1491st meeting

Monday, 4 November 1974, at 11.00 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1491

Tribute to the memory of Mr. P. E. Nedbailo

At the invitiation of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. P. E. Nedbailo, former representative of the Ukrainian SSR to the Sixth Committee.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) observed that because of the large number of questions on its agenda the International Law Commission had been unable to consider the problems raised by the succession of States other than in respect of treaties and by the most-favoured-nation clause.

2. The Commission had studied the question of the succession of States in respect of treaties for more than 20 years and it was a problem of immediate interest for all the new States which had appeared during that period of time. It was now a matter of urgency to complete that work. The draft articles submitted to the Sixth Committee (see A/9610, chap. II, sect. D) reflected the attention given to many aspects of the question such as the right of peoples to self-determination. It also showed the many analogies with the provisions of the Vienna Convention on the Law of Treaties.

3. The two fundamental concepts of the succession of States and of newly independent States should be unambiguously defined. The succession of States was the replacement of one State by another in the responsibility for the international relations of the territory. That succession was valid for all international relations and not only in respect of treaties; it also applied to all types of new States. Moreover, a newly independent State was a State whose territory had not been autonomous before succession and whose international relations had formerly been directed by another State. The concept therefore included all forms of accession to independence. The text of the draft clearly specified that the articles applied only to the effects of a succession of States occurring in conformity with international law, so that cases of aggression or occupation were excluded.

4. The Commission had ignored certain aspects of contemporary reality; for example, it had not stated its opinion on the elimination of certain colonial régimes. Nor had it tackled the question of the succession of States in cases of social revolution. That type of situation could constitute decolonization as the change of régime fundamentally modified the status of a subject of international law, and the new State must be able to reconsider its international relations. That was the road which the Soviet Union had followed after the revolution in October 1917 when it had annulled the treaties concluded by czarist Russia which were contrary to the interests of the workers. Other countries had found or would find themselves in the same situation and those countries must be able to make a free choice of the obligations which they wished to assume.

5. In its report the Commission sometimes rightly made a distinction between States and international organizations in respect of international law; but, in other cases, it seemed to make no such distinction. However, there was no doubt that the status of a subject of international law was not the same for States and for organizations. For example, in paragraph (4) of its commentary to article 32, the Commission seemed to consider the European Economic Community (EEC) as a community of States with the status of a subject of international law. However, the EEC was not a single State but an association of States, i.e. an international organization. In its studies of practice relating to treaties the Commission should have preferably confined itself to the institutions of the United Nations system.

6. The preparation of the draft should be completed by referring it to States for their views and thereafter resubmitting it to the Sixth Committee for a decision.

7. The work of the Commission on the responsibility of States was progressing slowly. Two comments could be made. Firstly, a State should be responsible for the actions of any institution on its territory, whether it was an organ of the State or any other kind of institution. The basis of such an affirmation was that a State could and should exercise its authority over any institution under its jurisdiction. It should also be determined which institutions were State organs. The examination of the constitution of a particular State should make that clear, as it indicated who could exercise the prerogatives of public power. There was no doubt that the study of those two aspects would bring

out more clearly the dimensions of the responsibility of States.

8. It was necessary to distinguish clearly between civil responsibility and State responsibility as such. It was also necessary to define the legal status of the acts of State organs. In some cases certain functions were temporarily entrusted to a body which was not a State organ but whose activity should nevertheless entail the responsibility of the State. In its report, the Commission appeared to approve such a distinction and to exclude the responsibility of the State when the damaging act was the work of a private law entity. That attitude was untenable because the State was indisputably responsible for the activities of its nationals when they violated international law and, more particularly, the Charter of the United Nations. A State was failing in its responsibilities if it did not prevent its nationals from engaging in illegal activities. Thus, for example, if the press or radio of the private sector conducted a racist campaign in a country, under the pretext of the freedom of speech, international law was being violated and therefore the responsibility of the State was involved.

9. In elaborating law on the responsibility of States, the Commission should take into account different types of actions such as crimes against peace, war crimes and crimes against humanity. The international instruments confirmed that need. The responsibility of States deriving from the nature of sanctions and the scope of international responsibility should also be studied. His delegation considered that it would have been easier to approve the draft on the responsibility of States if from the start it had been submitted as a whole rather than in successive parts.

10. On the subject of treaties concluded between States and international organizations or between two or more international organizations, his delegation stressed that the basis of the capacity of international organizations to conclude treaties lay in the relations which existed between the institutions of the United Nations system and the United Nations itself. The Commission did not seem to have paid sufficient attention to the question of whether the greater latitude allowed to international organizations in the conclusion of agreements or treaties was liable to lead to the establishment of conventional relations with racist régimes under instruments which would therefore be contrary to the Charter and to the interests of the international community.

11. The Commission felt that the tempo and nature of its work made it necessary to extend its twenty-seventh session from 10 to 12 weeks. His delegation was aware of the important work accomplished by the Commission. However, it did not believe that an extended session would suffice to enable the Commission to complete the work undertaken on the various items on its agenda. It could not accept the tendency, which it noted each year, to prolong sessions.

12. On the occasion of the twenty-fifth anniversary of the Commission, his delegation recalled that body's contribution to the codification of contemporary international law. If hoped that the Commission would be able to work more expeditiously in the future on the elaboration of instruments favourable to the progress of juridical rules which all States and all international organizations could apply effectively. The Commission must carry out more promptly the tasks assigned to it, by maintaining closer contact with Governments and by taking account of the opinions expressed by delegations to the General Assembly. Better co-ordination of the Commission's activities and related work by other United Nations bodies was also necessary.

13. His delegation approved as a whole the report submitted to the General Assembly.

14. Mr. JAZIĆ (Yugoslavia) said that he was gratified that the Commission had adopted and submitted to the General Assembly a final draft of articles on the succession of States in respect of treaties. It went without saying that the draft submitted called for detailed study by Governments, and his own Government would submit its views on the subject in due course. He therefore proposed to outline his delegation's general impressions, without prejudging the final position of his Government. A number of problems which had merely been touched upon in the original draft had been dealt with in a more detailed manner in the new draft articles, and in that regard he wished to lay stress on the role played by the Special Rapporteur, Sir Francis Vallat.

15. In elaborating the draft articles, the Commission had proceeded from two points of view: from the general law of treaties or from the Vienna Convention on the Law of Treaties, and from the various aspects that succession in respect of international treaties might acquire in practice. The Commission had endeavoured to implement the Vienna Convention as consistently as possible and had largely succeeded in doing so. Furthermore, it had elaborated more thoroughly the rules concerning succession through the uniting or separation of States. However, the question of succession of newly independent States in respect of international treaties continued to be at the centre of the discussions, since the liquidation of colonialism had made it necessary to adopt rules in that sphere. The Commission had based itself on the "clean slate" principle, which was in conformity with the principle of self-determination and applied fully to newly independent States, which was not the case of the principle of continuity *de jure*. His delegation welcomed the solution adopted by the Commission, as it saw in it a confirmation of the right of peoples to self-determination as a fundamental principle of contemporary international law in general. By the same token, taking into account the conditions in which devolution agreements had been concluded, especially in the case of newly independent States, the rules envisaged in article 8 relating to agreements transferring devolution of obligations or of treaty rights from a predecessor State, seemed to be fully justified. The rules concerning uniting and separation of States which established the principle of continuity, had been elaborated in greater detail than in the first draft articles,[1] which might have conveyed the impression that the Commission had been concerned primarily with the situation of newly independent States, which was now no longer the case.

1 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

16. The draft articles could serve as a basis for the elaboration of a convention by an international conference of plenipotentiaries, and his delegation supported the recommendation by the Commission in paragraph 84 of the report in which it suggested that the General Assembly should invite Member States to submit their written comments and to convene a conference of plenipotentiaries.

17. Turning to the question of State responsibility, he welcomed the additional articles adopted by the Commission (*ibid.*, chap. III, sect. B). The current level of development of international relations made it imperative to accelerate the elaboration of rules in that regard. Moreover, the General Assembly had underscored that need in resolution 3071 (XXVIII), and it would be useful if the Commission could place before the Sixth Committee a number of more important articles, to enable it to form a clearer picture of the question.

18. With regard to the question of treaties concluded between States and international organizations or between two or more international organizations, he stressed the need to elaborate uniform draft rules, since the conclusion of treaties between States and international organizations and between international organizations themselves had become a normal practice in international life which called for a uniform solution. The United Nations itself needed to base itself on precise rules for the conclusion of treaties with States and other organizations. Since the Commission was merely embarking upon its work on the question, it would be premature to comment on the draft articles which it had adopted (*ibid.*, chap. IV, sect. B). However, his delegation commended it for linking the Vienna Convention on the Law of Treaties with its own work, which should consequently be facilitated. The Commission would have, in the future, to solve other extremely complex questions, such as those which were raised by the consideration of the capacity of international organizations to conclude international treaties and which the Commission had been able to resolve satisfactorily in article 6.

19. Turning to the problem of the law of non-navigational uses of international watercourses, he commended the Commission for its promptness in complying with the recommendation made at its preceding session by the Sixth Committee. The Sub-Committee set up by the Commission for the study of that question had revealed the complexity of the problem and shown the need to elaborate rules which would take into account not only legal aspects, but also geographical, technical and other aspects. His Government would carefully study the questions which the Commission would address to Governments on that subject.

20. His delegation wished to emphasize once again the importance of the Commission's work and to assure it of its support. The questions raised in relation to its methods of work should be viewed in the light of the results of its work. In order to contribute towards the progressive development of international law and its codification, as envisaged in Article 13, paragraph 1 *(a)*, of the Charter of the United Nations, the Commission should be able to continue its work in accordance with the methods and practices which had produced notable results in the past. For that reason, his delegation agreed with the view expressed by Mr. Ustor, the Chairman of the Commission (1484th meeting), that the role which the Commission, as a body composed of experts serving in a personal capacity, should play both within the United Nations and in the preparatory stage of the work on the codification and progressive development of international law. From the point of view of States, the doubts occasionally expressed with regard to that work were not justified, bearing in mind the Commission's contribution in strengthening respect for international law and in promoting application of the principles of the United Nations.

21. With reference to the long-term programme of work and the organization of the work of the next session of the Commission his delegation shared the views set forth in paragraphs 162, 163 and 164 of the report, while stressing that the Commission should give high priority to the question of the succession of States in respect of matters other than treaties in order to complete its work on the question of succession as a whole. His delegation also supported the proposal that the Commission should hold 12-week sessions, since it could thereby fulfil the tasks entrusted to it more easily. As in the past, the Commission had continued to co-operate with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, and it should further strengthen its relations with those bodies in future.

22. His delegation wished to thank the Commission for having devoted a meeting to the memory of Mr. Milan Bartoš, and having named after him the International Law Seminar which had been held during its twenty-sixth session.

23. Mr. ORREGO (Chile) said that the Commission had achieved its most important results in the field of the succession of States in respect of treaties. Owing to the remarkable studies made by Sir Humphrey Waldock and Sir Francis Vallat, the Commission had been able to complete its consideration of that very complex question. His delegation noted with satisfaction that the draft articles had as a general rule been based on the "clean slate" principle. Moreover, the draft also took into account the interest of the international community in facilitating the accession of a successor State to international treaties concerning it, especially in the case of multilateral treaties. The President of the Commission had drawn to the attention of the members of the Sixth Committee the problem of multilateral treaties of universal character, for which a different solution had been proposed, aimed at ensuring continuity of accession unless otherwise decided by the State concerned. But there remained a need to define exactly what was meant by multilateral treaties of universal character, since the lack of a definition could give rise to interpretations inconsistent with the "clean slate" principle.

24. His delegation also welcomed the progress made in the field of State responsibility, treaties concluded between States and international organizations or between two or more international organizations, and the law relating to non-navigational uses of international watercourses. Mention should be made of the great usefulness of the reference documents prepared by the Secretariat and those of the

legal department of the Organization of American States, since they represented an important source of information for the study in question.

25. With reference to the role of the Commission in the process of codification and the progressive development of international law, his delegation wished to express its concern at the fact that the Commission had focused its attention in the past few years on problems in the field of traditional international law. Despite their importance, there was little connexion between those problems and the questions currently facing the international community, and in particular the developing countries. The problems of the law of the sea or the law relating to outer space, the legal problems raised by the activities of multinational companies, both private and public, standards for the prevention of pollution or the improvement of the quality of the environment, and the problems of trade, development and international investments required international regulations. That was why it must be noted that the programme of the Commission had been incomplete. Some of those questions were under consideration by other United Nations bodies, but in most cases they were not dealt with from the point of view of international law. Thus, the Commission had considered the question of the most-favoured-nation clause, but he wondered why it had not also studied other principles, mechanisms and institutions of the international commercial system. In that connexion, the representative of Guatemala had made some interesting observations at the previous meeting. Agreements among producers, agreements on basic commodities, trade preferences, mechanisms of economic integration and State trade had been conceived precisely as alternative solutions to the most-favoured-nation clause, in order to ensure that in their international economic relations the developing countries would not enjoy only formal equality. Those solutions, no less than the most-favoured-nation clause, formed part of the system of international law.

26. The Commission should endeavour to include in its agenda questions of that kind, which, if they could not always provide a basis for codification, could at least lead to studies and analyses with a view to the progressive development of international law.

27. The Commission should also establish closer links with universities and other academic centres engaged in research and analysis in the field of international law. In that connexion, his delegation regarded as positive the initiative taken by the Commission to organize seminars during its session.

28. Another problem of concern to his delegation related to the politicizing of the election by the General Assembly of members of the Commission and also of the appointments made by the latter in the cases provided for under its Statute. His delegation felt that that was one of the reasons why the Commission, a functional body, was gradually losing its prestige. It was essential that bodies responsible for improving the international legal order, such as the Commission, should observe standards of seriousness, impartiality, efficiency and respect for the ideas forming the mainstreams of contemporary legal thought.

29. The observations of his delegation reflected its desire to see the Commission once again play its rightful role in the field of international law. But the Commission had also been subjected to criticism based not on the desire to improve its functioning, but on a lack of understanding which often characterized administrative bodies. His delegation deplored the fact that the Joint Inspection Unit, under the pretext of a policy of administrative rationalization, was attempting to direct the work of a functional body; and it could not agree with the ideas set forth in the report of the Unit (see A/9795), which were based on a partial view of reality and of the methods of work of the Commission, as shown by the fact that the Commission and the Secretariat had not been consulted.

30. His delegation wished to express its appreciation to the legal department of the Secretariat, and hoped that it would be able to strengthen its technical support to the Commission, the programme of which was becoming increasingly heavy; it was on the services of the Secretariat that the success of the work of the Commission largely depended.

31. Mr. ALKEN (Denmark) welcomed the fact that the report of the Commission was being taken up towards the middle of the session, which had given delegations time to familiarize themselves with it; he hoped that that would become a regular feature in the future.

32. At its last session, the Commission had completed the second reading of the draft articles on the succession of States in respect of treaties. Its work on those articles had been going on for a very long period of time, and the difficulties inherent in the whole matter of succession had been brought out, both in the reports of the Special Rapporteurs and the observations of member States and in the debate. The original intention of the Commission had been to relate the law of treaties to the phenomenon of succession, but the draft articles as they now stood proved the impracticability of that approach. The "clean slate" principle, on which the draft articles were based, was in accord with the political trends of the present period of decolonization. As it had stated in its written observations (see A/9610, annex I) and at the previous session (1403rd meeting), the Danish Government was in favour of that principle. The changes and additions made to the draft articles during the second reading showed, however, that the text would apply mainly to different problems from those which marked the period of decolonization. In the same written observations, the Danish Government had also said that the structuring and delimitation of the draft were acceptable; he did not wish to go back on that position, but he would like to comment briefly on a few points of detail.

33. Since the idea in articles 8 and 9 was the same—namely, that the draft articles should override devolution agreements and declarations of continuance—it should be possible to merge those two articles. In the view of the Danish delegation, any chance of simplifying the text of the draft should be seized, for it was still too complicated.

34. Article 10, paragraph 2, stipulated that for a successor State to be a party to a treaty, there must be an acceptance in writing, even if the treaty itself contained a provision for succession. The Danish delegation agreed with the Special Rapporteur that that stipulation lacked flexibility and that

there should be other ways in which the successor State could indicate its acceptance.

35. Article 18, on succession to treaties signed by the predecessor State, had given rise to a lengthy discussion in the Commission on the question of the inequality of treaties. The Danish delegation doubted whether it was worth while to retain that article, which had been suggested by the Commission as a trial balloon and which nobody seemed to favour very much.

36. The solution at which the Commission had arrived in article 22, on the problem of retroactivity, seemed to be a reasonable compromise. The Danish delegation appreciated the complications, which were mainly of a practical nature, that the implementation of the continuity principle would cause, and it supported the solution reached by the Commission.

37. His delegation had studied with interest the proposal, in foot-note 54 of the report, of a presumed continuity of multilateral treaties of a universal character, but it doubted whether the international instruments which would come into question could be defined with sufficient precision.

38. The compatibility test was frequently used in the draft articles. As the Danish Government had stated in its written observations, it was in favour of the addition of a provision on the settlement of disputes. The many questions left open by the compatibility test confirmed the need for such a provision.

39. Another thing that was clear from the written observations of the Danish Government was that it would prefer the draft articles to take the form of a convention. It would also prefer some codification conventions to be negotiated in the Sixth Committee rather than at a conference of plenipotentiaries.

40. The Danish delegation had noted the progress achieved by the Commission in the study of State responsibility. It hoped that the final form of presentation would be that of a declaration.

41. The energy crisis had generated renewed interest in the use of water resources for the production of hydro-electric power. Also, the increasing pollution of rivers had highlighted the question of the rights and duties of riparian States. That was why the Danish delegation welcomed the adoption of the report of the Sub-Committee set up by the Commission for the study of that topic (see A/9610, chap. V, annex), and the nomination of a Special Rapporteur. Codification would help to clarify the present state of international law on the subject and would form a general framework for the conclusion of bilateral treaties. The multitude of problems involved could hardly be regulated once and for all by a universal treaty.

42. The Danish delegation felt that the autonomy and the rhythm of work of the Commission should be respected, and it was in favour of a 12-week session. He announced that the Danish Government's contribution to the next International Law Seminar would again be $4,000.

43. Mr. SIAGE (Syrian Arab Republic) said that his delegation attached a great deal of importance to the Commission, which was responsible not only for codifying the old rules of international law but also for developing an international law that would meet the aspirations of the newly independent States which had not participated in the elaboration of the old rules.

44. Concerning the succession of States in respect of treaties, he welcomed the fact that the Commission had adopted the "clean slate" principle, according to which a newly independent State was free to accept or to reject commitments made in its name by the predecessor State. That principle was all the more important because some colonial Powers had concluded treaties which were not in the interest of the territories under their administration. On the whole, the Syrian delegation accepted the draft articles and considered that they constituted a useful working instrument for a conference of plenipotentiaries.

45. Regarding the Commission's study of State responsibility, some progress had been made but much still remained to be done. He emphasized the responsibility of States which committed acts of aggression or resorted to the use of armed force contrary to the Charter of the United Nations, and the responsibility of States which subjected a territory to military occupation or whose behaviour was contrary to international law, particularly if they plundered the natural resources or refused to pay compensation for the damage they caused.

46. The law of the non-navigational uses of international watercourses was of special importance. The adoption of the report of the Sub-Committee on that question and the nomination of a Special Rapporteur should speed up the work in that area. It was important that the Commission should take a certain number of principles into consideration, among which were the following: the right of all States bordering on a watercourse to use that watercourse to some extent, the geographical and hydrological characteristics of the expanse of water, past and present utilization of the watercourse and its importance from the social point of view and from that of the over-all development of the country, the present and future needs of each State with regard to the watercourse, the need to use other watercourses, what priority should be accorded to States whose economic development depended largely on a watercourse, and the possibility of paying compensation to settle disputes about watercourses.

47. The Syrian delegation welcomed the Commission's co-operation with other agencies, particularly the African-Asian Legal Consultative Committee.

The meeting rose at 12.20 p.m.