of the new articles concerning permanent missions to international organizations augured well for the completion of work on that important topic. The Iranian Government would study the new draft articles carefully and make its position known in due course.

2. The discussion in the Commission on the succession of States and Governments illustrated the complexity of the subject and its numerous ramifications, particularly in the political sphere. With regard to succession in respect of matters other than treaties, his delegation agreed with the Special Rapporteur that the need to ensure the economic and political development of the new States created by the disintegration of the colonial system should take precedence over all other considerations.¹ It was to be hoped that more detailed reports on succession in respect of treaties and succession in respect of matters other than treaties would be submitted for the Commission's next session.

3. On the topic of State responsibility, his delegation was glad that the Special Rapporteur was proceeding with research on the subject and that there had been general agreement in the Commission on the main lines of the programme to be undertaken. Although the Commission had decided for the time being not to deal with responsibility for risk arising out of the performance of certain lawful activities, the work done by the Committee on the Peaceful Uses of Outer Space on a draft agreement on liability for damage caused by the launching of objects into outer space would be most helpful to the Commission when it took up that aspect of the question.

4. His delegation was particularly interested in the most-favoured-nation clause and was glad that the Commission had included the Anglo-Iranian Oil Company Case² among those to be considered by the Special Rapporteur in his next report on the subject. It was confident that the Special Rapporteur would make renewed efforts to complete his task as soon as possible.

5. The Iranian delegation endorsed the recommendation made by the United Nations Conference on the Law of Treaties to the effect that the Commission should study the question of treaties concluded between States and international organizations or between two or more international organizations. The Sixth Committee should therefore recommend the inclusion of that question in the Commission's programme of work.

6. His delegation appreciated the Commission's concern to complete the study of relations between States and international organizations before the expiry of the term of office of its present membership and would therefore have no objection to the organization of an additional or extended session in 1971. It was not, however, convinced of the need to extend the term of office of the Commission's members and thought that the existing term of five years met the special requirements of the Commission.

7. The co-operation existing between the Commission and the International Court of Justice and other international and regional juridical bodies would promote harmony and unity of views among the different organizations and contribute to the codification and development of international law.

8. Mr. KLAFKOWSKI (Poland) said that a reading of the report of the International Law Commission (A/7610 and Corr.1) prompted his delegation to make two general comments.

² *Anglo-Iranian Oil Company Case (Jurisdiction), Judgment of July 22nd, 1952: I.C.J. Reports 1952, p. 93.*

¹ See A/CN.4/204, para. 74.

9. In the first place, the activities of the United Nations in the codification of international law were undertaken through the intermediary of several different organs. The General Assembly had adopted hundreds of resolutions on the subject of international law and had established the International Law Commission, as well as various legal committees on special subjects. The work of the International Court of Justice complemented that of the Commission and the other legal organs of the United Nations. The judges of the Court—twelve of whom had been members of the Commission—were usually distinguished professors of international law. In addition, the Office of Legal Affairs of the United Nations Secretariat produced extremely useful basic documents on various subjects. The Organization thus played the unique role of a centre for research, adapted to all the requirements of the progressive development and codification of international law, and for the co-ordination of the scientific work done all over the world.

10. In the second place, the success of the International Law Commission in the development and codification of international law was due to the high level of technical competence of its members, eminent jurists from different States. In its task of elaborating possible international law, it was assisted by the close co-operation which it maintained with a number of international juridical organs and centres of legal research, such as the Harvard Law School.

11. Turning to the four topics dealt with in the report of the Commission on its twenty-first session, he expressed the view that the Commission should, in the context of relations between States and international organizations, consider the legal status of missions of observers of non-member States to international organizations. At present, the number of such missions to the United Nations was unjustifiably limited to six, and certain States such as the German Democratic Republic were prevented from sending observers to the Organization. The scope of the Commission's study should be enlarged along those lines, in accordance with the principle of the universality of the United Nations.

12. The Commission had also done preliminary but very valuable work on the important topics of succession of States and Governments and State responsibility. Its report also briefly considered the most-favoured-nation clause, which the Commission had correctly decided not to deal with in the codification of the general law of treaties.

13. The Polish delegation shared the misgivings expressed at the twenty-third session concerning the extension of the terms of office of the members of the Commission, which would not serve the aims pursued by that organ.

14. Mr. ROSENNE (Israel) said that, although his delegation shared the views of the Chairman of the International Law Commission regarding the importance of preliminary work, it felt that such work should not be allowed to gain a momentum of its own and become self-perpetuating. Preliminary examinations could never take the place of concrete proposals. It was therefore regrettable that the Commission appeared to have held in 1969 a preliminary discussion on the subject of succession of States and Governments in respect of matters other than treaties which had been very largely a repetition of the one held in

1968 and had been based on a report considered by some members to be exceptionally controversial and inadequate. It was to be hoped that the Commission would carry out its intention of giving priority at its next session to the more important question of succession in respect of treaties. The Israel delegation reserved its position with regard to the final form of codification of those two aspects of the law and wished its reservation to appear in the Committee's report. It was encouraging to note that the Commission had started work on the topic of State responsibility and made further progress in its study of the most-favoured-nation clause.

15. In its draft articles on representatives of States to international organizations, the Commission seemed to be following too closely the provisions of the 1961 Vienna Convention on Diplomatic Relations. Yet the absence of certain key features of diplomatic privileges and immunities in the classic sense—the principle of reciprocity and the concepts of *agrément* and *persona non grata*—should lead to considerable refinement both in the enunciation of the rules as generalizations and in their application in concrete cases. In addition, the Commission gave the impression that the articles applied to all permanent missions irrespective of size and scope, whereas they could apply only to those which were comparable to normal diplomatic missions. The definition of a "permanent mission" given in draft article 1 (d)³ therefore seemed inadequate.

16. The statement in paragraph (5) of the Commission's general comments to the effect that the representative of a State to an international organization represented his State "before" the organization might be misleading. In fact, the representative represented his State *in* the organization and before any organization or personality as might be necessary in the performance of his duties. The member State was itself part and parcel of the organization and the organization was not something apart from its members. His delegation felt it would be better not to overplay the idea of the personification of international organizations.

17. The Commission should be a little more bold in recasting the material and departing from the structure and contents of the 1961 Vienna Convention, in order to simplify the presentation of the law. Articles 39 and 40, for example, were confused, when read after articles 30 to 38.

18. The articles drafted at the twenty-first session seemed to deal only with permanent missions of States other than the host State. The draft articles as a whole would, however, also cover the permanent mission of the host State itself, to which many of the articles adopted in 1968 applied. Furthermore, care should be taken not to disturb unnecessarily the existing practices of States and international organizations. His delegation agreed with the Commission that the subject-matter of article 39 should be dealt with in the draft articles themselves and not be relegated to an optional protocol.

19. The Israel delegation supported in principle the various recommendations made in chapter VI of the Commission's report and agreed that the Commission

³ See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9*, chapter II.

should have the possibility of holding an extended session in 1971. The actual decision on whether to hold an extended session should be made by the Commission itself in due course. For the 1970 session of the Seminar on International Law, the Israel Government would again offer a scholarship of \$1,000 for participants from the developing countries, on the conditions stated by his delegation at the 840th, 960th and 1035th meetings of the Sixth Committee.

20. With regard to the resolution relating to article 1 of the Vienna Convention on the Law of Treaties which the Committee had decided to discuss in connexion with the report of the International Law Commission, his delegation wished to reiterate the reservations it had formulated at the 1101st meeting of the Committee.

21. In his delegation's opinion, two difficulties arose in connexion with the resolution of the Vienna Conference. First, the resolution might be interpreted in such a way as to prejudice the result of the study it recommended. It was not certain that the instruments referred to in the resolution could properly be regarded as "treaties". That was a matter which related both to international law and to domestic law and in both contexts it raised extremely difficult and delicate questions. It might be asked whether it was legal statesmanship or an irrelevant search for legal perfectionism which inspired the desire to assimilate such agreements to treaties concluded between States. If the General Assembly decided to refer that question to the International Law Commission, as recommended by the Vienna Conference, it must be on the understanding that the Commission would be absolutely free to reach whatever conclusions it found appropriate.

22. Secondly, the suggestion that the International Law Commission should study the matter "in consultation with the principal international organizations" was ambiguously worded. The Commission could only act in accordance with its Statute and its usual practice, and it must be allowed complete freedom to decide at what stage it would wish to consult with such international organizations as it might find appropriate. Under its Statute, it was clear that the initiative in the matter of consultations with organizations normally rested with the Commission.

23. His delegation believed that, at the most, the question arising out of article 1 of the Vienna Convention on the Law of Treaties and the discussion thereon should be referred to the Commission for examination in the normal way and at such time as the Commission found appropriate in the light of its commitments, its existing work programme and the conclusions it reached in its proposed review of its long-term programme of work. He could not agree with the view expressed by some delegations that the study in question would lead to the completion of the codification of the law of treaties. It would be better if the fundamental differences between treaties in the sense of the Vienna Convention and agreements to which international organizations were parties were recognized from the start, and the proposed study should not try to force the new type of international agreement into the formal confines of the established law of treaties between States.

24. His delegation would like to draw the attention of the Secretariat to the question of the compatibility—or possible

incompatibility—of the rules of codified law contained in the Vienna Convention with existing practices sanctioned formally by decisions of the General Assembly regarding the exercise of depositary functions by the Secretary-General. In his delegation's view, close examination of the Vienna Convention on the Law of Treaties would be desirable in order to establish whether the existing practices and regulations needed to be modified in any way. The opportunity might also be taken to continue unifying as far as possible, and, of course, subject to the terms of individual treaties and the practices of different international organizations, as much administrative practice as was possible in the performance of depositary functions by the international secretariats.

25. Mr. SUCHARITKUL (Thailand) said that the presence at the current session of judges of the International Court of Justice augured well for the development of international law, since the Court should be given the opportunity to have direct access to the views of Governments. It was also gratifying that during the past decade the Sixth Committee had established itself as a respected organ of the General Assembly and had assumed a more active role, with the inclusion of more substantive items in its agenda. The Committee was now participating more directly in the process of the codification and progressive development of international law, and its consideration of the draft articles on special missions testified to the soundness of that new and encouraging trend.

26. From the report of the International Law Commission on the work of its twenty-first session, he received the impression that the Commission's work had greatly benefited from wider participation, especially that of the developing countries. The Commission's texts were now more likely to be representative of all the various viewpoints, and, above all, there was now a better opportunity for the views of Asia and Africa to be understood and their interests taken more fully into consideration.

27. He noted with satisfaction the Commission's adoption of twenty-nine additional draft articles, on representatives of States to international organizations. His delegation would submit detailed written comments on the text at an appropriate time. At present, he would merely observe that in his delegation's view the notion of the privileges and immunities of permanent missions to international organizations could not be based on anything other than the effective functioning of the mission itself. The theory of extra-territoriality had long been invalidated and should have no place in an analytical rationalization of the status of permanent missions.

28. The status of a permanent mission to an international organization was essentially different from that of a diplomatic mission, since the international organization was also involved as an interested party. One major difference between regular diplomatic missions and permanent missions to international organizations was the fact that a State might send a permanent mission to an international organization having headquarters in a host country with which the sending State had no diplomatic relations. A slight departure from the provisions of the Vienna Convention on Diplomatic Relations was therefore necessary. However, although in theory permanent missions of States

to the United Nations had a status different from that of diplomatic missions accredited to Washington, it should be noted that for all practical purposes the two enjoyed an almost identical status. Moreover, the process of total assimilation had been achieved in certain instances. In the case of the Economic Commission for Asia and the Far East (ECAFE) at Bangkok, the names of the permanent representatives or the liaison officers had been included in the diplomatic list. Again, in the case of other States members of ECAFE and the States members of the South East Asia Treaty Organization, the diplomatic missions of those States were assigned the additional responsibilities of permanent missions to the organizations in question.

29. His delegation believed that the matter could best be regulated by specific agreements between the host country and the international organization concerned, so that the privileges and immunities of the permanent mission would correspond to its functional needs in each case. The problem was further complicated in the event of the extension of such status to cover international meetings and seminars organized in member countries other than the host country. Again, it was the basic duty of the international organization to ensure that a minimum standard was met by the member country in which a particular meeting was held.

30. Care should be taken in elaborating the various exemptions. The immunities under consideration were purely procedural in character and, as such, could be waived with proper authorization from the sending State. Thus, there could be no absolute immunity even from the jurisdiction of the host country, let alone immunity from substantive law. Draft article 39, in particular, required further refinement. Draft article 42, concerning the duration of privileges and immunities, was based on the corresponding provision of the Vienna Convention on Diplomatic Relations, which had given rise to some difficulties regarding motor accident cases. Speaking on behalf of a country which acted as host to a number of international organizations, he felt obliged to state that that problem could best be solved either by a general waiver or, initially, by the international organization itself not only requiring its personnel but also recommending its accredited representatives to take out third-party insurance to assume primary liability and responsibility for damages resulting from motor accidents. Draft articles 45 and 46 provided a clear illustration of the restrictive character of immunities as enjoyed by representatives accredited to international organizations.

31. He noted with satisfaction the progress made in the Commission's work on the succession of States and Governments. So far as succession in respect of treaties was concerned, his delegation entertained grave doubts regarding the existing norms of international law in that area. It was important to draw a distinction between the various types of treaty, between the *traité-loi* and the *traité-contrat* and between bilateral treaties and multilateral treaties, because the succession process might be different in each case. It was essential that account should be taken of the interests of new States. His delegation remained unconvinced with regard to the distinction between dispositive and non-dispositive treaties and between real or territorial and personal or political treaties and reserved its position on that point.

32. Three parties were involved in the question of succession in respect of treaties: the process must be initiated by the predecessor State, the successor State must express willingness to accept the obligations and rights to be passed on to it, and the consent of the other contracting party must also be obtained.

33. With regard to succession in respect of matters other than treaties, it was important to assert that the successor State could not succeed to rights and obligations more extensive than those of the predecessor State. As was made clear in the General Assembly resolutions on the permanent sovereignty of States over natural resources, the right of the successor State could not override the principle of permanent sovereignty over natural resources, which was of especial importance to developing countries.

34. It was gratifying to note the progress that had been made in the Commission's work on State responsibility and the most-favoured-nation clause. The latter topic had assumed increasing importance during the first United Nations Development Decade. He approved in that connexion the recommendation of the Institute of International Law that the most-favoured-nation clause should not be invoked against the interests of the developing countries in their regional co-operation efforts. In the Thai Government's present treaty practice, the most-favoured-nation clause was replaced by a non-discriminatory-treatment clause, and in respect of the latter also a generally accepted exception was made in respect of regional economic co-operation.

35. He noted with satisfaction the Commission's co-operation with the Asian-African Legal Consultative Committee and felt that the Sixth Committee should recommend that such co-operation should be continued. The Commission's Seminar on International Law was of great benefit to the new developing countries and should likewise be continued. His delegation was not convinced at the present time that the term of office of the members of the Commission should be extended. What was required was wider participation based on a rotation system and taking into account the need for continuity.

36. His delegation had no objection to the recommendation made in the resolution of the Vienna Conference relating to article 1 of the Vienna Convention on the Law of Treaties, it being understood that endorsement of that resolution would in no way impair the Commission's freedom to deal with the matter as it saw fit.

37. Mr. PETRÁN (Hungary) congratulated the International Law Commission and its Special Rapporteur, Mr. El-Erian, on the twenty-nine new draft articles on representatives of States to international organizations, which, with the twenty-one previously approved, formed an excellent basis for the proposed convention on the subject. His Government would study the articles very carefully and give its views on them in due course. With respect to article 25, however, concerning the inviolability of the premises of the permanent mission, he had serious misgivings about the third sentence of paragraph 1; the sentence would weaken the established principle of inviolability by its vague formulation and liability to be misunderstood.

38. Turning to chapter III of the report, on the succession of States and Governments, he commended the work of the

Special Rapporteur and said that his delegation awaited his next report with great interest. The completion of the study was not merely of theoretical value, but had great practical importance for young States and the developing countries, as it would enable them to benefit fully from their natural resources and wealth.

39. Progress had also been made on the complex question of State responsibility, which was very important for international co-operation. His delegation was now awaiting the first set of draft articles which the Commission had asked its Special Rapporteur to submit. Work on the question of the most-favoured-nation clause had also progressed, and it was gratifying to him that the Special Rapporteur for the topic was a fellow citizen of Hungary and that his reports had been widely commended.

40. Like the delegations of the Soviet Union and the Byelorussian SSR, his delegation questioned the need to extend the terms of office of the members of the Commission and to hold a winter session or an extended summer session in 1971. The difficulties referred to by the Commission should be overcome by better preparation and organization of work. He welcomed the Commission's intention to bring its long-term work programme up to date in 1970 or 1971, taking into account the General Assembly recommendations and the international community's current needs, and he awaited with great interest the working paper for which the Secretary-General had been asked. He hoped that in preparing that paper the Secretariat would take into account not only the past work of the Commission and the urgency and importance of the questions to be covered, but also the fact that with the emergence of new States in the international community new international problems had been created and those problems must be given priority.

41. The Committee had decided to consider the Vienna Convention on the Law of Treaties at the same time as the Commission's report, and for the sake of future international co-operation he hoped that a detailed study and a judicious settlement would follow.

42. The liaison and consultation that had taken place between the Commission and the juridical bodies referred to in chapter VI of the Commission's report were to be welcomed. His delegation was gratified to note the success of the fifth session of the Seminar on International Law, which had been held in 1969 at no cost to the United Nations. The index of the Commission's main documents that the United Nations Library at Geneva was preparing would be most useful for practising and academic jurists throughout the world.

43. In conclusion, his delegation considered that the report of the International Law Commission once again bore out the fact that since its establishment the Commission had been making a positive contribution to the progressive development and codification of international law and helping to implement Article 13 of the United Nations Charter. His delegation approved the report.

44. Mr. MARTINEZ MORENO (El Salvador) welcomed the approval by the Commission of the twenty-nine new draft articles on representatives of States to international

organizations. The only article that his delegation could not entirely accept was article 32, paragraph 1 of which ought to go into greater detail. The reference to immunity from civil and administrative jurisdiction ought to include specifically immunity in labour and trade matters, since otherwise representatives might be held subject to the jurisdiction of the host State with regard to breaches of employment contracts and dismissals. Concerning article 50, his delegation shared the view of the Netherlands representative (1104th meeting) regarding the consultations to be held with respect to both the application and the interpretation of the articles.

45. Turning to the question of the succession of States and Governments, he said that his delegation recognized the difficulties facing the Commission and believed that it had rightly decided to commence with a study of public property and public debts. However, it should not fail, at a later stage, to deal with the problem of acquired rights. In the course of the study on public debts, he hoped that the Drago doctrine, which was one of Latin America's great contributions to world law, would be reaffirmed. Its prohibition against the compulsory collection of public debts had been recognized as early as 1907 at the Second Hague Peace Conference.

46. His delegation was gratified that the Commission was preparing preliminary drafts of articles concerning State responsibility, based on the liability of States for violations of the rules of international law. It was also gratifying that the Commission had agreed that the second stage of its work would be to determine the consequences of charging a State with the commission of an unlawful international act and to define the various forms and degrees of responsibility. Because of the numerous violations of the human rights of Salvadoreans abroad committed in recent months, his Government was anxious to see the conclusion of a convention establishing the fundamental principles of State responsibility and setting up effective reparations machinery.

47. Turning to the Commission's programme of work, he wondered whether it was appropriate for the Commission to commence the study of new items before it had concluded items already on its agenda. In his view, it should concentrate on the topics of greatest practical importance, such as the law of State development and community law, which were so vital today in the light of the economic and social development problems of the non-industrialized countries and the present trend towards economic integration. Another topic which had not been fully studied under the law of treaties was that of conflicts between treaties and domestic law, especially national constitutions. In Latin American countries, the national constitution was held to take precedence in any conflicts. Since both the International Court of Justice and the European Economic Community Court of Justice, in the well-known Costa case, had upheld the primacy of international law over domestic law, it was vital that the problem should be studied in the light of principles of universal validity such as the fundamental principle of the juridical equality of States.

48. His delegation hoped that the fifth session of the Seminar on International Law would be followed by many more, and urged the industrialized countries to award more

scholarships, so as to enable young people from the developing countries to improve their knowledge of international law.

49. With regard to the proposed extension of the term of office of members of the Commission, his delegation, while recognizing the need to maintain continuity in the Commission's work, had objections of principle; it was important that more States should have the opportunity to contribute to the development of international law. The term of office should remain five years.

50. Mr. VANDERPUYE (Ghana), referring to chapter II of the report, approved of the decision to transmit the draft articles on representatives of States to international organizations to Governments. His Government would make detailed comments at a later stage, but, in the meantime, he wished to indicate his support for the controversial subparagraph (d) in paragraph 1 of article 32, which appeared at present in square brackets. The purpose of immunity was to enable diplomats to perform their functions without obstruction, but the practice had evolved at a time when the lethal capability of moving vehicles was unforeseeable. In the present circumstances, he favoured the existence of a right of redress, and would have liked the clause to apply to all diplomatic vehicles at all times. The text should be so drafted as not to allow insurance companies to evade liability in cases of accidents in which diplomatic vehicles were involved.

51. For humanitarian reasons, his delegation also approved of article 25, subject only to proper safeguards being

incorporated to prevent the provision from being abused and to ensure that the agents of host Governments did not enter the residences of permanent representatives without good reason.

52. On the subject of the succession of States and Governments, he praised the radical yet progressive approach adopted by the Special Rapporteur. Like the representative of the Netherlands, he supported the view that the notion of unjust enrichment was impracticable in the context of decolonization. The doctrine of acquired rights should not be used as a cloak to allow the colonialists to continue their activities and to prevent the developing countries from enjoying full sovereignty. On the other hand, the developing countries urgently needed capital aid, and there was therefore a strong case for working out an equitable arrangement with regard to compensation.

53. For the reasons advanced by the representative of the Byelorussian SSR, his delegation was opposed to an extension of the term of office of members of the Commission. Only 45 of the 126 States Members of the United Nations had so far been represented on the Commission, and an extension of the term would mean that more time would elapse before the other 81 countries could be represented.

54. As one of the beneficiaries, Ghana hoped that the fifth session of the Seminar on International Law would not be the last. The Seminar had proved to be extremely valuable.

The meeting rose at 12.55 p.m.