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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. YASSEEN (Iraq) said that the Sixth Committee's discussions on the reports of the International Law Commission were an important stage in the progressive development and codification of international law because they enabled members of the Committee to collaborate with the legal experts elected to the Commission by the General Assembly. The debates in the Sixth Committee on the Commission's work would surely provide a source of inspiration for the Commission and guide its efforts to find solutions to the various legal problems before it. From the discussion in the General Assembly would emerge trends and ideas that could gain the general support of the international community.

2. Recalling the visit of the President of the International Court of Justice to the Commission, he said that the relations between the International Court of Justice and the International Law Commission were a source of great satisfaction for his delegation and reflected the functional ties between the two organs. The Court cited the work of the Commission in its judgements; and the Commission had often been able to find, in the judgements of the Court, the most suitable language for formulating existing rules of law. The news that relations were continuing between the Commission and the Asian-African Legal Consultative Committee, the European Committee on Legal Co-ope-

ration and the Inter-American Juridical Committee was also welcome, for such relations would undoubtedly help to promote understanding.

3. The fifth session of the Seminar on International Law, which had been held at Geneva simultaneously with the Commission's twenty-first session, had enabled members of the Commission to have very valuable exchanges of views with the younger generation of jurists, whose fresh thinking could promote the progressive development of international law. The Seminar should certainly be continued.

4. His delegation supported the proposal that the term of office of members of the Commission should be extended to seven years. The proposal was justified by the very nature of the codification process and the method of work envisaged in the Commission's Statute. After preliminary discussion of a particular topic, the Commission appointed a rapporteur, who in turn produced draft articles. The articles were then considered by the Commission on first reading, before being submitted to the General Assembly. The next stage was for States to comment on the draft articles, and the Commission then produced a final text taking into account the comments of Governments. In view of the length of the process, which was after all necessary, continuity of membership—and consequently a longer term of office—was important.

5. With regard to the recommendation made by the Vienna 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 considered that, since there was now an increasing tendency for international organizations to become parties to international conventions, the General Assembly should comply with the recommendation. He had only one reservation: the inclusion of that question in the Commission's agenda should not alter the order of priority already established by the Commission itself, particularly with regard to the questions of the succession of States and Governments and of State responsibility.

6. Turning to the draft articles on representatives of States to international organizations, he said that the Special Rapporteur and the Commission were to be commended for their efforts to achieve acceptable solutions, which would strike a balance between the interests of the sending State, the host State and the international organization itself, on the basis of the relevant precedents and particularly of the Vienna Conventions on Diplomatic and Consular Relations and the draft articles on special missions. Two points caused him particular satisfaction. First, the exemption of the members of the mission from laws

concerning acquisition of nationality was not relegated to an optional protocol, as in the case of the Vienna Convention on Diplomatic Relations, but was included in a special article of the draft—article 39. Secondly, he welcomed the adoption of the system of tripartite consultations envisaged in draft article 50. A flexible approach should be adopted to questions that might arise in the application of the articles, and tripartite consultations between the host State, the sending State and the international organization would often make it possible to dispose of many disputes in a simple manner.

7. The draft articles should, of course, be communicated to international organizations and to host States even if, like Switzerland, they were not Members of the United Nations. His delegation agreed with the Commission that the draft being prepared should include articles on observers from non-member States to international organizations and delegations of such States to sessions of organs of international organizations. On the other hand, his delegation thought that the draft articles need not deal with delegations to conferences; a conference was a sovereign body, whether convened by an international organization or by a State, and it was therefore to be hoped that the Commission would reconsider its provisional decision in that regard.

8. Chapter III of the report on the succession of States and Governments was an accurate reflection of the Commission's discussions, in which many different views had been expressed. His delegation was glad that the Commission favoured the adoption of an empirical method for the codification of succession in economic and financial matters, and that the Special Rapporteur intended to deal with public property and public debts in the next report. It believed that in cases of succession arising out of a former colonial situation, solutions should be sought that favoured the economic development of the emancipated people. The colonial Powers had special responsibilities as predecessor States, and should therefore assume obligations greater than those normally assumed in cases of succession.

9. With regard to State responsibility, his delegation endorsed the method adopted by the Commission. First, of course, the general theory of responsibility should be defined; a definite distinction should be made between the fundamental rules and the rules actually governing the process of responsibility. The distinction had to be drawn, because the study of all the fundamental rules and actual international obligations would cover the entire field of international law. The Commission should naturally not disregard certain particular features of the application of the general theory of responsibility in certain areas of international relations. It should, however, formulate general principles and then consider whether their implementation presented particular features in certain areas of international relations. One area in which the application of the general theory of responsibility might assume particular characteristics was the violation of peace, which was of vital importance to the international community. In his view, the so-called responsibility for risk should be included in a general study of State responsibility; however, he would have no objection if consideration of that question were to be postponed to a later stage in the Commission's work.

10. With regard to the most-favoured-nation clause, the Special Rapporteur had submitted to the Commission a useful report containing a history of the question up to the Second World War.¹ He agreed with the view expressed by the Commission that it should in its deliberations focus on the legal character of the clause and the legal conditions governing its application and that it should clarify the scope and effect of the clause as a legal institution, with reference to its various applications. He wished, however, to emphasize that the Commission should also take into consideration new developments and transformations in international economic relations, when studying specific features of the clause, its unconditional nature and the scope of its effects. Likewise, it should ensure that the application of the clause would in no way prejudice the struggle for development or hamper the movement of economic integration. In that connexion, he drew attention to the resolution adopted on 10 September 1969 by the Institute of International Law at its session held at Edinburgh, which stressed the importance of the following points with regard to the most-favoured-nation clause in multilateral trade agreements: first, that the clause should not preclude the establishment of preferential treatment for developing countries by means of a general system of preferences based on objective criteria; secondly, that States benefiting from the clause should not be permitted to invoke it in order to claim treatment identical with that enjoyed by States participating in regional integration systems, and thirdly, that the option to derogate from the clause should be linked to adequate institutional and procedural guarantees, such as those provided under a multilateral system.

11. The Commission might contact interested international organs, such as the United Nations Conference on Trade and Development, with a view to obtaining information about recent developments in international practice.

12. Mr. HOUBEN (Netherlands) said that, after the President of the International Court of Justice, Mr. Bustamante, had visited the International Law Commission at its 1969 summer session at Geneva, the attendance of four distinguished judges at the meetings of the Commission to hear the discussions on items with which it was dealing was another token of the close relationship between the Court and the Commission for the purpose of furthering international law.

13. Since the International Law Commission had only just started discussing the topic of State responsibility, his delegation would comment at a later stage in the Commission's work on the manner in which that body proposed to codify the topic.

14. With regard to the topic of the succession of States and Governments, most members of the Commission shared the opinion of the Special Rapporteur that the notion of unjust enrichment was impracticable in the context of decolonization. The Netherlands member of the Commission had expressed the view at the Commission's 1003rd meeting that decolonization was not comparable to other cases of State succession, and had explained why the antithesis between nationals and aliens with regard to acquired rights was no longer absolute and why acquired

¹ A/CN.4/213.

rights themselves could not be regarded as absolute. It would be paradoxical if a change of sovereignty were to enhance the sanctity and permanence of acquired rights. The problem could hardly be approached from the standpoint that the newly independent State had been enriched by the fact that it had acquired all the wealth in question. In other United Nations bodies, an attempt was being made to evolve principles of co-operation, on the assumption that all peoples were entitled to an equitable share in economic and social progress, and the Netherlands delegation had put forward the idea of a development charter. From that point of view, the enrichment of new States should be welcomed rather than discouraged.

15. The draft articles prepared by the Commission on the subject of representatives of States to international organizations followed closely the corresponding provisions of the Vienna Convention on Diplomatic Relations. Almost all the departures made from those provisions had been necessitated by the fact that the concepts of reciprocity, *persona non grata* and *agrément* were not applicable to the triangular relationship between sending State, host State and international organization.

16. The Netherlands delegation favoured the retention of sub-paragraph 1 (*d*) in draft article 32. Indeed, it thought that the exception to immunity from jurisdiction should apply to accidents caused by a vehicle used in the performance of the official functions of the person in question, as well as to those caused by a vehicle used outside his official functions. It had previously tried to amend article 31 of the Vienna Convention on Diplomatic Relations, because it felt that the rules on diplomatic intercourse and immunities should not leave private victims of car accidents without any redress. Similarly, it had sought to enlarge the scope of article 31, paragraph 2 (*d*), of the Draft Convention on Special Missions.

17. Article 50 of the draft prepared by the Commission referred to consultations between the sending State, the host State and the organization concerning the application of the articles, but did not specify how questions concerning the interpretation of the articles were to be resolved. Moreover, in cases involving either the application or the interpretation of the articles, legal disputes on well-defined rules might arise. It therefore seemed necessary to provide for some kind of third-party settlement.

18. With regard to the future programme of work of the Commission, the Netherlands delegation hoped that the General Assembly would follow the recommendation made by the United Nations Conference on the Law of Treaties and refer to the Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations.

19. The Commission should also include in its programme a study of the proposal made by Mr. Ago in his report concerning the desirability of expediting the process of ratification of or accession to codification conventions, in order to shorten the final stage of the codification of international law.² That proposal could help to strengthen the rule of law in the international community, especially if

the Commission took as its starting-point the view expressed by Mr. Ago that the reasons why a State delayed transmission of the instrument formally establishing its consent were mainly inherent in the inertia of the political and administrative machinery of the modern State. Two main conclusions on that subject could be drawn from a recent study by UNITAR on the wider acceptance of multilateral treaties.³ First, delay in acceptance or non-acceptance of treaties often resulted not from deliberate decision on the part of Governments but from circumstances extraneous to the substance of the treaties. Secondly, although United Nations promotional efforts had helped to achieve a relatively higher rate of acceptance, additional international and national measures could be devised to foster interest in and accession to such treaties. The cause of the codification and development of international law could therefore be furthered by recommendations from the Commission designed to remove the factors hindering acceptance of codification conventions or at least reduce their impact.

20. On the occasion of the twenty-fifth anniversary of the United Nations, the Secretariat should make a special effort to bring the United Nations *Treaty Series* up to date. Although the task of registering, translating and publishing every treaty and international agreement concluded by any Member State was naturally very time-consuming, it should be possible—within the limits of the present budget—to ensure the publication of treaties and agreements within one year of their submission.

21. In the report under consideration, the Commission gave no additional arguments in support of its proposal that the term of office of its members be extended from five to seven years. The Netherlands delegation therefore maintained its opposition to that proposal, as stated at the twenty-third session of the General Assembly (1032nd meeting).

22. His delegation welcomed the organization, during the twenty-first session of the Commission, of the fifth session of the Seminar on International Law. The Netherlands Government had provided a scholarship for a participant from a developing country and had decided, in accordance with the Commission's recommendation, to grant a new scholarship to the amount of \$1,500 to enable a participant from a developing country to take part in the next session.

23. In conclusion, he expressed his delegation's appreciation of the valuable work done by the International Law Commission.

24. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that the report of the International Law Commission showed that the Commission had done some positive work during its twenty-first session. It had approved twenty-nine new draft articles on representatives of States to international organizations, and he noted with satisfaction that those articles were based not only on the norms of contemporary international law as embodied in the Vienna Convention on Diplomatic Relations but also on

² See A/CN.4/205/Rev.1.

³ United Nations Institute for Training and Research, *Wider Acceptance of Multilateral Treaties* (New York, 1969), UNITAR Series No. 2.

new elements of international law reflecting the specific activity of permanent representatives to international organizations.

25. In view of the Commission's decision to transmit the draft articles, through the Secretary-General of the United Nations, to Governments for their comments, his delegation wished at the present stage merely to make some preliminary observations.

26. Some of the draft articles could be improved upon. For example, the provisions of draft article 25, paragraph 1, were completely inconsistent; while the first sentence stated that the premises of permanent missions should be inviolable, the third sentence provided that the agents of the host State might enter such premises in case of fire or other disaster. The third part of the paragraph should be deleted, so that the inviolability of the premises of permanent missions would be unconditional.

27. With regard to draft article 44, he was pleased to note that the Commission intended to remove it to the end of the Convention, but felt that it should perhaps be reworded to read: "In the application of the provisions of the present articles, there shall be no discrimination against any State".

28. In draft article 47, a new sub-paragraph (c) reading "in case of death" should be added, since a similar provision was included in draft article 42.

29. He emphasized that the final draft articles should take into account the view expressed by the Commission that, while the representatives of States to an international organization were accredited to the international organization, they were usually resident in the host State and must therefore for the exercise of their functions receive

the privileges and immunities which the host State accorded to diplomatic envoys accredited to it.

30. He regretted that the Commission had made no significant progress in its consideration of the question of the succession of States and Governments—an item which had been on its agenda since 1962—or of the question of State responsibility. He ventured to hope that in its future work on those questions, the Commission would take into account the progressive principles of contemporary international law and the relevant resolutions of the General Assembly which recognized the right of all peoples freely to select their own political and economic system. He hoped too that it would bear in mind the economic, financial and other rights of countries which had attained their independence.

31. His delegation was unable to accept the Commission's proposal that the term of office of its members should be extended to seven years. The existing procedure for the election of members of the Commission for a term of five years was fully satisfactory, and had led to broader participation of countries in the work of the Commission. During the twenty years of the Commission's existence, members had been elected from 45 out of the 126 Member States. If the term of office of members of the Commission were extended to seven years, the chances of participating in the Commission's work would be even further reduced for many States.

32. His delegation was also opposed to the suggestion for holding an additional session of the Commission in 1971. That suggestion would involve considerable additional expenditure and there was in fact no need for an extra session. If the Commission tackled its work more efficiently, the regular sessions would suffice.

The meeting rose at 12.40 p.m.